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PREFACE TO THE SEVENTH EDITION

The Constitution of the different countries are hard to digest, though lots of efforts have been made to explain them in detail ever since the days of Aristotle. Students get puzzled and bewildered not knowing what is what The difficulties arise essentially because of the complexities involved in comparing the basic features of divergent constitutions. A thorough understanding of each and every constitution is possible only when there is a firm appreciation of the theoretical principles which lie at the back of the minds of the framers of the constitutions. They are imbued with the rationale of achieving certain fundamental objectives with the help of their constitutional provisions. These have to be explained threadbare.

World Constitutions Full View at a Glance is an effort to highlight the relevant issues that frequently arise in connection with the study of different constitutions. Lucidity, clarity and a keen sense of relevance make the otherwise hard constitutions mellow enough to chew and digest with little of effort. Examinations need no longer be a problem. In fact, "flying colours" should' easily be the objective of even the 'not-so-keen* type of students, let alone the studious scholars, now that, this Seventh Edition of *World Constitution Full: View At A Glance* is placed at their disposal.

PREFACE TO THE FIRST EDITION

This book has been written to meet the demand of my students for a book which should combine in it the qualities of a help book and a text-book. Most of the help books that find place in the market fall short even of mediocre standard. Their authors observe brevity to an extent that most of the useful matter and important facts are skipped over. An ambitious student cannot, therefore, add much to his knowledge. The present volume is comprehensive and contains sufficiently exhaustive treatment of the important constitutions of the world. Latest information on the subject has been incorporated. The reader is introduced to every chapter by a relevant quotation from, eminent constitutionalists. Each chapter begins with an introduction to acquaint the student with the subject matter that follows. Graphic illustrations have been addea at suitable places in the book to facilitate the understanding of complex constitutional facts The matter has been presented in a style that is both simple and lucid and falls within an easy grasp of an average student. The book has been written in the form of questions and answers, the form which finds general appreciation at the hands of the students preparing for the examination in a short span of time.

I arrogate to myself no special merit in respect of the originality of the subject-matter. I have only whetted the subject-matter and marshalled the scattered facts in order to meet the requirements of the examinees. My thanks, are due to the eminent constitutionalists and political thinkers whose standard works I have freely drawn upon. I am particularly indebted to Principal T.N. Sachdeva, M A., B. Com., and Prof. B. R. Sood, M. A. for their valuable suggestions and assistance.

I am confident that the book will find favour with those for whom it is meant. All suggestions with a view to making the book more useful will be thankfully received and incorporated in the next editions.

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CONTENTS

THE CONSTITUTION OF INDIA

"However good a Constitution may be it is sure to turn out bad because those who are called to work it happen to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the legislature, the executive, and the judiciary. The factors on which the working of these organs depend are the people and the political parties they will set up as their instruments to carry out their wishes and their policies. Who can say how the people of India and their parties will behave? Will they uphold Constitutional methods for achieving their purposes or will they prefer revolutionary methods of achieving them ? If they adopt the revolutionary methods, however good the constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to have any judgement upon the constitution without reference to the part which the people and their parties are likely to play."

Dr. Ambedkar

Chairman, Drafting Committee of the Constituent Assembly.

CHAPTER I

INTRODUCTORY

The Constitution of India is the culmination and expression of the aspirations of the Indian people to be free from the yoke of British Imperialism and control their destiny so as to follow a path of economic prosperity and social justice. The independence struggle was fought not only to attain political freedom but also for securing economic and social justice which could not be possible while living under Imperialist rule.

The Constitution establishes a Sovereign Democratic Republic and paves the way for securing to the citizens of India economic, social and political justice. It establishes not only a secular parlimentary democracy but also sets an ideal of a social and economic democracy. Apart from the guarantee of Fundamental Rights, it lays down the Directive Princinles of State Policy in the pursuance of which the Government has adopted the Socialistic Pattern of Society as its ideal.

Evolution : The Constitution is a product of long political and constitutional evolution. The nationalist movement started in an organised form as early as 1885 when the Indian National Congress was formed. The main demand at this stage was active association of Indians with the administration of the country. The movement was constitutional and limited to Council chambers and more concessions to educated Indians were sought for.

During the period between 1900 to 1919, Indian politics became radical and revolutionary.

Extremism or Militant Nationalism : This period is known as the period of extremist politics led by Bal-Pal-Lal (Bipin Chandra Pal, Bal Ganga Dhar Tilak and Lala Lajpat Rai). Tilak's "freedom is my birth right" became the slogan of the freedom movement. Politics came out of the Council chambers and popular masses began to be organised. The Swedeshi and boycott movements took birth. Besides this extremist movement led by these great patriots, this period sees the bomb cult. The revolutionary societies sprang up throughout the country : the *Ghadar* movement being the most important and most pervading of them. This period is known as a period of militant nationalism. The British Government followed a dual policy of suppressing the revolutionary and radical movement and winning over the moderate elements in the political life on the one hand and sowing the seed of communal separation on the other. The 1909 Reforms extended the representation of Indians in the Councils and granted separate communal representation to the Muslims. It was during this period that for first time, Indians were included into the Executive Councils of the Governor General and Governors.

1917 Declaration and **1919 Reforms** : As a result of the bomb-cult, the extremist movements, and the first World War, the British Government made Declaration of Policy of 1917. In this declaration the government promised responsible government to India as soon as possible after the war. Instead came the 1919 reforms. These reforms make a milestone in the constitutional development of India. Dyarchy was introduced in the provinces. For the first time Indians were given some share of power in the provincial administration, howsoever little it was. The administration of the provinces was divided into two parts—Reserved and Transferred. The transferred half was administered by Indian ministers The Legislatures had non-official and in most cases elected majority. It established bicameral Central Legislature, with the lower chamber—the Legislative Assembly, having non-official majority. This Legislature continued till 1947, when power was transferred to the Indian hands.

However, these-reforms failed to satisfy the political hunger of India because no responsible government as promised in the 1917 declaration was granted. In fact all power was concentrated into the hands of the Governor-General and the Governors. The ministers worked under the pleasure of the Governors and subject to their overriding authority. As a consequence the political movement became militant and radical. From now on started the Gandhian era in Indian politics.

Gandhi Enters Politics : Gandhi, who had already won recognition for his successful passive resistance movement in South Africa against Asiatic Law, could easily capture the minds of Indians for his appealing personality. He was a great co-operator and prided in citizenship of British Empire for which he had a genuine sense of loyalty. He was awarded medal for his meritorious services during World War. But passing of the Rowlatt Act, severe treatment to Turkey—the seat of the caliph of Muslim people—and Jallianwala tragedy, shook his faith in the British sense of justice and fairness and turned him a "non-co-operator. To forge Hindu-Muslim unity, he extended his help to Muslims and headed the Khilafat Movement. No other period saw such a great Hindu Muslim co-operation at political level. Millions of Indians participated in these movements and went to jail. Gandhiji made the political movement a popular and mass movement.

The Russian Revolution : The Russian Revolution of 1917 was a landmark in world history. It had great impact on Indian politics It was during 1920's that the Communist Party was formed and the Trade Union movement was organised and became militant. The socialist, communist and other left organisations began to grow. The students, youth and peasants movements sprang up. Young and progressive leaders like Pandit Jawaharlal Nehru and Subhash Chandra Bose entered politics. The Congress began to talk of economic and social programme in Free India. It adopted the policy of linguistic organisation of Slates. Politics became so militant that in

1929 the Congress adopted a resolution for complete Independence of India. It was a step further than the Dominion Status that had been its demand so far.

Communalism : However, it was during 1905 and thereafter that communalism became active. Communal riots occurred on an unprecedented scale. The Hindu Mahasabha and the Muslim League came out of their grooves and began to count in Indian political life though seeds of separatism were sown in 1906 when the Muslim League with the Agha Khan as Chairman was formed and even earlier. The Partition of Bengal was done out of communal considerations. Under 1909 Reforms, the communal representation was conceded to the Muslims and this policy was extended under the 1919 Reforms. The various Unity Conferences for forging Hindu-Muslim Unity failed. The constitutional and communal tangle remained unsolved. The communal award of 1932 laid down the foundation of Pakistan and subsequently Mr. Jinnah on the basis of 'two nations' theory could not be satisfied with less than separate state for Muslims.

The Simon Commission : The Simon Commission visited India during this period with a view to make recommendations on the next constitutional step, since the 1919 Reforms proved a failure. It was boycotted by all the political elements in India except the communal parties like Mahasabha and a section of the Muslim League. It was during this boycott of the Simon Commission that L. Lajpat Rai got injured at the hands of the police and he died at the altar of Mother India.

S. Bhagat Singh : While Indian politics had taken to constitutionalism and vested interesto were utilising the communal parties to divide the progressive national forces, a clarion call was given by the great patriot—S. Bhagat Singh. By throwing a bomb in the Centra! Assembly, he not only expressed the anger of the Indian people against Imperialism but also warned the Indian politicians of the purpose before them which they had at the moment forgotten and had fallen in the communal squabbles.

Nehru Committee Report : It was here and now that the Indian political elements accepted the challenge of the British Government that the Indians could not agree among themselves and produce a Constitution. The Nehru Committee, appointed by all Parties, produced a Constitution for India. Many features of the present Constitution are similar to those of the constitution as produced in the Nehru Committee Report. It has been called the 'blue print of New Constitution'.

Round Table Conference : The Government called a Round Table Conference to determine the next step in the constitutional advancement of India. It invited all the reactionary and vested interests in the Indian society. The Congress started Satyagraha for the demand of complete Independence. January 26, 1930, was celebra-

ted as Independence Day and it was for this reason that the constitution was inaugurated on 26th January, 1950. Since then this Independence Day has become the Republic Day.

Congress and the R.T.C. : Gandhiji entered into an agreement with Irwin. This is known as Gandhi-Irwin Pact. Gandhiji, as a consequence, participated in the 2nd R.T.C. as the sole official representative of the Congress. The Satyagraha was suspended. The Conference failed. Gandhiji was arrested on his return. It was at the Karachi Session that the Fundamental Rights Resolution was adopted by the Congress, which was embodied in the Constitution under the chapter of Fundamental Rights. It was as a result of the proceedings of the 2nd Round Table Conference that the British Government gave Communal Award, under which besides giving separate representation to various communities and giving separate representation to the Muslims even in those provinces where they were in majority as in Bengal and the Punjab, the Harijans were also given separate representation. Thus a sinister attempt was made to divide the Hindu society. Mahatma Gandhi went on fast and it resulted in an agreement under which the Harijans were given reserved representation in place of separate representation. The unity of the Hindu community was preserved.

1935 Act: These constitutional and political developments led to the passageof the 1935 Act which came into operation on 1st April, 1937. This Act provided for Federation of India in which the Indian States were to join with British India ; and granted full provincial autonomy. The Congress formed governments either independently or in co-operalion with other groups in 8 out of 11 provinces. The Federal part of the Act never came into operation. This Act was described by Pt. Jawaharlal Nehru as a 'Charter of Slavery'. The executive was armed with wide discretionary and overriding authority. In the Centre the Indian States were to join in a Federation and would have always sided with the British Government against the Nationalist force. Further political advance would have been completely blocked. Except the Hindu Mahasabha, all other parties had rejected the Central part of the Act. The present Constitution is to a very large extent an adaptation of the 1935 Act to the changed conditions of Free India.

The Second World War : However, after the working of the provincial autonomy for about years World War II started. The British Government joined it on the side of allies. India, being an Empire country, was automatically involved. The executive in India was given dictatorial powers under the Defence of India Rules to prosecute the War. The Congress Party resigned from the provincial ministries at the end of 1939 as a protest. Mahatma Gandhi again assumed the reins of the Congress which began its final bid for attainment of Independence. It demanded a declaration by the British Government that India would get independence after the War and that a provisional government representing political India should be formed to prosecute the War. The Muslim League adopted a resolution in March 1940 demanding the formation of Pakistan.

August Offer : The British Government made an offer, known as August Offer in August 1940. It promised Dominion Status after the War; the Constitution was to be framed by Indians subject to the due fulfilment of obligations which Great Britain's long connections with India had imposed upon her. During the War period, the Executive Council of the Governor-General was to be expanded to include the popular representatives of the people of India. The Congress rejected the offer. Gandhiji started individual Satyagraha. He did not want to interfere with the prosecution of war and at the same time express the indignation of the Indian people. Acharya Vinoba Bhave was the first satyagrahi to offer Satyagrah in this movement.

The war situation, in the meanwhile, deteriorated. Japan entered the war and was knocking at the doors of India. The world public opinion pressurised the British Government to take some steps to reconciliate the Indian people. The British Government announced Cripps Mission.

Cripps Mission : Mr. Cripps came to India on 23rd of March, 1942. His proposals consisted of two parts ; one dealing with long-term of Indian freedom and the other with the immediate establishment of an Interim Government at the Centre. The long term proposals were vague. Negotiations failed on the immediate issues. The Indian National Congress demanded the complete Indianisation of the Governor-General's Executive Council. But the British rulers were not prepared to surrender the portfolio of Defence to an Indian.

The Quit India Resolution of 1942 : The failure of the Cripps Mission produced great discontentment in India. It exposed the intentions of the British rulers. On August 8, 1942 the All-India Congress Committee passed the famous Quit India. Resolution. It also stressed the need for immediate ending of British rule in the country and sanctioned "the starting of a mass struggle on non-violent lines on the widest possible scale." The Government reacted by immediately arresting all the members of the Congress Working Committee along with Mahatma Gandhi. These arrests created a sensation in the country. A great revolutionary upsurge was witnessed throughout the length and breadth of the country. The Government set in motion its entire repressive machinery to put down the rebellion. Thousands were shot dead. Wholesale arrests were made. Jails were packed to capacity.

The Wavell Plan and Simla Conference of 1945 : Another **abor**tive effort to solve the political deadlock in India was made in 1945. Lord Wavell invited the leaders of all sections of political opinion. A conference was held at Simla. Discussions went on for about one month. The Wavell Plan in its essence was the complete Indianisation of the Executive Council. The caste Hindus and the Muslim were .to be represented on it on the basis of parity. Mahatma Gandhi resented the use of the words'caste Hindus'. The Muslim League

clamoured for having the representation of all the Muslim members in the Council. The Congress, being a national organisation, insisted on the nomination of its representatives from all the communities. The Conference met with failure because neither the Congress nor the League was prepared to deviate from the stand taken by them.

Cabinet Mission : The war with Japan came to an end on 14th August, 1944. General elections were held in the United Kingdom. As a result of these elections, the Labour Party came into power. The Labour Party wanted to transfer power to the Indians as a matter of political expediency. A Mission consisting of three Cabinet Ministers was, therefore, sent over to India to resolve the political deadlock. The Mission reached New Delhi on March 24, 1915. The Cabinet Ministers along with Lord Wavell started exploratory talks with the Indian leaders. The two major political parties *i.e.,* the Indian National Congress and the Muslim League failed to arrive at an agreement on fundamental constitutional issues. The delegation put forward its own plan to solve the problem. The plan was embodied in a joint statement issued by the Governor-General and the Cabinet Mission on 16th May, 1946. The plan may be summarised as follows :

1. It proposed a federal polity comprising British India and native States. The Union Government was to deal with only three subjects, *viz.,* Foreign Affairs, Defence and Communications.

2. The Union Government was to have a Legislature constituted from British Indian States. All communal issues were to be decided by a majority of the members present and an absolute majority of the community affected.

3. All subjects other than the Union Subjects and the residuary powers were to be vested in the Provinces.

4. Provinces were to be divided into three groups. Group 'A' was to consist of the six Hindu majority provinces. Groups 'B' and 'C' were to consist of the Muslim Majority Provinces. The Punjab, Sind and the N.W.F.P. were to constitute Group 'B' whereas Bengal and Assam were to form Group 'C'. The Provinces were given the power to opt out of the Group concerned by a decision of their new Legislature after the general elections.

Apart from the above proposals, a plan for an Interim Government was also envisaged in the statement. The Governor-General's Executive was to be reconstituted by including the representatives of the major political parties.

At first the plan was agreed to both by the Congress and the League. But later on. the Muslim League decided to boycott it. The League asserted that the formation of provincial groups was compulsory and not optional.

The Constituent Assembly : Elections to the Central and Provincial Legislatures were held in 1946. The Congress captured

an overwhelming majority of seats from the general constituencies whereas the League captured a thumping majority of seats from the Muslim constituencies. Elections to the Constituent Assembly were also held. An Interim Government was formed on September 2, 1946. The League at first refused to join it but later on did so. It, however, continued to boycott the Constituent Assembly.

Nevertheless, the Constituent Assembly minus the Muslim League members, held its sitting on December 9, 1946. There was again a great political stalemate. In the meanwhile, the British -Government announced on February 20, 1947 that it was determined to transfer power to the Indians and fixed June 1948 as the final time-limit. Lord Wavell was recalled and Lord Mountbatten was sent in his place.

The Mountbatten Plan of Jane, 1947 : Lord Mountbatten started exploratory talks with the leaders of Congress and the League. Both the parties were agreed to part company. Creation of Pakistan was assented to. It was on the 23rd June, 1947, that Lord Mountbatten made an announcement of the agreed plan. India was to be partitioned into Hindu and Muslim majority areas. Punjab and Bengal were to be partitioned. The people of the N.W F.P. and the Sylhet district of Assam were given the right to decide through plebiscite whether they wished to join Pakistan or India. Boundary Commissions were to be set up for partitioning the Provinces concerned.

The old Constituent Assembly minus the Muslim League members was to carry on its work of framing the Constitution of India. Pakistan was to have a separate Constituent Assembly. The 15th of August 1947, instead of June 1948, was fixed as the date for transfer of power.

The Indian Independence Act : A Bill containing the main proposals of the Mountbatten Plan of June 3, 1947 was introduced in the British Parliament on 3rd July, 1947. It was hurriedly passed by **the** British Parliament in a few days' time. Its main provisions may be brought out as follows :

1. The Act sought to set up two Dominions, the Indian Union and Pakistan. The territory of Pakistan was defined. It was to consist of Sind, Baluchistan, the N.W.F.P., the Muslim majority areas of the Punjab and Bengal including the Sylhet district of Assam. The Indian Union was to comprise the remaining parts of British India including East Punjab and West Bengal, two new provinces formed by partitioning the provinces of Punjab and Bengal.

2. Each Dominion was to have a Governor-General who would be appointed by the King on the advice of the Dominion Cabinet concerned. The same person could also be the Governor-General of both the Dominions in case they agreed.

3. The Government of both the Dominions would be carried on in accordance with the provisions of the Government of India

Act, 1935 pending the framing of their respective Constitutions. The Governor-General would have the powers to amend the Act to suit the new requirements. The Governor-General was not to use his discretionary powers. He was to act according to the advice tendered by the Dominion Cabinet. He would be a constitutional head.

4. The respective Constituent Assemblies would act as Dominion Legislatures and would have same powers as given in the Act of 1935. The same Assembly when working in the capacity of a Constituent Assembly would act as a sovereign body.

5. The Act empowered the Dominion Legislatures to amend or repeal any Act of the British Parliament applicable to India. It further provided that an Act passed by the British Parliament after 15th August, 1947 would not be applicable to India.

6. The title 'Emperor of India' was to be deleted from the Royal Style.

7. The Act abolished the office of the Secretary of State for India. In its place, a new office of the Secretary of Commonwealth Relations was to be created.

8. The Act further laid down that with the transfer of power to the two Dominions, the paramountcy of the British Crown over the Indian States would lapse and with it, all treaties, 'sanads' etc.,. would cease to be operative. The States would be free to join either of the two Dominions or remain independent.

The Constituent Assembly of India : The demand for the establishment of a Constituent Assembly was first embodied in a resolution' of the National Congress passed at its Faizpur Session on December 28, 1936. The same demand was further ratified by the provincial Legislatures where the Congress had a majority. This was all one sided. The British rulers were not yet prepared to entertain this demand. It was during World War II and under the stress of international conditions that Sir Stafford Cripps was sent over to India to win over the support of the Indian political leaders. The proposals of Sir Stafford Cripps contained provisions for setting up a body for preparing the Constitution of India after the termination of the War. The proposals of Sir Stafford Cripps were not accepted by the Indian political parties. Later, in 1946, the Cabinet Mission came over to India and put up a proposal for the setting up of a Constituent Assembly. The proposals were accepted by the major political parties in India. The members of the Constituent Assembly were elected on communal basis indirectly by the members of the Provincial legislatures through the method of proportional representation and single transferable vote. The seats were allotted to the various. provinces and communities. The Constituent Assembly was thus created. It had 389 members in all, including 93 representatives of the Indian States.

Its Meetings : The first meeting of the Constituent Assembly was held on 9th December, 1946. The Muslim League boycotted it.

The work of the Constituent Assembly was seriously handicapped. It held several sittings but the work of Constitution making made little headway. The situation in the country began to deteriorate seriously. Communal riots broke out throughout the length and breadth of the country and the whole situation culminated in the sad partition of the country in accordance with the Mountbatten Plan of June 3, 1947.

The Constituent Assembly minus the Muslim League members restarted the work. The Constituent Assembly of India then consisted of about 300 members including the representatives of the States acceding to India.

According to the Indian Independence Act of 1947, the Constituent Assembly became a sovereign body and all other limitations imposed under the Cabinet Mission Plan were lifted.

On August 29, 1947, the Assembly set up a Drafting Committee to prepare a draft constitution. The Committee consisted of eminent constitutionalists like Dr. B.R. Ambedkar (Chairman), Sir Alladi Krishnaswami Ayyar, Shri N. Gopalaswami Avyangar, Syed Mohammad Saadullah, Shri T.T. Krishnamachari, Shri K M. Munshi etc.

Dr. Rajendra Prasad was elected President of the Assembly.

The Constituent Assembly took 2 years, 11 months and 18 days to complete its work. It concluded its work on the 26th November 1949 when the constitution was signed at an impressive ceremony. Some provisions of the Constitution, like citizenship, elections, etc., were brought into operation at once but the rest of the Constitution came into force on the 26th January, 1950, on the Independence Day anniversary. The original Constitution is a voluminous document containing 395 articles and 8 schedules. A number of other Articles and Schedules have been added by some constitutional amendments made thereto after its promulgation.

Q. 1. Describe the main features of the Indian Independence Act, 1947.

Ans. The Indian Independence Act, 1947, was passed by the British Parliament in July, 1947. It established two independent Dominions—the Dominion of India and the Dominion of Pakistan and made them independent and free. Sovereignty of the British Parliament over these territories were transferred to the peoples of these territories and the suzerainty of the British Crown over the Indian States lapsed. The Indian Empire ceased to exist. Its main provisions are as follows :

1. The New Dominions : The Act set up two Dominions-India and Pakistan, from the 15th August, 1947. Article 2 of the Act determined the territories of the two Dominions. The Pakistan Dominion was to consist of Baluchistan. Sindh, West Punjab N.W.F.P., and East Bengal including Sylhet District of Assam. The remaining parts of the British India were to constitute the Indian Dominion.

The N.W.F.P. was to decide by a referendum before 15th August, 1947 whether it was to join Pakistan or not. Similirly a referendum was to be held in the Sylhet district of Assam and if the majority of votes cast went in favour of its joining Pakistan, it would form a part of East Bengal. The exact boundaries of these provinces—the West Punjab and East Bengal, including Sylhet District—were to be determined by a Boundary Commission to be appointed by the Governor-General. Till then these were to consist of the Muslim majority districts in the Punjab and Bengal provinces respectively.

2. Governor-General: The Act provided that for each dominion there shall be a Governor-General, to be appointed by His Majesty, for the purposes of the government of the Dominion. The same person, unless the Legislature of either of these Dominions passed a law otherwise, could be Governor-General of both the Dominions.

3. Legislature : Each Dominion was to have its own Legislature. It was given full power to make laws for that dominion. It could pass laws having extra territorial operation. It could repeal or amend any Act of the British Parliament or a rule, order or regulation made under it, which is a part of the law of that Dominion. No Act of the British Parliament in future shall extend to a Dominion unless it is extended by the law of the Legislature of that Dominion.

4. Temporary Provisions as to the Government **of each** Dominion : The Constituent Assembly of each Dominion was to act as Legislature of that Dominion. It was also to exercise powers for framing the Constitution of the Dominion. Except in so far as the Constituent Assembly enacts a law, each Dominion was to be governed as far as possible in accordance with the Government of India Act, 1935. However, the Discretionary and Individual Judgment Powers of the Governor-General and Governors under that Act were to lapse. Similarly, no bills of the Provincial Assemblies could be reserved for the significance of His Majesty. Nor could His Majesty disallow a Provincial Law any more.

5. Indian States : The suzerainty of the British Crown over the Indian States lapsed. Along with this, the treaties and agreements between His Majesty and the Indian States also lapsed. All authority, powers, rights or jurisdiction exerciseable by His Majesty in relation to these States and all obligations and functions of His Majesty in relation thereto, also lapsed. The States thus became sovereign entities. The States were given the freedom, if they so wished, to join India or Pakistan, or to remain independent entities.

However, such agreements that related to customs, transit, communications, posts and telegraph, or other like matters, were to continue to be effective till repudiated or replaced by fresh agreement.

6. Tribal Areas : As in the case of Indian States, the treaties and agreements between His Majesty and any person having authority in the Tribal areas lapsed ; and so did the obligations, rights and functions of His Majesty under such agreements and treaties.

7. Miscellaneous : The other provisions of the Act dealt with the Civil Services, the Armed Forces, the British Forces, in India, etc. The rights and privileges of the Civil Services were protected, provision was made for the division of the Armed Forces, and for retaining the authority and jurisdiction of His Majesty over the British forces stationed on the territories of India and Pakistan. It abolished the office of the Secretary of States for India. The title of 'Emperor of India' was deleted from the Royal Style.

POINTS TO REMEMBER

1. The Indian Independence Act, 1947, was passed by the British Parliament to grant independence to India. 2. It established the Dominions of India and Pakistan. 3. A Governor-General was to head each Dominion. The same person could be Governor-General of both the Dominions. 4. The Legislature of each Dominion could make any law ; could repeal the Laws of British Parliament applicable to that Dominion or extend such a law. 5. There shall be a separate Constituent Assembly for each Dominion to frame the Constitution of the Dominion. It would also act as the Legislature. 6. The provisions of the 1935 Act were to apply as far as possible. 7. The suzerainty of the British Crown over States lapsed. Thev were free to join one Dominion or the other. 8. The treaties and agreements of His Majesty with any person in the tribal areas also lapsed. 9. The office of the Secretary of State for India was abolished.

Q. 2. Write a short note on the Preamble of the Constitution.

Ans. Every Constitution begins with **a** Preamble. It contains the aims and objects and basic purposes of a Constitution. Similarly the Indian Constitution starts with a Preamble. The only exception to this universal rule is the 1935 Act.

It needs to be noted that the Preamble is not justiciable. Its provisions are not enforceable through courts of law. Its violation cannot be punished. It lays down the fundamentals of the new social order that fathers of the Constitution wanted to establish. Though the Preamble is non-justiciable, yet the courts may depend upon it in case of ambiguity of law, for the purposes of explaining and elucidating that law. "It is a key to open the minds of the makers of the Act." Justice Mahajan justified his interpretation of clause (5) of Article 22 on the basis of the Preamble. He said that the Preamble 'makes our Constitution sublime'.

The Preamble was framed on the basis of the Objectives Resolution introduced by Pandit Jawaharlal Nehru in the Constituent Assembly in its first session and it was adopted unanimously.

A

The Preamble reads as under.

We, the PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and opportunity ; and to promote among them all FRATERNITY assuming the dignity of the individual and the unity of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Thus the Preamble makes the people the source of the Constitution and sovereignty of the State. Dr. Ambedkar said in the Constituent Assembly that "this Constitution should have its roots, its authority, its sovereignty from the people. That it has." The Preamble says: "We the people of India..... give to ourselves this Constitution."

It describes India as a "Sovereign Democratic Republic". India was a dependency of Britain before Indepedence and became a Dominion on the 15th August 1947. This Constitution makes India a Sovereign Republic—a fully sovereign state controlling its own destiny—both in internal and external matters. Its membership of the Commonwealth of Nations of which the Queen of England is a symbolic head, does not impose any legal obligation upon Indian Republic, nor detracts from its sovereignty. India is a member of the Commonwealth out of its free will; it is a voluntary association.

The word Republic implies that the head of the Indian State is an elected and not hereditary one. The Constitution provides for the President of India who is elected for a term of 5 years.

The word Democratic implies that we have parliamentary system of government. The fathers of the Constitution hated dictatorship or military rule or monarchy. They believed in the rule of the people, by the people and for the people. The people are made the sovereign and the power of the state is to be exercised by their representatives in Parliament and State Legislatures. The other institutions like the administration and military are subordinate to the Parliament and subject to its authority. The establishment of dictatorship in any form by subverting parliamentary democracy will be against the spirit of the Constitution. The word democratic embraces in addition to parliamentary democracy in its political form social and economic democracy as well. It is in this wider sense that the term 'Democratic' is used in the preamble.

Justice : The preamble assures the people, economic, political and social justice. It thus visualises not only political democracy . but also social and economic democracy. It is in pursuance of these

-objectives that the Government has adopted the Socialistic Pattern of Society as its ideal.

Liberty, Equality and Fraternity : These are the basic principles of a democratic society. All men are equal and must be provided with an equal opportunity for their development. There should be no distinction between man and man. Every one should be assured equality of opportunity, liberty of thought and expression and dignity of human personality. Only then justice will be possible. While the Preamble assures these preconditions of development of individual's personality, it emphosises national unity. It assures "the unity of the Nation". Along with the individual's welfare, national unity and common welfare must also be promoted. Both are complementary and supplementary to one another. All fissiparous and anti-national tendencies and forces should be curbed.

Thus the Preamble represents the ideals and the spirit of the Constitution. Though it is not justiciable, yet it is the most sacred part of the Constitution. It makes the Constitution 'sublime'. Pandit Bhargava in the Constituent Assembly summed up the importance of the Preamble in the following words : "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution.....It is a jewel set in the Constitution. It is a superb prose-poem, nay, it is perfection in itself." It is considered as one of the best of its kind ever drafted.

POINTS TO REMEMBER

Preamble: 1. It is non-justiciable. 2. It was framed on the basis of the Objectives Resolution. 3. It makes the people source of sovereignty. 4. It makes India into a Sovereign Democratic Republic. 5. The membership of the Commonwealth of Nations does not affect the sovereign character of the State of India. 6. It assures the people of justice—economic, social and political. 7. It also assures liberty, equality and fraternity. 8. It represents the spirit of the Constitution and the Ideal.

—o—

"The Constitution is an experiment, as all life is an experiment."
*—Mr. Justice O. W. Holme**

CHAPTER II

FEATURES AND SOURCES OF THE INDIAN CONSTITUTION

***Q. 3. What are the salient features of the Constitution of India?**

Ans. The Constitution of India is remarkable for certain unique features of its own. According to Sir B. L. Mitter, some of the distinctive features of the Constitution of India are "the disappearance of the princely India, sovereignty of the people, adult suffrage, joint elecforafe, the abolttion of the Privy Council's jurisdiction and substitution of the Supreme Court in its place, the abolition of titles and untouchability, civil equality irrespective of religion, enumeration of fundamental rights, directive principles of State policy, the creation of the President and Cabinet System of Government and the establishment of a secular State."*

The salient features of the Constitution may be studied briefly under the following heads :

1. Written, Lengthy and Detailed: Like the Constitutions of the United States of America, Canada, and France, India too has a written Constitution ; though it differs from these documents in many respects. The Constitution of India is very elaborately written which makes it the most voluminous Constitution in the world. It has been the endeavour of the framers of the Constitution to provide for all the problems of administration and governance of the country. Even those matters which are subjects of conventions in other countries have been put down in black and white. Thus, while the U S. Constitution comprises only 7 Articles (to which may be added 22 amendments as well, and the Australian 128 Articles and Canadian 147 Articles, and South African 153 Articles, the Constitution of India is a monumental document consisting of 325 Articles, 9 Schedules and 16 amendments.

This extraordinary bulk of the Constitution is due to the following reasons : (a) The Constituent Assembly wanted to incorporate in the Constitution the accumulated experience gathered from the working of all the constitutions of the world and to avoid all possible defects and loop-holes (b) The framers of the Constitution were not content merely with laying down the fundamental principles of the Government as the American Constitution does. They followed Government of India Act, 1935, in providing for matters of administrative details not only because the people were accustomed to the

detailed provisions of the Act, but also because the authors had the apprehensions that under the existing conditions in the country, the constitution might be perverted unless the form of administration was also provided by the constitution, (c) Unlike the U.S. Constitution which deals only with the Federal Government and leaves the States free to draw up their own constitutions, the Indian Constitution provides for the administration of both the Union Government and the Governments of the States. (d) The vastness of the country and the peculiar problems faced by her have also contributed towards the bulk of the constitution. For example, there is one part entirely devoted to the Scheduled Castes and Tribes and some other minorities.

2. Both **Rigid and Flexible** : The Indian Constitution is partly rigid and partly flexible. The procedure laid down by the Constitution for its amendment is neither very easy, as in England, nor very difficult as in the United States. In England, which has no written constitution, there is no difference between a constitutional law and an ordinary one. The Constitutional law can be amended exactly in the same manner in which ordinary legislation is passed or amended. In the United States, however, the method of constitutional amendment is highly rigid. It can be carried out only with the agreement of the two-third majority of the Congress, and its subsequent ratification by at least three-fourths of the States. The Constitution of India strikes a golden mean, thereby avoiding the extreme flexibility of the English Constitution and the extreme rigidity of the American Constitution. A constitutional amendment can be initiated in either House of the Parliament. It can be passed by an absolute majority of the total membership of each House voting separately and two-third majority of the members present and voting. But certain parts of the Constitution can only be amended with the subsequent ratification by legislatures of at least half of the States. It may, however, be noted that the State Legislatures have not been given any powers to amend the constitution because they do not have separate constitutions. In Canada and Australia, both the Provinces and the States can amend their own Constitution within the federal framework.

3. **Sovereign Democratic** Republic : The preamble to **the** Constitution declares India to be a Sovereign Democratic Republic. It is sovereign since India has emerged out as a completely independent State. The Dominion Status of India established under the Independence Act of 1947 has been-terminated and India is now a full-fledged state with all the characteristics of sovereignty. The word 'Democratic' signifies that the real power emanates from the people. The word 'Republic' is used to denote that the State is headed not by a permanent head like the Queen of Britain but by a President, indirectly elected by the people.

4. Partly Federal : The Constitution declares that India or Bharat shall be a Union of States. It possesses double set of Governments, the Union and State Governments. All the subjects of

administration have been divided between the Union Government and the State Governments. There are three lists—(1) Union list which contains items of exclusive jurisdiction of Indian Parliament, (2) State list, which contains items of jurisdiction of State Leg statures; and (3) Concurrent list which contains such items upon which both the Parliament and State Legislatures can make laws concurrently. The residuary powers are vested in the Centre. The Union and the States have their own governments and executive heads. The President is the head of the Union executive and the Governor of the State executive. The Prime Minister is head of the Union Government and Chief Minister that of the State government. A Supreme Court has also been set up to interpret the Constitution and settle disputes arising between the Centre and the States and preserve this division of powers.

Although the Indian State is Federal in form, it has so strong a centre that some critics have called it Federal in form but unitary in spirit. The powers of the Indian Parliament as mentioned in the Union list are very wide. It can legislate even in the State list under certain circumstances. The Governor is appointed and dismissed by the President, who can also issue instructions and directions to him. The President can declare emergency and thereby assume administration of a State himself. The entire judicial system is headed by the Supreme Court. There are no two separate sets of Courts—Federal and State, as in the U.S.A. The Parliament can by law change the territories of States as it did under the States Reorganisation Act, 1956.

5. Parliamentary System of Government: The Constitution establishes a parliamentary type of Government both at the centre and the units. It follows the British Cabinet system as against the Presidential system of the U S.A. Though the President, elected indirectly, is head of tbe Executive of the Union, the real powers are vested in the Cabinet which is collectively responsible to the Lok Sabha. Similarly, in the States, Governor is the head of the executive but real powers are exercised by the Council of Ministers, which is responsible to the Legislative Assembly. The President and the Governor are merely constitutional heads.

6. Secular State : The Constitution seeks to prevent the growth of a communal polity or a theocratic state. It establishes a single common citizenship to all irrespective of religion, caste, colour, creed or sex. It confers upon every citizen the right to practise any religion he or she chooses. The constitution embodies the principle that the State should deal with relations between man and man, and not with those between man and God. Complete religious toleration underlies the spirit of the constitution. There is to be no ecclesiastion cal department of the State as it used to be during the British regime. The State has no official religion. No discrimination can be made on the basis of religion, faith, caste, colour and sex, etc. Every citizen is equal before law. There prevails full religious freedom. No religion is given a preferential or superior status. Thus constitu-

tion establishes a State in India which is neither religious nor irreligious but non-religious.

7. Single Citizenship : Although India has a Federal Government yet double citizenship, as provided for in the U.S. Constitution, has not been provided for in the constitution. All Indians irrespective of their domicile, enjoy, a single citizenship of India.

V 8. Directive Principles of State Policy : The Directive Principles of State Policy are another—distinctive feature of the Indian Constitution. This feature has been taken from the constitution of the Irish Free State. These are the ideals which the State shall strive to achieve as far as possible. Some of the important principles are as follows : (a) Equitable distribution of wealth amongst all classes so as to prevent its concentration into a few hands ; *(b)* providing adequate means of livelihood to all citizens ; (c) prevention of -cow slaughter ; (d) promotion of health and strength of workers ; (e) promotion of cottage industries, scientific agriculture and animal husbandry ; (f) the right to work, to education to a living wage and to public assistance in case of unemployment, old age, sickness, etc. ; (g) prohibition of intoxicating drinks ; (h) establishment of Village Panchayats ; (i) separation of judiciary from the executive ; and (j) the promotion of international cooperation and world security through peaceful means. These principles are non-justiciable. No legal action can be taken against the State in court of law if it fails to follow or realise any of these principles. They do not confer constitutional rights upon citizens, these cannot be enforced through courts of law as fundamental rights can be. However, these principles have been made by the fathers of the Constitution fundamental in the governance of the country. It becomes moral duty of every government to follow them and realise the purpose behind him.

9. Adoption **of** Unqualified Adult Franchise **and** Abolition **of Communal** Representation : The Constitution provides for universal adult suffrage without any qualification of property, taxation, education or the like. Every person enjoys the right of vote at the age of 21 years. In fact, India has achieved in one stretch what England achieved in about a century (1832—1927). An unqualified suffrage is **a** bold experiment.

No less creditable for the framers of the Constitution is the abolition of communal representation, which has been reponsible to a great extent for the lamentable partition of the country. The system of separate communal electorate has been replaced by the system of joint electorate. There is no reservation of seats except for the scheduled castes and tribes and the Anglo-Indians.

10. Fundamental Rights : Like the Constitution of the United States of America, the Constitution of India also includes a separate chapter guaranteeing fundamental rights to all citizens. These rights are justiciable and inviolable. They are binding on the legislature as well as on the executive. If any of these rights is violated, a citizen has the right to seek the protection of the judiciary. Any Act of the legislature or order of the executive can be declared null and

void if it violates any of the fundamental rights guaranteed to the citizens by the constitution. As against the Directive Principles of State Policy, the fundamental rights are justiciable, safeguarded with constitutional guarantees.

11. Official Language : In a country with diverse cultural traditions and languages, it is essential to declare some common language as the national language, symbolic of the unity of the different states in the country. The Constitution declares Hindi in the Devnagri script as the official language of the country. Since it would not be an easy task to replace English so quickly, the Constitution provides for the use of this language for the first fifteen years after—the—enforcement of the constitution, i.e., up to 1965. After that the President shall take the-decision-whether to immediately replace English-by-Hindi-or to extend this period further.

Besides, each State is authorised to adopt any one or more of the regional languages spoken there for all or some of the official purposes. Regional Committees have been formed in the States of Panjab and Andhra. These Committees look after the interests of the people in their regions.

12. The Reorganisation of States Act of 1956 also establishes five Zonal Councils. The States of the Indian Union have been grouped into five zones In the following manner.—

(1) Northern Zone comprising Panjab, Rajasthan, Jammu and Kashmir, Delhi and Himachal Pradesh.

(2) Central Zone comprising Uttar Pradesh, Madhya Pradesh.

(3) Eastern Zone comprising Bihar, West-Bengal, Orissa, Assam, Manipur and Tripura.

(4) Western Zone comprising, Maharashtra and Gujarat.

(5) Southern Zone comprising Andhra Pradesh, Madras, Mysore and Kerala.

The functions of the Zonal Councils will, however, be purely advisory. They will discuss matters of common interest and advise the governments concerned.

13. Independent Judiciary: The Constitution provides for an independent judiciary. The Supreme Court is the highest court of justice and appeal in India. It serves as the custodian and defender of the constitution. This court interprets the fundamental rights of the citizen of India. The independence of judiciary is guaranteed by adopting all the possible methods. The judges are appointed on the basis of merit and good qualifications by the President on consultation of judicial authorities. They enjoy security of service and are given a good salary. The judiciary is also kept free from executive.

14. The Constitution makers borrowed suitable and tried principles of other Constitutions of the World. They did not want to produce an original or unique Constitution. What they wanted was a good and workable Constitution, Thus parliamentary type

of Government is adopted from England. The Supreme Court and chapter on Fundamental Rights show the clear influence of Constitution of U.S.A. From Irish State came the inspiration of Part IV, the directive principles of state policy. The federation of India is set on the pattern of Canada where residuary powers are bestowed on the Centre.

In addition to the Constitution of Western States, Indian Constitution borrows a lot from the Act of 1935. It is asserted rather that the present Constitution has been largely modelled on the Government of India Act of 1935.

According to Dr. Punjab Rao Deshmukh the Indian Constitution is essentially the Government of India Act of 1935 with only adult franchise added. This is why Indian Constitution has been dubbed as a bag of borrowings. This criticism is only partly true, because in spite of the fact that Indian Constitution borrowed so many principles from other Constitutions, it is not purely western in character but embodies many of Gandhian principles and aspirations of the Indian people.

POINTS TO REMEMBER

Salient Features of the Republican Constitution of India : 1. It is a written, lengthy and detailed document consisting of 397 Articles and 9 Schedules. 2. It is partly a rigid and partly a flexible Constitution. 3. It declares India a Sovereign Democratic Republic. 4. It is partly federal and partly unitary. In peace times it is federal, in war or abnormal times it is unitary. 5. It establishes a parliamentary type of government both at the centre and the units. 6. It declares India to be a secular state and seeks to prevent the growth of a communal polity or a theocratic State. 7. It confers single citizenship upon all the Indians. 8. The integration of the Indian States has brought the entire Indian territory under a common central government. 9. It has certain directive principles of the State policy which lay down some ideals which the State should strive to achieve. 10. It adopts unqualified adult franchise and abolishes communal representation. 11. It guarantees to the citizens a number of fundamental civil rights. 12. It declares Hindi in Devnagri script the national language of Bharat. 13. It establishes independent Judiciary.

Q. 4. Discuss the sources and sanctions of the Indian Constitution.

Ans. Although the source of the Indian Constitution may be traced to the Indian Independence Act, 1947 which recognised the Constituent Assembly as a statutory sovereign body, yet the real source and sanction of the Indian Constitution are the people of India themselves. The Constituent Assembly of India was set up under the Cabinet Mission's Plan of May 16, 1946, after a prolonged demand made by the people of India. This Assembly, however, was not absolutely sovereign. The assembly met for the first time on 9th December, 1946. It was, however, boycotted by the members, belonging to the Muslim League Party. The work of the Constituent Assembly was seriously handicapped. It had several sittings but the work of constitution making made little headway. In the meanwhile, the British Prime Minister announced on February 20, 1947 that the British Government were determined to transfer power

to Indian hands and fixed June 1948 as the final time-limit. But the communal riots in India necessitated the immediate transfer of power. The leaders of the Congress and League agreed to part company. India was partitioned into Dominions of India and Pakistan according to Independence Act of 1947. The Act also made a division of the Constituent Assembly. Members belonging to those areas which were formed into Pakistan were to constitute the Pakistan Constituent Assembly, while the remaining ones were to serve as the Indian Constituent Assembly. The latter became a statutory sovereign body with powers to draw up a Constitution as it thought fit, proper and suitable to the aspirations and genius of the Indian people.

We must make a distinction between the source of our independence and the source of our Constitution. The legal basis of our independence is the Indian Independence Act of 1947 passed by the British Parliament, but the legal basis of our Constitution is the Constituent Assembly which was empowered under the Act of 1947 to frame a constitution for free India.

It was in the exercise of its own supreme legislative authority that the Assembly enacted, ordained and adopted the Constitution on November 26, 1949. So, in one sense we can say that the source of authority of the Indian Constitution is the Indian Independence Act of 1947 : because it was under the provisions of this Act that the Assembly enacted the constitution. Anything done by the Constituent Assembly under these circumstances can be said to have been done under the authority of that Act. This is one and the same model on which the constitutions of other Dominions were framed and which have their source and sanction in some Act of the British Parliament.

But, however, the procedure provided for the framing of the Constitution of India was different from that which was followed by other Dominions. The British Parliament transferred full political power to India and made the Constituent Assembly fully sovereign both as a Constituent Assembly and as a Legislative Assembly. But general sovereignty is always vested in the people and, in the exercise of that sovereign right the representatives of the people draw up a constitution. In other Dominions the representatives of the people adopted their constitutions which were enacted by the British Parliament. Thus the Acts of the British Parliament provide the legal basis of their constitutions. The Indian Constituent Assembly, on the contrary, enacted and adopted the constitution proclaiming India to be a Sovereign Democratic Republic. The Indian Constitution was not enacted by the British Parliament. It was in the exercise of her sovereign rights that the Indian Constituent Assembly also decided to remain within the Commonwealth even though it was proclaimed a Republic. The very basis of the Constituent Assembly rests on sovereignty, which in reality vests in the people. Hence the source and sanction of the Indian Constitution are the people of India themselves.

This is all the more clear when we examine the proclamation made by the Governor-General on January 26, 1950 enforcing the provisions of the Constitution. It said "Whereas the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic adopted, enacted and gave to themselves on the twenty-sixth day of November 1949, in their Constituent Assembly the Constitution of India....."

We see here that authority invoked in the Proclamation is that of the people of India and not of the Indian Independence Act of 1947. So, the real source and sanction of the Indian Constitution are the people of India themselves.

POINTS TO REMEMBER

(I) The legal basis of our independence is the Indian Independence Act on 947, passed by the British Parliament and the legal basis of our constitution is the Constituent Assembly which was made a statutory body under that Act. (2) The very basis of the Constituent Assembly rests on sovereignty which in reality is vested in the people. The authority invoked in the proclamation made by the Governor-General on 26-1-1950 enforcing the provisions of Constitution is that of the people of India and not of the Indian Independence Act of 1947. Thus the real source and sanction of the Indian constitution are the people of India themselves.

PROBABLE QUESTIONS WITH HINTS

1. "The Indian Constitution has the distinction of being the lengthiest constitution of the world." Discuss and account for its extraordinary bulk.

[For answer refer to the first feature of the Constitution.]

2. 'The Indian Constitution a voids the extreme flexibility of the English Constitution and extreme rigidity of the U.S. Constitution and strikes a middle course.' Elucidate.

[For answer refer to the second feature of our Constitution.]

3. What do you know about the franchise under the new Constitution ?

[For answer refer to the tenth feature of the Constitution.]

4. 'The Republican Constitution establishes secular polity with single citizenship.' Explain.

[For answer refer to sixth and seventh features of the new Constitution.]

5. What do you know about the national language of India ?

[For answer refer to the last feature of our Constitution.]

6. 'The Indian Constitution embodies the cumulative experience of the world constitutions'. Amplify.

[For answer follow the text of the preceding question.]

7. 'The real source and sanction of the Indian Constitution are the people of India.' Elucidate.

—O—

"The Indian Constitution offers all citizens individually and collectively the best fruits of democracy and those basic freedoms and conditions which alone make life significant and productive."

'Every State is known by the rights that it maintains'. —*Laski*

CHAPTER III

FUNDAMENTAL RIGHTS

Like many democratic and written constitutions, the Constitution of India also contains a chapter on fundamental rights guaranteeing certain fundamental rights to the citizens. These rights offer us the best fruits of democracy and opportunities for self-development. They seek to check arbitrary action 5n the part of the government. The Indian Constitution guarantees to every citizen the following rights, viz., right to equality and freedom, freedom against exploitation, religious freedom, cultural and educational rights, right to property, and right to constitutional remedies. The Parliament has been given powers to make laws to give effect to these rights and provide punishment for their encroachment and violation. In order to secure these rights and provide for uniformity in their enforcement, the Parliament, and not State legislatures, has been given the right to enact suitable legislation. Besides the fundamental rights granted to Indian citizens, there are certain rights which are given to all persons in India, whether they are citizens or aliens. These include the rights to protection of life and personal liberty.

Q. 5. "The Constitution of India embodies an impressive list of fundamental rights." Discuss.

Ans. The Indian Constitution confers a number of fundamental rights upon citizens and thus offers all citizens individually and collectively those basic freedoms and conditions of life which alone can make life significant and democracy fruitful. Such rights are essential for the proper moral and material uplift of people. As says Laski, "Rights are those conditions of social life without which no man can seek to be himself at his best." The enunciation of the fundamental rights is not a new feature of the Indian Constitution. These are found in many written constitutions of most of the European States formed after World War I.

These rights are regarded as solemn declaration of high purposes for which the State exists. The enunciation of fundamental human rights is now regarded as an essential condition for the stability of international life, rather a state is known by the rights it maintains.

The fundamental rights guaranteed in the Constitution of the Indian Republic are characterised by certain features which may be brought out as follows :

Fundamental Rights are an integral part of the Constitution, therefore they cannot be altered or taken away by ordinary Legislation. In Gopalan vs. the State of Madras' Chief Justice Patanjali Shastri declared, "Paramountcy to State-made laws is the

hall mark of fundamental rights." Thus the fundamental rights are fetters on the absolute power of Parliament in normal times and this fetter can only be removed or altered by an amendment of the Constitution.

(a) All Rights are Justiciable: This means that if any of these rights is violated, the individual affected is entitled to move the Supreme Court or High Courts for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State legislature in India or the orders issued by any executive authority as null and void if these are found to be inconsistent with the rights granted by the Constitution. The judiciary is thus the jealous guardian of the fundamental rights guaranteed by the Constitution. A similar feature is found in the American Constitution, where the Supreme Court can declare an action of the executive or a law passed by the legislature as *ultra vires.* Judiciary in England is, however, not competent to declare the laws passed by the Parliament as *ultra vires.* There the Parliament is sovereign body.

(b) Non-Absolute Nature of Rights : The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations and reasonable restrictions can be imposed at any time in the larger interests of the community. Moreover, every right is fully explained and thereby a very little margin has been left for the whim and fancy of the judges of the Supreme Court.

Suspension of Rights : During the operation of a Proclamation of Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and Supreme Court for the enforcement of the fundamental rights. Any such order may extend to the whole or any part of India. This is undoubtedly an undemocratic provision in the Constitution.

The fundamental rights are classified under the following seven main heads : (i) Right to Equality, (ii) Right to Freedom. *(iii)* Right to Freedom of Religion, *(iv)* Right against Exploitation, (v) Cultural and Educational Rights, *(vi)* Right to Property. (vii) Right to Constitutional Remedies.

(i) Right to Equality : From 14 to 18 Articles of the Constitution deal with right to equality. Equality is one of the basic postulates of democracy and is, therefore, rightly made the bed-rock of Indian polity by the Constitution. This right seeks to secure to the citizens equality in all its forms, legal, civic and social. The Right to Equality includes : (1) The State shall not deny to any person *equality before the law* or the *equal protection of laws.*, within the territory of India. (2) No discrimination shall be made on the basis of caste, race, religion, sex, place of birth. (3) No citizen shall be subject to any disability or restriction with regard to access to **shops** restaurants, hotels and places of public entertainment, or wells, tanks, roads, ghats, etc. which are wholly or partially maintained State. However, special provisions may be made for women and

children, scheduled castes and tribes, etc. (4) Every citizen shall be given equality of opportunity in matters relating to employment or appointment to any office under the State. No discrimination shall be made on the basis of religion, caste, race, sex, residence or place of birth, etc. However, the State may make reservations of posts in favour of backward classes or may fix residential qualifications. (5) Untouchability is abolished. The Constitution has enshrined the aspirations of Mahatma Gandhi and has opened a new chapter of social democracy. V(6) The Constitution further abolishes the old hated system of conferring titles and honour. Only titles of Military and academic distinctions are permissible. The provision seeks to establish civic equality among the citizens. The Constitution also guarantees equality of all before the law of the land.

(it) Right to Freedom : Article 19 of the Constitution guarantees seven freedoms under this right. But these freedoms are not absolute. The State can impose reasonable restrictions on these freedoms on various grounds. Below are given these freedoms and their restrictions.

(1) Freedom of speech and expression. It can be restricted on the grounds of the security of the State, friendly relations with foreign States, incitment to offence, public order, decency or morality, defamation and contempt of court.

(2) Freedom to assemble peaceably and without arms. It can be restricted in the interests of public order.

(3) Freedom to form associations or unions. It can be restricted in the interests of public order or morality.

(4) Freedom of movement throughout India.

(5) Freedom to reside and settle in any part of India.

(6) Freedom to acquire, hold and dispose of property. These three freedoms (4,5,6,) can be restricted in the interests of the general public or for the protection of the interests of Scheduled Tribes.

(7) Freedom to practise any profession or to carry on any occupation, trade or business. The State may fix professional or any technical qualifications. It may impose restrictions in the interests of the general public. It may also make laws relating to the carrying on by the State or by a State corporation of any trade, business industry or service.

All these freedoms constitute the core of civil liberty on which a true democracy is always based.

Besides these freedoms, the Constitution guarantees the protection of life and personal liberty to all persons living in India. None can be deprived of his life or personal liberty except according the procedure established by law. This right protects an individual against arbitrary arrest and indefinite detention. It lays down that no person who is arrested can be detained in custody without being informed of the grounds of arrest. He is given the right to consult and

to be defended by a legal practitioner of his choice. Thus our Constitution recognises the principle of 'Rule of Law.' No person shall be prosecuted or punished for the same offence more than once. No person shall be compelled to be a witness against himself.

The right to personal freedom cannot, however, be absolute. Its enjoyment is always subject to limitations imposed by the Government in the interest of public safety, morality and security of the State. The Constitution, therefore, allows the Parliament to restrict this right whenever the need arises. A citizen can, however, be detained for three months without trial. This period can be extended on the advice of an advisory board consisting of persons qualified to be judges of the High Courts up to the maximum limit of 3 years.

(iii) Right to Freedom of Religion : Article 25 of the Constitution grants complete freedom to citizens to profess, practise or propagate any religion. Every religious group has been given the freedom to manage its religious affairs and to own, acquire and administer property for religious or charitable purposes. The Sikhs have thus the right to wear and carry *kirpans.* The State, however, possesses the authority to regulate secular activities associated with any religious practice in the interest of the public order. Every religious denomination has the right to establish and maintain institutions for religious and charitable purposes. Religious instruction may be imparted by an institution managed by a religious body but all the students cannot be forced to receive that instruction. Further, religious instruction is not allowed to be imparted in educational institutions managed by the State.

(iv) Right against Exploitation : This right seeks to ban traffic in human beings, *begar* or other forms of forced labour. Employment of children below 14 years of age in any factory or mine or other risky occupations is also prohibited by law.

(v) Cultural and Educational Rights: The Constitution provides that a minority shall have the right to conserve its own language, script, literature and culture. Admission to any state-aided educational institution shall not be refused to anybody on grounds of religion, race, caste or language. All minorities, religious or linguistic, shall be entitled to establish their own educational institutions and the state shall not make any discrimination in granting financial aid to such institutions. With the guarantee of these rights, the Constitution opens a new era of the rights of the minorities.

(vi) Right to Property: The Constitution confers on the people of India the right to own property, movable or immovable. It lays down that no person shall be deprived of his property except by the authority of law. The state shall not acquire any private property from any citizen for public purposes without the payment of fair compensation. Further, an Act passed by a State legislature permitting compulsory acquisition by the state cannot be enforced unless it has received the assent of the President of the Republic. Under the fourth amendment, the Parliament or State Legislatures

shall be the final authority, to fix the 'fair' compensation. No case can be taken to a court of law on the ground that the compensation fixed under such a law is not fair.

(vii) **Right to Constitutional Remedies:** The enunciation of these rights in the Constitution is not sufficient in itself. These rights lose their significance and value if they are not safeguarded by constitutional methods. In order to protect these rights against their encroachment by the executive, Article 32 of the Constitution confers upon every Indian citizen the right to move the Supreme Court, and Article 226 to move a High Court for the enforcement of these rights. This right is, therefore, the heart and soul of our fundamental rights. The Supreme Court has the power to issue various writs of habeas corpus, quo warranto, etc., for the enforcement of these rights.

The right to constitutional remedy, can, however, be suspended during the operation of a proclamation of emergency by the President. The right is to be restored as soon as the emergency is over.

The Parliament can, make laws and thereby determine the extent to which these rights shall be restricted in their application to the Armed Forces or the Forces charged with maintenance of public order.

POINTS TO REMEMBER

(a) The following are characteristics of the fundamental rights conferred by the New Constitution upon the citizens : (1) All rights are justiciable. (2) These are non-absolute. (3) These can be suspended during a national •emergency.

(b) The following is the list of fundamental rights : (1) Right to Equality. (2) Right to freedom. (3) Right to freedom of Religion. (4) Right against Exploitation. (5) Cultural and Educational Rights. (6) Right to Property. (7) Right to Constitutional Remedies.

Q. 6. "The Constitution grants fundamental rights with one hand and takes away with the other." Discuss this statement.

Ans. The Constitution made a great democratic advance in so far is it conferred fundamental rights upon the citizens of India, which they never enjoyed before. Before the Indian Independence Act, the sovereignty lay with the British Parliament and all rights and liberties of the people of India were subject to its discretion. But the Constitution has made the people sovereign and has given the fundamental rights to them which are normally inviolate and are therefore a limitation upon the government. However, these rights have not been made absolutely inviolate. In fact these rights have been surrounded by so many limitations and restrictions and the government has been given so much discretion to restrict them that their lies much of truth in the saying that the Constitution grants these rights with one hand and takes them away with the

er though it may not be all truth.

We shall examine below the restrictions imposed by the Constitution on these rights :

(1) The right of inviolability of person can be violated by the Government under its powers of preventive detention. A person cannot be arrested except under a warrant of arrest from a court of law or if arrested without such warrant, he must be presented before a Court within 24 hours of such arrest. But citizens detained under preventive detention, cannot take advantage of this right.

"Democratic freedom in India is still too young a plant to be capable of defending itself against overt or covert onslaughts that may be directed against it by elements which have no regard either for democratic liberties or orderly progress". This is how Pylee defends this act. This argument can be accepted during war but not in peace.

(2) The right of property is not absolute. The constitution provides that property cannot be acquired except with fair compensation. The fourth amendment has laid down that no case shall be taken to a court of law on the ground that the compensation fixed by Parliament or a State Legislature is not fair.

(3) The freedom of speech can be reasonably restricted by the Government on the grounds of: *(a)* incitement to offence, (*b*) friendly relations with other states, (c) treason, (d) libel and defamation, (e) obscenity and immorality, etc.

(4) The freedom of Press can be restrained on the grounds of State security, treason, libel, defamation, obscenity, etc. The Punjab Government has passed a Press law restraining the liberty of Press widely.

(5) The freedom of meeting or association can be restrained in the name of State security.

(6) The freedom of profession becomes in view of prevailing unemployment insignificant for those who find no work.

(7) The President can suspend all or any of the fundamental rights during an emergency. He can even suspend the constitutional guarantees of these rights and the right to move the courts to enforce these rights.

(8) There are no rights of work and free and compulsory education, the two most fundamental rights.

To say that Indian constitution grants fundamental rights with one hand and takes them away with other is not correct. The critics expect too much, they forget the trying conditions through which the country has been passing. They also fail to take stock of the economic condition of the country. The critics seem to ignore the prompt and forthright decisions of the supreme court.

The power of suspending fundamental rights is not unknown in other countries. The Parliament of England can suspend any of

the rights of the citizens. The Congress of the U.S.A. can suspend the right to writ of habeas corpus. This power is with legislatures in these countries. But in India this power, to withdraw the rights of the people, is in the hands of the executive. The executive cannot do anything alone. The action taken by the executive must be rectified by the legislature.

PROBABLE QUESTIONS WITH HINTS

1. Describe the main characteristics of the Fundamental Rights guaranteed by the Republican Constitution of India.

[For answer refer to the first part of text of Question 3.]

2. How does our Constitution provide for the protection and enforcement of the Fundamental Rights ?

[For answer refer to the Right to Constitutional Remedies in Question 3].

3. 'The Constitution of free India seeks to establish social, civic and political equality among the people.' Comment.

[Refer to Question's].

4. Describe the different freedoms guaranteed by the Republican Constitution of India. Do you feel that these are real and effective ?

[For answer refer to the Right to Freedom and also refer to the emergency provision regarding suspension of fundamental rights dealt with in Question 3.]

"The Directive Principles of State Policy are like instruments, instructions, political manifesto and a code of moral precepts which have to guide the governors of our country."

CHAPTER IV

DIRECTIVE PRINCIPLES OF STATE POLICY

A unique feature of the Indian Constitution is the enumeration of the Directive Principles of State Policy. They embody the objectives which the state shall try to achieve. These principles tend to form the basis of our Welfare State. They are meant to be codes of constitutional propriety which will determine the relations of government with the people These are supposed to be imperative bases of State policy. Unlike the Fundamental Rights, however these Directives are not justiciable ant cannot be enforced by the judiciary. Thev are only directives which the executive and the legislature must strive to follow in governing the country. A similar enumeration of Directives of State Policy is found in the Constitution of the Irish Free State. Though these Directives have no legal sanction to back them yet thev are very **Valuable** because they **are** a standing reminder to the Governments of the Union and the States that they should not do anything which violates the spirit **of** these principles. These principles though not fixed and rigid have a great significance. These are **to** act as **a** constant guide **to** our legislators and governors. These are indicative of the hopes and aspiration of the farmers of **our** Constitution regarding the establishment of a Welfare State.

Q. 7. What are the Directive Principles of State Policy in the Indian Constitution ? How do yon distinguish them from Fundamental Rights ? Are these Directive Principles meaningless and superfluous ?

Ans. The Directive Principles of State Policy constitute the 4th part of the Indian Constitution. They are unique and novel, and depict the ambitions and aspirations of the Indians. They are some sort of ideals which our Constitution makers wished Indian Government to strive for. They are patterned on the Directive Principles of social policy in Irish Constitution. But the idea of such principles can be traced back to such noble declarations as French declaration of Rights of Men, American Declaration of Indepence and the Charter of United Nations. No less the Constitution makers were influenced by liberal philosophy of 19th century. They are somewhat on the pattern of instrument of instructions as provided by Act of 1935. At the same time it will be wrong to say that Directive Principles are all foreign borrowings. In fact a number of these Principles are entirely Indian and Gandhian in nature like setting up of village Panchayats, cottage industries, prohibition of cow slaughter. Article 37 of the Constitution lays down that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws These principles cannot be enforced by Court of Law. They are nonjusticiable rights. These principles are those—rights which the framers of the Constitution could not give to all citizens at the time

of the commencement of the Constitution. The fulfilment of these principles can set up a Welfare State in India.

There are sixteen Articles of the Constitution from 36 to 51 which deal with Directive Principles of State policy. Though Directive Principles are not properly classified in the Constitution, yet they can be conveniently divided into following categories.

Economic Principles: (i) Equal distribution of wealth and material resources among all classes of people so as to prevent its concentration in a few hands.

(ii) Provision of adequate means of livelihood to all citizens of the State.

(iii) Equal pay for equal and same work for both men and women.

(iv) To ensure just and human conditions of work, a decent standard of living, full enjoyment of leisure and social and cultural opportunities.

(v) Maintenance and protection of health and strength of all citizens.

(vi) To make provisions for public assistance in case of unemployment, old age, sickness, disability and other cases of undeserved want.

(vii) To raise the level of nutrition and standard of living.

Gandhian Principles: *(i)* Prohibition of intoxicating drinks and drugs.

(ii) To establish Village Panchayats.

(iii) Free and compulsory education for children up to the age of fourteen.

(iv) The State shall promote with special care the educational and economic interests of the weaker section of the people and in particular Scheduled Castes and Schedule Tribes and shall protect them from social injustice and all forms of exploitation.

(v) Prohibition of the slaughter of cows and calves and other milk and draught cattle and to set up animal husbandry for improving the breeds.

(vi) To set up cottage industries.

International Principles : (i) To promote International peace and security.

(ii) To maintain just and honourable relations between nations.

(iii) To foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

(iv) To encourage settlement of international disputes by arbitration.

Miscellaneous : (i) To separate judiciary from the executive.

(ii) To protect monuments and historical buildings.

(iii) The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Difference between Directive Principles and Fundamental **Rights** : The greatest difference between Fundamental Rights and the Directive Principles of State Policy is that while the former are justiciable, the latter are not. Fundamental Rights are backed by legal sanction, but in the case of directive principles the Constitution makes it absolutely clear that they are not enforceable by any court of law. For example, if a citizen is denied the right of freedom guaranteed by the Constitution, he can seek the protection of the Supreme Court in enforcing the right. But if, say, he is unemployed and does not find any work in spite of the fact that provision of right to work is a Directive Principle of State Policy he cannot seek the protection of the court for its enforcement. Legally, therefore, they do not matter.

Their Significance : The difference was made quite clear by Supreme Court in case of State of adras vs. Champakan Dorairajan. Although the directive principles are not enforceable by any law court, yet they are not just meaningless and superfluous. They are very valuable in so far as they serve as a standing reminder to the Governments of the Centre and the States that they should follow these ideals in governing the country. Even the judicisry may fall back upon them while interpreting and construing laws as they constitute the very spirit of the Constitution. All these principles underlie the fundamental objectives for which the state exists. It is for attaining these objectives that we have proclaimed our country as Sovereign Democratic Republic. Moreover, they have a special significance in a democracy where the ruling party may change after an election. The directive principles in the Constitution ensure that the State would strive to achieve them whether the party in power is reactionary or progressive. These principles are a valuable supplement to our fundamental rights. They enshrine the aspirations of the framers of our constitution regarding the future set up of India. They point towards the goal to be achieved by our nation. They have been declared fundamental in the governance of the country. Thus no government can afford to ignore them. They are the test of success or failure of a government and its achievements The policies of the present government are based on these principles to a very large extent. The Panchayats have been established. In seven states executive and judiciary have been separated. Cow-slaughter has been banned. Steps like reservation of posts, grant of scholarships, etc. are taken to raise the standard of backward classes and scheduled castes and tribes. The cottage and small scale industries are developed and helped by the State. Efforts like the passage of the Hindu Code Bill in different laws lead to establishment of uniform Civil Code. The Five Year Plans help in developing the economy, providing more employment opportunities and conserving national resources from being exploited by private individuals for profit and personal gain. These are only some of the achievement made in the direction of realisation of the directive principles. Yet much remains to be done. Unemployment has not been abolished. Right to work and right to free and compulsory education between

6 to 14 years of age have not been given yet. Judiciary has not been separated from the executive in all the States. The standards of nutrition, sanitation and health are still very low. Illiteracy is very high. The Achievements of last years have not yet made the country welfare state—the directive principles of state policy stand for. Thus these principles give the direction to the governments for evolving their policies.

POINTS TO REMEMBER

Some of the Directive Principles of State Policy may be brought out as follows: (1) Provision of adequate means of livelihood to all. (2) Equitable distribution of wealth among all classes of people. (3) Protection of children and youth. (4) Prevention of cow-slaughter. (5) Equal pay for equal work. (6) Free and compulsory education for children up to the age of fourteen. (7) Promotion of cottage industries, scientific agricultute and animal husbandry (8) The right to work, to education, to public assistance in case of unemployment, old age, sickness and disablement. (9) Prohibition of liquors. (10) Establishment of Village Panchayats. (11) Protection of historcial and national monuments. (12) Separation of the Judiciary from the Executive. (13) Promotion of international co-operation and world security.

Q. 8. 'The Directive Principles of State Policy do not matter.' Discuss.

'The Directive Principles of State Policy have been merely decorative.' Discuss;

Ans. The Directive Principles of State Policy form an invaluable part of the constitution. These have been framed on the model of the Irish Constitution. These principles are non-justiciable and it is said, therefore, that they do not matter. The citizens of India cannot seek justice on the basis of these principles ; they arc not enforceable through courts of law. These are merely instructions issued by the fathers of the Constitution to the future governments directing them in the manner in which their powers should be exercised and laying before them the ideals to be achieved. If they violate them, they incur no legal liability.

However, these principles exercise a great moral force on the government. They manifest the will of the tramers of the Constitution. They could not incorporate these in the Fundamental Rights because the necessary conditions for their realisation were non-existent at that time. All the same, they reflect the sovereign will which becomes the duty of every government to realise. These are a moral limitation upon the government. These are a test of its working. The electorate will ask the government how far it realised in practice these principles. Even the High Courts have depended upon these principles in interpreting the Constitution when the provisions are vague to know the intention of the framers of the Constitution.

In practice also these principles have not been merely 'decorative' but have actually guided the governments in evolving and prosecuting their policies. Some examples are given below where the directive principles have been actually put into practice so far as it was possible.

(1) The Government of India established the Backward Classes Commission for inquiring into the conditions of these classes and make recommendations for their uplift. The Government of India and the State Governments have agreed to accept almost all the recommendations of the Dhebar Commission on scheduled tribes and scheduled areas.

(2) The government appointed the States Reorganisation Commission and on the basis of its report the States have been reorganised on the linguistic principle keeping in view other factors also.

(3) The government has appointed the Law Commission for establishing a uniform civil code throughout the country and making justice cheap, speedy and simple. The Government of India has passed different Acts relating to Hindu Code Bill thereby providing uniform civil code in these matters.

(4) The government has adopted 'Panch Sheel' as its foreign policy which includes the respect for international law and the peaceful settlement of International disputes.

(5) Under the Second Five Year Plan, the government has adopted the policy of development of small scale and cottage industries. It has also developed public sector to manage such undertakings which could not be left to private hands. It has also adopted the policy of nationalisation of such undertakings or services which cannot be left into private hands. The same policy has been further developed under the Third Five Year Plan. The small scale and cottage industries are given due prominence.

(6) The State governments have adopted policies to separate judiciary from executive. In the Punjab, the judicial powers of the Deputy Commissioner were taken away and placed into the hands of an independent district judge under the direct supervision of the High Court. The experiment is being extended. In seven States, judiciary has been completely separated from the executive.

(7) All the States have passed Panchayat Acts establishing Panchayats on the basis of adult franchise, etc.

(8) The Government of India has established the Central Council of Health which deals with problems relating to nutrition, health and hygiene in a State.

(9) The workmen's insurance against sickness and accident, etc. is already working on a limited scale.

(10) Equal pay for equal work is given in most of the jobs. Minimum wage has been fixed in many areas of employment.

(11) Most of the States have passed laws prohibiting cow-slaughter.

(12) The abolition of landlordism, the development of co-operative societies, the community development projects are revolutionising the rural life and placing animal husbandry and agriculture on modern scientific lines.

India is a democracy a government by the people. The people will not allow the Directive Principles to remain meaningless, the strength of public opinion will make them meaningful. Once in five years elections are held, the voters are free to vote for only such candidates who will not be indifferent to the Directive Principles.

PROBABLE QUESTIONS WITH HINTS

1. "The Directive Principles of State Policy embody the pious wishes of the framers of our Constitution." Comment.

Or,

"The Directive Principles of State Policy constitute an imperative basis of State Policy." Elucidate.

[For answer refer to the opening paragraphs and the last paragraph of the preceding chapter.]

'The Indian Constitution establishes a dual policy with single citizenship.'

CHAPTER V

CITIZENSHIP

The Constitution of India does not lay down any detailed provisions regarding the acquisition or termination of citizenship, but instead it leaves to the Parliament to draw up such provisions. However, the Constitution does contain a chapter dealing with this subject. The most remarkable feature of the Constitution in this regard is that, though it is federal in character, yet it provides only single citizenship, i.e., the Indian citizenship. This is in strange contrast with other federal constitutions like that of the U.S.A., where a person enjoys dual citizenship of the State as well as of the Federation. The framers of our Constitution provided for single citizenship with a view to arresting the forces of disintegration so cunningly introduced by the British rulers for their own selfish ends. This also helps in safeguarding the rights, privileges and obligations of the citizens with equality throughout the country. It further helps in promoting uniformity in economic and trade policies of the States'. It avoids inter-state trade and other barriers.

The fathers of the Constitution had to deal with a very complicated matter while framing the clauses relating from citizenship. Because of partition of the country a large number of people had migrated to India from Pakistan and vice *versa.* Those who migrated to India had to be given right of citizenship and those who migrated to Pakistan had to be excluded from Indian citizenship There was the problem of Indians living abroad for a long time. The Constituent Assembly took two years to reach the final decision on this issue, so much so, that even when the final draft came before the Assembly, 140 amendments were moved.

Q. 9. What are the conditions regarding the acquisition of Indian citizenship ? How was the problem of migrants from Pakistan solved by the Constitution of India with regard to their citizenship rights ?

Ans. The Constitution does not deal with the law of citizenship exhaustively. It confers powers upon the Parliament to make laws in this respect. However it deals in the main with the right of citizenship as follows :

Right of Citizenship at the Commencement of the constitution : Every person, who at the time of commencement of this Constitution, **had** his domicile **in** the territory of India and who was born in India or whose parents were born **in** India or who **has** been resident of India for not less than 15 years immediately preceding the commencement of the Constitution, is a citizen of India.

Right of citizenship of those who migrated to India from Pakistan before the Commencement of the Constitution: (1) Those persons who migrated to India from Pakistan before the 19th day of July, 1948, shall be deemed to be citizens of India.

(2) Those persons who migrated to India from Pakistan on or .after the 19th July, 1948, shall be deemed to be citizens of India, if

they have been registered as citizens of India by an officer appointed for the purpose by the Government of India on an application made by him before the commencement of the Constitution. No such person could be registered unless he had been resident of India for at least 6 months before the date of his application for registration. Such registration could take place before the commencement of this. Constitution.

Rights of citizenship of those that migrated to Pakistan but **later on** returned **to India**: A person who had migrated from Indian territory to Pakistan territory after 1st March, 1947 but who returns to India under a permit for resettlement or permanent return issued by an appropriate authority, shall be deemed to be a citizen of India.

Right **of** Citizenship **of** those Living Abroad : Any person, who **was** born in India, or either of whose parents were born in India, or any of whose grand-parents was born in India and who is ordinarily residing in any country outside India shall be a citizen of India if he has been on his application, registered as a citizen of India by the diplomatic or consular representative of India in the country, where such person resides. No such person shall be a citizen of India if he has voluntarily acquitted the citizenship of any foreign State.

Acquisition and Loss of Citizenship : The Parliament passed a law in 1955 regulating the acquisition and loss of citizenship of India.

Acquisition : The Act lays down five modes of acquiring citizenship of India.

(i) *Birth.* A person born in India on or after 26th January, 1950, shall be citizen of India. However, the children born to foreign diplomatic personnal and enemy aliens shall not acquire citizenship.

(ii) Descent. A person born outside India on or after the 26th January, 1950 of Indian parents shall be an Indian citizen.

(iii) Registration. A person, if not already an Indian citizen can acquire citizenship by registration if that person belongs to one of the following 5 categories;

(1) persons of Indian origin Residing outside the territory or undivided India ;

(2) women married to Indian citizens ;

(3) minor children of Indian citizens ;

(4) citizens of Commonwealth countries and Ireland ;

(5) persons of Indian origin but ordinarily residing in India and who have been so resident for at least six months before making an application for registration.

Naturalisation : A citizen of another State who has renounced that citizenship and has resided in India or has been in the service of a government in India for one year immediately prior to the application and during the seven years preceding this one year has

resided in India or been in service of a government in India for an aggregate of 4 years could acquire citizenship by naturalisation.

Acquisition of Territory: If the Government of India acquires new territory as part of India, it may prescribe which persons shall be citizens of India.

Loss of Citizenship : An Indian citizen may lose citizenship under the following conditions :

(1) Renunciation: A citizen of India may renounce his. citizenship through a declaration made in a prescribed manner.

(2) Termination : A citizen of India shall lose his citizenship if he or she voluntarily acquired citizenship of another State at any time between 26th Jan. 1950 and 30th Dec. 1955.

Deprivation: The Government of India can deprive a person of Indian citizenship by issuing an order under Article 10 of this Act. The Act provides conditions under which this deprivation can take place.

POINTS TO REMEMBER

(1) The Constitution of India, unlike other federal constitutions, provides for only single citizenship. (2) The criterion for eligibility to citizenship rights is birth, descent and domicile? A person must himself or either of his parents must be born in India or he must have been resident of India since 1945 i.e., for not less than 6 years preceding the promulgation of the Constitution. (3) Persons residing outside India can become citizens of India provided they or their parents or any of their grand-parents were born in undivided India and they have been registered as citizens of India by diplomatic representatives of India in foreign countries. (4) Persons who migrared from Pakistan to the Indian Dominion can become citizens of India if they or either of their parents, or any of their grand-parents were born ir India before the Partition. (5) Those who migrated to India before July 19 1948 must be residing in India since the date of their migration and those wh migrated on or after that date be registered as citizens of India by making application to the competent authorities and must be residing in India 6 months before submitting such an application. (6) The right of citizenship is denied to those who migrated to Pakistan from India after 1st March, 1947. But those who returned to India under permits seeking permanent settlement are exempted. *(7)* Citizenship can be acquired through birth, descent registration, naturalisation and when India acquires new territories. (8) Citizenship can be lost **by** renunciation termination and deprivation.

'The Indian federation does not suffer from the faults of weakness of conservatism or legalism.' ***—S.N. Mukerjee.***

CHAPTER VI

FEDERAL ASPECTS OF THE INDIAN CONSTITUTION

The Constitution of India is federal. It is contended by some commentators that the constitution establishes federation with a unitary bias. The centre has been given very wide powers. In federal constitutions like those of the U.S.A. and Switzerland, the Centre has less powers than those of the units. This was because the framers of the Constitution were conscious of the fact that while a strictly federal structure calls for a weaker centre, the special circumstances prevalent in this country at the time of the framing of the constitution called for a stronger Centre. Thus, while in a strictly federal constitution like that of the U.S.A., the residuary powers are vested in the states, in India, like Carada, they are vested in the Centre. But the creation of a strong centre is justified by the circumstances prevalent in the country which called for a concerted and unified action by a strong central authority. Moreover, the past history of India warrants the establishment of a strong centre. However, the Constitution possesses all the essential features of a federal structure.

Q. 10. How far is the Indian Constitution Federal ? Mention specially the points which give it a unitary bias.

Ans. India has vast territory with a great diversity of race, religion and language. Such a big country cannot do without a federal form of government. The framers of the Indian Constitution were convinced of the importance and necessity of a federal polity for India. The inclusion of the former princely States in the new set-up made it all the more imperative to frame the Constitution of India on federal lines. The princely States would not have agreed to join the rest of India if it were a unitary State. The common subjection of all the parts of India to British Imperialism and the joint struggle of all the people in India against foreign rule were also great forces in unifying the diverse elements in the Indian population All these factors contributed to the idea of having a federation for India. A federation provides unity and yet autonomy in local and cultural matters.

The new constitution, however, does not make India a typical federation like that of the U.S.A. Certain special conditions that India faced at the time of Independence and the desire of the fathers of the Constitution to provide a machinery for the rapid economie development of the country and maintaining the national integrity led to the creation of a strong centre. The Constitution makes India or Bharat into a 'Union of States.' Nevertheless, the Constitution of the Indian Republic possesses the following characteristics of federalism.

(i) Division of Powers : It is a Union of 16 States and Union Territories. The latter are administered by the Centre. The federal character extends to the 16 States. Distribution of the

subjects of administration between the Centre and the federating units is an essential requisite of a federation. Our Constitution makes this division of subjects. Three different lists have been drawn up, *viz.*, the Union List, the State List and the Concurrent List. Both the Union Government and the State Governments are autonomous and independent within the spheres of the powers allotted to them by the Constitution. In the Union list only the Parliament can make laws. In the Concurrent list both the Parliament and the State legislatures make laws but in case of conflict the Union law prevails. In the State list, normally, the State legislatures make laws.

(ii) Supremacy of the Constitution : The Constitution is the supreme law of the land. Both the Union Government and the State Government derive their authority directly from the Constitution.

(iii) Written Constitution : India possesses a written Constitution which is another essential of a federation.

(iv) Rigidity of the Constitution: Every federation has more or less a rigid constitution. The Constitution of the Indian Republic to some extent satisfies this condition as well. The Constitution provides for a special procedure with regard to its amendment. The Union Legislature or the State Legislatures cannot amend it in an ordinary legislative procedure. Those provisions which deal with the federal features of the Constitution can be amended only after ratification by at least half of the state legislatures.

(v) Special Judiciary: India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution. The existence of a Federal Court or a Supreme Court with special powers is always essential for a federation. The Indian Constitution satisfies this condition too. It possesses judicial review and can declare laws *ultra vires,* if they are unconstitutional.

The foregoing account of the federal aspects of the Indian Constitution proves beyond doubt that India has got a federal form of Government. But the Indian Federation forms a class by itself. It has certain special features, which make the centre stronger. The following facts bring into limelight the pronounced unitary bias of our Constitution :

1. Single Citizenship : In a federation like America each citizen enjoys double citizenship—a citizenship of the state where one is domiciled and a citizenship of the federation as a whole. But the Republican Constitution of India establishes a dual polity with a single citizenship. This means that constitutionally all Indians are labelled as Indians alone, not as Punjabis, Bengalis. Madrasis etc. All enjoy equality before law. All enjoy equal rights in all parts of the Indian territory. The idea of single citizenship is clearly a departure from the accepted principles of federalism. The fathers of our constitution introduced this element in the constitution in order to ensure a strong feeling of national unity and to minimise the separatist tendencies in the country.

2. Excessive Authority **of the** Centre: A weak Central Government is the essence of federalism. But our Constitution has created a very strong Centre. The powers are distributed between the Union and the States in such a way as to make the Centre very powerful. The Union List contains as many as 97 subjects whereas 47 subjects are placed in the Concurrent List. Although the Concurrent List is a common list and both the Centre and the States are competent to pass laws regarding the subjects enumerated in it, yet the Centre has an upper hand. In case laws are passed both by the Parliament and one or more state legislatures regarding a common Concurrent subject, it is the law of the Union Parliament that shall prevail in case of conflict between the two.

3. **Residuary Powers** : In a federation like that of the U.S.A., the residuary powers are enjoyed by the states but in the Indian federation the residuary powers are vested in the Parliament. This tends to increase the powers of the centre. In this case we find that the distribution of powers is similar to that of the Canadian federation where the centre is very powerful. The Union Government in India, however, has been made even more powerful. The Concurrent List in Canada contains only two subjects whereas there are 47 subjects in the Concurrent List of the Indian Constitution.

4. Emergency Powers of the Centre : The strength of the Centre can be immensely increased in times of war and other national emergencies. Under such contingencies, the President of the Indian Union can assume extraordinary powers which may amount to suspension of the autonomy of the States. The Union Parliament in such cases is empowered to make laws regarding the subjects enumerated in the State List. The federal structure of the country can thus be changed into unitary one without amending the constitution.

A similar effect will follow if the President is satisfied that government cannot be carried on in accordance with the provisions of the Constitution in a particular state and declares emergency. This shows that the Indian Constitution is at once unitary and federal. It is federal in peace time and unitary in times of national emergency.

5. Jurisdictional of the Centre over the subjects of the States : Not only does the Union enjoy extraordinary powers during **a** national emergency but it can also encroach upon the authority of the States during normal times. The Union Parliament can at any time be empowered to pass laws regarding subjects contained in the State List if the Rajya Sabha (Upper House of the Union Parliament) declares it to be necessary or expedient in the national interest, by a resolution supported by not less than two-thirds of the members present and voting. The Parliament can also pass a law on an item in the State List if such a law is required to honour an international obligation by the Government of India, or, if two or more States request the Parliament to do so. Thus the autonomy of the units of the Indian Federation can be encroached upon by the Union at any time.

6. Flexibility of the Constitution : The Indian federal system is not so rigid as is the case with most other federations of the world. The method of amending the Constitution is rather simple. Major part of the Constitution can be amended by the Union Parliament itself without the approval of the State Legislatures. This fact also emphasises the strength of the Centre. The units have no right to initiate amendments to the Constitution.

7. Position **of** Union Territories: The States enjoy some powers but the Union Territories enjoy no such position. They are directly administered by the Union. These are merely administrative units governed by the Union. This is a clear departure from the established principles of federalism and at the same time this fact indicates the unitary character of the Indian Constitution.

8. Inequality of Representation : In the Swiss and American federations, the upper chamber generally secures an equality of representation to federating units irrespective of their size and population. The lower chamber is supposed to represent the national interests and the upper chamber represents the local interests of the states. In the Indian Union, however, the principle of equality of representation of the units in the upper chamber has not been followed as the States are represented on the Council of States on the basis of their population.

9. Provision regarding the Constitutions of the State : In other federations and particulary in the United States of America, the units have the right to draw up their separate constitutions within the federal framework. But the Indian Constitution, like the Canadian Constitution, contains provisions relating not only to the Constitution of **the** Union but also to **the** Constitution of the States. The Constitution of the Union and of the States is a single structure within which the units must work.

10. Redistribution **of** Boundaries **of** the States : The Union Parliament has power to alter the existing boundaries of any state. These changes can be made by passing a bill to this effect in the Union Parliament on the recommendation of the President. The President is, of course, required to ascertain the view of the legislature of the State concerned. The States have already been reorganised in 1956. The Parliament may pass such a law in contradiction to the views expressed by the States. In the American federation the territorial integrity of the States cannot be violated.

11. Common All-India Administrative Services : The Constitution provides for common **All**-India Administrative Services. The members of the services are appointed by the Union Government and they are responsible to it. They are placed in key positions in the State governments. In the U.S.A. different States have their own administrative officers appointed by the State Governments. This provision, therefore, makes the Union strong at the cost of States.

The head of a State is a Governor. He is appointed and dismissed by the President and is responsible to him. The President

can issue him instructions which are binding upon him. Thus he will act as the agent of the Union Government in the States. In other federations the head of a unit is appointed or elected by the unit itself.

12. Single Judiciary and Uniform System of Civil and Criminal Law. The Constitution provides for a single integrated judicial system for the whole country. The Supreme Court and the High Courts are links in the same chain. There is also a single Civil and Criminal Code for the entire country. It is clearly indicative of the unitary character of our Constitution.

All the factors mentioned above show that the Indian Constitution is federal in form but unitary in spirit. It has made the Union very strong at the expense of the States. The framers of the Constitution justify the creation of a strong Centre on the following grounds :

(i) India attained independence under curious circumstances. Communal and separatist tendencies were spreading fast. Propaganda initiated by the Muslim League and other communal organisations had evil repercussions on the political life of the country. These communal and separatist tendencies could be suppressed only by the creation of a strong Central Government.

The attitude of the rulers of the so-called native states also necessitated the establishment of a strong Central Government capable enough to undo their evil designs.

(ii) The framers of the Constitution wanted to profit by the lessons of Indian history. India fell a prey to foreign invaders because of a weak Central Government and bitter rivalries among her ruling princes. A strong Centre alone could possibly save the newly won Independence.

(iii) It was realised that it was absolutely necessary for the reconstruction and development of the country to preserve and mobilise the collective efforts of the people in all parts of the country who got organised in their common fight against the foreign rule.

(iv) The old Indian traditions of cultural unity had to be preserved.

(v) The volcanic state of international life also necessitates the existence of a strong Central Government.

(vi) The Constitution follows the modern tendency of all the federations towards centralisation of authority.

POINTS TO REMEMBER

(i) The Constitution of the Indian Republic possesses the following distinctive features of a federation : (1) Like other federations, our constitution distributes subjects of administration between the Centre and the States. (2) The Constitution is the supreme law of the land, giving its authority to both the Central and State Governments. (3) India possesses a written Constitution which is an essential requisite of a federation. (4) Our federation has more or less a rigid constitution. (5) India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution.

(ii) The following facts prove its unitary character: (1) Single citizenship. (2) A large amount of authority to the Centre. (3) Residuary powers lie with, the Centre which becomes strong. (4) Strength of the Centre increases enormously during national emergency. (5) The Centre enjoys jurisdiction over the subjects in the State list. (6) Flexibility of the Constitution enables the Centre to amend it without consulting the State Legislatures. This makes the Centre strong. (7) Redistribution of the boundaries of the States can be brought about by the Union Parliament. (8) Common all-India Services place the members of these services in key positions in the States. The Governor is a central agent in the States. Thus the Centre controls the State Governments. (9) India has a single judiciary and uniform system of Civil and Criminal Law.

(iii) Justification for making the Centre strong : (1) Communal and separatist tendencies in the country. (2) Warning of the past history of India. (3) Reconstruction and development of the country. (4) Volcanic state of international life, etc.

PROBABLE QUESTIONS WITH HINTS

1. "The new Constitution is quasi-federal." Discuss.

(P.U. Sept. 1952, April 1953)

"The Indian Constitution is federal in structure with a pronounced unitary bias."—D.N. Bannerjee. Comment.

Discuss the main features of the Indian Federation under the New Constitution. Do you find any peculiarities in it.

[For answer, discuss the federal and unitary aspects of the Indian Constitution dealt with in the peceding question.]

2. How do you justify the establishment of a strong Central Government in India.

[Refer to the closing paragraph of the preceding question.]

"The Indian Constitution is Federal in structure with a Unitary bias." *—D.N. Bannerjee*

CHAPTER VII

RELATIONS BETWEEN THE UNION AND THE STATES

The essence of a federation lies in the distribution of powers between the Federation and the federating States. In a typical federation like the United States, some enumerated and specific powers are given to the Centre and the remaining powers are vested in the federating States. This scheme of distribution of powers creates a weak central government. But in recent times, it has been found necessary to have strong federal centres in the interests of national unity and strength. This principle was kept in view by the framers of the Canadian Constitution and the same has been followed in the Indian Constitution with a little modification. The Constitution of India establishes a federal polity with a strong Union Government. Although the jurisdiction **of** the States in legislative, executive and financial spheres has been prescribed by the Constitution, the Union Government can encroach upon the authority **of** the States both in peace times and emergency. Thus the Indian Constitution establishes a strong federation. There is, in the modern times, a tendency in all federations towards centralisation of power. Even in the U.S.A., where the Constitution created a weak centre, an enormous growth of the Federal Government has been witnessed during recent times.

***Q. 11. Describe briefly the distribution of Legislative powers between the Union and the States.** *(V. Important)*

Ans. The division of powers between the federal centre and federating units is an essential requisite of a federation. Generally speaking, there are two different methods by which the division of legislative powers is done in a federation. Firstly, the federal centre may be allotted certain enumerated and specified powers and residuary powers may be vested in the States. The Constitution of America followed this method. It was later followed by Australia. Secondly, certain enumerated and specified powers may be given to the federating units and residuary powers may be left to the Centre. This method was adopted in Canada.

The Indian Constitution follows more or less the Canadian system. But still it differs from the Canadian method in so many respects. The Constitution of India embodies three separate legislative lists, *viz.,* the Union List, the State List and the Concurrent List.

(a) The Union List contains as many as 97 important subjects including defence, war, peace, railways, post and telegraph, foreign relations, banking, currency, trade and commerce with foreign countries, Union Public Services, organisation of the Supreme Court, taxes on incomes other than agricultural income, custom duties etc. This is exclusively within the jurisdiction of the Parliament.

(b) The State List cantains 66 subjects. Some of them are law and order, police, local self-government, prisons and refor-

matories, public health, sanitation, education, agriculture, land, forests, trade and commerce within the State, land revenue, taxes on agricultural income, jurisdiction and powers of all courts except the Supreme Court etc. Normally, the State legislature alone makes laws within this list.

(c) The Concurrent List contains 47 subjects. Some of them are criminal law, marriage and divorce, trade unions, welfare of labour, economic and special planning, rehabilitation of refugees, price control, factories, electricity, stamp duties etc. Both Parliament and State legislatures can make laws in this list.

All those powers which have not been included in these three lists lie with the Union Government. In other words, all undefined and residuary powers are vested in the Union by the Constitution. Both the Union Parliament and the State Legislatures are exclusively competent to make laws regarding the subjects mentioned in their respective lists. The Parliament has, however, the power to make laws with respect to the subjects contained in all the lists for the Union Territories. The Concurrent List is a common list. The Union Parliament and the State Legislatures are equally competent to make laws regarding the subjects mentioned in this list. In case there is conflict between the laws of Parliament and the State Legislatures on an item in the Concurrent List, it is the law of the Union Parliament that prevails. But a law regarding a concurrent subject passed by a State Legislature will not be invalid if it was assented to by the President and it was passed before the Union law on the same item was enacted.

Limitations to the State Legislatures : The Constitution of India has a pronounced unitary bias. Under certain circumstances the Union Parliament can encroach upon the legislative authority of the State Legislatures and can make laws regarding **the** subjects enumerated in the State List. These circumstances may be mentioned as follows :

(a) Article 249 lays down that the Union Parliament shall be competent to make laws regarding a subject or subjects enumerated in the State List if the Rajya Sabha passes a resolution by 2/3rds majority of the members present and voting authorising the Parliament to do so. Such a resolution shall remain in force for a period not exceeding one year. This period may be extended by a further period of one year at a time by a subsequent resolution. A law made by the Parliament regarding such a subject will cease to be effective 6 months after the resolution has ceased to be in force.

(b) The Parliament shall make laws regarding subjects mentioned in the State List if two or more State Legislatures make a request to *the Parliament to that effect. Such a law will be applicable only to States concerned. Such a law may be adopted by any other State if its legislature passes a resolution to this effect.

(c) The Union Parliament, again, may pass a law on the State list item if such a law is required to honour an international commitment by the Government of India.

(d) During the operation of a Proclamation of Emergency, concerning internal disturbances, war or external aggression, the Union Parliament acquires an authority to legislate over all the subjects specified in the State List. But these laws will become ineffective six months after the proclamation of Emergency has ceased to operate.

(e) During the course of emergency, a State Legislature if it is allowed to exist, can also make laws but these can be declared invalid if these come into clash with the laws passed by the Parliament.

(f) Some bills require the previous consent of the President before they are introduced in a State legislature, for example items like change of territories, name of a State, restrictions on inter-State wade etc.

(g) Some bills after they are passed by the State legislatures require assent of the President before they become law. The President may refuse to give assent. His veto is absolute and cannot be over-ridden by the State legislature.

(h) The legislature may be dissolved by the Governor in his discretion. He may even recommend to the President proclamation of emergency, if he feels that the Constitution has broken down in his State. If the President is satisfied either on Governor's recommendation or even otherwise, he may proclaim emergency. In such a case, cabinet shall be dismissed and legislature dissolved. The executive power shall be assumed by the President and the legislative power shall vest in the Parliament. Such emergencies were declared in the Andhra State and the Kerala State among others.

(i) The President, in his 'satisfaction', may issue a proclamation of financial emergency and assume the administration of State finances. He may even withdraw money from the Consolidated Fund of a State without sanction of its legislature.

All these facts clearly indicate that the States of the Indian Union have a very little amount of authority and are nothing more than glorified municipalities.

POINTS TO REMEMBER

(1) The Constitution of India prescribes three separate legislative lists, namely, the Union List, the State List, and the Concurrent List. (2) The Union List contains 97 important subjects such as defence, war, railways, post and telegraph, etc. The State List contains 66 subjects some of which are law and order, police, prisons, etc. The Concurrent List contains 47 subjects like criminal law, trade unions, marriage and divorce, etc. All undefined and residuary powers are vested in the Centre. (3) Under certain circumstances the Union Parliament can encroach upon the legislative authority of the State Legislatures and make laws regarding the subjects enumerated in the State List. (4) The President and the Governor exercise wide control over the state legislature.

Q. 12. Describe the administrative relations between the Union **and the States under the Indian Constitution.**

Ans. Generally speaking, the executive authority of the Union extends to all the subjects enumerated in the Union List and the

executive authority of the State Governments extends to the subjects specified in the State List. Besides this, the Constitution contains various provisions regarding the coordination of relations between the Union Executive and the State Executive. They may be described in brief as follows :

(1) The Constitution lays down that the executive powers of the States should be exercised in such a manner as not to impede the exercise of executive powers of the Union. The Union Government can give necessary directions to the States for these purposes The Union Government can give similar instructions to States for ensuring the compliance with the laws made by the Parliament and any existing law applying in a State.

(2) The Union Government may also give directions to the States for the maintenance and construction of means of communication declared to be of national or military importance. The Parliament is further empowered to declare National highways or waterways. It is also empowered to construct and maintain means of communication as part of its functions with respect to naval, military and air force work.

(3) The Union may give directions to a State for protecting railways within that State.

(4) The Union Government may confer powers and extra duties on the government and officials of the States for the discharge of functions falling under the authority of the Union Executive, The extra cost entailed in this connection is borne by the Union Government. Similar powers and functions may be conferred by States upon Union Government and officials. The cost shall be borne by the State concerned.

(5) The Union Parliament is authorised to make laws regarding the adjudication of disputes regarding inter-state rivers and river valleys. It is also authorised to exclude by law the jurisdiction of courts including the Supreme Court in respect of any such disputes.

(6) The Union Public Service Commission, on a request from the Governor of a State may, with the approval of the President, serve all or any of the needs of the States.

(7) Article 263 authorises the President to establish an inter-State council to enquire into and advise upon disputes between States and to devise means for promoting common interests of the Union and the States.

Article 365 provides that failure of a State to carry out the lawful executive directions of the Union may be regarded by the President as a failure of the constitutional machinery in that State The President can then declare a state of emergency regarding that State.

During the operation of the Proclamation of Emergency, federal polity is converted into a unitary one and the State Executive functions under the direct control of the Union Executive.

The Union regulates the inter-State trade and imposes inter-State sales tax.

POINTS TO REMEMBER

(1) The executive authority of the Union and the States extends to their respective lists of subjects. (2) The State Executive acts according to instructions issued by the Union Executive regarding implementation of Union laws. (3) The Union Executive issues directions to the States regarding the maintenance of means of communication and protection of railways. (4) The Union Executive may confer extra duties on the officials of the States. (5) The Union Executive appoints an inter-State Council. During a Proclamation of Emergency, the Union Executive controls the State Executive.

Q. 13. Discuss and critically examine the financial relations between the Union and the States.

Ans. The Indian Constitution establishes federal structure of government. Naturally, there is a federal structure of finance too. The fathers of the Constitution took great care to avoid the confusion and conflicts between the Union and the States in the financial field as was prevalent in old federations. These conflicts resulted in enormous litigation. Consequently, the fathers of the Indian Constitution laid down detailed provisions regulating financial relations between the Union and the States.

Not only heads of revenue have been allocated in detail between the Union and the States, but the Constitution regulates borrowings, Consolidated and Contingent Funds, grants-in-aid, etc.

Further the Constitution has provided for the establishment of a Finance Commission every five years to inquire into financial relations between the Union and the States and make necessary recommendations.

The various aspects are discussed below.

Union Sources **of** Revenue : Some of the important sources of revenue to the Union are : Currency, Coinage, Foreign exchange, Railways, Posts, Telegraph, Telephone, Foreign loans, Public debts, Lotteries, Duties **of** Customs and Export Duties, Reserve Bank **of** India, etc.

Sources of Revenue of States : The sources of State revenues include land revenue, taxes on vehicles, animals and boats, professions, trades and callings, entertainment tax, tolls, taxes on land and buildings, on mineral rights, succession and estate duty in respect of agricultural lands etc.

Duties levied by the Union but collected and appropriated by the States : Stamp duties and excise duty on medicinal and toilet preparations are levied by the Union but are collected and appropriated by the States.

Taxes levied and collected by the Union but assigned to the States : The Union imposes duties and taxes and also collects

them but the proceeds are assigned to the States under the following heads;

(1) Succession and Estate duties on property other than agricultural land ;

(2) taxes on railway fares and freights ;

(3) terminal taxes on goods or passengers carried by railway, air or sea ;

(4) taxes on sale and purchase of newspapers and advertisements published therein ; etc.

Taxes levied and collected by the Union and distributed between the Union and the States : Taxes on income other than agricultural income fall under this category. Further, the Parliament may by law provide that proceeds of duties of excise other than those on medicinal and toilet preparations may be shared by the States in the manner prescribed by such law.

Surcharge on certain duties and taxes for the purposes of the Union : The Union Government may impose surcharge on items under the above two categories for the purposes of the Union and the entire proceeds of such surcharge will be appropriated by the Union.

Grants-in-aid : The Parliament may, by law, provide grants in-aid to States for developmental purposes or for the purposes of promoting the welfare of the Scheduled Tribes and raising the level of administration of Scheduled areas.

Other Provisions : (1) No State law relating to taxes on professions, trades, calling or employment shall be invalid on the ground that it is a tax on income.

(2) The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State unless otherwise provided by the Parliament by law.

(3) A State shall not impose tax on the sale of goods where such sale or purchase takes place outside the State or the commodity concerned is an export or import item.

(4) No State shall, save in so far as provided by Parliamentary law or otherwise, impose a tax on the consumption or sale of electricity which is consumed by the Government of India or sold to it for such consumption and on electricity consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to the Government or any railway company for the above stated purposes.

(5) The property and income of the State shall be exempt from Union taxation. However, such tax may be imposed in respect of trade or business carried on by, or on behalf of the Government of a State and on property used or occupied for such purposes.

(6) The Privy purses paid to the rulers of Indian States are charged on the Consolidated Fund of India and are exempt from all taxes on income.

Contingency Fund : The Constitution provides that the Parliament by law may create a fund in the nature of an imprest to be called 'The Contingency Fund of India'. Money will be paid to the fund from time to time as determined by the Parliament.

A State legislature may also create Contingency Fund of the State by its own law. Money to be credited to this fund is to be determined by the State Legislature.

The Contingency Fund of India is placed at the disposal of the President who can advance money out of this fund to meet unforeseen expenditure subject to subsequent approval of the Parliament.

Likewise, the Contingency Fund of the State is placed at the disposal of the Head of the State who may also advance money out of this fund to meet unforeseen expenditure subject to subsequent approval of the State legislature.

Critical Analysis : This allocation is good from the point of view of administrative convenience. It is administratively feasible that taxes like customs and corporation tax which are of an all-India character should be the charge of the Centre. The allocation is, however, defective inasmuch as the States have not been given adequate funds for their developmental needs. The needs of the States in contrast with the Centre are almost unlimited. They are charged with the administration of nation-building activities which call for huge expenditure. But the sources of income assigned to the States are not only inadequate but also static and inelastic. Land revenue is permanently fixed in some areas and fixed for long periods in others. The revenue from provincial excise and court stamps is actually declining. The Centre, on the other hand, has customs, income tax and Central excise which are all heavy yielders of revenue. The allocation has, therefore, been criticised as giving too much to the Centre and too little to the States.

As against this, however, he asserted that in almost all countries having Federal Constitution integration rather than separation seems to be the rule. Central Governments are taking an increasing part and a great interest in developmental activities. The present allocation is thus quite in keeping with the modern trend. And then in the changed context of affairs, the Central Government is extending unstinted help to the States through grants and subsidies. Besides, we have to develop our backward economy. There are stupendous, economic problems which can be tackled only on an all-India basis. The Centre must, therefore, have a strong financial position.

The allocation of resources, between the Centre and the States is, however, not final. There is a statutory provision in our Constitution regarding the appointment of a Finance Commission to review the working of the financial relations between the Centre

States. A Finance Commission was accordingly appointed in November, 1951 under the chairmanship of Shri K. C. Neogy. It submitted its report in December, 1952. The recommendations of the Commission have been accepted in their entirety by the Government. The recommendations involve the assignment of a larger share of income tax to the States ; the allocation of 40% of the net proceeds of the Union duties of excise on tobacco, matches and vegetable products to the States and the payment of increased and additional grants-in-aid to a number of States. The net effect of these recommendations is to transfer, on an average, a sum of the order of Rs. 21 crores a year more than at present to the States by way of devolution of revenue and grants-in-aid. Similarly another Finance Commission was appointed with Mr. Santhanam as Chairman. A third Commission was appointed with Mr. A. Chanda as chairman. The fourth Finance Commission was appointed under the chairmanship of Mr. P.V. Rajamannar.

POINTS TO REMEMBER

(1) The allocation of financial resources between the Centre and the States follows the pattern of the Act of 1935. The Union Government has very important sources of revenue like customs duty, income tax, excise duty on some articles, estate duty, corporation tax, etc. The State Governments have sources of revenue like land revenue, taxes on agricultural income, excise duties on alcohols and narcotics, taxes on sale and purchase of goods etc. (2) The Constitution makes provisions for the creation of a Contingency Fund both for the Union Government and the State Governments. (3) The allocation is criticised on the ground that it gives too much to the Centre and too little to the States. But it is quite in keeping with the modern trend in the federations of the world. In the present context of circumstances, the importance of a financially strong Central Government cannot be ignored. The Constitution provides for the appointment of a Finance Commission to review the working of the financial relations between the Centre and the States.

PROBABLE QUESTIONS WITH HINTS

1. Describe the relations between the Government of the Union and the Government of the States. How far do they encroach on the sovereignty of the States ? *(P. U. Sept. 1951,* M.A. Political Science)

[For answer refer to questions dealing with legislative, administrative and financial relations between the Centre and the States]

2. 'Legislative division between the Centre and the States in India betrays the intention of the framers of the Constitution regarding the establishment of an omnipotent Central government under the garb of federal structure.' Discuss.

[For answer refer to Q. 8.]

'Our Constitution strikes a golden mean between the flexibility and rigidity of the British and American Constitutions.'

CHAPTER VIII

AMENDMENT OF THE CONSTITUTION

A federal constitution is generally rigid. It is a sacred agreement among the various States, the spirit of which must be maintained as far as possible. In-particular the provisions regarding the distribution of powers between the Centre and the States should not be amended easily as that might disturb the very basis of federalism. In the United States where the Constitution is. strictly federal in structure, its amendment is very difficult. But since the Constitution of India is federal with a unitary bias, it is neither very rigid nor very flexible. There are some provisions, like the distribution of powers and other important provisions, which can be amended by the Union Parliament by a special procedure, and must be ratified by half of the State legislatures, before being approved by the President. But in the case of other provisions, the Parliament itself can amend them by following the prescribed procedure, *i.e.,* by an absolute majority of all the members of a House coupled with two-thirds majority of the members present and voting in that House and voting separately in the two Houses. There have been eighteen amendments, so far.

***Q. 14. Describe the procedure laid down for the amendment of the Indian Constitution.** *(V. Important)*

Ans. The procedure laid down by the Constitution for its amendment is neither so easy as in England nor so difficult as in the United States. The Constitution of England is highly flexible. It can be amended by a simple majority of the British Parliament. No separate procedure is prescribed for its amendment. Both ordinary and constitutional laws are created in the same manner. The Constitution of the U.S.A. is extremely rigid. It can be amended only if a two-thirds majority of both the Houses of the Congress and three-fourths of the States agree.

The Constitution of India, however, strikes a middle course thereby avoiding the extreme rigidity of the American Constitution and the extreme flexibility of the British Constitution. The method of amendment of the Indian Constitution is as follows :

1. A highly rigid method of amendment is provided for some provisions of the Constitution which have a vital importance for the States of the Indian Union. These provisions include election of the President, executive powers of the Union Government and State Governments, legislative relations between the Union and the States,. Supreme Court and State High Courts, representation of States in the Parliament and Article 368 which lays down different procedures for constitutional amendments.

In all these cases a constitutional amendment must be passed by the Parliament by a majority of its total membership and a two-

thirds majority of the members present and voting in each House: separately. It must also be ratified by at least half the legislatures of the States before it is presented to the President for his assent.

2. The remaining provisions of the Constitution can be amended by an absolute majority of each House and by a majority of not less than two-thirds of the members present and voting in each House of the Parliament voting separately. A constitutional amendment passed in this manner becomes a part of the Constitution after receiving the assent of the President.

It may be noted that all constitutional amendments can be proposed by the Union Parliament. An amendment to the Constitution can be initiated by the introduction of a Bill in either House of the Parliament. The State Legislatures have no authority to propose amendments. Moreover, the States are not competent to amend their own constitutions. In Canada and Australia, the competent units of the federation can amend their constitutions, within the federal framework.

There is a loop-hole in the Constitution. A constitutional amendment passed according to the prescribed method must also be approved by the President. There is no provision as to whether the President is bound to give his assent to such a constitutional amendment. At the same time he has not been given veto in case of constitutional amendments.

The following are the eighteen amendments added so far :

(1) The first amendment was passed in 1951 (18th June 1951). It amended the fundamental rights and gave important powers to the States to place restrictions on the freedom of speech and expression on the grounds of 'incitement to offence', 'friendly relations with other States' etc. It declared laws passed before the Constitution was promulgated and which had become inconsistent with fundamental rights, as not illegal with retrospective effect, etc. It also added the Ninth Schedule.

(2) The second amendment omitted the upper limit of population as fixed originally for constituencies in parliamentary elections. It said, "not less than one member for every 750,000 of the population" shall be omitted in Article 81, clause (1), sub-clause (b). Thus there is no upper limit of population in a constituency now.

(3) The third amendment placed certain items on the concurrent list, *i.e.,* foodstuffs, edible oils and oilseeds, cattle fodder, raw cotton and cotton seed, raw jute and product of any industry which is declared by the Parliament to be expedient in the public interest.

(4) The fourth amendment amends the right of property. The Union and the States can acquire private property for state purposes by paying compensation. The third amendment added that no case shall be taken to a court of law on the ground that compensation fixed by the Parliament or a State legislature is 'not fair' if such law had been assented to by the President. Thus it gives

final authority to the Parliament or State Legislatures in the matter of acquiring private property and determining the amount of compensation.

(5) The fifth amendment gives the power to the President to fix the time limit for the replies to be sent by the States when consulted by the President on the question of Bills affecting their boundaries, areas or name.

(6) The sixth amendment gives powers to the Union government to impose inter-state sales tax.

(7) The seventh amendment concerns changes necessitated by the passage of the States Reorganisation Act, 1956.

(8) The eight amendment amended Art. 334 which increased the period of reservation of seats for scheduled castes and tribes for a period of 10 to 20 years.

(9) The ninth amendment was introduced to facilitate the demarcation of boundary between India and Pakistan according to the agreement dated 23rd October, 1959 and further to facilitate the seceding of certain part of Indian territory.

(10) The tenth amendment created Dadra and Nagar Haveli as a Union Territory.

(11) The eleventh amendment was concerned with the election of the President and Vice-President. According to this amendment for the words, "members of both Houses of Parliament assembled at a joint meeting" the words, "members of an electoral college consisting of the members of both Houses of Parliament" shall be substituted. Moreover, the ejection of a person as President or Vice-President shall not be called in question on the ground of the existence of and vacancy for whatever reason among the members of the electoral college electing him.

(12) The 12th amendment created Goa, Daman and Diu as the 8th Union Territory.

(13) The 13th amendment related to the creation of Nagaland and determined the constitutional structure of the territory and added after article 371, the article 371A.

(14) The fourteenth amendment created Pondicherry as the 9th Union Territory. It also added Art. 239A, empowering the Parliament to create by law a Legislature and Council of Ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry.

(15) The fifteenth amendment raised the age of retirement of High Court Judges from sixty years to sixty-two years. When any question arises as to the correct age of a judge of the Supreme Court or High Court the question shall be decided by the President.

Art. 220 was amended to facilitate transfer of judges. They cannot practice in the High Court from which they retired when

transferred to another High Court. Judges will get some compensatory allowance.

(16) The sixteenth Amendment deals with (a) Preservation of the territorial integrity of the country and enabling the Government of India to take a speedy disciplinary action against political activities which can endanger the integrity and sovereignty of the country. It amended Art. 19 to enable the Sates to impose reasonable restrictions on rights. It amended Art. 84 and 173 regarding the qualifications for election to Parliament and State Legislatures. It amended the Third Schedule to add to the oaths, the oath to up-hold the sovereignty and integrity of India.

(17) The seventeenth amendment further safeguards the right to property (Art 31 A) by stipulating that it shall not be lawful for a State to acquire — any portion of land held by a person for personal cultivation as is within the ceiling limit applicable to him under any law or any buildings or structures standing thereon unless the law relating to such acquisition provides for payment of compenation at a rate which shall not be less than the market value of the land and property concerned.

(18) The eighteenth amendment contains two explanations applicable to Art. 3 of the Constitution. Explanation I says that the word 'State' in article 3 also includes a Union Territory by which the Union Parliament can make new states or increase or diminish the areas of existing ones by passing suitable laws; but in the proviso of the same article "State does not include Union Territory.

Explanation II says that the power conferred on the Parliament by clause (a) includes the power to form a new State or Union Territory by uniting a part of any State or Union Territory to any other State or Union Territory.

POINTS TO REMEMBER

The Constitution of India is partly rigid and partly flexible. There are the following three methods of amendment relating to various provisions of the Constitution. Apart of our Constitution can be amended by a two-thirds majority of the members present and voting in each House coupled with absolute majority of each House. A certain part of the Constitution can only be amended if the above procedure is supplemented with the ratification of the proposal for amendment in at least half the State Legislatures belonging to Parts A and B of the First Schedule. A part of the Constitution can be amended by a simple majority of the Parliament in each House. So far the Constitution has been amended eighteen times.

PROBABLE QUESTIONS WITH HINTS

1. "The Constitution of India avoids the extreme flexibility of the British Constitution and the extreme rigidity of the American Constitution." Discuss.

[For answer refer to the text of the preceding question.]

2. 'The Constitution which prescribes the structure of the Government should be adaptable and adjustable to the growing socio-economic system.' Discuss with r eference to the Indian Constitution.

[For answer, deal with the flexible and rigid aspects of the Constitution.)

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'The new Constitution effects a compromise between centralism and federalism.'

CHAPTER IX

UNITS OF THE INDIAN FEDERATION

The Indian Union accor ding to the original Constitution consisted of 28 States in all which were specified in the First Schedule of the Constitution. The States were divided into three parts, and classified as Part A, Part B and Part C States. Besides there were the Andaman and Nicobar Islands and Sikkim which were called Part D States. Part A States corresponded to the former Governors' Provinces in British India, and were 10 in number. At the time of the commencement of the Constitution there were only 9 States in Part A, but with the bifurcation of the Madras State which resulted in the formation of the Andhra State, their number rose to 10. These States retained their old names except the C.P. and Berar and the United Provinces, which were renamed as Madhya Pradesh and Uttar Pradesh respectively. Part B States generally consisted of former princely States and the various unions, formed out of their mergers. They were 8 in number.

Part C States consisted of former Chief Commissioners' Provinces and other princely States which had been converted into centrally-administered areas after Independence. These included Delhi, Ajmer, Himachal Pradesh. Bhopal, etc.

The Constitution empowered the Parliament to form new States by altering the territories of existing States by following a prescribed procedure. Consequently under the States Reorganisation Act, 1956, these categories have been abolished. States have been reorganised on linguistic principle, while keeping in. view other factors like national unity, defence, financial viability and econonic development. At present there are 16 States and 9 Union Territories constituting the Union of India. Besides, there is NEFA as an autonomous area administered by the Governor of Assam under supervision of the Union Government. The 16 States enjoy federal character.

Q. 15. What were the different units of the Indian Federation prior to re-organisation of States ?

Ans. The Constitution of the Indian Republic declared India to be a Union of States. There were, broadly speaking, three categories of States in the Indian Union, *i.e.,* States of Part A, Part B and Part C of the First Schedule. In addition, however, there were some territories specified in Part D of the First Schedule also. Each of the States had its own administrative machinery, though none of them was sovereign in the technical sense.

States **in** Part A : These corresponded to the former British Indian Provinces. They were the following : (1) Andhra, (2) Assam (3) Bihar (4) Bombay (5) Madhya Pradesh (6) Madras (7) Orissa (8) Punjab (9) Uttar Pradesh (10) West Bengal.

States **in** Part B : These states consisted of the unions of former Indian States and three individual States. These States had been prior to Independence the territories of Indian princes. These were the following: (1) Hyderabad, (2) Jammu and Kashmir, (3) Madhya Bharat, (4) Mysore, (5) Patiala and East Punjab-States Union (commonly known as Pepsu), (6) Rajasthan, (7) Saurashtra, and (8) Travancore-Cochin.

States **in** part C : These States included the former Chief Commissioners' Provinces or native States or parts thereof converted into centrally administered areas. They were as follows : (1) Ajmer (2) Bhopal, (3) Bilaspur, (4) Coorg, (5) Delhi, (6) Himachal Pradesh,. (7) Kutch, (8) Manipur, (9) Tripura, and (10) Vindhya Pradesh.

States **in** Part **D** : They were the Andaman and Nicobar Islands.

Q. 16. Discuss the Importance of the reorganisation or States in the Indian Union. Give an account of the various States that have come into being as a result of the reorganisation of States.

Ans. One of the major problems that faced free India was that of the reorganisation of States. Before Independence, the country was divided into a number of administrative units called Provinces.. The British Government, while setting up this division into Provinces,, did not take into consideration the cultural or linguistic needs of the people. The division of the country into Provinces that took place was governed by the British rulers' convenience in stabilisation of the conquered territory and by the idea of facilitating the administration.

As the national sentiment grew and the movement for Independence became stronger, there arose a consciousness that the hetered geneous distribution of the country was an obstruction in the evolution of national culture and the progress of various nationalities inhabiting this vast land. As a result of this, the people of India put up a demand that the division of Provinces be

on the basis of language. As a matter of fact this demand for linguistic Provinces became an integral part of the freedom struggle. Indian National Congress, the spearhead of the struggle, reiterated this demand time and again. It lent indirect support to the scheme of linguistic provinces as early as 1905 when it backed the demand for annuling the partition of Bengal. More direct support came when it constituted Bihar as a separate Congress Province, though the actual separation of Bihar State came about in 1912. This was followed in 1917 by the formation of two Congress Provinces of Sind and Andhra both formed on linguistic principle. Three years after the formation of Sind and Andhra, the Congress at its Nagpur "Session in 1920, accepted the linguistic redistribution of provinces as a clear political objective. The Congress again urged the redistribution of provinces on linguistic basis to the Indian Statutory Commission in 1927 and was followed by a clear enunciation of the linguistic principle by the Nehru Committee of the All-Parties Conference in 1928. The principle of formation of linguistic provinces was reiterated by the Congress in various subsequent resolutions such as the Calcutta Resolution of October, 1937, the Wardha Resolution of 1938 and the Election Manifesto of 1945-46.

With the advent of freedom this demand assumed an added importance. The feeling and sentiment which had been nurtured so long, wanted immediate satisfaction, particularly when people who piloted and vehemently supported the demand had come at the helm of affairs. It became associated with political integrity, democratic idealism and the right of self-determination. From all parts of the country there arose a strong voice that this step be immediately taken and the promises held out so long, be fulfilled. It was not possible to sleep over it because the movement was assuming more and more vigorous shape everyday. Not only that it was just placating the people, but it was the demand of democracy. Government of the people, for the people and by the people shall be worth its name only if it can gauge the aspirations of the people and work in accordance with them.

Apart from this, it was admitted at all hands that a reorganisation of states with a view to give free scope of development to various languages and cultures would make for an all-round cultural development of the nation and would also serve to create a psychosis for national cohesion and solidarity.

Another fact that made the reorganisation of states an imperative need was the merger of the princely states into the Indian Union. The merger, in the first place, removed the obstruction that lay in the way of any reorganisation. Secondly, it made some of the units cumbersome and unwieldy. So, it was felt that the states in the Indian Union be reorganised. The Constituent Assembly, -appointed the Dhar Commission to make recommendations in the matter. The Congress at its Jaipur Session established the J.V.P. {Jawaharlal, Vallabhbhai Patel, Pattabhia Sitarammaya) Committee. The Congress made it an election issue in 1951-52 general elections.

But nothing concrete was done. The movement became very strong, in the South for the creation of Andhra. An Andhra patriot kept fast unto death and died. The Government, consequently, was forced to create separate Andhra State. The movement for linguistics reorganisation took momentum everywhere, particulary in the Punjab. The Akali Party put up the demand for Punjabi Suba. The Government could not shelve the demand any longer. The Government of India appointed in December, 1953, a high power Commission to go into the whole affair and suggest a scheme for reorganisation. This States Reorganisation Commission consisted of Shri Fazl Ali, Chairman (an ex-Supreme Court Judge), Shri H. N. Kunzru (a liberal politician) and Sardar K.M. Pannikar (a senior Diplomat-Administrator).

The Commission toured the whole country and after making as thorough study of the problem submitted its report in October, 1955. The report embodied the result of a fact finding survey which covered a long range. The Commission visited 104 places and travelled 38,000 miles. It interviewed over 9000 persons. It received and examined 152,250 documents from organisations and individuals,. The Commission accepting the principle of linguistic redistribution also laid down other principles and factors that must be equally kept in view. These are—national unity, national defence, economic development, financial viability, educational or cultural backwardness, military aspect of border States etc. The Commission recommended the redivision of India into 16 States and some centrally administered areas. The proposals of the Commission were on the whole welcomed by the people. The report was subjected, at the same time to scathing criticism. The main trouble centres were Bombay and the Punjab. Maharashtrians and Gujaratis both wanted to include Bombay in their States. The Central Government proposed Bombay to be made into a centrally administered area. It was not acceptable to either of them. It led to the resignation of Shri C.D. Deshmukh, the then Finance Minister from the Cabinet. There were riots and firings in the State. At a public meeting in Ahmedabad, Pandit Jawaharlal was not allowed to speak for 50 minutes and he had to leave the meeting without making his speech. The Akalis led an agitation in the Punjab and started satyagraha. However, the matters cooled down and the final agreements were arrived at. The Reorganisation of States was effected under the Act of 1956 and was introduced in November 1956. The Punjab and the Bombay States were made bi-lingual States. The agitation for separation of Gujarat from Bombay continued after the States Reorganisation Act was passed. It ultimately led to their separation and creation of two new States. Now there-are 16 States and 9 Union Territories. Details are as follows :

1. Andhra Pradesh : It consists of the territory of the former state of Andhra and the following territories :

(a) The districts of Hyderabad, Medak, Nizamabad, Adilabad, Karimnagar, Warangal, Khammam, Nalgonda and Mahbubnagar;

(b) Alampur and Gadwal Taluks of Raichur district;

(c) Kodangal and Tandur Taluks of Gulbarga district; and

(d) Narayankhed and Zahirabad taluks of Bidar district.

It has a total area of 2,75,243.41 sq. kms. and a population of 3,59,83,447.

2. Assam : It comprises the territory of the state of Assam and has an area of 2.03,398.37 sq. kms. and a population of 1,22,09,330 people.

3. Bihar : Certain territories of the former state of Bihar have been transferred to West Bengal in accordance with the provisions of the Bihar and West Bengal (Transfer of Territories) Act. This State now covers an area of 1,74,007.76 sq. kms. approximately. It has a population of 4,64,55,610.

4 Gujarat (Capital : Ahmedabad) : The State of Gujarat came into being on May 1, I960. It has an area of 1,87,092.37 sq. kms. and population of 2,06,93,353. It has a unicameral legislature.

The two States of Maharashtra and Gujarat came into existence on May 1, 1960, when the Bombay Reorganisation Act, 1955 came into force. This Act split the old Bombay State into two :States.

5. Jammu and Kashmir : The territory of this state remains unchanged. Its existing-territory covers an area of 2,22,869.78 sq. kms. It has a population of 35,60,976.

6. Kerala : It is a State consisting of:

(a) the territories of the former state of Travancore-Cochin, excluding the territories comprising the Agastheeswaram, Therala, Kalkulam and Vilavancode taluks of Trivandrum district and the Shencotah taluk (excluding Pubyara Hill pakuthy) of Quilon district ;

(b) the territories of the former Madras State comprising (i) Malabar district, excluding the islands of Laccadive and Minicoy, and *(ii)* Kasaragod taluk of South Kanara district.

This state covers an area of 36,867.59 sq. kms. and contains a population of 1,69,00,715 people.

7. Madhya Pradesh : **It** comprises **the** following **territories :**

(a) territories of the eastern state of Madhya Pradesh except Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara

and Chanda districts ; *(b)* the territories of the then existing state of Madhya Bharat except Sunel Tappa of Bhanpure tehsil of Mandsaur district; (c) Sironj sub-division of Kotah district in the existing state of Rajasthan; (d) the territories of the then existing state of Bhopal ; and *(e)* the territories of the then existing state of Vindhya Pradesh.' It has now an area of 4,43,468.03 sq. kms. and has a population of 3,23,72,408.

8. Madras : It includes territories of the state of Madras and some portions of the then existing State of Travancore-Cochin. Its total area is 1,29,965.51 sq. kms. and population is 3,36,86,953.

9. Maharashtra State (Capital: Bombay) : It has an area of 3,07,268.33 sq. kms. and a population of 3,95,53,718. It is the third biggest state in India both in area and population.

10. Mysore : This State comprises (a) the territories of the then existing State of Mysore ; (b) Belgaum district except Changad taluk and Bijapur, Dharwar and Kanara districts ; (c) Gulbaraga district except Kodangal and Taudur Taluks, Raichur district except Alampur and Gadwal taluks, and Bidar, Bhalki, Humnabad and Santpur (Aurad) taluks of Bidar district, of the then State of Hyderabad ; *(d)* South Kanara district except Kasaragod taluk and Amindivi Islands, and Kollegal taluk of Coimbatore district in the State of Madras ; and (e) the territories of Coorg. Its area covers 1,91,756.07 sq. kms. and population is 2,35,86,772.

11. Nagaland (Capital-Kohima) : It is a state having **a** unicameral legislature and the Governor of Assam is the Governor of Nagaland also. Its area is 16,487.84 sq. kms. and population is 3,69,200.

12. Orissa: Its territory remains unchanged. Its area is 1,55,859.21 sq. kms. and population is 1,75,48,846.

13. Punjab : This new State has been formed by the merger of the States of Punjab and Pepsu. Its area is, 1,22,009.57 sq. kms. and population is 2,03,06,812. It is now proposed, to further split the State into Punjab and Haryana.

14. Rajasthan : It includes (a) the territories of the previous State of Rajasthan, except Sironj sub-division of Kotah district; *(b)* the territories of the former State of Ajmer ; (c) Abu Road Taluka of Banaskantha district of the former state State of Bombay ; *(d)* Sunel tappa of Bhanpur, a tehsii of Mandsaur district of former Madhya Bharat. Its area now is 3,42,266.43 sq. kms. and population 2,01,556,02.

15. Uttar Pradesh : There is no change in the territory of the State. It covers an area of 2,94,365.08 sq. kms. and has a copulation of 7,37,47,401.

16. West Bengal: It consists of original territories of West Bengal plus certain areas taken over from Bihar. Its area is 87,675.91 sq. kms. and population is 3,49,26,279.

The Union Territories : There are the following Union Territories under direct administration of the Centre :

(1) Delhi, (2) Manipur, (3) Tripura, (4) The Andaman and Nicobar Islands, and (5) The Laccadive, Minicoy and Amindivi Islands, (6) Dadra and Nagar Haveli, (7) Goa, Daman and Diu, (8) Himachal Pradesh, (9) Pondicherry.

POINTS TO REMEMBER

(1) The division into provinces under British Government was not satisfactory. (2) The demand for reorganisation was long overdue. (3) The Government set up a high power Commission. (4) Some disturbances over the report of the Commission. (5) After the Reorganisation of States, the following States and Union Territories were created : States—Andhra Pradesh ; Assam ; Bihar ; West Bengal; Kerala ; Madhya Pradesh ; Madras ; Mysore ; Orissa ; Punjab ; Rajasthan ; Uttar Pradesh ; Jammu and Kashmir ; Maharashtra ; Gujarat, and Nagaland ; Union Territories : Delhi; Himachal Pradesh ; Manipur ; Tripura ; Andaman and Nicobar Islands; the Laccadives, Minicoy and Amindivi Islands ; Dadra and Nagar Haveli; Goa, Daman and Diu ; and Pondicherry.

Q. 17. Give a brief account of the scheme for Regional Committees in the Punjab State as established in 1957.

Ans. According to the proposals of the States Reorganisation Commission, Punjab was made a bilingual State. Punjabi in Gurmukhi script and Hindi in Devnagri hold an equal status in the new set-up. There had, however, been a long-drawn tussel between the supporters of the two languages ; both nurtured fears and apprehensions that they might not be deprived of the opportunities for developing their own language and culture. It was not possible to maintain peace and harmony in the States unless these fears were allayed and both the sections were assured of safety and support for their particular interests. The Union Government, after discussing the matter with the leaders of both the sections evolved a scheme which according to late Pandit Pant, was recognised as a 'good, sound, wholesome scheme which will lead to growth of goodwill, unity, development and welfare of the people of the Punjab and of all sections of it'.

The Scheme : The following were the outlines of the scheme :

1. There will be one legislature for the whole of the re-organised State of Punjab which will be the sole law-making body for the entire State, and there will be one Governor for the State who will be aided and advised by a Council of Ministers responsible to the Assembly for the entire field of administration.

' 2. For the more convenient transaction of business of Government with regard to some specified matters, th£ State will be divided

into two regions, namely, the Punjabi-speaking and the Hindi-speaking regions. (Some people propose the names as Western and Eastern regions).

3. For each region there will be a regional committee consisting of the members of the State Assembly belonging to each region including the Ministers from the region but not including the Chief Minister.

4. Each regional committee shall elect its own Chairman. The Eastern Committee elected Mr. Balwant Rai Tayal as its Chairman, and the Western Committee elected Mr. Ram Nath Seth as its Chairman in November 1957.

5. These regional committees will deal with the following matters : (i) Development and economic planning within the framework of the general development plans and policies formulated by the State legislature. (ii) Local self-government, *ie.,* the constitutional powers of municipal corporations, improvement trusts, district boards and other local authorities for the purpose of local self-government or village administration including 'Panchayats'. *(iii)* Public health and sanitation, local hospitals and dispensaries, *(iv)* Primary and secondary education, (v) Agriculture, *(vi)* Cottage and small-scale industries (vii) Preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice *(viii)* Ponds and prevention of cattle trespass, *(ix)* Protection of wild animals and birds and fisheries (x) Control and arrangement of inns and inn-keepers, markets and fairs. (xi) Arrangement and proper administration of co-operative societies, charities and charitable institutions, charitable and religious endowments and religious institutions.

6. Legislation relating to these matters shall be referred to the regional committees. These committees may also put forward proposals for legislation. They may also give suggestions with regard to questions of general policy not involving any financial commitments other than expenditure of a routine and incidental character.

7. The advice tendered by regional committees will normally be accepted by the Government and the state legislature. In case of difference of opinion, reference will be made to the Governor whose decision will be final and binding.

8. The official language of each region will, at the district level and below, be the respective regional language.

9. The State will be bilingual recognising both Punjabi (in Gurmukhi script) and Hindi (in Devnagri script) as the official languages of the State.

10 The Punjab Government will establish two separate departments for developing Punjabi and Hindi languages.

11. In accordance with and in furtherance of its policy to promote the growth of all regional languages the Central Government will encourage the development of the Punjabi language.

POINTS TO REMEMBER

(1) According to the proposed new set-up the Punjab will be a bilingual State. (2) The State will be divided into two regions—Hindi-speaking and Punjabi-speaking. (3) There will be one Governor and one legislature for the whole State. (4) Each region shall have a Regional Committee having powers to deal with certain specific matters. *(5)* In case of a difference of opinion between the Regional Committee and the State Legislature, the decision of the Governor will be final and binding. (6) Provisions will be made for the proper development and encouragement of both the languages.

"The President occupies the same position as the King under the English Constitution. He represents the Nation but does not rule the Nation." *—B. R. Ambedkar*

CHAPTER X

THE UNION EXECUTIVE

The Union Executive consists of the President and a Council of Ministers. It is a parliamentary type of executive. The President is the head of the Union Executive. He is to act on the advice of a Council of Ministers which is collectively responsible to the Lower House of the Union Parliament, *i.e.*, the House of the People. A Parliamentary executive was preferred by the fathers of the Indian Constitution in view of the following considerations :

(a) Great popularity of this system all over the world.

(b) Successful working of this system in the Provinces under the Act of 1935.

(c) Harmonious working of the executive and the legislature, assured under this form, being essential for an infant democracy.

(d) The need for bringing the princely States in line with responsible governments in other Provinces.

***Q. 18. How is the President of the Indian Republic elected ? Describe his qualifications, term of office and emoluments.**

Ans. Method **of Election :** The President of India is elected indirectly by an electoral college composed of the elected members of both Houses of the Parliament and the Legislative Assemblies of the States. The election is held by secret ballot in accordance with the Principle of proportional representation by means of single transferable vote. Thus the President is elected by the representatives of the people and the citizens play no direct part in his election.

Indirect election of the President has been provided for because direct election of the President by such a vast electorate of India would involve a great difficulty. Moreover, a directly elected President may not like to act as a mere constitutional head of the State which is an essential requisite of a parliamentary democracy.

The Presidential election is conducted under the following conditions :—

(1) The Electoral College consists of elected members of both Houses of Parliament and those of the Legislative Assemblies (Lower Houses) of States.

(2) The total votes exercised by the members of Parliament are equal to the total votes exercised by all the members of State Legislative Assemblies.

(3) A member of a State Legislative Assembly exercises as many votes as :—

$$\frac{\text{Total Population of a State}}{\text{No of elected M.L. A's of that State}} : 1000$$

(4) Each M.P. exercises as many votes as

$$\frac{\text{Total votes of all the M.L.A's}}{\text{No. of elected M.P's}}$$

(5) Each member casts his votes on the basis of proportional representation by means of single transferable vote.

(6) Each member has to cast all his votes en-bloc. He cannot divide them and give to more than one candidate.

(7) A candidate who gets absolute majority of valid votes cast gets elected.

(8) The election of the President takes place after the General Election.

(9) According to the Amendment 11, the election of the President and Vice-President cannot be declared invalid on the ground that the General Election has not been completed.

Qualifications : A candidate for the office of President should possess the following qualifications :—

(a) He must be a citizen of India.

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

(c) He should be qualified for election to the House of the People.

(d) He should not hold any office of profit under any Government or a local Body in India. Exemption, however, has been granted to the offices of President and Vice-President of the Indian Republic, Governor and Ministers of the Union and States.

Term of Office: The President holds office for a period of five years. He is eligible for re-election. He may be removed from office for violation of the Constitution before the expiry of his term by impeachment. Charges for this purpose may by preferred by either House of the Parliament by a two-thirds majority. The other House investigates the charges. If it is finally established by two-thirds majority of the total membership of the other House as well, the President is forthwith removed from his office. He has the option to resign voluntarily before the expiry of his full term. In case of a vacancy caused by his death, resignation or removal, the Vice-President is to officiate as President till it is filled by new elections which must take place before the expiry of a period of 6 months after the occurrence of the vacancy. The new holder of office is to hold the office for the full term of 5 years.

Emoluments : He draws a salary of Rs. 10,000 per month, besides allowances drawn by the Governor-General of India under the Act of 1935. He is also entitled to a rent-free official residence.

His emoluments are a charge on the Consolidated Fund of India and are, therefore, not votable by the Parliament. His salary and allowances cannot be reduced during his term of office. He may himself decide to draw less than the fixed amount.

POINTS TO REMEMBER

The President is elected indirectly by an electoral college composed of the elected members of the Union Parliament and Legislative Assemblies of the States. He should be a citizen of India. He should be over 35 years of age and should not hold any office of profit under any government in India. He should be eligible for the House of the People. He holds office for a period of 5 years and draws a salary of Rs. 10,000 per month apart from various other allowances.

Q. 19. Describe the powers and position of the Indian President ? Discuss his relations with the Council of Ministers. (*P.U. 1952)

India is a Republic, the constitution provides for a President.

Ans. The Constitution confers extensive powers on the President of the Indian Republic. His powers may be discussed under the following heads :

Executive Powers : The President is head of the State. He is the chief executive head of the Union. All executive action is taken in his name. He is the Supreme Commander of the Lefence Forces of the Union. He has the power of taking any military action in case of danger in view of its subsequent approval by the Parliament. He makes all important appointments such as Governors of the States, ambassadors and other diplomatic representatives, Chief Justices and Judges of the Supreme Court and the High Courts, Attorney-General, Auditor-General, the Chairman and the members of the Union Public Service Commission and members of the Election and Finance Commissions. He also makes the appointment of the Prime Minister and on his advice other Ministers of the Union Government. According to the Amendment of the Constitution (1956), the Union Territories are to be administered by him through officers appointed by him under the system of new organisation of States of the Indian Union. The President may constitute by regulation for every such territory a council of advisers to the Chief Commissioner. This advisory council may be partly elected and partly nominated. Under the new organisation of the States of Indian Union, the President shall be authorised to constitute Regional Committees of the State Legislative Assembly in Punjab and Andhra and secure their proper functioning by directing suitable modification in the rules of Government and of the Assembly.

Legislative Powers : The President enjoys extensive powers in the legislative field. The Union Legislature consists of the President and the two Houses of the Parliament. He summons, adjourns and prorogues both the Houses of the Parliament and dissolves the House of the People. He may summon a joint session of both the Houses of the Parliament, especially when they disagree on a Bill. He nominates 12 members to the Council of States and 2 Anglo-Indians to the House of the People.

He opens the first session of the Parliament with a speech outlining the national and foreign **policy** of his Government along with the legislative programme. He may address the two Houses of the Parliament separately or jointly. He may send messages to either Houses of Parliament and it will consider any matter required by the message to be taken into consideration. Dr. Rajendra Prasad sent a message to the Parliament when it was discussing the Hindu Code Bill.

All Bills passed by the Parliament must receive his assent before becoming laws. He may withhold his assent from all Bills other than Money Bills. But if a Bill vetoed by the President is again passed in both Houses of the Parliament by the same simple majority, he cannot withhold his assent. His previous assent is required regarding certain types of bills to be introduced in the State Legislatures. There are certain other bills which require his assent after they are passed by State Legislatures. He may veto them. His veto is absolute in this respect.

The President may issue ordinances at any time, when the Parliament is not in session. Such ordinances have the same force as an Act of the Parliament. An ordinance issued by the President must be placed before the Parliament as soon as it meets. It ceases to operate six weeks after the re-assembly of the Parliament unless it is approved by both the Houses in the meantime.

During an emergency arising from the failure of the constitutional machinery in a State, the President may make laws for such a State when authorised by the Parliament.

Financial Powers : The President enjoys several financial powers. Before the beginning of a financial year, he causes to be laid before the Parliament the annual budget and the supplementary budget, if any. No Money Bill can be introduced in the Parliament without his prior recommendation. He distributes the shares of all income-tax receipts between the Centre and the States and allocates to the States of Assam, West Bengal, Bihar and Orissa grants-in-aid in lieu of their share in export duty on jute. He is also empowered to appoint Finance Commissions for allocation of the shares of the States in regard to receipts from other taxes. The first Finance Commission under the chairmanship of Shri K.C. Neogi was appointed. The second Finance Commission was appointed with Mr. Santhanam as Chairman. The President is empowered to create a Contingency Fund out of which he can make advances to meet unforeseen expenditure subject to the subsequent sanction of the Parliament.

Judicial Powers : The President enjoys the power to grant pardon, reprieve or remission of punishment to any person convicted in certain types of cases, under the Union laws particularly all cases involving punishment with death.

He appoints Judges of the High Courts and the Supreme Court and thus enjoys a great judicial patronage. He makes their appointments with the consultation of such Judges of Supreme Court and

High Courts as he may deem fit to consult. In case of appointments other than that of the Chief Justice of the Supreme Court, the latter must be consulted.

The President also enjoys certain legal immunities. He is not answerable to any court of law for the exercise and performance of the powers and duties of his office. No criminal action can be taken against him in any court of India.

The President can refer any matter of constitutional law to the Supreme Court for advice. The advice of the Supreme Court, however, is not binding upon him. During a financial emergency, he may reduce the salaries of the Judges of the Supreme Court and High Courts, and of the personnel of the Union Services.

Emergency Powers : The President has been given wide powers to meet emergencies. The Constitution envisages three kinds of emergencies :—

(a) Emergency arising out of war, external aggression or internal disturbances.

(b) Emergency arising out of the failure of the constitutional machinery in the States.

(c) Emergency arising out of threat to financial stability or credit of India.

The President himself is the sole judge to determine whether an emergency has arisen or not.

National Emergency : So far as the first kind of emergency is concerned, it has far reaching results. If he is satisfied that there is a grave danger to security of India either from external aggression or internal disturbance, he may declare emergency. Under this emergency the Union Parliament acquires powers to frame laws regarding subjects mentioned in the State List. The President can issue directions to any State regarding the conduct of executive business. The President can also modify the distribution of sources of revenue between the Union and the States. All this amounts to the suspension of internal autonomy of the different States. The declaration of emergency of this kind, further, empowers the President to suspend the operation of the Fundamental Rights and their constitutional guarantees, given in Articles 19 and 32. No citizen can then have the right to move a court of law for the enforcement of these rights.

Constitutional Emergency : If the President is satisfied either on a recommendation of the Governor or otherwise that the government cannot be carried on in a State in accordance with the Constitution, he may declare emergency in that State as was declared in Andhra and Kerala. Under such an emergency, the President may assume to himself any or all functions of the Government of the State and all or any of the powers of Governor of the State.

He may declare that the powers of the State Legislature shall be exercisable by the Parliament, which the latter may exercise

directly or may delegate to some other authority. He may suspend the Constitution relating to any body or authority in the State, except that he cannot assume any of the powers of the High Court. He may thus dissolve the State Legislature and dismiss the State Council of Ministers as happened in Kerala in 1958.

Financial Emergency : He may declare financial emergency if he is satisfied that there is threat to financial stability or credit of the country as a whole or a part thereof. In such a case, he may give such directions to any State as he may deem fit and ask it to observe certain canons of financial propriety. He may order reduction in the salaries and allowances of all or any class of persons serving in connection with the affairs of a State, may order reduction in the salaries and allowances of all or any person serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts. He may require a State to submit to him a money bill for his assent after it is passed by the Legislature.

Approval of the Emergency Proclamation : A proclamation of Emergency as stated above needs to be approved by the Parliament voting separately in both the houses within two months from the date of its proclamation. If the Lok Sabha is dissolved before the expiry of this period of two months, the proclamation must be approved by the Rajya Sabha within two months and by the Lok Sabha within 30 days after its first date of meeting after re-election. Such a proclamation can remain in force only for six months, after which it must be renewed by the Parliament every six months. It can remain in force for the maximum period of 3 years. The President thus enjoys extensive powers. There are however formal powers exercisable on the advice of the Council of Ministers which is the real executive. Nevertheless the office of the Indian President is one of high dignity and influence like British Monarchs.

President and the Cabinet: The Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The number of Ministers has not been fixed by the Constitution as it may change from time to time according to requirements. The Prime Minister is appointed by the President and other Ministers are appointed by the latter on the advise of the former. The Ministers hold office during the pleasure of the President but the Council of Ministers is collectively responsible to the House of the People. The Constitution, however, does not make the advice so tendered by the Cabinet binding upon the President.

There is no doubt that the President enjoys extensive powers in each and every sphere of governmental activity and a superficial study of his powers gives an impression that the Constitution has made him nothing Jess than a dictator. But it should not be forgotten that in spite of a wide array of powers, the President cannot afford to use them effectively. He is the head of the executive which is Parliamentary in character. For the successful working of a Parliamentary Government, it is essential that the executive head

should surrender all his powers to the responsible government which in this case is the Council of Ministers. The President is thus bound to be reduced to the position of a nominal executive head, whereas all his powers are to be enjoyed by the Council of Ministers. Dr. Rajendra Prasad, the first President of the Indian Republic, established healthy Parliamentary conventions by acting according to the advice tendered by the Union Cabinet.

There are critics who point out that the President of the Indian Republic is much more than a nominal constitutional head and is not like the King or Queen of England. They point out that the Constitution does not provide that the President will always be bound to accept the advice of his Ministers and it cannot be argued that the conventions of the British Constitution, according to which the King or Queen exercises his or her functions with the advice of his or her Cabinet, will apply to India. But this criticism is untenable as the President cannot afford to disregard the advice of his Ministers. The Cabinet enjoys the confidence of the Lower House of the Union Parliament. If the President refuses to accept the advice of the Ministry, it may feel compelled to resign. In such a case the President will have to find an alternative Ministry. This may not be possible so long as the outgoing Ministry commands the confidence of majority of the members of the House. Now the President alone cannot constitutionally carry on the administration. Hence it is established that the President cannot disregard the advice of his Ministers. He must act as a nominal executive head. Moreover, the Parliament's power of impeaching the President for the violation of the Constitution is also an effective check against the dictatorial use of powers by some over-ambitious President. It was made very clear in the Constituent Assembly. Dr. Ambedkar gave an assurance that non-acceptance of ministerial advice would amount to violation of the Constitution for which the President could be impeached. Sir B. N. Rau, the constitutional adviser to the Constituent Assembly said that the omission to make the advice binding was made only after the Constituent Assembly was convinced that such a provision was unnecessary. The Prime Minister stated in the Parliament that the President is "a constitutional President" and that he is "bound to act according to that advice", *i.e.*, according to the advice of the Cabinet. Dr. Rajendra Prasad, as President of the Constituent Assembly said that the position of the Indian President is "that of a constitutional President" and that he is "bound to act according to that advice", *i.e.*, advice of the Cabinet. Chief Justice Mukherjea also held that "The President has thus been made a formal or the constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.

Influence of the President: The foregoing account is likely to create an impression that the President is to reduce himself to the position of a rubber stamp or a dumb statue. But the absence of effective powers, it is pointed out, does not mean that he has no influence or prestige. He is the elected representative of the people and thereby enjoys greater popular faith than a nominal executive

head like the King or Queen of England or the Governor-General' of Canada. He is the first citizen of India and his office carries great dignity. He is the head of a very strong Central Government and in this respect he is more powerful than the American President who is the head of a weak Centre. He can use his discretion in the appointment of the Prime Minister on certain occasions when no single party holds an absolute majority in the House of the People. Such an occasion gives the President a chance to act according to his free will. By skilfully using his freedom of choice he will be able to determine the complexion of the Council of Min sters. Further he has right to be informed, to encourage and to warn his Ministers. But the office of President depends upon what its holderm akes of it. A man of dynamic personality can do a lot to enhance the prestige and dignity of this office. The fact of the matter is the that advice of an able President cannot be easily disregarded by the Ministers. The President, as said late Shri J. L. Nehru, enjoys no powers but influence.

POINTS TO REMEMBER

The Constitution confers extensive powers on the President :

Executive Powers : He is the chief executive head of the Union and all executive action is taken in his name. He makes a number of appointmets. He is the direct administrator of Part C States.

Legislative Powers : He summons and prorogues either House of the Parliament and dissolves the House of the People. He nominates some members of either House of the Parliament. He opens the first session of the Parliament. All Bills passed by the Parliament are referred to him for his final approval. He can issue ordinances during the recess of the Parliament.

Financial Powers : All Money Bills are introduced in the Parliament with his prior recommendations. He allocates receipts from certain taxes amongst various States.

Judicial Powers : He enjoys the power to grant pardon, reprieve and remission.

Emergency Powers : The President has wide powers to meet emergencies. The constitution envisages three kinds of emergencies—general emergency, emergency regarding failure of constitutional machinery in a particular State and financial emergency. He has extensive powers with regard to these emergencies.

President and the Council of Ministers : Although the Constitution has armed the President with a wide array of powers, yet he cannot use them effectively. He is only the constitutional head of a parliamentary government

Influence of the President: Absence of effective powers does not mean that he has no influence or prestige. He is the first citizen of India and his office holds great prestige. He has the right to be consulted, to warn and to encourage his Ministers.

*Q. 20. Discuss the emergency powers of the President. Are these powers consistent with the spirit of democracy?

Ans. Far more significant and vitally important than the executive and legislative powers of the President are the emergency powers which the Constitution confers on him. By virtue of these powers the President can change the form and content of the Constitution itself. These powers are a unique feature of our Constitu-

tion. Similar provisions regarding emergency powers were to be found only in the Weimer Constitution of Germany.

The Constitution envisages three types of emergencies and arms the President with substantial powers to deal with each one of them :

(a) **Emergency arising out of war, external aggression or internal disturbances.**

(b) Emergency arising out of the failure of the constitutional machinery in a State.

(c) Emergency arising out of threat to financial stability or credit of India.

It is to be noted that the President himself is the sole judge to determine whether an emergency has arisen or not. The proclamation of emergency can be made even before the actual occurrence of war or external aggression or internal disturbance if the President is satisfied that there is an imminent danger thereof. The President's satisfaction cannot be enquired into or questioned in a court of law. Such a proclamation ceases to be effective after the expiry of two months if it is not ratified by the Union Parliament within this period.

It is possible that if any such proclamation is issued at a time when the Lok Sabha has been dissolved or it is dissolved during the period of two months. In such circumstances, if a resolution approving the proclamation has been passed by the Rajya Sabha, but no such resolution has been approved by Lok Sabha before the expiration of that period (two months) the proclamation shall cease to be effective unless Lok Sabha approves of it within a period of thirty days from the date on which the Lok Sabha first meets after its reconstitution unless before the exipration of the said period of thirty days a resolution approving the proclamation has been also passed by the Lok Sabha. This clearly means that the proclamation of emergency must be approved by the Parliament (both the Houses) within a period of two months. If Lok Sabha has been dissolved during the period of two months or before the declaration of the emergency.the proclamation shall have no effect or the emergency will come to end unless the Lok Sabha approves of it within a period of thirty days after it meets for the first time. In other words we can say that the proclamation of emergency is valid for a period of two months after it is made without the approval of even Rajya Sabha, and for the maximum period of thirty days after the meeting of Lok Sabha. If Lok Sabha neither accepts it nor rejects it, it shall come to an end after thirty days of its meeting.

(a) General Emergency : The Proclamation of Emergency of this category will have the following consequences :

1. The Union Parliament will have unrestricted powers to make laws regarding the subjects enumerated in the State List. Any law passed by a State Legislature can be declared null and void if the same is inconsistent with laws passed by the Parliament.

2. The Union Executive will issue directions to the State Executive for the conduct of executive business. The Union Executive may appoint officers of its own in the States for any specific purpose.

3. The President may alter the normal distribution of revenues between the Union and the States.

4. The Fundamental Rights guaranteed in Article 19 of the Constitution will remain suspended during such an emergency, if so ordered by the President.

5. The President will have the power to suspend the right to move the Supreme Court or High Court for enforcement of any of the fundamental rights given in Article 32.

In short, by declaring emergency, the President can transform the very character of the Constitution. Federal structure of the Government will be changed into a unitary one. Such a power of converting a federation into a unitary government is not possessed by any chief executive head in any other Federal Constitution.

It may be noted that the President is not absolutely free to act in an arbitrary manner. There is one democratic safeguard. He is subject to the authority of the Parliament. Every such proclamation must be laid before the Parliament and cannot remain in force for more than 2 months unless approved by the Parliament in the mean-time. Moreover, it can safely be presumed that the executive authority will be wielded by the President on the advice of his ministers.

(b) Failure of Constitutional Machinery in the States : The condition of Emergency can also arise in case the constitutional machinery in a State of the Indian Union fails to function. The President, if satisfied on a recommendation from the Government of a State or otherwise can declare emergency and suspend the Constitution in that State. The proclamation of an emergency arising out of the breakdown of the constitution shall be laid before the two Houses of the Parliament within a period of two months. If the Parliament (both the Houses) approves of it, the emergancy shall contime to operate in that part of the country for a period of six months. If the situation continues to be abnormal the period of emergency can be further extended to six months after the approval of both the Houses of Parliament. It can continue to remain effec-tive in this manner for the maximum period of 3 years.

The proclamation of emergency under this condition shall have the following consequences :

1. The President assumes to himself all executive authority vested by the Constitution in the Governor. The Governor concer-ned may, however, be directed to act as an agent of the President.

2. The President may empower the Parliament to exercise all the powers of the Legislature.

3. The President will have the authority to withdraw money from the Consolidated Fund of the State pending the sanction of the Parliament if it is not in session.

The President cannot, however, assume to himself or transfer to someone else the powers of the High Court.

(c) Financial Emergency : A Proclamation of Emergency may also be made if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or a part thereof is threatened. The terms and conditions of the proclamation of financial emergency are the same as of the National emergency. The consequences are different. They are given as under :

1. The salaries and privileges of all public officials including the Judges of the Supreme Court and the High Courts and members of the Public Service Commissions can be reduced.

2. All Money Bills passed by the State Legislatures will be reserved for the consideration of the President.

3. Normal distribution of revenue between the Centre and the States may be altered.

4. The President may take all necessary action for restoration of financial stability.

Criticism : (a) The provisions regarding emergency powers of the President are regarded as incompatible with the spirit of democracy and federalism. The powers are like a loaded gun which may be used at any time to destroy democratic federalism. Similar powers were granted by the Weimer Constitution of Germany to the President of the German Reich and it was by the use of these powers that Hitler was enabled to destroy the liberty of the German people and become a dictator.

The power of suspending fundamental rights is perhaps the most undemocratic feature of these powers. To make matters worse the President can suspend the right to move the courts for the enforcement of the fundamental rights. When a debate over the provisions was going on in the Constituent Assembly, a certain member protested : "This is a day of shame and sorrow. May God help the Indian people !"

It may, however, be noted that the British Parliament and the American Congress can also suspend the writ of 'Habeas Corpus'. But in India, the President or rather the Union Executive, can suspend these rights at any time. A redeeming feature of the whole thing lies in the fact that the President is required to lay before the Parliament his orders regarding the suspension of the right to move the courts for enforcement ot the fundamental rights. Moreover, one single individual cannot be expected to take such drastic measures all by himself. In proclaiming emergencies, like all other actions, the President is expected to act on the advice rendered by the Cabinet.

(b) The provision regarding the suspension of the Constitution in a State by the President is also no less objectionable. The autonomy of a State can be encroached upon at any time. The President is not required to wait for the report of the Governor regarding the failure of constitutional machinery in a State. He may take action on his own initiative. Further, Article 365 lays down that the Constitution in a State may be suspended if a State executive fails to comply with any directions given by the Union Executive.

The President's powers in this connection are undoubtedly drastic. This reminds one of the powers of the Governor-General under the Act of 1935. But the essential spirit of the Constitution enjoins the adoption of the British Parliamentary conventions which reduce the President to the status of a mere constitutional figurehead—a symbol of national unity. He is expected to act on the advice of his ministers who are responsible to the House of the People.

The justification of these emergency provisions lies in the past history of India. Whenever there was a weak Centre, it led to ruin and disaster. After independence, the country was facing separatist tendencies. The fissiparous forces were strong. The problem before the fathers was not only to give a democratic constitution but also to provide safeguards against anti-national and anti-democratic forces. These emergency powers of the President were expected to be used sparingly and only in case of real emergencies. However, there is a danger against misuse of these powers by the party in power for its party ends. This can be avoided only if the public opinion and democratic forces are very strong in the country. In fact, no democracy can work successfully unless the people are convinced of its democratic ideals and are alert and vigilant against non-democratic and anti-democratic forces. Thus a heavy responsibility lies on the people to safeguard their interests and democracy in the country. These emergency powers could be used usefully for the purpose only if democratic opinion is very effective. Already these emergency provisions have been put to good use in the border States of Punjab and PEPSU, Andhra, Travancore-Cochin State and Kerala. They always hang like the sword of Damocles on the shoulders of erring States. They also ensure continued government there.

POINTS TO REMEMBER

The President of Indian Republic has been armed with extensive powers during emergency. By the use of these powers he can transform the entire government structure of the State. The Constitution envisages three different emergencies *viz.*, an emergency arising out of external aggression and internal disturbances; an emergency arising out of the failure of constitutional mathinery in the States and emergency arising out of financial breakdown. In the event of the first emergency, the federal structure of the country is converted into unitary one. In case of second emergency, the State Government comes under the direct control of the Union Government. In case of financial emergency, the President may take, necessary steps to restore the financial stability of the country. The emergency provisions of the Constitution are subjected to scathing criticism. These powers are like a loaded gun which may

be used at any time to destroy democratic fedsralism. The power regarding the suspension of fundamental rights is, perhaps, the most undemocratic feature. Suspension of internal autonomy of States is another objection. The redeeming feature of the whole thing is that the President cannot act independently of the Parliament and the Cabinet. It will be only in grave situations that these powers can be used. Moreover, a strong Central Government is the lesson of Indian history which cannot be easily ignored.

Q. 21. Compare and contrast the powers and functions of the Indian President and the Governor-General of India under the Government of India Act, 1935.

Ans. Very often it is pointed out by the critics that the Indian Constitution has given to the President almost all the powers which were given to the Governor-General by the Government of India Act, 1935. Though at first sight, this comparison might seem to be correct, it is not so in actual practice. The Governor-General was intended to be a despot by the Act of 1935, so that he could act as a watchdog of the British Imperial interests, and could act in times of emergencies. He was, therefore, given very wide powers in the executive and legislative as also the financial fields. In the executive field, there were three reserved subjects over which he had the sole authority and was allowed to act in his own discretion. These were defence, external affairs and ecclesiastical affairs. In the administration of these subjects, he was not supposed to consult the Council of Ministers. Even in other matters he was not supposed to act on the advice tendered by the ministers if that tended to affect the interests of the British Empire in India. The Governor-General had special instructions to exercise his personal judgment in matters relating to maintenance of law and order and financial matters too. The ministers were supposed to be mere henchmen of the Governor-general. Although the ministry was to be responsible to both the chambers of the Federal Legislature, yet the instrument of instructions required the representation of princely and other interests in the Council of Ministers.

The Constitution does not arm the President with all these sweeping powers. He has no reserved subjects. On all matters he is to act on the advice of the Cabinet. The entire executive sphere has been placed under the jurisdiction of the Cabinet. The President has neither "discretionary" nor "individual judgment" powers that the Governor-General was empowered with. The Indian President has been made a constitutional head of the State, and real powers are vested in the Cabinet which is responsible to the Lok Sabha. Though the Constitution does not make it obligatory on him to accept the advice of the Ministers, yet by implication he is to follow the convention of the British parliamentary system. The Council of Ministers is constitutionally responsible to the House of People The President has no free hand in the selection of Ministers, who are to be selected only on the advice of the Prime Minister who is to be the leader of the majority party in the Lower House of the Parliament. Whereas the Governor-General was only responsible to the British Government for his actions, the Indian President

be impeached by the Parliament for any violation of the spirit of the Constitution.

In the legislative sphere, the Governor-General could veto the bills passed by the Federal Legislature. The President possesses only suspensory veto. It can be over-ridden by the Parliament, if it repasses the bill in the same form within 6 months. In the matter of issuing ordinances during the absence of the legislature, his powers were almost the same as those of the President. But in addition there were certain subjects for which the Governor-General could issue ordinances at any time, and they were valid for 6 months, subject to renewal for further periods of 6 months. For these ordinances, the Governor-General was required to obtain the approval of the Secretary of State and the British Parliament, and not of the Federal Legislature. The President cannot issue any such ordinances.

The residuary powers which are now exercised by the Parliament, were given to the Governor-General under the Act of 1935, to be exercised in his discretion. The Federal Legislature was also greatly handicapped. It had very limited control over the Federal finances. There were certain items of the budget over which it could not vote. The Governor-General could certify a demand rejected by the legislature. The Indian Constitution does not give any such power to the President. It only says that all bills must receive the President's assent before becoming Acts. The President is normally expected to give his assent. With respect to financial legislation, the President cannot withhold his assent. Thus the Governor General was given very wide powers under the Act of 1935, which are not stipulated under the Indian Constitution for the President. The President is supposed to act merely as a constitutional head like the King of England. Though the British Government also held out assurance that the Governor-General would not interfere in the day-to-day administration, yet it could not be tested as the Act was never enforced so far as the provisions regarding the Central Government were concerned.

POINTS TO REMEMBER

Sometimes it is pointed out by critics that the President of India is no less an autocrat than the Governor-General of India under the Act of 1935. But it is a false assertion. The Governor-General under the Act of 1935 was intended to be a jealous guardian of British Imperial interests in India. He had vast over-riding powers in the executive, legislative and financial spheres. He was the supreme law-maker because all Bills passed by the Federal Legislature could be vetoed by him. On the positive side, he could issue ordinances. He had control over the major part of the budget. He could act in his own discretion and individual judgment and could ignore the advice of his Ministers. The President of India like the King or Queen of England is only a constitutional head of a Parliamentary Government.

Q 22. Compare and contrast the powers of the Indian President and the American President.

Ans. 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 the 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 incharge of the whole constitutional machinery, both Central and of the 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 :

(1) The American President presides 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 of inferiority. In the 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 times of a national crisis are such as are not enjoyed by the American President. The Indian President can suspend the Constitution in a State and declare constitutional emergency either on the recommendation of the Governor or himself and may assume the control 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 States or of the Union, including the salaries and allowances of the Judges of the Supreme Court and the High Courts. Such a control over the judiciary is possessed only by the Indian President.

(2) Apart from the emergency powers, the President of India has been given a formidable list of other executive, financial and legislative powers. 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 in anticipation of its subsequent approval by Parliament. He can suspend the Constitution in a State in case of failure of the constitutional machinery in that State and assume the administration himself. He can also declare a financial emergency. The American President has no such powers.

But this is only one side of the picture. In reality the Indian President occupies a position of far lesser strength than the one occupied by the American President. In the first piece, the Indian President is controlled by the Parliament in a way in which the American President is not.

Whereas in India there is the parliamentary system of government, in the U.S.A. there is the Presidential system of government. As such the American President is free from the control of the legislatures Secondly, the Indian President is more or less a choice of Parliament whereas the American President is elected by as electoral college specially elected for the purpose. The Indian President is chosen by an electoral college composed of the elected members of both Houses of Parliament and the Legislative Assemblies.

of the States. The Indian President can be impeached by either House of Parliament whereas in America it is the Upper House, tne Senate, which has the sole power of impeachments. In India, on the other hand, either House of Parliament will have such power provided the other House prefers the charges.

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 Congress unless it is once again passed by the two-third majority of both 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 Congress comes to an end within the ten days during which he is required to return the Bill. On the other hand, the Indian President has no such 'pocket veto' power and his veto can be over-ridden by a simple majority in Parliament. But the Indian President has the power of assent and the power of veto in certain Bills within the sphere of jurisdiction of the State Legislatures. His veto is absolute in this respect. The American President has no such powers at all. The Indian President can dissolve the Parliament, while the American President can never dissolve the Congress.

The President of America is both head of the executive and Government. The Indian President is head of the Union Executive but not of the Government. The Prime Minister is the head of the Government.

However, it is the parliamentary system of Government in India that 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, the Constitution does not demand of him to follow the advice tendered by the Council, but in actual practice it can be safely said that the President will find it very difficult to go against the advice so tendered. In America, the Cabinet officers are mere servants 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 ministers 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 merely his 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 will not normally dare to disregard such advice as is given 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 limits the powers of the President in actual practice in spite of the fact that he is not required to follow the advice of the Cabinet legally. The fact is that whereas the American President is a real executive head, the Indian President is expected to be constitutional head.

As is evident from the above, 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 him only in a formal sense. In practice, these powers are expected to be exercised by the Cabinet which is the real executive of the Union, 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 Ministers. It is the Ministers who take all the decisions although these decisions are executed in the President's name. However, in times of constitutional crises, these powers may turn out to be very real as happened in case of Weimer German Republic after 1928. Fascism was established in that State by the President by exercise of emergency powers, similar to those of the Indian President. At that time the Indian President will be much stronger than the American President is or can ever be.

POINTS TO REMEMBER

Theoretically, the Indian President enjoys more powers than the American President. The Indian President is the head of a very strong Central Government whereas the American President is the head of a very weak Federal Government. Secondly, the Indian President enjoys certain emergency powers which do not fall in the share of the American President. But this difference is only to be found in theory. In practice the Indian President fades into insignificance before the American President. The difference is mainly caused by the systems of government which prevail in the two countries. The Indian President is the head of a parliamentary government and is, therefore, required jto be a figurehead like his prototype, the British King or Queen. The American President is the head of a Presidential government and is not, therefore, supposed to surrender his powers to his ministers.

Q. 23. Describe the methods of election, qualifications, term of office and functions of the Vice-President of the Indian Republic.

Ans. The Constitution of India provides for the office of Vice-President.

Election : The Vice-President is elected indirectly by both the Houses of the Parliament by secret ballot in accordance with the system of proportional representation by means of single transferable vote. The members of the State Legislatures do not take part in the .election of the Vice-President.

Qualifications :

(i) He must be an Indian citizen and qualified for election as a member of the Rajya Sabha?

(ii) He should have competed 35 years of age ;

070 He should not be a member of either House of Parliament or of any State Legislature. If such a member is elected Vice-President, he shall resign his membership ;

(iv) He should not hold an office of profit under any Government in India. However, an exception to this is made in the case of President, Vice-President, Governors, and Ministers.

Term of Office : The term of his office is 5 years. During this period a Vice-President may resign voluntarily or he may be removed from office by a resolution passed by the absolute majority of the Rajya Sabha and agreed to by the simple majority of the House of the People. But no resolution will be moved for this purpose without a notice of 14 days. It is to be noted that no procedure for impeachment is necessary for the removal of the Vice-President. The election of the Vice-President must be held as soon as possible after the vacancy has arisen. He shall hold office for the full term of 5 years. The salary and allowances of the Vice-President cannot be reduced during his term of office.

Functions : The Vice-President performs the following functions:

1. The Vice-President is the ex-officio chairman of the Rajya Sabha, as the Vice-President of the U.S.A. is the ex-officio chairman of the Senate. In case, the Vice-President acts as President of India or discharges his functions, he shall not preside over the Rajya Sabha.

2. The Vice-President officiates as President in case of death, resignation or removal of the latter till the new President is elected. This period can extend maximum to six months. The Vice-President, thus, unlike the Vice-President of the U.S.A., does not succeed the President for the rest of the latter's term.

3. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions. During such period, he shall be entitled to all the powers and immunities of the President. He shall get such emoluments, allowances and privileges as may be fixed by the Parliament by law.

4. Like the Vice-President of U.S.A., the Vice-President may pay official visits on behalf of the Government of India to foreign States

6. The Vice-President is ex-officio Chancellor of the University of Delhi.

All disputes arising out of the election of the Vice-President shall be decided by the Supreme Court.

POINTS TO REMEMBER

1. His election. The Vice-President is elected by both the Houses of the Union Parliament by secret ballot.

2. His qualifications, (a) He must be an Indian citizen and qualified for election as a member of the Council of States, *(b)* He must not be less than 35 years in age. (c) He should not be a member of either House of Parliament or of any State Legislature, (d) He should not hold any office of profit.

3. His term of office. The term of office is generally 5 years.

4. His functions. (a) He is the ex-officio chairman of the Rajya Sabha. *(b)* He officiates as the President when the latter is ill or absent from the country, or resigns or dies.

*Q. 24. Describe the procedure for the formation of the Council of Ministers with special emphasis on the relations between the President and the Council of Ministers. Discuss the functions of the Council of Ministers. *(V. Important)*

Ans. The Constitution provides that in the Union Government, "There shall be a Council of Ministers to aid and advise the President in the exercise of his functions." The Prime Minister is appointed by the President and other Ministers are appointed by the latter on the advice of the former. They hold office during the pleasure of the President. Article 53 of the Constitution also prescribes that the executive power of the Union vested in the President is to be exercised by him either directly or through officers subordinate to him. The Ministers cannot take any executive action in their own name. The President himself makes rules for the organisation of the departments and conduct of the business of the government. Moreover, the Constitution does not make it binding upon the President to act according to the advice of his Ministers. The parliamentary system presupposes gaps between theory and practice. In theory all the powers belong to the head of the State but in practice, they belong to the government, which is responsible to the Parliament.

In actual practice the position is, however, quite otherwise. The Constitution also lays down that the Council of Ministers shall have collective responsibility towards the Lok Sabha. In other words, the Constitution provides for a parliamentary type of government. This form of government cannot work successfully unless the legal executive head surrenders his powers to the responsible cabinet. A constitutional deadlock will ensue if the legal executive head wants to enjoy real and effective powers. Dr. Rajendra Prasad once said in the Constituent Assembly, "Although there is no provision in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the conventions under which in England the King always acts on the advice of his Ministers, would be established in this country also and the President would become a Constitutional President in all matters."

Dr. Rajendra Prasad, as the first President of the Indian Republic, proved the truth of his words quoted above. He established healthy parliamentary conventions by following the advice tendered by the Ministers. It can now be safely hoped that true parliamentary relations between the chief executive head and the Minister have come to stay.

Formation of Ministry in Practice: Although the President has the sole right to appoint Ministers, yet normally he invites the leader of the party holding a majority in the Lok Sabha to form the Cabinet. The leader is designated as Prime Minister. The

selection of other Ministers is entirely the business of the Prime Minister. The President has simply to accept his choice. He cannot, as a matter of law, insist on the inclusion of any of his friends, or the exclusion of any one whom he does not like. However, there are occasions when no single party in the House commands a clear majority. It is only on such occasions that the President can exercise the freedom of his choice.

A Minister must be a member of either House of Parliament. Non-members can also be appointed as ministers but they must get themselves elected to either House of Parliament before the expiry of a period of six months commencing from their appointment.

Cabinet and the Council of Ministers : A distinction may be made here between the Cabinet and the Council of Ministers. The constitution provides only for a Council of Ministers. The Cabinet is an informal body of senior Ministers who form the inner core of administration. Like the British Cabinet, it is a wheel within a wheel. It is the policy-making part of the Council of Ministers. The Council of Ministers includes all the Ministers, Ministers of State, Deputy Ministers etc. But the Cabinet consists of a number of senior Ministers given Cabinet rank. The Ministry does not meet as a body. But the Cabinet meets as a body and takes decisions regarding the conduct of executive business. These decisions are binding on all the Ministers.

Functions of the Council of Ministers : The Council of Ministers forms the Government of the Union. It is headed by the Prime Minister, who is head of the Union Government. The Cabinet exercises real power at the Centre. It controls the legislative, financial, executive and foreign policy of the Union Government. Its powers may be discussed as below :

Legislative Powers : The Council of Ministers controls the legislature of the Union Government—Parliament. It formulates its policy and submits and explains it to Parliament for approval. Since it holds majority in Parliament, it is always sure of the acceptance of its policy. The entire legislation of importance passed by Parliament is initiated by the Ministers. If a bill initiated by a private member is passed by Parliament it is only with the support of the Council of Ministers. It also controls the summoning, adjournment and prorogation of Parliament. In case of disagreement between the Cabinet and Parliament on vital policy matters, the Prime Minister may advise the President to dissolve the Parliament.

Financial Policy : The Cabinet controls the financial police
It is the Finance Minister who submits the budget to Parliament. Parliament approves the budget—expenditure and revenue items - with amendments only if acceptable to the Government Money Bills can be introduced only by the Council of Ministers.

Executive Policy : The Council of Ministers controls the executive policy. The Ministers preside over departments and supervise, direct and control their administration. The Cabinet brings about co-ordination of policy among various departments and settles their conflicts. The Cabinet formulates foreign and defence policies of the country ; it carries on negotiations with foreign States and enters into international agreements and treaties with them. It is responsible for the execution of Five-Year Plans. The Prime Minister is the chairman of the Planning Commission and other important Ministers are its members. The Plan is prepared by the Commission under the supervision and direction of the Cabinet. The Cabinet presents the Plan to Parliament for approval and after its adoption, is responsible for its proper execution. The powers are exercised by the President on the advice of the Cabinet. By convention it has become binding upon the President.

Public Sector : The Council of Ministers is responsible for the direction of the public sector units like steel plants, STC etc.

POINTS TO REMEMBER

1. The appointment of the Prime Minister and other Ministers is made by the President himself. They hold office during his pleasure. He distributes, portfolios amongst them. They are collectively responsible to the Lok Sabha.. The President generally accepts the advice of the Council of Ministers.

2. Formation of Ministry. The President invites the leader of the party holding a majority in the Lok Sabha to form the Cabinet. The Prime Minister then selects other Ministers. A Minister must be a member of one of the two Houses of Parliament.

3. Functions of the Cabinet. The Cabinet occupies a central position in the machinery of the Union Government. It possesses vast powers in administration and legislation. All the Bills are introduced by the Ministers as Government measures. The Council of Ministers prepares the budget and determines how money is to be raised and spent.

Q. 25. Describe the features of the Cabinet System as it works in India.

Ans. The Cabinet system in India has worked exactly on the same lines as it is practised in England. The success of this experiment in England is sought to be achieved in India. Some of its features are :

(a) Exclusion of the President: The President of the Indian Republic does not attend and preside over the meetings of the Cabinet. Although all executive action is taken in the name of the President yet the President cannot be held responsible for the wrongs done by the Ministers. In England it is supposed that the King can do no wrong. A similar constitutional position is attributed to the President of the Indian Republic. He is not responsible for the acts of omission or commission of his Ministers.

(b) Harmony between the Executive and the Legislature : All the members of the Cabinet are also the members of either House of Parliament. The Ministers play a double role. On the one side, they attend the meetings of the legislature and take an

active part in its discussions and legislative programmes of Parliament ; on the other side, they hold different executive portfolios and carry on administration of the country. Thus there is a close relationship between the executive and the legislature. This close relationship between the executive and the legislature is an essential feature of the parliamentary type of government as distinguished from the American Presidential type which is based on the principle of 'separation of powers'.

(c) Ministerial Responsibility : The Cabinet has political Responsibility towards the Lok Sabha and through it to the electorate. It continues in office as long as it enjoys the confidence of the majority of members in the House. The moment it loses the confidence of the majority, it has to quit office. The Ministers are themselves legally responsible towards the courts of law in the country for the actions taken by them in their official capacity, and not the President in whose name every action is taken.

(d) Collective and Joint Responsibility: Our Constitution clearly provides for collective responsibility of the Council of Ministers towards the Lok Sabha. In Britain and other parliamentary democracies, the idea of collective and joint responsibility implies that the entire Council of Ministers works as one team. A vote of no-confidence or a vote of censure against one Minister applies to the entire team. The Ministry resigns as one body if a vote of no-confidence is passed against a single Minister by a majority of the House. The entire body swims or sinks together. It stands or falls together.

(e) Political Solidarity : It signifies that all the Ministers belong to the same political party, hold identical views and subscribe to the same principles. The Ministry must act as a single team. The Ministers may have differences among themselves on certain issues but once a decision is taken by a majority vote at the Cabinet meeting, it is binding upon all. They must face the House and the people in one voice. They cannot express their dissenting opinions. A departure from this principle was made in the first Cabinet of the Indian Republic. It was a Cabinet of a composite character. Although the majority of the Ministers belonged to the Congress Party, yet non-Congressmen were also included in the Ministry. But the present Ministry is purely a single-party Ministry.

(f) Leadership of the Prime Minister : The leadership of the Prime Minister is recognised constitutionally. It is he who selects the Ministers and distributes portfolios amongst them. He presides over the meeting of the Cabinet and conducts its proceedings. He is central to the life and death of the Ministry. He is central to its life in so far as it is he who constitutes the Ministry. He is central to its death because his resignation means the resignation of the whole Cabinet. In case there is a difference of opinion between the Prime Minister and a particular Minister, it is the latter who must yield or resign Dr S.P. Mukherji, Mr. K.C. Neogi, Dr. John Mathai Mr. C.D. Deshmukh resigned from the Cabinet for similar reasons.

Thus leadership of the Prime Minister is a recognised principle of the Indian Cabinet system. In this the Indian Constitution follows the general pattern adopted by all parliamentary democracies. Like the British Prime Minister, he is not only first among equals but also a moon among stars. He can change the composition and personnel of his Cabinet any time he likes. It has been rightly said that he can 'shuffle his pack as he pleases'. But he is always a leader and not a boss.

The Prime Minister is also the chief link between the President and his Council of Ministers.

POINTS TO REMEMBER

The following are the main features of the Cabinet system in India

1. Exclusion of the Chief Executive Head : The President does not attend Cabinet meetings.

2. Harmony between the Executive and the Legislature : All the members of the Cabinet are also the members of the Union Legislature. There is a close relationship between the Executive and the Legislature.

3. Responsibility to the Lower House : The Cabinet is responsible to the Lok Sabha.

4. Collective and Joint Responsibility : The Council of Ministers is collectively and jointly responsible to the Lower House. A vote of no-confidence in the Lok Sabha against any one of them forces all to resign.

5. Political Solidarity : Normally all the Ministers should belong to a single political party, as is the case with the Congress party today.

6. Leadership of the Prime Minister : He is constitutionally as well as conventionally recognised as the leader of the Cabinet. It is he who selects Ministers and distributes work amongst them. He presides over the meetings of the Cabinet. He is central to the life and death of the Ministry. In case of a difference between the Prime Minister and a Minister, the latter must either yield or resign.

Q. *26.* Discuss the position and powers of the Indian Prime Minister. How is he appointed ?

Ans. The Indian Constitution provides a unique position to the Prime Minister. Though in practice he enjoys almost the same powers and position as the British Prime Minister does, yet he differs from the British Prime Minister in so far as his position is legally recognised by the Constitution. The office of the British Prime Minister has been evolved by a process of long-established conventions. His office was unknown to the British Constitution till 1905 when for the first time, salary was fixed for the Prime Minister thus giving this office a constitutional recognition. The Indian Constitution, however, clearly prescribes that "there shall be a Council of Ministers with the Prime Minister as the head."

His Appointment: The Constitution provides that the Prime Minister is to be appointed by the President. But it is expected of the President to appoint only that person as the Prime Minister who is the leader of the majority party in the Lok Sabha. It *is* necessary because ultimately the Prime Minister and his team of Ministers are constitutionally responsible to the Lok Sabha.

The Prime Minister enjoys vast powers in the constitutional set-up of the country. Although all executive authority of the Union is vested in the President, it is invariably exercised by his Council of Ministers and the President is supposed to be a mere constitutional head. Since the Prime Minister is the head of the Council of Ministers, he can wield as much authority as he likes. It is the Prime Minister who chooses the Ministers of his team and naturally expects them to follow his instructions and directives in all important policy matters. No Minister can afford to displease the Prime Minister. If he has to differ from his policies, he must resign as the Prime Minister's will must prevail so long as he is the leader of the majority party in Parliament. Dr. S. P. Mukherjee and Mr. K. C. Neogi resigned from the Cabinet on the question of the Nehru-Liaqat Pact. Dr. Ambedkar resigned on the question of the Hindu Code Bill among other causes. Mr. C. D. Deshmukh resigned on the question of Bombay. Mr. Giri resigned on the question of labour policy, etc. It is he who presides over the meetings of the Cabinet. In the Cabinet he is not only the first among equals, but a moon among stars. He is essential to the life and death of the whole Council of Ministers. His resignation brings, about the fall of the entire Cabinet. He is thus the keystone of the Cabinet arch.

The Prime Minister is the main link between the President and the Cabinet. It is he who has to inform the President of the decisions of the Council of Ministers. He is the Chief adviser to the President. The Constitution says that the President will appoint the Prime Minister to aid and advise him in the discharge of his executive functions. The former is to appoint other Ministers on the advice of the latter.

Inside Parliament, the Prime Minister is the chief spokesman of the Government and the leader of the House. It is therefore he who shapes the domestic and foreign policy of the country, as he is responsible for piloting all important legislation affecting policy matters. It is his duty to come to the help of every Minister who might find it hard time in the House of the People as a result of attacks from the opposition members.

The position of a Prime Minister also depends on the person holding this high office. Our late Prime Minister, Shri Jawaharlal Nehru, was a national hero and as such he acted even in his own discretion whenever he was opposed to the views of his Cabinet colleagues. A weaker personality may be overshadowed by a strong President, or even by his own Cabinet or party colleagues. The present Prime Minister is not only the head of the Government but also the head of the Planning Commission and the Atomic Energy Commission.

POINTS TO REMEMBER

The appointment of the Prime Minister : The Constitution of India has legally provided for the office of Prime Minister. He is formally appointed by the President.

His Powers : *(a)* He selects Ministers under him. (*b*) He is a source of communication between the President and the Council of Ministers, (c) He presides over the Cabinet meetings, *(d)* He guides the Ministers and supervises their work. (e) He is the chief spokesman of the Government in the House.

PROBABLE QUESTIONS WITH HINTS

1. What is meant by the statement that the President of India is a constitutional head of the State ?

'The President of India is merely a figurehead.' How. far do you agree with this view ?

'India possesses a parliamentary form of government.' Discuss.

[For answer refer to the relations between the President and the Council of Ministers and also refer to the various provisions of the Constitution which establish these relations.]

2. Give an account of the emergency powers of the President of India. Do you think these are compatible with democracy ?

[For answer refer to Q. No. 18.]

3. How is the President of India elected ? Why was a direct election of the President avoided ?

[For answer refer to relevant question.]

4. Analyse the relations between the executive and the legislature in the Government of the Union. How do they affect the parliamentary nature of the Union Government ? *(P. U-. April 1952)*

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"The right of election is the very essence of the Constitution."
—Junius

CHAPTER XI

PARLIAMENT OF INDIA

Parliament is the legislature of the Indian Union. It is a bicameral legislature and consists of the President, the Rajya Sabha and the Lok Sabha. The Rajya Sabha is the upper chamber while the Lok Sabha is the lower chamber. In matters of legislation, both Houses have co-equal powers except in the case of money Bills with respect to which the Lower House reigns supreme. The President is an integral part of Parliament and all Bills passed by it must receive his assent before becoming laws. The President summons and prorogues the Parliament and can dissolve the Lok Sabha.

Q. 27. Describe the composition and powers of the Lok Sabha.

Ans. The Lok Sabha is the Lower House of Parliament. But as is the practice in all other countries except the U.S.A., it is more powerful than the Upper House since it controls the national purse. Its normal life is 5 years but it can be dissolved earlier by the President. Its life can also be extended during the operation of an emergency proclamation, for a period of one year at a time. The extension of life, however, cannot be continued for more than 6 months after the proclamation ceases to operate.

Its Composition and Election: The Constitution fixed the maximum strength of the House originally at 500, but the first House of the People consisted of 499 members. By a recent amendment, the strength of the House has been increased. The States will now send a maximum of 500 members and the Union Territories 25. At present the total membership of the House is 517. Out of this 496 represent the States, 19 the Union Territories, one NEFA and two the Anglo-Indian community. Out of these two members one each representing the Union Territories of Andaman and Nicobar Islands, the Laccadive, Minicoy and Amindivi Islands, one representing Dadra and Nagar Haveli, one member representing NEFA and two representing the Anglo-Indian Community are nominated by the President. The members of this House are elected directly by the people on the basis of universal adult franchise, secret ballot and joint electorate. The Constitution provided for the reservation of seats for the scheduled castes and scheduled tribes for a period of ten years, *i.e.,* till 1960. It has been further extended for a period of ten years. The President may also nominate not more than two representatives of the Anglo-Indian community to give it an adequate representation. The country, as a whole, is divided into

territorial constituencies without crossing the State boundaries. A State is divided into equitable constituencies according to seats allotted to it. The members are elected from single member constituencies. A candidate getting the highest number of votes gets elected.

Qualifications : A candidate for election to the Lok Sabha must be a citizen of India and should not be less than 25 years of age. He should not hold an office of profit under the Government. He should not be a criminal, an undischarged insolvent, or otherwise disqualified. He should not hold a licence or contract from the Government, etc.

Disqualifications : A member of the House shall be disqualified from being chosen as a member of the House :

(i) if he holds an office of profit under the Government of India or a State Government

(ii) if he is of unsound mind and declared so by a competent court ;

(iii) if he is an undischarged insolvent;

(iv) if he acquires the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State ;

(v) or if he is disqualified by or under any law made by the Parliament.

Vacation of Seat: A member shall vacate his seat if he :

(i) becomes disqualified to be a member of the House ;

(ii) resigns his seat by writing to the Speaker ;

(iii) remains absent from the sittings of the House for a period of 60 days without permission of the House.

Sessions : The House shall meet at such time and place as is fixed by the President of India. However, six months should not intervene between two sessions of the House. The President may summon a joint session of the Lok Sabha and the Rajya Sabha. He may address the Lok Sabha or a joint sitting of the two Houses. He may also send messages to the House. Every Minister whether he is a member of the House or not and the Attorney-General shall have a right to speak in and take part in the proceedings of the House. Ministers who are not members and the Attorney-General, however, shall not be entitled to vote.

Privileges : The privileges of members of the House include :

(i) Freedom of speech in the House.

(ii) No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the House or any parliamentary committee, or in respect of publication by or under the authority of the House.

(iii) In other respects, the powers, privileges and immunities of the House and its members and committees shall be such as may be defined from time to time by Parliament by law. Until Parliament makes such a law, these will be the same as those enjoyed by

the members of the House of Commons in Britain at the time of the commencement of this Constitution.

Quorum : The quorum is one-tenth of the total membership of the House.

The Speaker : The Speaker is the presiding officer of the House. The Speaker and the Deputy Speaker are elected by the House as soon as possible from amongst its own members. They shall vacate office as soon as they cease to be members of the House. They may resign. They may be removed by the House by a resolution passed by absolute majority. Such a resolution could be moved only after a notice of 14 days was given of the intention to move the resolution. The Speaker or the Deputy Speaker does not preside when a resolution for his removal is discussed by the House ; he shall have a right to speak and otherwise to participate in the proceedings of the House when such a resolution is discussed and shall vote. In England, the Speaker's election is to be approved by the King, although it is a formality. But the election of the Speaker of the Lok Sabha is not subject to the approval of the President. The Constitution does not explain the functions of the Speaker. But conventionally, he is supposed to perform the following functions :

(0 He presides over the meetings of the House and maintains discipline and decorum in the House. All speeches and remarks are addressed to him.

(ii) **He interprets the rules of procedure of the House for which his rulings are final.**

(iii) **He decides points of order, puts questions to vote and announces the results of voting.**

(iv) He uses his Casting vote in case of a tie.

(v) He certifies whether a particular Bill is a money Bill or not.

(vi) **He protects the privileges of the members of the House.**

(vii) **He represents the House in its collective capacity and protects its dignity and grace. He is a link between the President and the House.**

(viii) **He maintains law and order within the premises of the House.**

(ix) **He admits motions of adjournment or no-confidence. He may disallow a question.**

(x) He recognises members on the floor of the House.

(xi) **He presides over joint sittings of the Lok Sabha and the "Rajya Sabha.**

(xii) **He is consulted along with the Chairman of the Rajya Sabha by the President while making rules for the joint sittings of both the Houses of Parliament.**

Powers: The powers of the Lok Sabha may be described as follows:

(a) Legislative: The Lok Sabha has vast legislative powers. The House can make laws along with the Council of States

regarding the subjects contained in the Union and the Concurrent Lists. On certain occasions it can also make laws regarding the subjects mentioned in the State List. It is only possible when the Rajya Sabha passes a resolution that a particular State subjept has acquired national importance and thereby authorises Parliament to make laws relating to that item. Its legislative powers increase immensely during the operation of a proclamation of emergency. During a general emergency the House, along with the Council, is competent to make laws regarding all the subjects enumerated in the State list.

(b) Financial : The House has exclusive financial powers. Financial measures can only be initiated in this House and not in the Rajya Sabha. It is the custodian of the national purse. It passes the budget and determines how money is to be raised and spent. If a money Bill is passed by the House, it can be delayed by the Rajya Sabha by 14 days. The latter cannot amend or reject a money Bill, against the wishes of the Lok Sabha.

(c) Executive : The House exercises control over the executive. The Cabinet is responsible to it. It continues in office as long as it enjoys the confidence of the House. The Cabinet can be thrown out of office by a vote of no-confidence passed by a majority of members present and voting in the House. The House also exercises control over the executive through questions, supplementaries and adjournment motions. Any member may ask the Government any question to elicit information regarding its policies.

Questions may be followed by supplementary questions to clarify the reply given. In this way the Government is censured if it has neglected its duties in a particular matter. The Government can further be exposed by the House by adjournment motions. An adjournment motion is moved for discussing a matter of urgent public importance, *e.g.,* a serious riot, a serious police firing at a public meeting or a grave railway accident. If an adjournment motion is carried, it would amount to a vote of no-confidence in the Government. The real object of an adjournment motion is to bring to light the inefficiency or corruption of the administration and mistakes of policy which the executive is thought to be guilty of.

(d) Constituent Powers : The Lok Sabha enjoys along with the Rajya Sabha the power to amend the Constitution. However, this power is limited since amendments must be passed by both the Houses separately and secondly, amendments to certain prescribed provisions of the Constitution must be ratified by at least half of the State legislatures.

(e) Electoral Powers ; The elected members of the House participate in the election of the President and the Vice-President.

(f) Judicial Powers : The Lok Sabha as also the Rajya Sabha have no judicial powers. However, they have an indirect judicial authority. They can present a joint address to the President for the removal of Judges or Chief Justices of the Supreme Court or a

State High Court. The House has also the power to initiate proceedings for the impeachment of the President.

(g) Rales : It frames its own rules of procedure. It acts as a court for trial of persons who violate its rules, dignity and privileges. The Speaker may issue warrants of arrest of any person for such violation and order his presence before it. The decisions of the House are final and cannot be questioned in any court of law.

(h) Policy Statements : All important policy statements are made by the Government in this House.

(i) Miscellaneous Powers : The approval of the House is essential for the continuance of a Proclamation of Emergency. It may appoint committees and commissions.

In spite of all these powers, the House of People is not as powerful as the British House of Commons. The laws enacted by the Parliament are subject to the judicial veto of the Supreme Court if they run counter to the Constitution.

POINTS TO REMEMBER

The House of the People is elected for a period of 5 years. It can be dissolved earlier and its life can be extended during an emergency. It is elected by a direct vote of the people on the basis of adult franchise and joint electorates. It elects its own presiding officer who maintains decorum and discipline in the House. Its legislative authority extends to the Union and Concurrent subjects. At times it can make laws regarding the subjects contained in the State List. It has exclusive control over the State finances. The Union executive is responsible to it. It can amend a large part of the Constitution along with the Rajya Sabha. It shares in the election of the President and the Vice-President.

Q. 28. Describe the composition and powers of the Council of States or the Rajya Sabha.

Ans. The Rajya Sabha is the upper chamber of the Parliament. It is a federal chamber and provides representation to the federating units of the Indian Union. It is indirectly elected on the basis of proportional representation by means of single transferable vote.

Membership : The Constitution has fixed the maximum limit of its membership at 250 ; 238 representing the States and Union territories and 12 to be nominated by the President to give representation to Art, Science, Literature and Social Service. At present the total membership is 238 out of which 12 are nominated and 226 are elected from the States and the Union Territories.

The representation to the units is given on population basis. In this respect the Rajya Sabha differs from the Senate in the U.S.A. and the Council of States in Switzerland, where the federating units have been given equal representation, *i.e.,* each State or Canton having two representatives. The representation of the State and the Union Territories has been fixed by law. Under this law allocation has been made not strictly on population, though by and large it is this principle that has been followed. For example, Delhi has been given 3 seats though strictly on population basis it will deserve much less.

Election : The members of the Rajya Sabha besides the nominated members are elected indirectly. In this respect, it differs from the Senate, whose members are elected directly on the basis of adult suffrage. The members of the Rajya Sabha representing the States are elected by their Legislative Assemblies. A special method is provided for the election of representatives of the Union Territories ; Since there are no Legislative Assemblies ; members of the Rajya Sabha are elected from these units by special Electoral Colleges as determined by Law. For example, the representatives from Delhi are elected by the local bodies. Elections are held on the basis of proportional representation by means of single transferable vote. This provides representation to all the sections of membership of a legislative assembly.

Qualifications of Members : A candidate for election to the Rajya Sabha must be a citizen of India, must have completed 30 years of age, and must be fit physically and mentally. Other qualifications are the same as for the members of the Lok Sabha.

Its Life : It is a permanent House not subject to dissolution. One-third of its members retire every two years. Every member enjoys 6 years' term like that of the Senate in the U.S.A.

Its Presiding Officer : The Vice-President of India is the ex-officio chairman of the Rajya Sabha. It elects one of its members as its deputy chairman.

Powers : The Rajya Sabha is the upper chamber of the Union Parliament. Keeping in accord with the theory of bi-cameralism, it has been made weaker than the Lower House, though not so weak as the House of Lords. Thus the Rajya Sabha is neither so powerful as the Senate in the U.S.A., nor it is so weak as the House of Lords in Britain. It enjoys co-equal powers with the Lok Sabha except in the the matter of financial legislation and control over the Cabinet wherein Lok Sabha has exclusive power. In other matters like the ordinary legislation, amendment of. the Constitution, approval of emergency proclamation and ordinances, impeachment of the President and removal of Judges of Supreme Court and High Courts or Election Commissioner or Finance Commission or Comptroller and Auditor-General, etc., it enjoys co-equal powers with the Lok Sabha. Besides it can pass a resolution authorising Parliament to make legislation within the State List This power does not belong to the Lok Sabha. Its powers may be studied under the following headings :

(a) Legislative: The Rajya Sabha enjoys equal and co-ordinate powers with the Lok Sabha in ordinary legislation No Bill can become an Act unless both the Houses have given their consent. In case of disagreement a joint meeting of both the House takes place and the decision is taken by a majority vote of the members present and voting.

This provision ensures the predominance of the Lok Sabha, as its strength is double the strength of the Rajya Sabha

The former is sure to carry the Bill even in the face of unanimous opposition of the Rajya Sabha.

(b) Financial: The Council has negligible authority in respect of financial legislation. A money Bill can originate only in the Lower House and not in the Rajya Sabha. As soon as it is passed by the Lower House, it is submitted to the Rajya Sabha. The Lok Sabha has been given the power of delaying such Bills for 14 days. A financial measure is considered to have been passed by the Council after the expiry of this dilatory period even if it does not agree. This means that concurrence of the Rajya Sabha is not essential for the passing of a money Bill and the control of the purse is entirely in the hands of the Lok Sabha. Even if the Upper House makes some recommendations on such Bills, the Lower House is free to reject them.

(c) Judicial : It enjoys with the Lok Sabha the power of initiating or investigating and deciding the impeachment charges against the President. It also enjoys equal powers with the Lok Sabha in passing joint resolutions for the removal of judges of the Supreme Court and the High Courts and other high officers.

(d) Constituent: The Lok Sabha enjoys equal powers in the matter of constitutional amendments with the Lok Sabha. Every amendment must be passed by both the Houses separately.

(e) Miscellaneous : *(i)* It participates in the election of the President and the Vice-President of the Indian Republic as the Lok Sabha does.

(ii) The Rajya Sabha can authorise the Parliament to legislate for a State subject, if it passes a resolution by 2/3rd majority of its members present and voting to the effect that a particular subject mentioned in the State List has acquired national importance.

(iii) The approval of the Rajya Sabha and the Lok Sabha is necessary for the continuance of proclamation of emergency issued by the President from time to time. If the Lok Sabha is dissolved, and the President proclaims an emergency it must be passed by the Rajya Sabha within 2 months.

POINTS TO REMEMBER

1. The Rajya Sabha is the Upper House of the Union Parliament. Its membership is fixed at 250. The strength of the present Rajya Sabha is 238. Out of this number 12 are nominated by the President. The members are elected indirectly.

2. Qualifications. A candidate must be a citizen of India, must be 30 years of age and must be mentally and physically fit.

3 Its Life. It is a permanent House and cannot be dissolved earlier. One-third of its members retire after every two years.

4. Presiding Officer. Its presiding officer is the Vice-President of India.

5. Its Power. It enjoys legislative, financial, judicial and other powers.

*Q. 29. Critically examine the mutual relations between the two Houses of Parliament. *(Important)*

Ans. In the case of non-money Bills both the Houses of Parliament have co-equal and co-ordinate powers. Every non-Money Bill must be passed by both the Houses before it can become an Act. One cannot overrule the other. In case of disagreement a joint sitting of the two Houses may be held to resolve the deadlock. The decisions in the joint sittings are taken by a simple majority of the members present and voting. In the case of money Bills, the Lower House is at a position of advantage because they can be initiated in the Lower House alone. Money Bills, after having been passed in the Lower House, are required to be referred to the Rajya Sabha for its recommendations. The Rajya Sabha must return the Bill with its recommendations within 14 days. If the Upper House fails to return this Bill within this period, it is deemed to have been passed by both the Houses. The Rajya Sabha can, of course, propose certain amendments but the Lower House is at liberty to accept or reject these amendments.

The Executive is collectively responsible to the Lower House and not to the Upper House. The Lower House in this way exercises a good deal of control over the executive but the Upper House is helpless in this respect. A member of the Upper House who is a Minister of the Union can be called to account by the Lower House but not by the Upper House which cannot pass a vote of no-confidence in the Cabinet or a Minister.

The relation between the Upper and the Lower House is indicative of the fact that the Lower House is the real and effective Legislature of the Union whereas the Upper House plays second fiddle. In matters of ordinary legislation, the Upper House can effectively assert itself. But in financial measures it has particularly no voice. It can merely delay a Bill for a period of 14 days. The Lower House gains in prestige and dignity because of the responsibility of the Cabinet towards it. It is the Lower House the confidence of which can keep a Cabinet in power. Lack of confidence of the Lower House in the Cabinet can bring about its fall. It is again the majority party in the Lower House that forms the Government.

Thus, the two Houses do not stand on an equal footing. The Lok Sabha enjoys a pre-eminent position. Although the Upper House enjoys equal powers in the case of non-Money Bills, yet in case of a difference of opinion ultimately the Lower House would triumph. In a joint session, apparently the Lok Sabha would win by sheer dint of its larger membership. Thus the Upper House has less powers than the British House of Lords which can at least delay non-money Bills for one year.

Apart from the disadvantageous position of the Rajya Sabha in regard to legislative, financial and executive powers, the -are certain other factors which lower its prestige and dignity

legislative organ. Some of these may be pointed out below :

(a) The Lok Sabha consists of persons directly elected by the people on the basis of adult suffrage. The Upper House consists of persons indirectly elected by the members of the State Assemblies and twelve nominated members. It is but obvious that the members of the Upper House cannot command the dignity and prestige which is the share of only the popularly elected members of the House.

(b) The Lok Sabha elects its own Speaker whereas the Vice-President of India elected by both the Houses, is the *ex-officio* Chairman of the Rajya Sabha. This means that the Upper House does not even enjoy the freedom to elect its own Chairman. Further, the Lower House can remove its Speaker by its majority vote but the Upper House cannot remove its Chairman without the approval of the Lok Sabha. This means that the Lok Sabha can retain the Vice-President in the Chair of the Upper House despite the unanimous opposition by it. Surely, this is not an index of equality between the two Houses.

(c) According to Article 118, at a joint meeting of the two Houses, the Speaker of the Lok Sabha shall preside. It is. a direct hit to the prestige of the Council. The provision clearly indicates the intention of the framers of the Constitution regarding the position of the Upper House. It is to be noted that the Chairman of the Upper House is the Vice-President, jointly elected by both the Houses. Evidently he could prove to be a better person for this, purpose. But the Constitution does not accept this justifiable claim. To make matters worse, the Chairman cannot attend the joint meeting fince he is not a member of either House of Parliament.

However, apart from these facts, the Rajya Sabha enjoys co-equal powers with the Lok Sabha in matters of approval of the emergency proclamation, approval of the President's ordinances, removal of Judges of High Courts and 'Supreme Court, Election Commission, Finance Commission, Comptroller and Auditor-General, etc. In case the Lok Sabha is dissolved by the President, before a proclamation of emergency is approved by Parliament, it shall become operative if within two months of its proclamation it is. approved by the Rajya Sabha. The Rajya Sabha alone could authorise Parliament to make laws in the State list in the name of national interest by passing a resolution by 2/3 majority of its members present and voting. Very often important debates even on matters like the budget take place in the Rajya Sabha before they are held in the Lok Sabha.

Thus the Rajya Sabha, though given a secondary place by the Constitution, is not so weak a chamber as it would seem at the first glance. It is surely not so weak as the House of Lords is ; nor is it so strong as the Senate of the U.S.A. It occupies a position in between the two.

POINTS TO REMEMBER

The Rajya Sabha enjoys equal authority with the Lok Sabha in respect of ordinary legislation. In case of disagreement, the disputed question

is decided by a joint meeting of both the Houses presided over by the Speaker of the Lok Sabha. The Lok Sabha wins because of its double strength. The Rajya Sabha has insignificant authority with respect to financial legislation. It can only delay money Bills for 14 days. It has no control over the executive which is only responsible to the Lok Sabha which is directly elected by the people whereas the Rajva Sabha is indirectly elected. The Lok Sabha elects its own Speaker but the Chairman of the Rajya Sabha is the Vice-President elected by both the Houses. These factors lead to the subordination of the Rajya Sabha.

***Q. 30. Critically examine the powers and position of the Union Parliament.** *(Important)*

Ans. The Union Parliament is the legislative organ of the Union of India and enjoys extensive powers which may be described as follows :

1. Legislative Powers : (a) The Union Parliament has exclusive legislative jurisdiction over 97 subjects included in the Union List.

(b) It has co-equal jurisdiction with the State Legislatures over 47 Concurrent Subjects. In case there is a conflict between the laws passed by the Union Parliament and a State Legislature regarding a particular Concurrent Subject, it is the law of the Union Parliament that prevails.

(c) Not only does Parliament make laws regarding the Union Subjects and the Concurrent Subjects but also it can make laws regarding subjects mentioned in the State List. This can be done both in peace times and during the operation of proclamation of emergency.

(i) **It can make laws regarding any State subject to the Rajya Sabha passing a resolution by 2/3rd majority of its members present and voting that a particlular subject has acquired national importance and it should be legislated over by Parliament.**

(ii) During the emergency it can legislate on any and every subject mentioned in the State List.

(iii) Parliament can also legislate over certain State subjects it two or more State Legislatures pass resolutions to this effect.

(iv) Or when the implementation of international agreements and treaty obligations of the Government of India requires such a law.

(d) **Parliament possesses 'residuary' powers. It legislates on all those subjects which are not mentioned in any of the three lists.**

2. Financial Powers : Parliament has vast financial powers. It is the custodian of the Union purse. It passes the budget and authorises all expenditure. No taxes can be imposed without its authority. Nor can any money be spent without its consent. Certain items, however, are not put to the vote of Parliament as they have been declared by the Constitution a charge on the Consolidated Fund **of India like the salaries and allowances of the President and the Judges of the Supreme Court, etc.**

3. Control over the Executive: Parliament exercises control over the Cabinet. The Cabinet is responsible to the Lok Sabha. It makes or dissolves the Cabinet. The Cabinet continues in office as long as it enjoys the confidence of a majority of the members in the Lok Sabha and it must resign office when the latter withdraws confidence by rejecting any important Bill introduced by the members of the Cabinet, or by refusing supply or by passing a straight vote of no-confidence.

The Lower House also exercises control over the executive through its power of asking questions. Any member may ask the Government any question to elicit information regarding its policies. Questions may be followed by supplementary questions to clarify the replies given. In this way the executive is censured if it has neglected its duties in any matter. The Government can, further, be exposed in Parliament by an adjournment motion which may be tabled for discussing a matter of urgent public importance such as a serious riot, a police firing at a public meeting or a grave railway accident. The real object of an adjournment motion is to bring to light the inefficiency or corruption of the administration and the mistakes of policy of which the executive is thought to be guilty.

All emergency proclamations promulgated by the President must be approved by Parliament, within 2 months from the date of their promulgation, failing which the proclamation lapses and emergency ceases. All ordinances issued by the President are to be laid before Parliament and must be approved by it within 6 weeks from the date of its meeting, failing which they become invalid. It is this power of Parliament that is the only check on the otherwise dictatorial powers of the President. During emergency, all orders issued by the President relating to finance must also be laid before Parliament.

4. Judicial Powers : (a) The Parliament has the sole right to impeach the President of the Indian Republic. Charges against the President may be preferred by either House of Parliament by 2/3rds majority of the total membership of the House. The other House investigates the charges. If they are finally established by a similar majority in the other House as well, the President is removed from his office. (An impeachment is a Parliament trial, *i.e.,* the case against the President charged with violation of the Constitution is decided by the Legislature and not by a Court of Law.)

The power of impeachment of the President in the hands of Parliament is an effective check against the former's dictatorial use of powers. It may, however, be noted that similar power is also enjoyed by the American Congress but it has not proved to be effective. Only once during the long course of the working of the American Constitution, one President, Johnson, was subjected to the process of impeachment in 1868. But the impeachment could not be carried through for want of the required majority in the Senate.

(b) Parliament may approve a proposal by a majority of total membership of each House and by a majority of 2/3rds of the members of that House present and voting for the removal of the Judges of the Supreme Court, the State High Courts, the Comptroller and Auditor-General, and the Election Commission. Such a demand must be presented to the President who will then issue orders for the removal of the Judges.

5. Electoral Powers : Parliament takes part in the election of the President. It elects the Vice-President of India in a joint session. It makes election laws.

6. Constituent Powers : A major portion of the Constitution can be amended by Parliament. It is only with respect to particular provisions that proposals for constitutional amendment must be ratified by at least half of the State Legislatures. All proposals for constitutional amendments can be initiated only by Parliament.

7. Miscellaneous Powers : (a) Parliament by law can create a new State or change the name of the existing State after ascertaining the views of the State concerned.

(b) Parliament by law can create or abolish the Upper House in a State on the recommendations of the State concerned.

Limitations : The Indian Parliament is not a sovereign body as the British Parliament is. It is not only the law-making body nor are its laws final, nor has it exclusive constitutional law-making powers. It is a co-ordinate organ of the federal government. The main limitations upon the powers of Parliament are as under :

(1) All the Bills passed by Parliament require the assent of the President to become law. The President can veto these bills but his veto is suspensory. Parliament can override it by repassing the bill in the original form.

(2) The President can dissolve Parliament at any time.

(3) The President can issue ordinances during the recess of Parliament. Such ordinances have the same validity as Acts of Parliament. These ordinances have to be placed before Parliament for approval. But very often such an ordinance may present the Parliament with a *fait accompli* and it may have no choice but to accept it. The executive, therefore, will commit Parliament to certain policies without previous consultation or sanction.

(4) All money Bills require the previous consent of the President before these are introduced in Parliament.

(5) Parliament can reduce or reject the financial iten but cannot increase them.

(6) The Supreme Court possesses judicial review and can declare the laws of Parliament *ultra vires,* or unconstitutional. In this respect the Parliament of India enjoys more powers than the

Congress of America. There the Supreme Court can declare a law *ultra vires* on the ground of injustice or unreasonability, but this is not the case in India. If Parliament makes a law within its constitutional powers, it cannot be declared *ultra vires* by the Supreme Court of India.

(7) In practice Parliament is controlled by the Cabinet. The Cabinet has always a majority in Parliament and hence controls Parliament. Parliament becomes merely a registry office to place its legal stamp upon the decisions and policies of the Cabinet. The Cabinet controls both the legislative and financial policies of Parliament. Almost all the Bills that are passed by Parliament are initiated by the Ministers. The budget is prepared by the Governmert and is generally passed by Parliament with minor changes in details rather than in principles.

POINTS TO REMEMBER

Parliament has exclusive authority over 97 subjects given in the "Union List and 47 subjects specified in the Concurrent List. It makes laws as regards State subjects both during normal and abnormal times. Its legislative authority suffers from certain limitations which do not have a great significance. It has full control over the Union finances subject to the overshadowing control of the executive which enjoys the support of a safe majority in the House. It exercises parliamentary control over the executive. But it is feared that the Union executive may control Parliament through a subservient majority in the Lok Sabha. It impeaches the President and may pass a resolution regarding the removal of Judges. It amends the Constitution and shares in the election of the President and the Vice-President. It can create new States. It can create or abolish a second chamber in the State legislatures.

Q. 31. How does a Bill become an Act in the State Legislature or the Union Parliament ?

Ans. A Bill is a proposal for legislation. A distinction is generally made between public Bills and private Bills. A public Bill is one which affects the general interests and ostensibly concerns the whole or at any rate a large portion of them. A private Bill, on the other hand, affects a particular locality, or an association of persons or a local body like a district board or a municipality.

Bills are further divisible into two forms, *viz.*, ordinary Bills and money Bills. A money Bill is one which includes a proposal for taxation or expenditure of public funds. Non-money Bills concern matters of general public importance and do not contain any proposal regarding raising of money or expenditure of public money.

An ordinary Bill or a non-money Bill may originate in either House of the Legislature. Money Bills can only be initiated in the Lower House. A Bill is considered to have been passed if it is approved by both the Houses of the Legislature and it receives the assent of the chief executive head. A Bill, before it can become an. Act, passes through the following stages.

(a) The Introduction or First Reading : A member, other than a Minister, who wants to move a Bill has to give one month's

of bis intention to introduce it and shall submit a copy of the Bill along with the statement of objects and reasons. The Speaker, if he thinks fit, may revise the statement of objects and reasons. If a Bill requires previous consent of the President, the bill must be accompanied by such sanction or approval. A date is prescribed on the agenda of the House for its introduction. On the date fixed, the mover is called upon by the Speaker to introduce the Bill. The mover rises from the seat and begs leave of the House to introduce the Bill. If the majority of members of the House present and voting support the motion, the motion is deemed to have been passed. No debate takes place. After the leave to move the Bill is granted, the mover stands up and says, ' Sir, I introduce the Bill."

Sometimes, the motion for "leave to move the Bill" is opposed as was done in case of the Preventive Detention Bill 1954. In such a case, the Speaker may permit a brief statement by the mover and the member who opposes. Government Bills are generally published in the Government Gazette without any formal introduction. If published so, they do not require formal introduction. If after publication, leave to introduce is sought and the Bill is introduced formally, the Bill need not be printed again.

(b) Motion after Introduction of a Bill or Second Reading : When a Bill is introduced, or on any subsequent date, the member incharge of the Bill (member who introduces the Bill) may make one of the following motions : (1) the Bill be taken into consideration, or (2) it be referred to a Select Committee, or (3) it be circulated to elicit public opinion, or (4) it be referred to a Joint Committee of both the Houses. At this stage, a general discussion takes place on the Bill. The details of the Bill are not discussed. Nor amendments are moved.

(c) Committee Stage ; If the Bill is approved at this stage, it may be circulated for eliciting public opinion. If so, the opinions are collected and the member incharge, may, at a subsequent date move that the Bill be referred to a Select or Joint Committee. A Bill at this stage may be referred to such a committee without being circulated for public opinion. The Committee consisting both of Government and Opposition members proportionate to their strength in the Lok Sabha shall consider the Bill in detail, i.e., clause by clause. It may accept or propose amendments to the Bill. After completing the discussion it reports the Bill back to the house. The time for such reporting is generally 3 months but may be varied by the Lok Sabha.

(d) After the Bill is reported back by the Committee, the member-in-charge of the Bill may move that the Bill as reported by the Committee be taken into consideration, etc. The debate at this stage is confined to the report of the Committee. A vote is taken. After this motion is carried, the Bill is taken up for consideration clause by clause. Every clause is debated upon, amendments are moved, accepted or rejected. Every clause is voted upon.

all the clauses are thus approved, the Bill as a whole is put to vote of the House.

(e) Clause-by-Clause Discussion : After the motion that the Bill as reported by the Committee be taken into consideration is carried, the clause-by-clause discussion follows.

(f) Passing of the Bill or Third Reading : It is a formal stage. The member incharge of the Bill may move that the Bill be passed. Details are not discussed, nor are amendments moved. Some verbal or formal amendments may, however, be made. The debate is of a general character, either in support of the Bill or against the Bill.

(g) Second House : If the Bill is passed in the final reading, it is referred to the second House for consideration. The Bill passes through the same stages in the Second Chamber. A Bill is deemed to have been passed by the legislature when it is assented to by both the Houses. In the case of the Union Parliament, both the Lok Sabha and the Rajya Sabha enjoy equal authority regarding ordinary Bills. In case of disagreement between the two Houses, the President may convene their joint meeting which will be presided over by the Speaker of the Lok Sabha. A decision regarding the Bill under dispute is to be taken by the majority of members present and voting. The Lok Sabha in this respect has a position of vantage since its strength is more than double the Rajya Sabha. In the case of the bicameral State Legislature, the Legislative Council has a position much inferior to that of the Legislative Assembly. The former can delay a Bill passed by the latter for 3 months or at the most 4 months.

(h) Chief Executive Head : After a Bill has been passed by both the Houses of Parliament, it is referred to the President after receiving whose assent, it becomes law. In case he withholds his assent, the same may be re-passed by Parliament by a simple majority and in that case the President must give his assent. Thus the veto of the President is only suspensory.

In case of States, a Bill passed by the State Legislature becomes law with Governor's signatures. But there are some Bills like those of acquiring private property or dealing with essential commodities etc., which must be reserved for the President's signatures. He may veto them and his veto in this case is absolute. The State Legislature cannot override it.

POINTS TO REMEMBER

1. A bill is a proposal for legislation. 2. A Bill passes through the following stages to become an Act:

(a) Introduction and General Discussion. Only the general principles of the Bill are discussed. If the Bill is passed in the first reading, it is either referred to a Select Committee or circulated for eliciting public opinion.

(b) Committee Stage. The Bill is closely examined in every detail and amendments are proposed.

(c) Report Stage. It is the hottest stage of the Bill. The Bill is discussed clause by clause with or without amendments.

(d) Passing of the Bill. There is a general discussion on the principles of the Bill.

Other House : If the Bill is passed in its final reading it is referred to the Second Chamber for consideration. The Bill passes through the same stages in the Second Chamber. If it is passed in the Second Chamber it is referred to the Governor of the State or the President in case of the Union Government. On receiving the assent of the Governor or the President, it becomes law and is placed on the Statute Book.

Q. 32. Discuss in brief the legislative procedure regarding Money Bills.

Ans. Article 110 of the Indian Constitution defines a money Bill as a Bill containing provisions regarding : (a) the imposition, alteration or abolition of any tax, *(b)* the regulation of the borrowing of money, (c) payment of money into or withdrawal of money from the Consolidated Fund or Contingency Fund, *(d)* declaring of any expenditure to be a charge on the Consolidated Fund, and (e) any matter incidental to all the above.

In case there is a dispute as to whether a particular Bill is a money Bill or not, it is to be decided by the Speaker. A money Bill can be initiated only with the previous consent of the President.

All money Bills can only be initiated in the Lower House of the Legislature. The Upper Houses both in the Union Parliament and State Legislatures have insignificant powers with respect to Money Bills. They can simply delay a money Bill for fourteen days..

Passage of Budget : Before the commencement of every financial year, the chief executive head causes to be laid (through the Finance Minister) before the Legislature an annual financial statement showing the estimate of receipt and expenditure for the ensuing year. The estimates of expenditure are shown in two parts—*(a)* expenditure charged on the Consolidated Fund and which cannot be voted by the Legislature, and *(b)* sums required to meet other expenditure. The last category is known as demands for grant. The Lower House has the power to assent to any demand or reduce its amount. Every demand for grant is made on the prior recommendation of the chief executive head.

When the demands for grant have been assented to by the House, an Appropriation Bill is introduced. The Appropriation Bill is meant for the appropriation out of the Consolidated Fund of all grants made by the House as also expenditure charged on the Consolidated Fund.

Apart from the normal demands for grant, the chief executive head may place before the House demands for additional or supplementary grants. The same procedure has to be gone through for this purpose as well.

When the voting of supplies or expenditure is over, the second part of the Budget which pertains to the income or revenue of the government is placed before the House. The House can reject any tax or reduce the rate of tax but it cannot propose any new tax or rate of tax. This part of the Budget is known as the Finance Bill. When both the parts of the Budgets are passed, it is referred to the chief executive head who must affix his seal of approval.

POINTS TO REMEMBER

Article 110 of the Constitution defines a money Bill. A money Bill can be introduced only in the Lower House. The Upper House simply enjoys a delaying power of fourteen days. The Speaker certifies whether a particular Bill is a Money Bill or not. A Budget is an annual financial statement of expenditure and income for the ensuing year. When both parts of the Budget are passed by the Legislature, it is referrred to the chief executive head for his approval.

Q. 33. Describe the Committee System in the Lok Sabha.

Ans. Committee System : Committees perform a vital function in modern Parliaments. They provide technical knowledge and expert advice to the otherwise amateur Parliament and also save its time. The committee system differs from chamber to chamber in different countries. The Lok Sabha has developed its own system of committees. It has dropped the system of standing committees. Committees are appointed for every Bill and are known as Select Committees or Joint Select Committees.

Select Committees : A Select Committee is appointed for every Bill. It is an *ad hoc* committee and comes to an end as soon as the Bill referred to it is reported to the Lok Sabha. A Select Committee is appointed by the Lok Sabha for every Bill. Its members are appointed by the House itself. The names of members of a Select Committee are suggested by the member-in-charge of the Bill. He also gets their previous consent. The chairman is appointed by the Speaker from amongst its members ; in case, the Deputy Speaker is its member, he acts as chairman. The quorum is 1/3 of its membership. The time for reporting is fixed by the House itself but extension may also be given by the House. The Committees follow the procedure identical to that of the House. In case of doubt, the Speaker's decision is final. These Committees meet in the precincts of the House and even when the House is in session. In the latter case, the Committee's meeting must be adjourned to allow the member to participate in division in the House. The Committee deals with a Bill clause by clause and votes upon each clause and adopts it with or without amendment. The Committee can call for evidence or witnesses—official or non-official. The witnesses are allowed to tender evidence through counsel.

Joint Committees : These are appointed in case of important Bills like The Criminal Procedure Code, Amendment Bills or Hindu Marriage Bill, etc. A Joint Committee represents both the Houses. The House, when the Bill is initiated, may pass a resolution for appointing a Joint Select Committee and request the other House to nominate its representatives. If the other House agrees, the Joint Committee comes into existence. The number of members differs with every committee. Normally, membership of such committee is 50 ; the Lok Sabha having 2/3rd share and Rajya Sabha l/3rd.

Public Accounts Committee and Estimates Committee : To exercise control over finances, the House appoints these two committees. The Public Accounts Committee consists of 22 members, 15

members from Lok Sabha and 7 members from the Rajya Sabha. They are elected in accordance with proportional representation, by means of single transferable vote. The chairman is appointed by the Speaker. Its tenure is one year. The Comptroller and Auditor-General acts as its adviser and attends its meetings. It may appoint sub-committees. It may call for officials, records and witnesses. The decision of the Speaker on matters of procedure is. final. It examines the accounts of the previous year. It examines accounts of one or two departments every year and may examine accounts of one of the Government enterprises or semi-Government enterprises like D.V.C., Chittaranjan Locomotive Works, etc. Its work is of a retrospective nature. Its existence is a great restraint on the executive in matters of finance. The Estimates Committee consists of 25 members; and is appointed in the same manner as members of the Public Accounts Committee and follows a similar procedure in the conduct of its business. Its quorum is 8. Its function is to examine the estimates presented by the departments in the budget for grant by the Parliament. It examines whether the estimates have been prepared properly. It, again, examines accounts of one or two departments every year. It is an economy committee of the House. Its function is to examine such of the estimates as it may deem fit and to report if (1) economies consistent with the policy underlying the estimates could be effected, and (2) to suggest the form in which the estimates are to be presented to Parliament.

Other Committees : The Lok Sabha had 9 other Committees —Business Advisory Committee, Committee on Petitions, Committee of Privileges, Rules Committee, House Committee, Library Committee, Committee on Private Members Bills, Committee on Subordinate Legislation and Committee on Government Assurances.

The Committee on Subordinate Legislation was first appointed on December 1, 1953. Secondly, all rules and regulations made by the Ministries are to be laid before the Parliament for 30 days. The Speaker highly praised the work of this Committee and said that they were 'the only protectors of the people against the "new despotism" getting aggressive'. According to him its function was to direct the rule-making power in proper channels and thus, act as 'collaborators, co-operators and friends' of the administration.

The Committee on Government Assurances was established on December, 1, 1953 with Mrs. Sucheta Kriplani as its Chairman. At that time, she was a member of the Opposition in Lok Sabha. Its functions are to investigate (1) the extent to which assurances given by the Ministers have been implemented, (2) and whether such implementation, if any, has taken place in the minimum time necessary for the purpose. Its main function is to see and report to the House whether the powers delegated by the Parliament have been properly exercised within the framework of the Act that delegated such powers This committee is appointed by the Speaker and consists of 10 members. Its chairman is nominated by the Speaker. It can appoint sub-committees, and has the power to require the attendance of persons and production of papers and records. It submits its

reports to the House. It is the result of its recommendations that every Bill has to be accompanied by a Memorandum stating the proposals for delegated legislation under that Bill.

PROBABLE QUESTIONS WITH HINTS

1. Discuss the powers and limitations of the Union Legislature. Is it a sovereign legislature ?

[For answer refer to the question relating to the Powers of the Union Parliament.]

2. "The Rajya Sabha is not a Second Chamber ; it is instead a Secondary Chamber." Discuss.

[For answer refer to Relations between the Houses of the Parliament.]

3. "Except in regard to money Bills and financial matters, the powers of the two Houses of Parliament are completely equal under the Constitution." Dr. K. N. Katju. Do you agree with these remarks ?

[For answer refer to above.]

4. "Though the author of the Constitution wanted the Rajya Sabha to merely hold dignified debates, yet in some respects, it is not only as powerful as the Lok Sabha, but even more powerful." In the light of this statement, comment on the strength and weakness of the Upper House.

[For answer discuss the powers of the Rajya Sabha and point out its different weaknesses.]

"The Supreme Court of India has more powers than the highest Court in any part of the world."

—Alladi Krishnaswami Ayyar

CHAPTER XII

UNION JUDICIARY

Federalism is very often described as legalism. This is true to some extent. A federal scheme involves the division of powers between the Centre and the Units. There are, therefore, possibilities of disputes arising between 4he Centre and the units or between the units themselves regarding their spheres of authority. Disputes of this nature can be decided only by a special judiciary established for this purpose. The judiciary, therefore, occupies a very important place in a federal constitution. But in the interests of an efficient judicial system, it is essential that the judiciary must be independent. It should, in no case, be under the control of the executive or the legislature otherwise its decisions are bound to be partial. In the Indian Constitution the judiciary assumes special importance. The Constitution has conferred Fundamental Rights on the people which need to be protected against the executive and legislative. It has provided constitutional guarantees to be enforced by the Supreme Court and other courts. Hence there was greater need to make the judiciary independent.

Realising the importance of an independent judiciary, the framers of our Constitution have sought to establish an independent Supreme Court free from the influence of the executive or the legislature. The judges of the Supreme Court once appointed cannot be removed from service by the executive before the age of their retirement. They can only be removed by the President on receipt of a joint address passed by Parliament by its two-third majority in each House. Their privileges and allowances cannot be altered to their disadvantage except during the operation of a proclamation of financial emergency.

Though the Indian Constitution sets up a dual policy, yet it establishes only a single hierarchy of judiciary with the Supreme Court at its head. This is in contrast with the U.S. Judiciary where there are separate courts to administer Federal and State laws.

Q. 34. Discuss the composition and powers of the Supreme Court of India.

ADS. The Federal Court of India was first established in 1937 under the Government of India Act, 1935. A new status was conferred on it in 1950 under the Republican Constitution and it was reconstituted as the Supreme Court of India. The Supreme Court is the highest and final judicial tribunal of India and as such India's judicial link with the Judicial Committee of the Privy Council of England is broken.

Composition : It consists of the Chief Justice and 10 other Judges. Parliament can, however, by law increase or decrease this number. Previously there were 8 Judges. Parliament increased this number recently to 11. All the Judges of the Supreme Court are appointed by the President after consultation with such

Judges of the Supreme Court and High Courts in the States as the President may deem fit. It is further provided that in case of the appointment of a Judge other than the Chief Justice, the Chief Justice of India must be consulted.

Qualifications of Judges :

(i) A Judge of the Supreme Court must be a citizen of India.

(ii) He must have acted at least for five years as a Judge of some State High Court or he must have been an advocate of some State High Court of at least 10 years' standing or he should be a distinguished jurist in the opinion of the President.

Non-Indians could not be appointed as Jndges but a recent amendment makes it possible for non-Indian Judges, who had chosen to continue their services with the Government of India after the enforcement of the New Constitution, to be eligible for appointment as Judges of the Supreme Court.

Conditions of Service : The Chief Justice of India draws a salary of Rs. 5,000 per month and other Judges draw Rs. 4,000 per month apart from various other allowances. Besides this, they are provided with residential accommodation. The salaries and other privileges of the Judges cannot be altered to their disadvantage during their term of office except during the operation of a financial emergency.

With a view to establishing an independent judiciary, the Constitution guarantees full security of service to all the judges. They hold office till the age of 65 years, but they may be removed at any time on grounds Of misbehaviour, physical or mental infirmity. Although the appointment of Judges is made by the President yet the latter cannot remove them from service according to his whim and fancy. A judge of the Supreme Court can be removed from service only when a proposal is presented to the President by Parliament. Such a proposal must be passed by each House of Parliament by an absolute majority coupled with two-thirds majority of the members present and voting in each House. This provision gives full security of service to the Judges and removes them from the control of the executive. In order to maintain the dignity of this exalted office, the judges are not allowed to start practice after retirement. But there is no constitutional bar against a retired Judge being appointed for some work, inquiry committee, by the Government. Their salaries and allowances are declared to be a charge on the Consolidated Fund of India and cannot, therefore, be put to the vote of Parliament.

These conditions of service are indicative of the desire of the framers of our Constitution regarding the establishment of an independent and powerful judicial tribunal.

Seat of the Supreme Court: The Supreme Court shall ordinarily sit at Delhi. It may also meet at such places as the Chief Justice may decide from time to time with the approval of the President.

Powers : The Supreme Court is the highest judicial tribunal of India and as such it is armed with extensive powers. It exercises original, appellate and advisory jurisdiction.

Original Jurisdiction : The original jurisdiction of the Supreme Court extends to the following cases :

(a) All disputes between the Union Government and one or more States.

(b) Disputes arising between the States of the Indian Union.

The Supreme Court has no jurisdiction over disputes arising out of the treaties and agreements with the rulers of the former native States.

Appellate Jurisdiction : The appellate jurisdiction of the Supreme Court extends to both criminal and civil cases :

(1) An appeal to the Supreme Court can be made in criminal cases in which a High Court reverses the decision of the lower Court and sentences to death an accused who was acquitted by the lower Court. (2) An appeal can also be made in a case when the High Court withdraws a case from a lower court before itself and tries it in the first instance and awards death penalty. (3) An appeal in any other criminal case can also be made if the High Court certifies that it is a fit case for an appeal to the Supreme Court.

Appeals in civil cases can be made to the Supreme Court if the High Court certifies that the value of the subject matter in dispute is not less than Rs. 2,000. Appeals in civil cases can also be made if the High Court certifies that the case involves some substantial point of constitutional law.

Power to grant Special Leave to Appeal : The Supreme Court is the guardian of fundamental rights of the citizens of India. The Supreme Court, to protect these rights can grant a special leave to Appeal (Article 136) against any decision or order of any authority. Court or Board throughout the country except military Tribunals.

Guardian of Fundamental Rights : Under Article 32, the citizens are given the constitutional guarantee to approach the Supreme Court for the enforcement of their fundamental rights. The Supreme Court will have the power to issue writs, like *Habeas Corpus, Mandamus, quo warranto,* etc. to protect these rights.

Judicial Review : The Supreme Court is the guardian of the Constitution. It is the final interpreting body. It can declare the laws of Parliament and State Legislatures and orders or ordinances issued by the executive *ultra vires* or void on the ground of constitutionality. In this respect it resembles the Supreme Court of America. But its power of judicial review is not so wide as that of the American Supreme Court. The latter declares laws *ultra vires* on the ground of 'due process of law' while the Indian Supreme Court declares laws *ultra yires* on the ground of "process as established by law." The American Supreme Court not only examines the constitutionality of laws but also their reason ability. It may declare a

law void on the ground that it is unreasonable even though it may have been passed within constitutional powers. This has made it the 'third chamber' of Congress or 'Super Legislature.' The Indian Supreme Court, on the other hand, has no such power. It examines only the constitutionality of laws. If the Parliament or a State Legislature has made a law within its constitutional power, it cannot be declared illegal however unreasonable it may be. The Indian Supreme Court thus can never become the 'super legislature' or 'third chamber of legislature.' The real authority to decide upon policy of the State shall lie with the Parliament and the State Legislature and with the Supreme Court.

Advisory Jurisdiction : The President can refer to the Supreme Couit any question of law for its opinion. Under this jurisdiction even those disputes which involve interpretation of treaties and agreements with the rulers of former native States can be referred to it for its opinion although the Court has no original jurisdiction over them. Such opinion is, however, not binding on the President.

Court of Record : The Supreme Court is the Court of Record, Its decisions and proceedings are recorded for future references. It can also punish persons responsible for its contempt.

Miscellaneous : Its orders and decisions are binding on all civil and judicial authorities in India. It can make with the approval of the President from time to time, rules for regulating its practice and procedure. It can appoint its own officers. The President, however, can require the Supreme Court to make certain appointments after consultation with the U.P.S.C.

It stands as the head of all the courts in the country. It supervises and controls their working. It has brought about a judicial unity and led to creation of a simple judicial cadre for the whole country.

The evolution of the constitution will depend upon the Supreme Court to a very large extent. It cannot ignore while delivering its judgments the social, economic and political tendencies of the times thereby adapting the provision of the Constitution to the new conditions and requirements. It has already taken into account the Directive Principles of State Policy in delivering its judgments and has upheld such laws as were based on these principles.

POINTS TO REMEMBER

. The Supreme Court of India consists of the Chief Justice and ten other judges. They are appointed by the President with consultation of some other Judges of the Supreme Court and the State High Courts. A Judge of the Supreme Court must be a citizen of India and must have acted as a Judge of a certain State High Court, or must be an advocate with at least 10 year's standing or must be an eminent jurist. The Judges have been given complete security of service. Once appointed, they cannot be removed except through a system which is very difficult. The salaries and allowances of the judges cannot be altered to their disadvantage. The Supreme Court sits at Delhi It has original jurisdiction in all constitutional disputes between the Centre and the States or between one State or another. It has appellate jurisdiction in constitutional civil and criminal cases. It has also advisory jurisdiction. It is the final interpreter of the Constitution.

Q. 35. Critically assess the powers of the Supreme Court of India. (F. *Important)*

Justify the remark that the Supreme Court of India is really supreme.

Compare and contrast the Supreme Court of India with that of America.

Ans. The Supreme Court of Indian Republic enjoys a unique position in the judicial systems of the world. The following facts clearly bring out the unparalleled position occupied by the Supreme Court of India :

1. It enjoys original jurisdiction with respect to all constitutional disputes arising between the Government of India and one or more States and between one State or another. In this respect the powers of the Indian Supreme Court are more or less similar to those possessed by the Supreme Court of United States.

2. The Supreme Court of India is the guardian and interpreter of the Constitution. It has the power to review laws passed by the Union Parliament and State legislatures and declare them *ultra vires* or unconstitutional if they contravene any provision of the Constitution. It is thus the custodian and guardian of the Constitution. In this respect, it is to be noted that the Supreme Court of India has lesser authority than that of the Supreme Court of America which can sit in judgment over the will of the legislature and can declare a law to be void even if it does not actually contravene a certain provision of the Constitution. This power has been derived by the Supreme Court of America under the *'due process'* clause in the U.S. Constitution. This means that the Supreme Court of America not only possesses the power to declare a law passed by any legislature in America as *ultra vires* if it contravenes some provision of the Constitution, but also it can declare it un-constitutional on the simple grounds that the judges feel that the same is not good. This is an additional power possessed by the Supreme Court of America. Our Constitution, however, uses the phrase '*procedure established by law*' instead of '*due process of law'*- There is a world of difference between the two expressions. The 'due process of law' clause would mean that the Supreme Court can declare a law as invalid simply because in the opinion of the judges the same is not duly enacted. The 'procedure established by law' clause means that the judges cannot question the fairness or validity of law itself provided it is made within the limits of the Constitution. Thus whereas we find that the Supreme Court of America has vital powers of judicial veto and on this account it has assumed the position of third legislative chamber, the Supreme Court of India does not have this position as it cannot challenge the fairness aad natural justice of Parliamentary legislation. Thus the Indian Supreme Court cannot become 'a third chamber' of legislature.

3. Guardian of Fundamental Rights : The Supreme Court of India is the guardian of the fundamental rights of the citizens

India guaranteed under the Constitution. It can declare as null and void a law passed by any legislature in the country if it is contrary to these rights. It can issue writs in the nature of *'habeas corpus'* and the like for the enforcement of these rights. Here the Supreme Court of India resembles that of America which also possesses similar powers with the difference of *'due process'* clause of the American Constitution which confers an additional authority on it.

In the case of India, however, the right to move the Supreme Court for the enforcement of fundamental rights can be suspended by the President during the operation of proclamation of general emergency. The Supreme Court of America does not suffer from this limitation.

4. Appellate Jurisdiction in Civil and Criminal Cases: The Supreme Court of India is not only the highest federal Court of Tndia, but also it is the highest Court of appeal in civil and criminal cases. Our Constitution provides for a single integrated judicial system with the Supreme Court as its head. In America, however, the Supreme Court does enjoy appellate jurisdiction in civil and criminal cases decided by the various State High Courts. America maintains a double judiciary—the Federal Judiciary and the State Judiciary. The Federal Judiciary is supposed to interpret and protect the Constitution, whereas civil and criminal law is to be dealt with by the State High Courts. In this respect Indian Supreme Court is more powerful than the American one.

5. Independence of Judiciary : The Supreme Court of India is free from the influence and control of the executive and the-legislature.

The following facts prove that our judiciary enjoys greater independence than that of any-other country in the world.

(a) Appointments : Out Constitution steers a middle course between the American and British systems of judicial appointments. It does not give unfettered discretion to the Executive as in Great Britain. Nor has it followed America where judges of the Supreme Court are appointed with the approval of the Senate. The judges of the Supreme Court of India are appointed by the President with consultation of some other judges of the Supreme Court and the High Courts In all appointments, the Chief Justice of India must be consulted barring his own appointment. This method ensures the appointment of right type of judges and eliminates politics from their appointment.

(b) Removal: Once appointed, the judges cannot be removed from service by the President except through a very difficult process. The Constitution provides that a judge of the Supreme Court can only be removed from service by the President on receipt of a joint address passed by the Parliament by its two-thirds majority of the members present and voting, coupled with absolute majority in each House.

The method of removal, however, corresponds to the American and British systems. The constitutional history of these countries reveals that it has been rarely possible to remove a judge once appointed as this much majority is not easily possible.

This system ensures security of service to the judges and makes them fearless and dauntless in the administration of justice.

(c) The salaries, allowances and privileges of the judges cannot be altered to their disadvantage except during the operation of a proclamation concerning financial emergency. Further, the salaries and allowances of the judges and other administrative expenses of the Supreme Court are a charge on the Consolidated Fund of India and are, therefore, not subject to the vote of the Parliament. This provision goes a long way to ensure independence to the Supreme Court by placing its judges beyond the Parliamentary control.

(d) Qualifications : The Constitution prescribes that only judicial luminaries or advocates with sufficient experience and distinction and eminent jurists can be appointed judges of the Supreme Court. This fact adds to the efficiency of the Supreme Court and guarantees fair discharge of its functions.

The facts quoted above prove beyond any shadow of doubt that our Supreme Court enjoys greater prestige and independence than those enjoyed by any other Court in the world.

6. The Supreme Court of India is a Court of Record as well. Its decisions are used for all future references. The foregoing account of the powers of the Supreme Court justifies the remark that the Supreme Court of India is really supreme.

POINTS TO REMEMBER

The Supreme Court of India enjoys a unique position in the judicial systems of the world. The following facts show its enormous powers : (1) has original jurisdiction in all types of constitutional disputes. (2) It is the custodian of the Constitution. (3) It is the guardian of the fundamental rights. (4) It has wide appellate jurisdiction. (5) The judges have been guaranteed complete security of service. (6) It has advisory jurisdiction as well. (7) It is a Court of Record.

PROBABLE QUESTIONS WITH HINTS

1. 'The jurisdiction and powers of the Supreme Court of India are wider than those exercised by the highest Court in the Commonwealth or by the Supreme Court of America.'—Mr. M. C. Seetalvad. Discuss.

[For answer refer to the preceding question.]

2. 'The Supreme Court of India has been given complete independence.' Elucidate.

[For answer refer to the paragraph dealing with independence of Judiciary given in the preceding question.]

3. 'It is correct to describe the Supreme Court of India as the Third Legislative Chamber.' Discuss.

[For answer refer to the powers of the Supreme Court.]

'The Governor has nothing to do but to act as, constitutional head signing on the dotted lines.'

CHAPTER XIII

THE STATE EXECUTIVE

The executive of a State consists of a Governor aided and assisted in the discharge of his functions by a Council of Ministers. The Council of Ministers, is collectively responsible to the Legislative Assembly of the State concerned. The Governor is a mere constitutional head of the State and real and effective authority with respect to administration of the State is exercised by the Ministers. The office of Governor has been in existence since the beginning of the British regime in India. But then the Governor was an autocrat, a despot and a dictator having enormous discretionary powers in every sphere of administration. The Governor under the Republican Constitution is only a nominal *de jure* head of the State. This is in keeping with the responsible nature of governments which have been established in the States.

The essential difference between the administration of Part A and B States, as provided for in the original Constitution, lay in the fact that, whereas the executive head in Part A States was the Governor appointed by the President for a period of five years, the head of Part B States was the Rajpramukh recognised by some agreement or covenant drawn between the Rajpramukh and the Government of India. The term of office of the Rajpramukh varied from State to State. They were paid 'privy purses' (allowances) as agreed to in different covenants.

Another point of difference between the two administrations was that the Constitution provided for general supervision of the Union Government over Part B States. This general control of the Union Government over Part B States could last for ten years after the promulgation of the Constitution. But the Parliament has the power to lengthen or shorten this period for any particular State, and the President has been authorised to exempt any State from the operation of this provision. The State of Mysore was exempted from this control. Under the reorganisation of States, the office of Rajpramukh has been abolished and distinction between Part A and B States has also been put to an end.

In view of certain historical reasons, the Constitution assigns a special position to the State of Jammu and Kashmir. In respect of this State the Parliament's powers have been restricted to those matters which have been specified in the Instrument of Accession, and to those which the President may specify with the concurrence of the State Government.

Q. 36. Discuss the powers, and position of the Governor of a State in the Indian Union. Also give a critical estimate of his powers.

Ans. The Governor is the chief executive head of the State in the Indian Union. A common Governor for two or more than two States may be appointed. He is appointed by the President of Indian Republic. His term of office has been fixed at five years: But be can be removed earlier by the President if he so desires. He: has the option to resign at any time during term of office.

Qualifications : (i) He must be a citizen of India.

(ii) He must have completed 35 years of age.

(iii) He is debarred from holding any other office of profit during his term of office.

(iv) He must not be a member of either House of the Parliament or of any State Legislature. In case he is member of a legislative body in India, he will have to resign before taking over the charge of his office.

Emoluments : He draws a monthly salary of Rs. 5,500 plus other allowances befitting his position and status. He is provided with free residential accommodation all other facilities.

Powers of the Governor : The Constitution lays down that 'the executive powers of a State shall be vested in the Governor and all executive action shall be taken in his name'. He makes rules for the convenient transaction of the business of the State Government. The powers of the Governor may be grouped under the following four heads :

(i) Executive, *(ii)* Legislative, *(iii)* Financial, and (iv) Judicial.

(i) Executive Powers : The executive powers of the Governor extend to all subjects included in the State List and to those Concurrent Subjects in respect of which the State Legislature has framed laws. He is the Chief Administrator of the State. He appoints the Chief Minister who holds office during his pleasure. In consultation with the Chief Minister, he appoints other Ministers and allocates the various portfolios to them. He also makes appointments of important officials of the State like the Advocate-General, the Chairman and members of the State Public Service Commission, judicial appointments below those of the judges of High Court etc. He is consulted by the President while making appointment of the judges of his State High Court.

The Chief Minister must inform the Governor of all the decisions of the Council of Ministers in executive matters and relating to legislative proposals. The Governor may ask the Chief Minister to place a matter before the Council on which a Minister has taken a decision but which has not been discussed by the Council. As Dr. Ambedkar pointed out in the Constituent Assembly, it is the duty of the Governor "to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration".

The Governors of Punjab and Andhra have some discretionary powers regarding the proposed Regional Committees in their States. Whenever there is a conflict between the Regional Committees and the State Cabinet, it will be decided by the Governor and his decisions in this connection will be final.

(ii) Legislative Powers: *(a)* He summons, adjourns and prorogues the State Legislature. He may dissolve the Legislative Assembly which is the popular branch of the State Legislature. The

Upper Chamber, however, being a permanent House cannot be dissolved by him. (b) All bills passed by the State Legislature must be referred to him for his seal of approval. He may give his approval to a Bill or may reserve it for further reference to the President or may return it to the Legislature for consideration. The Governor does not enjoy the power to veto a Bill passed by the Legislature. But the Governor may withhold his assent to a Bill and return the same to the Legislature for consideration. But if the Bill is again passed by the Legislature in the same form by its simple majority, it becomes obligatory for the Governor to give his assent. Money Bills cannot be returned by the Governor to the Legislature for reconsideration which signifies that the Governor cannot withhold assent from Money Bills passed by the State Legislature. But no Money Bills can be introduced in the Legislative Assembly without his prior recommendation. He has to reserve certain Bills for the consideration of the President, *(c)* At the commencement of the first session of the State Legislature every year, the Governor delivers an address corresponding to the speech from the throne in the British Parliament. In the address, the Governor outlines the executive policy and the legislative programme of his Government. (d) He may send messages to the Legislature recommending measures for legislation. (e) He may address either House separately or jointly whenever he feels it necessary. (f) The Governor enjoys the power of promulgating ordinances during the recess of the State Legislature. An Ordinance can be issued to meet some pressing emergency. An Ordinance issued by the Governor ceases to be effective six weeks after the re-assembly of the Legislature unless approved earlier. *(g)* He nominates one-sixth of the total strength of the State Legislative Council from amongst men having distinction in the spheres of science, arts, literature, co-operative movement and social service. He can also nominate two members of the Anglo-Indian community to the Legislative Assembly if this community does not get an adequate representation on the House otherwise.

(iii) Financial Powers : Before the beginning of every financial year, he causes to be laid (through the Finance Minister) before the Legislative Assembly an annual estimate of the revenue and expenditure of the State. No Money Bill can be introduced in the Legislative Assembly of the State except on his recommendation. He must always give his assent to a Money Bill passed by the Legislature. He has no veto power at all in case of Money Bills.

(iv) Judicial Powers : The Governor also enjoys certain judicial powers. He is consulted by the President when a judge of this State High Court is appointed. The judges of the High Court take oath of their office before him. He determines the appointment, posting and promotions of the District Judges and other judicial officers. He also possesses the power of pardon, reprieve, and respite. He himself cannot be prosecuted and tried in any court in the country for any offence during the course of his office.

Special Powers : The Governor of Assam has been given special powers with respect to administration of the tribal areas. In the States of Bihar, Madhya Pradesh and Orissa it is the special responsibility of the Governor to see that a Minister is placed in charge of tribal welfare.

Critical Estimate of the Powers of the Governor : The Constitution lays down that "the executive power of a State shall be vested ill the Governor and that all executive action shall be taken in his name." The foregoing account of the powers of the Governor reveals that he enjoys immense powers in all spheres of administration. But it is wrong to suppose that the Constitution has made him a virtual dictator. The Constitution clearly prescribes that the Coventor is to be aided and assisted in the discharge of his functions by a Council of Ministers which will have collective responsibility towards the Legislative Assembly. The term of their office depends upon the will of the Legislative Assembly and they are subject to interpellation of its members.

Existence of this provision in the Constitution shows that the different States of the Indian Union will have a parliamentary type of executive. Now this system of government is based on certain set conventions. One of the most important conventions is that the legal executive head surrenders all his powers to the Cabinet which owes its responsibility towards the Legislature. The legal executive head becomes a constitutional or nominal executive head whereas real and effective powers are exercised by the Council of Ministers. This convention is the bed-rock of parliamentary form of government because effective responsibility towards the Legislature cannot be maintained by the Ministers if they do not enjoy real powers. By the logic of facts it is, therefore, necessary that those who shoulder responsibility should also wield power. Moreover, it may be remembered that the Governor is only a nominated officer of the State while Ministers are the elected representatives of the people. He cannot have the same dignity and prestige which is possessed by elected representatives of the people.

The Governor will be faced with an awkward situation if at all he decides to disregard the advice of his Ministers. The Ministers will deem it their insult and may resign. The Governor will thus be placed in an embarrassing situation as it will not be easily possible for him to get an alternative Ministry enjoying the support of the majority members in the Legislature. Now the Constitution requires of the Governor to act according to the advice of his Ministers in all normal circumstances. If he decides to appoint a Ministry from the minority group of the legislature it will not be able to face the House and push its legislative programmes. The Governor will thus be compelled by the circumstances to accept the advice of the Ministers who retain the confidence of majority of members in the legislature. If at all he decides to act regardless of the wishes of his Ministers in normal circumstances, he will have to face the wrath of the electorate and displeasure of the Union Government and may even lose his job. No sensible person will accept such a position. This shows

that the Governor will be a mere nominal or titular executive head. Dr. Ambedkar while opposing popular election of the Governor made a remark on the position of his office and powers that his. powers will be so limited, so nominal, his position so ornamental that it would be a waste to spend money on his election. According to K.M. Munshi, the Governor has no right to overrule the Council of Ministers if their advice is collective.

In spite of the fact that the Governor will be a puppet in the hands of his Ministers, there are occasions when he can exercise his discretion and act independently.

General Emergency. Firstly, he can act in his discretion when the President of the Indian Republic declares a state of emergency in the Union. In such a case he can act regardless of the advice of his Ministers. But he must act according to the instructions and directions received from the President from time to time.

The Governor may recommend to the President that the Constitution has broken down in his State and emergency may be-declared. If the President is satisfied, he may declare emergency. During emergency, the Governor assumes all powers ; the Council of Ministers is dismissed and the Legislature is dissolved. The Governor makes such recommendations without the consultation of the ministry.

Miscellaneous : In case of instructions or orders issued by the President to a Governor the latter is bound by them even if they conflict with the advice tendered by the Council of Ministers, and shall over-rule the latter.

In case of no party holding a clear majority in the Legislative Assembly he shall exercise his discretion in the formation of the Ministry as he did in case of Madras and Travancore-Cochin after 1952 General Elections. Similar situation arose in Orissa and Kerala after 1957 elections.

In the matter of dissolution of the Legislative Assembly, he may exercise discretion. In case of Travancore-Cochin in 1954, the defeated ministry advised the head of the State to dissolve the Assembly. He accepted the advice. In the same State, in 1955 another defeated ministry similarly advised dissolution of the Assembly. He rejected the advice.

He may dismiss a ministry if its activities are likely to endanger national security or solidarity.

Thus the Governor enjoys wide powers. Normally, he shall act as the constitutional and nominal head of the State executive. But in times of emergency, he shall exercise wide and effective authority.

POINTS TO REMEMBER

The Governor is appointed by the President of the Indian Republic. His term of office is fixed at 5 years. He must be a citizen of India. He must not be less than 35 years of age. He must not be holding any office of profit. He

must not be a member of either House of the Parliament or of any State Legislature. He draws a salary of Rs. 5,500/-per mensem in addition to other allowances. He enjoys (i) Executive, *(ii)* Legislative, (iii) Financial and *(iv)* Judicial Powers. The Governor of a State in free India is merely a nominal head. He acts in accordance with the advice of his Ministers. But under certain circumstances he can act in his own discretion too. During emergency he becomes the direct agent of the President.

Q. 37. What is the procedure laid down for the appointment of the Council of Ministers in a State ? Discuss its constitutional position in relation to (a) the Governor and, (b) the State Legislature

Ans. Article 163 of the Constitution lays down that "there-shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions."

Appointment of the Ministers : According to the Constitution the appointment of Chief Minister is to be made by the Governor himself but in practice it is not so. The Governor only selects as Chief Minister a person who commands the support of a stable majority in the State Legislative Assembly. The other Ministers are appointed by the Governor on the advice of the Chief Minister. All Ministers are requried to be members of the State Legislature. Non-members can also be appointed but they must be elected as members of the State Legislature within 6 months after their date of appointment. The number of Ministers is not fixed by the Constitution, but it lays down that in Bihar, Orissa and Madhya Pradesh, there must be a Minister incharge of the welfare of the tribes, scheduled castes and backward classes. The portfolios are distributed amongst the Ministers by the Governor on the advice of the Chief Minister. Their salaries are determined by the Legislative Assembly.

Relations between the Council of Ministers and the Governor: The Council of Ministers constitutes the real executive in a State. Although executive action is taken in the name of the Governor yet decisions are taken by the Ministers. The Governor, as has been pointed out previously, is a nominal executive head. He surrenders all his legal powers to his Ministers. In theory, the Governor is to act and the Ministers are to advise but in practice the case is otherwise. The Ministers act and the Governor simply advises. In spite of all this, the Governor has the right to be consulted, to encourage and warn his Ministers who are also free to heed his advice or not. Moreover, the Chief Minister is required to keep the Governor informed about the affairs of the State, including the decisions of the Council of Ministers and the proposals for legislation. The Governor can call for any information from the Chief Minister. He can act in certain cases in his own discretion and dispense with the advise of the Ministers especially during the operation of a proclamation of emergency.

Theoretically, Ministers can be dismissed by the Governor because they hold office during his pleasure but in practice again

this is not possible. The Governor cannot afford to dismiss a Minister or the whole Council of Ministers if they have the support of a stable majority in the Legislature. Ministers may regard such an action of the Governor as an insult and may resign. In the event of their resignation, it is not easily possible for the Governor to find an alternative Ministry enjoying the support of the majority of members in the Legislature. It is, therefore, obligatory on the Governor to carry on with the Council of Ministers as long as it enjoys the support of a stable majority in the Legislature.

Relations between the Council of Ministers and the Legislature : All the Ministers are required to be members of the Legislature. The leader of majority party in the Lower House is designated as Chief Minister by the Governor. The other Ministers are selected by the Chief Minister from amongst the majority party. They are collectively responsible to the Legislative Assembly. They continue in office so long as they enjoy the support of the majority in the House. The Legislature can force the Ministry to resign if the former rejects a Bill moved by a. Minister if it is a vital bill or passess a Bill or any amendment which is opposed by the government or passes straight vote of no-confidence against the Ministry. A cut in the salary of any Minister or refusal to pass a demand for grant or any proposal for taxation would also indicate lack of confidence in the Ministry, resulting in its resignation. The Legislature also controls the Ministry by putting questions and supplementary questions and tabling adjournment motions.

Although the Ministry depends for its life on the will of the Legislature yet the Ministry wields a great influence over the Legislature. All important Bills are moved from the ministerial benches. Financial measures are exclusively moved by the Government. A Ministry, in fact, reigns supreme so long as it enjoys the support of a safe majority in the Legislature. In case of no confidence motion passed against the Ministry, the latter may advise the Governor to dissolve the legislature. This happened in the State of Travancore-Cochin.

POINTS TO REMEMBER

According to the Constitution, the appointments of Ministers are made by the Governor. But in practice, it is not so. The Governor selects as Chief Minister a person who commands a stable majority in the State Legislative Assembly. The other Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers constitutes the real executive in a State. All decisions are made by the Ministers in the name of the Governor. The Governor is a nominal executive head. The Governor can use his discretion and can dispense with the advice of his Ministers. The Governor can dismiss the Ministers because they hold office during his pleasure. The Governor has to carry on with the Council of Ministers as long as they enjoy the support of stable majority in the Legislature. All the Ministers are required to be members of the Legislature. The leader of the party is designated as the Chief Minister. The other Ministers are selected by the Chief Minister. The Ministers are collectively responsible to the Lower House of the Legislature. A vote of no-confidence by the Legislature forces all to resign. The Legislature also controls a Ministry by putting questions and moving adjournment motions, The Ministry also exercises a lot of influence over the Legislature so long as it has a safe majority in its support.

PROBABLE QUESTIONS WITH HINTS

1. What do you understand by responsible government ? Does the Constitution of India introduce such a system of Government in the States ?

[For answer refer to the question dealing with relations between the Governor and the Council of Ministers.]

2. 'The Governor is a constitutional ruler.[1] Explain.

[For answer refer to a critical estimate of the powers of the Governor.

'The State Legislature suffers serious limitations on its legislative authority.'

CHAPTER XIV
THE STATE LEGISLATURE

Every State has a legislature consisting of one House or two Houses as the case may be. The State Legislatures of Andhra Pradesh, Bihar, Maharashtra, Madras, West Bengal, Uttar Pradesh, Punjab, Mysore, Madhya Pradesh, and Jammu and Kashmir have two Chambers e4ch, whereas all other States have only one Chamber each. The Lower House is known as the Legislative Assembly and the Upper House is called the Legislative Council. The Parliament may by law abolish the Legislative Council in any State or it may crcate this House for a State which has only one Chamber, on a recommendation by the State Legislative Assembly.

Q. 38. Describe the composition and powers of the Legislative Assembly.

Ans Composition and Election. A State Legislative Assembly consists of members directly elected by the people of the State on the basis of adult franchise. Its maximum membership shall not exceed *500* and minimum not below 60. The number of members of each Assembly has been allotted under the States Reorganisation Act, 1956. The State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State. The population at the last census shall be the basis of this division. The change, if any needed, shall be effected after every census by an authority which the Parliament by law may determine. All elections are now held on the basis of adult franchise, joint electorate, single member territorial constituencies, secret ballot and direct election. Some reservation of seats has, however, been made for the Scheduled castes and Scheduled Tribes for the first ten years of the working of the Constitution. This period has been extended by another ten years. In the Legislative Assembly of Assam some seats are reserved for autonomous tribal districts of the State as well. The Governor can nominate two members of the Anglo Indian community to the Assembly it he is convinced that the community needs representation and is not adequately represented.

Qualifications for Membership : A candidate for membership of the Legislative Assembly should be a citizen of India and not less than 35 years of age. He should not be holding any office of profit under the Government and should possess sound mental and physical health. He should not be an undischarged insolvent. Such other qualifications may be required as are fixed by law of the Parliament.

Voting : All questions at a sitting of the House shall be determined by a majority of members present and voting except when otherwise provided in the Constitution.

Quorum: The quorum of a Legislative Assembly shall be 10 or one-tenth of its membership whichever is greater.

Disqualification : A member shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly :

(i) If he holds an office of profit under the Government of India or the Government of any State ;

(ii) If he is of unsound mind and is so declared by a Court of Law ;

(iii) if he is an undischarged insolvent ;

(iv) if he is not a citizen of India or has voluntarily acquired citizenship of a foreign State ;

(v) if he is disqualified under a law of Parliament.

In case of dispute, whether a member of a State Legislative Assembly has become disqualified, the matter shall be referred to the Governor, whose decision shall be final.

Vacation of seats : A member shall vacate his seat:

(1) if he becomes disqualified as stated above ;

(2) if he resigns by writing to the Speaker ;

(3) if he is absent from the House without its permission for a period of 60 days;

(4) No person shall be member of both the houses of a State Legislature ; nor of Legislatures of two or more States or of Parliament and a State Legislature at the same time.

Privileges : The members shall enjoy the following Privileges :

(1) freedom of speech in the Legislative Assembly ;

(2) exemption from liability to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any Committee thereof;

(3) no person shall be liable in respect of the publication by or under the authority of a House ;

(4) other privileges that the members of the House of Commons and its Committee enjoyed at the time of the commencement of of this Constitution.

Salaries : The members shall be entitled to such salaries and allowances as are fixed by the State Legislature from time to time.

"Session : The Legislative Assembly shall meet at least once a year. Six months should not lapse between two sessions.

Life of the Assembly : The Legislative Assembly has a normal life of 5 years but it can be dissolved earlier by the Governor before the expiry of its normal term. Its life can also be extended by the Parliament by law while a Proclamation of Emergency is in

operation for not more than one year at a time and not in any case beyond six months after the termination of the Proclamation of Emergency.

Its Presiding Officers : The presiding officer of the Assembly is called the Speaker. He is elected by the Assembly in its first meeting of the first session. The Assembely also elects a Deputy Speaker who presides over the meeting of the House in the absence of the Speaker. The functions, of the Speaker are the same as those of the Speaker of the House of the People.

Powers : The powers of the Legislative Assembly may be discussed under the following heads :

Legislative : The Legislative Assembly is competent to make laws regarding the subjects mentioned in the State List. It can also make laws regarding the subjects enumerated in the Concurrrent List. The subjects mentioned in the Concurrent List, however, fall under the joint jurisdiction of the Union Parliament and the State Legislature. In case there is a conflict between the law of the State and the Union regarding any Concurrent Subject, it is the law of the Union Parliament that prevails. If a State law on such an item was passed before the Parliamentary law and had received the President's assent, then the State law shall replace the law of the Parliament.

Ordinary Bills can originate both in the Upper and the Lower Houses. An ordinary Bill must be passed by both the Houses before it can become an Act. But the Upper House, *i.e.*, the Legislative Council can only delay a Bill for three months from the date of its receipt from the Legislative Assembly. After the expiry of this period, the Bill in question may be referred in its original form to the Governor for his approval. A Bill rejected or amended by the Legislative Council may be repassed by the Legislative Assembly in its original form and referred to the Legislative Council which can again delay it for one month. But on the expiry of this period, the Bill may be sent to the Governor for his approval if it does not approve it within the period. This shows that the Legislative Assembly is the real legislature in a State. All effective authority is wielded by it and the Legislative Council is only a useless appendage. It is a secondary Chamber rather than a second Chamber.

Financial : All Money Bills must originate in the Legislative Assembly. It has complete control over the State Finances. No tax can be imposed, nor can a penny be spent without its approval. A Money Bill after having been passed is referred to the Legislative Council but its consent is not essential. The Legislative Council can merely delay the passage of a Money Bill for 14 days only. Fourteen days after its receipt by the Council, it becomes an Action the receipt of signatures by the Governor, even if the Council has not passed it in the meanwhile.

Control over the Executive : The Council of Ministers is collectively responsible to the Legislative Assembly. The Ministers continue in their office so long as they enjoy the confidence of majority of

the members in the Legislative Assembly. The moment they lose the confidence of majority in the House they are thrown out of their office by a vote of no-confidence. The Assembly exercises control over the executive in some other ways also. A member of the Assembly may ask the executive any question to elicit information regarding its policies. The questions may be followed by supplementary questions to clarify the reply given. In this way, the executive is exposed if it has neglected its duties in a certain matter. The government can further be exposed in the House by adjournment motions. An adjournment motion is moved for discussing a matter of urgent public importance such as a serious riot a serious police firing at a public meeting etc. The real object of an adjournment motion is to bring to light the inefficiency or corruption of the administration and the mistakes of policy of which the executive is thought to be guilty.

It is the Legislative Assembly which exercises control over the executive. The Legislative Council has no such powers because the Ministry is not responsible to it.

POINTS TO REMEMBER

(1) A State Legislative Assembly consists of members directly elected by the people on the basis of adult franchise. The total number of members depends upon the population of the State. The Constitution has abolished the much hated system of communal representation. All elections are now held on the basis of joint electorate. (2) A candidate should be a citizen of India and not less than 25 years of age. (3) The Legislative Assembly has a normal life of five years, but it can be dissolved even earlier by the Governor. Its life can also be extended by the Parliament.

Powers. (a) *Legislative :* It legislates over the subjects given in the State List and over matters given in the Concurrent List. The Legislative Assembly is the real legislature in a State. The real authority is wielded by it, whereas the Legislative Council is only a useless appendage.

(b) Financial: All Money Bills must originate in the Legislative Assembly. It has complete control over State Finances.

(c) *Control over the Executive :* The Council of Ministers is collectively responsible to the Legislative Assembly and remains in office so long as it enjoys the confidence of the Legislative Assembly. It controls the Executive *by* putting questions and by tabling adjournment motions etc.

Q. 39. Describe the composition and powers of the State Legislative Council.

Ans. A State with a bicameral legislature, has the Legislative Council as its Upper House.

Composition : The Constitution has fixed the maximum strength of the Legislative Council at one-third of the membership of the State Legislative Assembly with a minimum of 40 members. It consists of both elected and nominated members, *(a)* The Governor nominates one-sixth of its total strength from amongst persons having special distinction in Arts, Literature, Science, Cooperative Movement and Social Services. (b) One-third of the total strength

is elected by the Legislative Assembly of the State concerned from amongst persons who are not members of the Assembly. (c) One-third of the total is elected by members of Local Bodies, *viz.*, Municipalities, District Boards etc., through territorial constituencies. (d) One-twelfth of the total is to be elected by and from amongst persons who have been teachers of three years' standing in educational institutions not lower in standard than that of a higher secondary school. *(e)* The remaining one-twelfth is to be elected by and from amongst University graduates of at least three years' standing. All elections to the Legislative Council are to be held in accordance with the system of proportional representation by means of single transferable vote.

Qualifications of Members: A member of the Legislative Council should be a citizen of India and not less than 30 years of age. He or she should not hold any office of profit under the Government and should possess sound physical and mental health.

Life of the Council : The Legislative Council is a permanent House, one-third of its members retiring after every two years.

Its Presiding Officer : The Council elects its own Chairman and Deputy Chairman from amongst its own members.

Powers : The Legislative Council is a very weak legislative body. Its position is much inferior to that of the Legislative Assembly. Ordinary Bills can be originated in both the Houses, but the Legislative Council can only delay a non-Money Bill for three or four months. It cannot 'kill' a bill passed by the Assembly.

Money Bills cannot be introduced in the Legislative Council. These can only be introduced in the Legislative Assembly. A Money Bill passed by the Legislative Assembly is, however, referred to the Council for its approval. The Council must make recommendations within 14 days of its receipt. This becomes an Act after the expiry of this period even if the Council rejects or amends it.

It exercises no control over the executive because the executive is responsible only to the Legislative Assembly.

Note :—The constitution establishes a legislature in every State. But it does not provide for bicameral legislature in all the States. Many members in the Constituent Assembly were opposed to the idea of creating a second chamber in the States. Some of them went to the extent of doubting the financial ability of many States to bear the burden of this "costly ornamental luxury". The critics compelled the framers of the constitution to leave the matter to the members from different States. At present only the following ten States have Second Chambers. (1) Andhra Pradesh (2) Bihar (3) Jummu & Kashmir (4) Maharashtra (5) Madhya Pradesh (6) Madras (7) Mysore (8) Punjab (9) Uttar Pradesh (10) West Bengal.

POINTS TO REMEMBER

A State with a bicameral legislature has Legislative Council as its Upper House. It consists of both elected and nominated members. All elections to the Legislative Council are held in accordance with the system of proportional representation and single transferable vote. A member must be a citizen of India, and must be less than 30 years of age. The Legislative Council is a permanent House. The Council elects its own chairman and deputy chairman from among its own members. The Legislative Council is a very weak legislative body. Its position is much inferior to the Legislative Assembly. It can only delay a Bill passed by the Legislative Assembly, but cannot kill it Money Bills cannot be introduced in the Legislative Council.

Q. 40. Write a short note on the relations between the two Houses of the State Legislature.

Aus. In relation to the Legislative Council the Legislative Assembly enjoys a predominant position. All Money Bills must originate in the Lower House. A Money Bill after having been passed by the Legislative Assembly is referred to the Legislative Council but its consent is not essential. The Legislative Council can simply delay the passage of a Money Bill only by 14 days. Fourteen days after its receipt by the Council, it becomes an Act on receipt of signatures by the Governor even if the Council has not passed it in the meanwhile.

In case of ordinary Bills too, the Legislative Assembly enjoys greater powers. An ordinary Bill may be introduced in either House. It is also sent to the Council for consideration after it has been passed by the Lower House. The Legislative Council can delay a Bill up to a period of three months from the date of its receipt from the Legiiative Assembly. After the expiry of this period, the Bill in question is referred in its original form to the Governor for his approval. A Bill rejected or amended by the Legislative Council may be repassed by the Legislative Assembly in its original form and referred to the Council which can delay it for another month but after the expiry of this period too, the Bill in question may be sent to the Governor without the consent of the Council. This shows that the Legislative Council fades into insignificance before the authority of the Legislative Assembly.

Moreover, a legislative organ gains in prestige and dignity if it has control over the executive. In this respect we find that it is the Legislative Assembly to which the executive is responsible. The Legislative Council loses all its importance because of the absence of any control on its part over the executive. In modern parliamentary democracies second Chambers of this nature have no significance. The State Legislative Council is even weaker than the. Rajya Sabha which has at least equal authority with the Lok Sabha in respect of ordinary Bills. A Legislative Council is supposed to play a second fiddle to the Legislative Assembly. It is, therefore, criticised on the ground that it only helps the ruling party to dole out patronage to its workers as obviously it is a burden on the State Exchequer.

POINTS TO REMEMBER

The powers of the Legislative Council are conspicuous by their absence. It fades into insignificance before the Legislative Assembly. The Legislative Council can merely delay a Money Bill for fourteen days and an ordinary Bill for about three months. It is thus a useless appendage.

Q. 41 Describe the powers and functions of the State Legislature. What are the limitations to its authority ?

Ans. A State Legislature is competent to make laws regarding the subjects mentioned in the State List and the Concurrent List. It has full control over the finances of the State. Before the beginning of a financial year, the State budget is placed before it. The Legislature may pass, reject or reduce the amount of any demand. Similarly, no tax can be levied without the sanction of the Legislature. Not only does the State Legislature enjoy vast legislative and financial powers but it also exercises control over the Executive. The Ministry is collectively responsible to the Legislative Assembly. Its life depends upon the will of the latter. The Legislature, further, controls the Executive by asking it questions and supplementary questions and by tabling motions of adjournment.

Limitations : In spite of all these powers, a State Legislature suffers from serious limitations on its legislative authority. These may be described as follows :—

(i) A State Legislature is a non-sovereign body because it cannot amend its constitution.

(ii) Certain Bills cannot be moved in the State Legislature without the previous sanction of the President. This condition applies to Bills which seek to impose restrictions on the freedom of inter-State trade or commerce.

(iii) Certain Bills passed by the State Legislature must be reserved by the Governor for the consideration of the President. These Bills cannot become laws unless the President has given his assent. This condition applies to Bills relating to the acquisition of property by the State, and concurrent matters going against the existing laws of the Parliament, essential commodities, etc. The veto of the President is absolute. The State Legislatures cannot override it.

(iv) The Parliament can also make laws regarding the subjects mentioned in the State List. This can be done if the Council of States passes a resolution by two-thirds majority of its members present and voting to the effect that a particular subject mentioned in the State List has attained national importance. This provision is a great handicap on the powers of the State Legislature because in peace time too the Parliament can encroach upon the legislate authority of the State Legislature.

(v) The Union Parliament can legislate over all the subjects mentioned in the State List during the operation of the proclamation of general emergency issued by the President.

(VI) The Union Parliament will be authorised to frame laws, regarding the State subjects when a state of emergency is declared on account of the breakdown of the Constitution in a particular State. Such laws, however, are applicable only to the State affected.

(vii) The Governor's discretionary powers also constitute serious restrictions on the legislative authority of the State Legislature. He may dissolve it at any time.

(viii) The Parliament may make any law for the proper implementation of a treaty with a foreign State or decisions arrived at by an international conference. Such decisions are enforceable in all the States.

(ix) In financial matters the Legislature does not enjoy full control. The expenditure charged on the Consolidated Fund of a State cannot be put to the vote of the Legislature. This includes salaries and allowances of the Governor, the Speaker and the Deputy Speaker, the Chairman and the Deputy Chairman of the Council, the Judges of the High Court and some other expenses.

POINTS TO REMEMBER

A State Legislature is competent to make laws regarding the subjects mentioned in the State List. It can also make laws regarding the subjects given in the Concurrent List. It has full control over the State finances. It exercises control over the State executive which is responsible to it. In spite of all these powers a State Legislature suffers from various limitations which may be mentioned as follows :—

(a) It is a non-sovereign body. (b) Certain Bills cannot be moved in it without the prior consent of the President, (c) Certain Bills passsd by it must be referred to the President for his final approval, *(d)* The Parliament can encroach upon its authority both during peace time and emergency.

Q. 42. Make out a case for and against Second Chambers in State Legislatures.

Ans. There is a good deal of controversy among the political thinkers in India regarding the existence of Legislative Councils in some of the State Legislatures. Arguments are advanced for and against the Second Chamber in India. Some of the arguments in favour of the Second Chamber may be summed up as follows :

(a) The Second Chamber acts as a brake against the hasty, ill-considered and the rash legislation enacted by the Lower Chamber. The Legislative Assemblies are elected by the direct vote of the people. They are liable to be swayed by popular passions. A single Chamber elected on the basis of universal adult franchise is radical. It is, therefore, necessary to have a Second Chamber to check radicalism of the Lower House.

(b) The Legislative Councils in our States are used for providing representation to intellectuals, artists and scientists. Such people are generally election shy and keep themselves aloof from active politics. Moreover teachers, graduates and members of Local bodies are separately represented on the Legislative Councils. Our Councils are, therefore, reservoirs of knowledge, intellect, experience and maturity.

(c) The Legislative Councils in the States act as revisory Chambers. They serve as second filterbeds. Bills passed by the Legislative Assemblies are thoroughly revised and scrutinized by them and thereby all their technical flaws are removed.

(d) The Councils have been given some delaying powers. They interpose delay between the introduction and final adoption of a Bill and thus permit time for cool reflection and deliberation. Delay involved in the passage of a Bill is sometimes beneficial in the ultimate interests of the people.

(e) Second Chambers check the despotism of the Lower Houses. In the absence of the Second Chamber the Lower Chamber may grow tyrannical and despotic. "Of all the forms of Government that are possible among mankind," said Lecky, "I do not know any which is likely to be worse than the government of a single omnipotent democratic chamber. It is at least as susceptible as an individual despot to the temptation that grows out of the possession of an uncontrolled power, and it is likely to act with much less sense of responsibility and much less real deliberation."

(f) Finally, it is pointed out that Legislative Councils are harmless because they cannot create a deadlock by refusing Bills passed by the Legislative Assemblies. They merely advise the Lower Houses and it is up to the latter to accept or reject their advice. The strength of the second Chambers, therefore, lies in their weakness.

Arguments against the Second Chambers: (a) Second Chambers are considered to be useless because these have been given no powers by the Constitution. They cannot put any effective check on the Legislative Assemblies since they can only delay a money Bill for 14 days and non-Money Bill for 3 or 4 months at the most. Existence of Second Chambers in the States is therefore an undue burden on the tax-payer.

(b) The delaying power given to the Second Chambers is harmful instead of being useful. It sometimes checks the enactment of Useful and progressive legislation.

(c) Its revisory function is of no avail because Bills are thoroughly discussed and examined by Committees of experts and then they are given three readings in the Lower House. There is, therefore, hardly any scope for further revision.

(d) Even the framers of the Indian Constitution had doubts about the desirability of Legislative Councils in the States. The provisions regarding the creation and abolition of these Councils indicate that there was no definite opinion regarding their utility.

(e) Some uncharitable critics even point out that Second Chambers have been created by the ruling party in order to dole out patronage to its workers and supporters and especially to those party guns who are defeated in the general elections. Entry of Morarji Desai in the Bombay Legislature and that of C. Rajgopalachari in Madras Legislature are cited as cases in question.

POINTS TO REMEMBER

The existence of Second Chambers in the State is defended because they act as brakes against hasty and ill-considered legislation ; they are used for providing representation to intellectuals, artists and scientists ; they act as revisory Chambers; their delaying power is useful and they check the despotism of Lower Houses. The Second Chambers are condemned because they are an unnecessary burden on the tax-payer, their delaying power is often misused and their revisory function is useless. Even the framers of the Constitution doubted their desirability.

PROBABLE QUESTIONS WITH HINTS

1. "The Legislative Council is a useless appendage of the State Legislature." Discuss.

[For answer refer to the question dealing with relations between two Houses of the State Legislature.]

2. Enumerate and discuss the significance of the restrictions imposed by the new Constitution on the competence of the State Legislature.

[For answer refer to the question dealing with powers of the State Legislature.]

"The judiciary is the shield of innocence and an impartial guardian of every private civil right."

CHAPTER XV

THE STATE JUDICIARY

The Constitution envisages the establishment of a High Court in each State. The Parliament may by law extend or exclude the jurisdiction of a certain High Court to a certain Union Territory. The High Court is at the head of the judicial hierarchy of State which consists of various subordinate courts. A High Court consists of a Chief Justice and other judges. The maximum number of judges of a State High Court is to be fixed by the President from time to time. A new status has been conferred upon the Provincial High Courts exisiing before the promulgation of the new Constitution. Restrictions on their original jurisdiction in regard to revenue cases, which were in force previously have been removed.

Q. 43. Describe a State High Court under the following heads:

(i) Its Composition, *(ii)* Appointment, qualifications, emoluments and conditions of service of the judges, *(iii)* Its functions.

Ans. The Constitution provides for the establishment of High Courts in all States. The Parliament may by law establish a common High Court for two or more States, extend the jurisdiction of a High Court to a Union Territory or exclude such jurisdiction.

(i) Composition : The High Court of each State consists of a Chief Justice and some other Judges. The number of the judges has not been fixed by the Constitution. It is to be determined by the President from time to time.

(ii) Appointment : The Chief Justice and other judges are appointed by the President in consultation with the Chief Justice of the Supreme Court and the Governor of the State concerned. In case of the appointment of a judge other than the Chief Justice, the Chief Justice of the High Court concerned must also be consulted.

Qualifications : A person to be appointed as the Judge of the High Court must possess the following qualifications.

(1) He must be a citizen of India.

(2) He must have held a judicial office in India for at least 10 years or he should be an advocate of a High Court of at least 10 years' standing.

Conditions of Service : The Chief Justice of a High Court in a State draws a salary of Rs. 4,000 per month and the other judges get Rs. 3,500 per month apart from various other allowances.

Allowances and right of leave and pension are determined by Parliament by law. Salaries and other allowances of the judges cannot be altered to their disadvantage during the course of their service except in case of Financial Emergency. Like the judges of the Supreme Court, the judges of the State High Courts have been given complete security of service. They continue in office during good behaviour and retire at the age of 60. A judge cannot be easily removed from service by the Executive. He can only be removed from service by the President after an address has been presented to him by each house of the Parliament for his removal. Such an address must be passed by a majority of the total membership of each House and by a majority of not less than two-thirds of the members present and voting. A High Court Judge may be transferred from one High Court to another by the President after consultation with the Chief Justice of India. A retired High Court judge may practise before the Supreme Court and any High Court other than the one in which he was a parmanent judge and before no other authority in India.

Additional and Acting Judges : In view of temporary increase in the work of a High Court or by reason of arrears of work therein, the President may appoint additional judges of the High Court for a period not exceeding two years.

The President may also appoint a duly qualified person as an acting Judge in place of permanent judge in case of Iatter's absence or inability to perform the duties of his office. No judge appointed as additional or acting judge shall hold office after attaining the age of 60 years.

(iii) Functions : Broadly speaking, the High Courts perform the same functions as were performed by them before the promulgation of the Constitution. Their functions may be classified as *(a)* Judicial, and *(b)* Administrative.

(a) Judicial Functions : As pointed out above the jurisdiction and powers of the High Courts are practically the same as they were immediately before the commencement of the Constitution. But restrictions with respect to revenue matters which existed previously have now been removed.

Every High Court has original, appellate and revisory jurisdiction.

Original Jurisdiction : (a) A State High Court has original jurisdiction with respect to revenue and its collection.

(b) It enjoys original jurisdiction with the Supreme Court regarding the enforcement of Fundamental Rights guaranteed by the Constitution. It can issue writs in the nature of *Habeas Corpus, Mandamus, Prohibition,* etc., for the enforcement of the fundamented rights and for any other purpose to any authority or person or the Government within its territorial jurisdiction,

(Habeas Corpus is a writ to the jailor to produce the body of one detained in prison and state the reason of such detention. *Manda-*

mus **is used for enforcing the performance of a public duty by a government official.** *Prohibition* **is used for the purpose of preventing an inferior court from exceeding its jurisdiction.)**

The High Courts of Presidency towns, *i.e.,* **Calcutta, Madras and Bombay have original jurisdiction in almost every civil or criminal matter. All civil cases exceeding Rs. 100 can be tried in them. The serious criminal cases which are elsewhere decided in Sessions Courts can be decided by these High Courts. They can also withdraw a case from a subordinate Court and try it themselves. Other High Courts have original jurisdiction over certain cases of admiralty, wills, Christian divorce and contempt of court apart from the original jurisdiction with respect to some revenue matters and enforcement of the fundamental rights.**

Appellate Jurisdiction : All High Courts have appellate jurisdiction in all types of cases against the decision of lower courts in the States.

In criminal cases an appeal shall lie with the High Court against the decisions of a Sessions Court. In civil cases, an appeal shall lie with the High Court against the decision of the District Court.

Revisory Jurisdiction : A High Court can withdraw a case from a subordinate court and can deal with the case itself if it is satisfied that the case involves a substantial point of constitutional law. It may send back such a case to the Court of hearing with a copy of its judgment. The lower court then proceeds to deal with the case in accordance with the views of the High Court.

Court of Record : Every High Court is a court of record. Its proceedings and decisions are referred to in all future cases. It has the power to punish for contempt of itself.

(b) Administrative Functions : A High Court stands at the apex of the judicial system in a State. It supervises the working of all subordinate courts and frames rules and regulations for the transaction of business. It can also examine the records of its subordinate courts. It appoints members of the staff for these courts. Even the judges and magistrates for senior courts are appointed after consultation with the respective High Courts. Article 227 gives the power to the High Court to exercise supervision over all courts and tribunals throughout the territories under its jurisdiction. It may issue general rules and regulations of practice and proceedings of such courts, may call for returns from such courts, may prescribe rules for maintenance of accounts books etc. However, it does not have any power of superintendence over any court or tribunal constituted under any military law.

POINTS TO REMEMBER

1. The Constitution provides for establishment of High Courts in Part A and Part B States. The Parliament has been empowered to create separate High Courts for Part C States also.

2. Composition : A High Court consists of a Chief Justice and some other judges. The Chief Justice and other judges are appointed by the President. The judges must fulfil various conditions before they are considered eligible for appointment. The Chief Justice of a High Court in the State draws a salary of Rs. 4,000 per month, and judges get Rs. 3,500 per month. The judges have been given complete security of service. They retain their office up to the age of 60 on the condition of their good behaviour and integrity of character.

3. Functions of the High Court : The High Court performs double functions, judicial and administrative.

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"Part C States are merely administrative units of the Central) Government."

CHAPTER XVI
PART C & PART D STATES

Original Constitution of independent India established certain Part C and Part D States. Some of them corresponded to the former Chief Commissioners' Provinces under the British regime whereas others were created by integration of the former princely States. Some individual native States were also included in this category. The Constitution provided for their administration directly by the President under the law enacted by the Parliament. The President acted either through a Chief Commissioner or a Lt. Governor. The Government of Part C States Act, 1951 established partial responsible governments in some or these States. Their existence, however, was an anomaly in the democratic set-up of the country. In pursuance of democratic ideals, these States have been liquidated under the provisions of the States Reorganisation Act put into force on the 1st November, 1956.

Q. *44.* Describe the provisions for the administration of Part C and D States. Also describe the changes that have been made regarding Part 'C' and 'D' States.

Ans. Prior to the enactment of the States Reorganisation Act, the Part C States were directly administered by the President through Chief Commissioners or Lt. Governors appointed by him. However, the Government of Part C States Act 1951, allowed limited autonomy to these Stales. The Act further provided for the establishment of responsible Governments in some of these States. The limitations imposed varied with different States. It provided for the creation of Legislative Assemblies and Ministries in all Part C States excepting Bilaspur. Moreover, the Act could not apply to the States of Kutch, Manipur and Tripura till such date as the Union Government thought fit.

The Legislative Assemblies of these States were elected by the direct vote of the people on the basis of adult suffrage and joint electorate with reservation of Scheduled Castes. These legislatures had been given the power to legislate on all State Subjects and the Concurrent Subjects. This power was, however, restricted in the case of the Delhi State. The Delhi State Assembly could not make laws with respect to matters of public order, police, local bodies, transport and various other public utility services. The Assembly had a normal life of 5 years unless dissolved earlier.

In the sphere of the executive powers, the Ministries in these States again enjoyed very little real authority. Though they were formed by the majority party in the legislatures, their powers were very limited. In case of a difference between the Ministry and the Chief Commissioner, the matter was to be referred to the President for decision. In case of emergency, the Chief Commissioner could

act in his own discretion. Even the Council of Ministers was to be presided over by the Chief Commissioner and it was only in his absence that the Chief Minister could preside.

The Chief Commissioner enjoyed vast powers. He could send a message to the legislature which must discuss at an early date the proposals contained therein. Further, every decision taken by the Council of Ministers in relation to any matter concerning New Delhi, was subject to concurrence of the Chief Commissioner. In case of difference of opinion, the Chief Commissioner was authorised to act in his discretion.

Moreover, the Central Government retained complete control over these States. Parliament continued to enjoy complete legislative sovereignty in relation to these States. This meant that it could tamper with the legislation passed by them at any time it liked. Moreover, the Chief Commissioner and the Council of Ministers were under the overall control of the President. He could suspend the responsible machinery of the State administration if he felt this step was necessary for the good government and administration of these States.

Council of Advisers : Section 42 of the Act provided for the establishment of the Council of Advisers in certain Part C States. Three Part C States, *viz.*, Cutch, Manipur and Tripura were to have Council of Advisers and no Legislative Assemblies and responsible Ministers. Appointment, powers and number of advisers were to be determined by the President. They were to aid and assist the Chief Commissioner in the discharge of his functions.

Conclusion : The foregoing account of the powers of Part C States shows that these were purely administrative units of the Central Government. They were much inferior in status to Part A and B States. In executive sphere, these States were under the paramount control of the President who acted through Chief Commissioner and Lt. Governors. The Chief Commissioner and Lt. Go vernors were not bound to accept the advice tendered by the Ministers. The powers of the Council of Ministers of Delhi State were seriously handicapped in many respects. In legislative sphere the Union Parliament continued to have legislative control over all State subjects in relation to Part C States. The Legislative Assemblies had no doubt been created in most of the Part C States, but they enjoyed only delegated powers. Prior sanction of the Chief Commissioner was essential for the introduction of a number of Bills in the Part C Legislative Assembly although Part A and B States suffered from no such limitation. In case of a conflict between the laws passed by the Legislative Assembly of a Part C State and the Union Parliament with respect to a State subject, it was the law of the latter that was to prevail.

There was a popular resentment against the existence of Part C States as such. It was hoped that either Part C States would be merged into adjoining States or their territories would be extended by the inclusion of neighbouring areas. One such proposal was there

in respect of the creation of Greater Delhi by including certain Districts of Uttar Pradesh and Punjab. Bilaspur was going to be merged in Himachal Pradesh. It was further suggested that Part C States should be brought in level with Part A and B States.

Part D States : Part D States, *i.e.*, the Andaman and Nicobar Islands, were under the direct administration of the Government of India. The President exercised his authority through a Chief Commissioner. This provision also extended to any other territory which was not specified in the First Schedule of the Constitution. Chandernagore, formerly a French settlement but now ceded to India in 1952, was one such territory. The President might make rules for the peace and good government of these territories.

New Territories under the proposed organisation of States : Under the new organisation of States, there are now nine Union Territories apart from the 16 States. Under the new provisions every Union territory will be administered by the President acting through a Chief Commissioner. The President may constitute for every such territory, a Council of Advisers to the Chief Commissioner. The Council of Advisers may be partly elected and partly nominated.

POINTS TO REMEMBER

(1) The Part C States were directly administered by the President through a Chief Commissioner or Lt. Governor. (2) The Government of Part C States Act 1951 provided for the creation of Legislative Assemblies and Ministries in all Part C States except Bilaspur. The Act did not apply to the States of Kutch, Manipur and Tripura. (3) The Delhi State Legislative Assembly could not make laws relating to public order, police, local bodies, transport and various other public utility services. (4) The Union Government retained complete control over these States and Parliament could tamper with the legislation passed by them. (5) Part D States, *i.e.,* Andaman and Nicobar Islands were under the direct administration of the Government of India. (6) Any other territory not specified in the First Schedule of the Constitution such as Chandernagore, formerly a French settlement but now ceded to India in 1952, was administered by the Union Government through a Chief Commissioner. Under Constitution Amendment Act 1956, instead of Part C and D States, there were to be seven Union Territories to be administered by the President through officers appointed by him.

"India deprived of the States would have lost all coherence."
—*Professor Coupland.*

CHAPTER XVII

INTEGRATION OF PRINCELY STATES UNDER THE CONSTITUTION

Before Independence, India was divided into two parts, British India and Native India. The British India consisted of Governors' and Chief Commissioners' provinces which were governed under the direct British authority. The Native India consisted of about 562 States ruled by Rajas, Maharajas and Nawabs under the suzerainty of the British Crown. They were scattered over the length and breadth of the country and covered nearly 44% of the total area of India. The population of these States added together was above 90 millions *i.e.,* above 24% of the total population of India. The different States varied in size of population and extent of territory. The big States existed side by side with small States. There was a State like Hyderabad, having an area of 82,312 sq. miles practically equal to that of Great Britain. Again, there were States as small as Loharu in East Punjab and Bhagat in the Simla Hills with very small territory and population of only a few hundred people.

The Indian States during the British regime were placed under the Imperial protection of the British Government. In internal and external affairs, the Indian States were subject to the paramountcy of the British Crown. The British Government could interfere with and regulate the affairs of the Indian States. In fact, the Indian States were strong fortresses of the British ruling power in India. The Princes always helped their British masters in times of need. In return of these services, the British Government always favoured the Indian Princes who were carrying on autocratic Governments in States.

India achieved Independence on 15th August, 1947 according to the Independence Act, 1947. The Act ended paramountcy of the British Crown over the Indian States. All treaties and *sanads* of the British Government with the Indian States ceased to operate. The States became sovereign States. The States were free to join either of the two Dominions or to remain independent. This clause of the Act was a potential danger to the territorial integrity of India. It was absurd to allow more than 500 States to exist as separate independent States. Indeed it was a subtle attempt on the part of the British rulers to disrupt the unity of India and to sabotage her newly won freedom. It was a terrible moment for Indian statesmanship. The problem was rendered more complicated by the attitude of some of the Princes. Credit goes to Sardar Vallabhbhai Patel who handled the situation with tact and foresight. A mild force was used in case of certain States like Junagadh and Hyderabad. Other States were linked peacefully with India by various methods.

Q. 45. Critically analyse the relations of the former Indian. States with the British Government before Independence.

Ans. The assumption of powers by the Crown in 1858 opened a new chapter in its relations with the Indian States. Hithertofore the policy of the East India Company towards these States had passed.

through the following phases :

1. Ring-Fence Policy (1757-1813): During this period, as Lee-Warner has pointed out, "the British endeavoured as far as possible to live within a Ring Fence, and beyond that they avoided intercourse with the chiefs". The servants of East India Company kept themselves scrupulously away from Indian politics.

2. Policy of Subordinate Isolation (1813-1858) : During this period, the Company made all possible efforts to subordinate almost all the States through subsidiary alliances.

But with the assumption of powers of the Crown in 1858, the position of the States vis a-vis the British Government changed considerably. Though the Queen's Proclamation promised to observe the sanctity of treaties and other agreements yet various other statements by many British leaders made no secret of the overall paramountcy of the Crown. In 1858 Lord Canning said : "The Crown of England stands for the unquestioned ruler and paramount power in all India." This supremacy was later asserted when Queen Victoria assumed the title of 'Empress of India'.

A demonstration of new power that was growing was given in 1875 when the Gaekwad of Baroda was deposed for alleged misrule ; similarly in 1891 the British Government temporarily annexed the State of Manipur following a rebellion. In restoring the native rule it was made clear that principles of international law were not applicable to their relations with foreign States. This meant that these States were not sovereigns but were subordinate to the Crown.

By degrees, fresh usages and precedents were developed which carried intervention in the affairs of the States far beyond the terms of the treaties and written agreements. In course of time, a position was reached in which the British authority in all matters stood practically unchallenged. Though some of the States apparently possessed sovereign powers such as complete legislative and judicial authority, and even their own coinage, still the fact remained that the British Government recognised no inherent rights in the rulers or involuntary restraints on its own authority. The Crown claimed and defended this paramountcy on the grounds of imperial sovereignty, defence of the country and discharge of international obligations. Though the degree of *de facto* control exercised by the paramount power considerably varied from State to State yet the British Government asserted and enforced its paramountcy over these States through various measures which may be discussed as follows :

1. Exclusive control over foreign relations : A native State had no external relations except with the British Government. It had no power to declare war, to enter into diplomatic relations with foreign Stetes or make alliances with any other native State. The British Government exclusively represented these States in foreign relations. It was responsible for the fulfilment of international agreements entered into by the States. It protected the foreign nationals in India. It issued passports for foreign travel. Opposition to the British authority in India was tantamount to breach of allegiance and

was a crime punishable with death and confiscation. Nawabs of Jhajjar and Ballabgarh were condemned and executed by the British Government on the charge of joining the Indian mutineers in 1857 and their States were confiscated.

2. Limited military establishments : No State could maintain more troops or military establishments than were required for the purposes of internal administration, the discharge of imperial obligations, or, for the maintenance of reasonable dignity of the Prince.

3. General responsibility for internal peace and good government : There was no State in which the British Government could not interfere to stop misgovernment or to punish the ruler for an atrocious crime by a tribunal specially constituted for the purpose.

4. Military assistance : The native States were required to render subordinate military assistance to the British Government when the need arose. In the case of some of the States this was clearly stated in the terms of the treaties. For instance, the Treaty with Bikaner, 1818, stated that the Maharaja will act in subordinate co operation, and will furnish troops at the requisition of the British Government, according to his means. Moreover, Imperial Service Troops were maintained by a number of States.

5. Extra Territorial Jurisdiction of the British Government: The British Government had extra territorial jurisdiction over British subjects and foreign nationals residing in the native States. The Europeans were immune in all cases from the jurisdiction of the native State Courts. They could be tried only by the courts established under the authority of the British Government. The Crown exercised these powers through its representative, i.e., the Viceroy of India. The Viceroy controlled the Indian States through the political department of which he himself was the head. The Political Department maintained contact with the Indian States through Residents in some cases and Agents in others.

Rights of States : As against the rights of the Crown, enumerated above, there were certain rights, which the States enjoyed against the paramount power. These may he summarised as follows :

(a) Maintenance of the territorial integrity of the States.

(b) Protection from outside aggression and internal disturbances.

(c) Maintenance of the dynasty rights, the privileges and *izzat* of the rulers.

(d) Right to levy customs (for coastal States only) and to control internal trade.

Chamber of Princes : The end of the First World War in which the rulers of Indian States had rendered meritorious services to the British Government, marked a complete break from the earlier policy of suspicion and isolation of the States for the fear that they might not enter into any conspiracy or secret alliance against the British Government. Now it was thought desirable to make provision for an organisation in which the princes could discuss matters concerning their common interests. The Princes in 1917, at the time of the visit of Mr. Montague to India, also expressed a desire to have some all-India organization to place their considered views on matters of common interest before the Governor-General. The British Government accepted this suggestion and a Chamber of Princes was established at Delhi. In all there were 120 members of this Chamber—108 representing the salute States and 12 representing the 127 non-salute States. The remaining 327 estates or jagirs had no representation in the Chamber. The Chamber elected its own Chancellor and had a Standing Committee of seven members. The Viceroy acted as the ex-officio President of the Chamber. It was, however, nothing more than a consultative body. It was expressly forbidden by its constitution from discussing "treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and chiefs, their States and the members of their families and the actions of individual Rulers." Its establishment also left unimpaired the individual relations between any Indian State and the Crown.

States and the Butler Committee : The States, not being satisfied with the existing tacit relationship with the British Crown, wanted a more clear and definite understanding of the matter. Some of them were contending for certain amount of sovereignty. So, in 1927 an Indian States Committee with Sir Harcourt Butler as Chairman was appointed. It turned down the contention of the Rulers that they were independent sovereigns and that they should enjoy direct relations with the Crown and not with the Government of India. It also refused to believe that 'the Crown had no other powers over the States except those that were in accordance with the treaties, engagements, and the *sanads*, and declared that the relationship of the paramount power in the States was not merely contractual, resting on treaties made more than a century ago, but was a living and growing relationship resting on history ; usages and precedents.'

The Committee, however, recognized that in future the relationship of the States with the paramount power should be maintained not through the Government of India but through the Crown's representative, to be known as the Viceroy. But for all practical purposes, this change was unimportant and only theoretical.

Such was the relation of the Indian States with the British Crown before a federal system of Government was provided for in the Act of 1935 under which the States were given the option to

join or not to join the proposed federation. But since the federal scheme never came into operation, this relationship of States with the Crown continued till 1947 when finally the British withdrew leaving India independent.

POINTS TO REMEMBER

(1) During the period 1757-1813 the East India Company acted on the Ring-Fence Policy, *viz.,* to live within a Ring-Fence and to avoid intercourse with the Chiefs. During the period 1813-1858 the Company made all States subordinate to it by making them enter into subsidiary alliances with it. (2) With the assumption of power by the Crown in 1858 the States became subordinate to the British Government and the overall paramountcy of the Crown was established. A demonstration of power was given in 1875 when Gaekwad of Baroda was deposed for alleged misrule. In 1891 the British Government temporarily annexed the State of Manipur following a rebellion. (3) An Indian State had no external relations except with British Government. It had no power to enter into political communication or alliance with the other Indian States. No Slate could maintain more troops than necessary for the upkeep of internal administration. The British Government could interfere in the State administration to stop misrule or punish the ruler for an atrocious crime. The Indian States were required to render help and furnish troops in resisting foreign aggression. The British Government assumed jurisdiction over British subjects in Indian States. (4) The States were guaranteed the maintenance of territorial integrity, protection from outside aggression maintenance of dynasty and the right to levy customs. (5) In 1917, a Chamber of Princes was established at Delhi. The Chamber elected its own chancellor and pro-chancellor and had a standing committee of 7 members. The Viceroy acted as ex-officio president of the Chamber. But it was nothing more than a cosultative body. (6) In 1927 Butler Committee was appointed which turned down the contention of rulers that they were independent sovereigns. It was, however, recognised by the Committee that the rulers should have relations with the Crown through the Viceroy and not the Government of India. (7) The Act of 1935 provided for a federal system of Government and gave the States option to join the Federation. But the federal system never came into operation and States continued to have the same position.

Q. 46. Discuss the position of the Indian States after the attainment of independence.

Ans. The Indian Independence Act of 1947 partitioned India into two dominions : India and Pakistan. At the same time it permitted the princely States which were formerly under the paramountcy of the British Crown, to decide about their future status. It left them with three alternatives : *viz.,* to join the Indian Dominion, *or* to join the Pakistan Dominion, *or* to remain independent.

This provision in the Indian Independence Act was rather a notorious oesign of the British Government and was meant to destroy the territorial integrity of India. It presented the first government of free India with a formidable task of consolidating the country's position. If these 500 and odd States in the Indian territory had been left to be independent, it would have been a potential danger to; the country's unity and security.

The Government of India realised the gravity of this problem and created a separate Ministry of States at the Centre to tackle this

problem. It was indeed lucky that this Ministry was put under the charge of the late Sardar Vallabhbhai Patel. By his foresight, statesmanship and inherent ability, Sardar Patel tackled the problem in a remarkable manner in a very short time. He brought round many princes within the Indian territory to accede to the Indian Dominion by signing the Instrument of Accession. Only a few States behaved indifferently. Hyderabad and Kashmir decided to remain independent while Junagadh acceded to Pakistan although it was contiguous to Indian territory. Plebiscite was held in Junagadh and the people of the State gave verdict in favour of India by an overwhelming majority. A mild police action was taken in respect of Hyderabad. The State of Kashmir soon realised its mistake and found the Pakistani raiders knocking at its doors. Hurriedly it approached the Government of India with the Instrument of Accession, and thus the State was also brought within the Indian Union.

Later on the process of consolidation was launched and the problem of the States was solved in the following manner :

(i) Merger of the States with Provinces : A large number of States were merged with the adjoining Provinces. This process started on 1st January, 1948, when 25 Orissa Stales joined Orissa Province, and 14 States of C. P. merged with Madhya Pradesh. Nearly 300 small States and Jagirs were merged with Bombay. Loharu was merged with East Punjab.

(ii) Grouping of States into Unions: Some States were grouped together or integrated into Unions. A large number of Katbiawar States formed a Union known as Saurashtra. Patiala, Nabha, Jind, Kalsia, Faridkot and Maler Kotla joined together to form a Uniop known as PEPSU which is now merged with the Punjab. Similarly other States joined together and formed Rajasthan, Madhya Bharat and Travancore-Cochin. All these new States were placed in Part B of the First Schedule.

(III) Integration of States into Chief Commissioner's Provinces : All Simla Hill States were grouped together into a Chief Commissioner's Province, known as Himachal Pradesh. This State along with Bhopal, Bilaspur, Cutch, Manipur and Tripura was placed in Part C of the First Schedule. They were directly administered by the Central Government. Vindhya Pradesh which was previously a Part B State, was converted into Part C State and was placed under the direct control of the Centre. Bilaspur was merged in Himachal Pradesh. Later on, Himachal Pradesh and Vindhya Pradesh were raised to Lt. Governorship.

(iv) Certain States which were big enough were allowed to remain as separate units such as Jammu and Kashmir, Mysore and Hyderabad.

The problem of the Indian States was thus solved successfully by the Indian leaders. India now stands as one integrated whole

and all the attempts of the British rulers and other enemies of Ind to destroy her unity proved futile.

POINTS TO REMEMBER

The Indian Independence Act of 1947 partitioned India into 2 Dominions, ***viz.,*** India and Pakistan. The States were given the option to join either Dominion or remain independent. The Government of India created a separate Ministry of States under the charge of Sardar Vallabhbhai Patel who by his statesmanship and ability brought about the accession to the Indian Dominion of all States except Junagadh, Hyderabad and Kashmir. A minor police action brought round Junagadh and Hyderabad. Kashmir also acceded to India when raiders were knocking at her doors. A large number of States were merged with adjoining provinces. Some States were grouped together and integrated into Unions. All Simla Hill States were grouped into a Chief Commissioner's Province known as Himachal Pradesh. Jammu and Kashmir, Mysore and Hyderabad were allowed to remain as separate units.

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"However good a constitution may be, it is sure to turn opt bad because those who are called to work it, happen to be a bad lot."

—Dr. B.R. Ambedkar

CHAPTER XVIII

CRITICISM OF THE INDIAN CONSTITUTION

The Indian Constitution declares India to be a sovereign democratic republic. It is the Charter of Indian Independence. But no constitution by itself can become an instrument of a nation's independence if the parties place creed above country, says Dr. Ambedkar. We must defend this Charter of Indian Independence to the last drop of our blood.

There are, however, certain parties and persons which and who criticise the Constitution forgetting the conditions and circumstances under which it was framed. Moreover, it was too early to pass any judgment over the Constitution, as true worth of a constitution can only be tested in practice.

Q. 47. Give a critical estimate of the Indian Constitution.

Ans. Indian Constitution has been subjected to a variety of criticism by the Rightists, the Leftists and constitutional *pandits* **Some of the various points of criticism may be summarised as follows:**

1. Lack of Originality : The new Constitution of India has nothing novel, individual or characteristic about it. Except for the inclusion of a list concerning Directive Principles of State Policy and provisions regarding minorities and Scheduled Castes it follows the pattern of Government as provided under the Act of 1935. It clings to the word "Union" used by the Cripps and Cabinet Missions. Its various provisions have been -adopted from other constitutions of the world. It is, therefore, a hybrid constitution without any conspicuous element of originality. The framers of the Constitution could draw upon the ancient Indian political institutions. The Constitution did not make any mention of the *Sabha* **or the** *Samiti* **of the Vedic age. Now, of course, the two chambers of Parliament have been by law named as Rajya Sabha and Lok Sabha and similarly indigenous names have been adopted for State Legislative Chambers, local bodies, panchayats and other village, tehsil and district local organisations.**

Defenders of our Constitution point out that under the modern social and political conditions, ancient political institutions cannot be fitted in.

2. Un-Gandhian in Character: The critics of the Indian Constitution point out that Indian Constitution is un-Gandhian in essence since it does not come up to the conception of ***Ram Rajya.*** **This criticism appears to be untenable since the Constitution em-**

bodies the principal tenets of Gandhian philosophy. Article 17, of the Constitution abolishes untouchability. The much-hated system of separate electorate has been abolished and it has been replaced by joint electorate in order to promote unity among the various communities of India. The Directive Principles of State Policy embody all that was dreamt of by the Father of the nation.

3. Unreality of Fundamental Rights: The critics point out that the fundamental rights guaranteed in the Constitution are illusory and are not real. The rights are not guaranteed in absolute terms. Every right is hedged in by various restrictions, as for example, Right to Freedom with respect to speech, association and movement has been qualified by restrictions contained in any existing law or to be contained in any future law relating to any matter which undermines, the security of the State. The Union Parliament and the State Legislatures are competent to frame any law regarding the curtailment of the fundamental rights on the ground of decency, morality or security of the State. The legislatures have also the power to impose reasonable restrictions on the Right to Freedom of Assembly in the interest of public order. Under the plea of reasonable restrictions, Legislatures can frame laws regarding the curtailment of this right under any situation. Even the Right to Personal Liberty can be curtailed under the provision of Article 21 which prescribes that no person shall be deprived of his life and personal liberty except by a procedure established by law. This provision implies that our legislature can pass any law in respect of this right and our Supreme Court and High Courts are simply supposed to interpret and apply the laws enacted by the legislatures. But they do not have the authority to challenge the validity of such law. As for example, if the legislatures pass a law regarding arrest and detention, the Supreme Court and the High Courts are simply supposed to see whether the legal procedure has been strictly followed or not. In this way laws regarding restrictions on personal liberties fall out side the jurisdiction of the judiciary. The provisions regarding preventive detention empower the Union Parliament to prescribe the maximum period for which a person can be detained. To make matters worse all the above mentioned fundamental rights may be suspended during the operation of a proclamation of emergency arising out of war, external aggression or internal disturbances. Even the Right to Constitutional Remedies may be suspended.

The advocates of our Constitution point out that the security of the State is more important than the rights of the people. Conditions of the 20th century call for the existence of these restrictions. Further the Parliament cannot place unlimited restrictions on these rights. It can place only reasonable restrictions. The Supreme Court shall determine whether such restrictions are reasonable and whether they are in the interest of State Security or public order or not.

4. Illusion of Directive Principles of State Policy : Part IV of our Constitution contains a list of Directive Principles of State

Policy. These principles have no legal significance since their breach does not signify the breach of the Constitution. These Principles merely embody the pious wishes of the framers of our Constitution. The critics point out that these principles are meant to satisfy the ignorant masses of India. They further point out that most of the principles embodied in this list are the achievements of progressive countries like the U.S.S.R. and England.

The critics forget that ours is an infant State and such achievement cannot be made by magic in such a short span of time. Moreover Directive Principles of State Policy are not without significance because these enshrine the aspirations of the framers of our Constitution. Our national government is striving hard to make these principles real and effective. These are the ideals set forth by the fathers which we have to achieve. The success and failure of a government depends upon the extent to which it realises these principles in practice. These are a moral test. Even the Supreme Court and High Courts have taken their cognisance in interpreting the Constitution.

5. Over-centralisation : The critics point out that the Indian Constitution establishes an unduly powerful Centre under the apparent garb of federal structure. The States of the Indian Union enjoy only municipal powers. Their autonomy can be encroached upon both during normal and abnormal times. This feature of the constitution is a clear negation of the accepted principles of federalism. The advocates of the Constitution justify the establishment of powerful Centre on the grounds that the Constitution has been made under the conditions when fissiparous tendencies menaced the integrity of the country. These communal and separatist tendencies could be suppressed only by the creation of a strong Central Government. Moreover, the framers of the Constitution wanted to profit by the lesson of Indian History. India fell a prey to foreign invaders because of a weak Centre and bitter rivalry among her ruling princes. A strong Centre alone could save the newly won independence. A strong Centre alone could ensure rapid and planned economic development. It could alone bring about uniformity in civil and criminal laws and thereby in the social and economic life. At the same time, this is not an argument for a Unitary State. India is a multi-national state and has diversified culture. While there is need for uniform economic and political development there is simultaneously a need for cultural autonomy so that local cultures and languages be developed and enriched. It is thus a federal constitution with a strong Centre that could serve the interests of India. It ensures political unity, rapid economic development and cultural enrichment. Federal Constitution also provides greater democracy since larger number of people participate in making of laws and an it also solving local problems speedily and in the context of local conditions and local aspirations of the peoples of different States.

6. Emergency Provision of the Constitution : The Constitution is criticised on account of the vast emergency powers of the President. The President of the Indian Republic can declare a state of emergency under three conditions. Each type of emergency has far-reaching consequences. Under the first kind of emergency, the federal structure of the country can be converted into a unitary one. Most of the fundamental rights will remain suspended. Under the second type, a State comes under the direct control of the Union. Under the third type of emergency again the President can take drastic steps to restore financial stability. The President is the sole judge to determine whether a state of emergency has arisen or not. The critics point out that the emergency powers of the President are like a loaded gun which may be used at any time to destroy democratic federalism.

The criticism quoted above is untenable since all proclamations of emergency must be ratified by the Parliament before the expiry of a period of two months and then the President must act according to the advice tendered by his Ministers who are responsible to the Parliament. The President, therefore, cannot assume the position of an autocrat. Such provisions are justified in the context of the volcanic state of international life.

7. Powers of Issuing Ordinances: The Constitution gives wide powers to the President and the heads of the States regarding issuing of ordinances during the recess of the legislatures. This reminds one of the Act of 1935 under which the Governor-General and the Governors had wide powers in this respect. There is no such provision in England. This criticism is not quite valid because an ordinance issued by an executive head ceases to be effective six weeks after the reassembly of the Legislature, unless earlier approved by it.

8. Non-representative character of the Constituent Assembly : The extremist element in the country condemns the Constitution on the grounds that it was made by the Constituent Assembly which was elected on the basis of narrow franchise as provided under the Act of 1935. The Constitution, therefore, does not reflect the will of the people. There is some truth in the statement but the whole thing depends upon the circumstances under which the power was transferred to Indian hands. However, the Preamble to the Constitution makes the people a source of the Constitution. It says, "We the people of India constitute India into a Sovereign Democratic Republic." Thus the sovereignty is vested in the people of India.

Thus the Constitution of India established federalism and parliamentary democracy. It provides, for the first time fundamental rights to the citizens of India. Further, it lays down the Directive Principles of State Policy, which are an attempt to extend the fundamental rights. It is in pursuance of these principles that the Government has adopted the ideal of Socialistic Pattern of Society. The Constitution provides the people with political demo-

cracy with the possibility of establishing economic democracy. It is the duty of each citizen to be alert and exercise enlightened judgement in its exercise. No democracy can exist and grow unless the citizens are cautious and eager to defend it. In India there are already certain elements who oppose democracy and federalism and plead for establishment of dictatorial regimes. The Indian citizens have to fight against such elements.

It is true that the Constitution does not provide all what was needed to guarantee economic and social justice. It could not because of the circumstances and conditions in which it was born. However, the Constitution does provide a constitutional machinery which can be utilized for establishment of such conditions that economic and social justice could prevail. It is only by extending the democratic features of the Constitution that this cau be achieved.

POINTS TO REMEMBER

The Indian Constitution is criticised on the following grounds : (a) It lacks originality. It is mainly an adaptation of Government of India Act 1935. ***(b)*** It is un-Gandhian in essence as it does not fulfil the conception of Ram-Rajya. (c) The fundamental rights guaranteed in the Constitution are mostly unreal. (d) The Directive Principles of State Policy are illusory, (e) Emergency powers of the President are undemocratic. (f) Ordinance issuing powers of the executive heads do not correspond to the spirit of democracy, *(g)* The Constitution establishes a highly powerful Centre under the superficial federal structure, *(h)* The Constitution was not made by a representative Constituent Assembly.

CHAPTER XIX

MISCELLANEOUS QUESTIONS

Q. 48. Write notes on the following ;

(1) Election Commission. (2) Finance Commission. (3) Commission for Backward Classes. (4) Inter-State Council. *(5)* Attorney-General. (6) Comptroller and Auditor-General.

Ans. 1. The Election Commission: The Constitution provides for the establishment of an Election Commission for India. It is a statutory body. It is made independent of the Executive and the Legislature. It is a permanent body. It is made independent to ensure free and impartial elections in the country without interference from political parties in power.

Composition : The Election Commission consists of the Chief Election Commissioner and a certain number of members to be fixed by the President from time to time. They are appointed by the President subject to the provisions laid down by Parliament in this respect. The President may also appoint Regional Commissioners to assist the Election Commissioner before the commencement of the general elections to the State Legislature or Union Parliament.

Their term of service is to be fixed by the President in every individual case. The Chief Election Commissioner once appointed cannot be removed by the President in an ordinary manner. He can be removed by the President if he is presented with a resolution passed by each House of Parliament by absolute majority and 2/3rd majority of the members present and voting. The conditions of his service cannot be varied to his disadvantage after his appointment. Other members of the Commission or Regional Commissioners can be removed from service by the President on the recommendation of the Chief Election Commissioner. The President or the Governor shall make available when so requested by the Chief Election Commissioner or the State Regional Commissioner respectively such staff as may be necessary to discharge their duties.

Functions : (1) It supervises, directs and controls all elections. (2) It prepares electoral rolls for elections to the Parliament and State Legislatures and Presidential and Vice-Presidential elections. (3) It appoints election tribunals for the settlement of disputes arising out of elections to the Union and State Legislatures.

Besides, it deals with matters pertaining to reservation of sea 8 for scheduled castes and tribes, determination of population for purpose of election, determination of constituencies, qualifications of

members of Parliament and State Legislatures, voting system, administration of elections and declaration of results, etc.

2. The Finance Commission : Article 280 of the Constitution provides for the establishment of a Finance Commission within two years from the commencement of the Constitution. Thereafter a new Finance Commission shall be appointed every fifth year or earlier as decided by the President.

The Finance Commission consists of a chairman and 4 other members. They are appointed by the President on the basis of qualifications as provided for by the President.

Qualifications : The Parliament determines by law the qualifications of the members of the Commission. It also determines the manner of selection. It also lays down its powers in the performance of its functions. According to the law of Parliament, the Chairman shall be one who has had experience of public affairs. The other members shall be selected from amongst those, who

(1) are qualified to be appointed as judges of a High Court ; or

(2) have wide experience of financial and administrative matters ; or

(3) have special knowledge of finances and accounts of the Government; or

(4) are eminent economists.

The Commission determines its own procedure and has powers of a Civil Court. It has the power to require any persons to appear before it and furnish information which may be useful for its work.

Functions : *(a)* It is to advise regarding the distribution of taxes which are divisible between the Union and the States, and their allocations between States.

(b) It is to recommend the principles on which grants-in-aid should be paid out of Union revenue to the States.

(c) It is to make recommendations regarding the financial relations between the Union and the States.

(d) It is to advise the President regarding any other financial matter referred to it.

3. The Commission for Backward Classes : There are many backward classes and communities in India. It is absolutely necessary that these classes should be raised to a higher social and educational, cultural and economic standard. With this end in view, the Constitution provides for the establishment of a Commission for backward classes. The members of the Commission are to be appointed by the President. The Commission is to submit its report

in respect of the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union and State Governments to remove such difficulties and improve their conditions. It further makes recommendations regarding the grants that should be made for the purpose. by the Union or any State. The Commission shall also investigate the matters referred to it by the President. All recommendations made by the Commission shall be placed before the Parliament for consideration and enactment.

4. The Inter-State Council: Article 263 of the Constitution provides for the establishment of an Inter-State Council. The members of the Council are to be appointed by the President. The Council is charged with the duties of inquiring into and advising upon disputes which have arisen between the States of the Indian Union. It is to make recommendations for co-ordination in different spheres of governmental activity among the various States. The Council is primarily meant to deal with the disputes between the States in respect of inter-State rivers and river valleys. Parliament may by law exclude the jurisdiction of the Supreme Court or any other court regarding such disputes.

5. The Attorney General : Article 76 of the Constitution provides that the President of India shall appoint a person who is qualified to be appointed a judge of the Supreme Court to be the Attorney-General of India. The main function of the Attorney-General of India is to advise the Government of India on such legal matters as are referred to him. He is to represent the Union Government in legal disputes. The President may assign to him any other duty. In the performance of his duties he has the right of audience in all courts in the territory of India. He holds office during he pleasure of the President and receives such remunerations as the President may determine.

The office of the Attorney-General is similar to the corresponding office in the U.K. It is more or less a political appointment as it is generally the choice of the ministry in saddle.

6. The Comptroller and Auditor-General: The Comptroller and Auditor-General is a very important functionary of the Government. His office is indispensable for the enforcement of Parliamentary control over finance. He holds an independent and responsible position. He is appointed by the President. He can be removed from office in the manner in which the judges of Supreme Court can be removed. His salary and allowances are determined by law of Parliament. The administrative expenses of his office including his salary and allowances are charged on the Consolidated Fund of India. After his retirement, he is not eligible for government service.

Functions : (1) He controls and audits the accounts of the

Union Government and the State Government. He is to see that requirements of the law as to the issue of public money are duly observed. He is to see that the expenses voted by the Parliament and the State Legislatures are not exceeded or varied. He is thus the custodian of the public purse and controller of public expenditure.

(2) The Parliament may extend his powers in relation to the accounts of any other authority like the State Corporations.

(3) The accounts of the Union and State Governments shall be maintained in such form as may be prescribed by the Comptroller and Auditor General with the approval of the President.

(4) He helps the Public Accounts Committee of the Parliament in its work.

(5) He is to satisfy himself that those who sanction expenditure have the authority to do so.

(6) He is to see that the financial rules and orders which have a bearing on governmental expenditure are observed and obeyed.

He submits an annual report regarding the state of Union finances to the President and regarding the position of State finances to the heads of the States. Such reports must be laid before the Parliament and the State Legislatures concerned.

Q. 49. Make out a case for and against Reorganisation of States on the basis of language.

Ans. The problem of the formation of linguistic States was one of the many thorny problems with which the infant State of India was confronted immediately after Independence. British India was divided into various administrative units known as Provinces. These Provinces were organised primarily from the point of view of administrative convenience regardless of linguistic and cultural unity of the people. Thus they came into existence as a consequence of historical processes for the spread and consolidation of the British Power in India as the foreign rulers organised these administrative units without reference to the hopes and aspirations of the people concerned and in complete disregard of the linguistic and cultural patterns of -diverse areas.

During the latter part of the British Raj the people started demanding re-organisation of Provinces on linguistic basis and expression was given to the popular demand in this behalf in the resolutions adopted by the Congress at all relevant times. As a matter of fact the demand for linguistic Provinces was a part of India's struggle for liberation. With the advent of Independence, however, this question assumed tremendous importance. From every part of the country, a voice was raised that this sub-continent should be re organised on linguistic basis. Having due regard to the wishes of the people, the Government of India appointed a high

power Commission for the reorganisation of the States. It consisted of Mr. Fazl Ali, Mr. K.M. Pannikar and Pt. H.N. Kunzru Mr Fazl Ali was the Chairman of the Commission.

The re-organisation of the States was an uphill task. The language and culture of an area having an importance of their own could not be easily ignored. Our late Prime Minister Nehru emphasised the fact that the aspirations of the people of each linguistic unit should be reconciled with the aspirations of the nation.

There are many arguments which can be put forward for the formation of linguistic States.

In the first place, we are a democratic State. The strength of democracy lies in the will of the people. If democracy fails to fulfil the wishes of the people it cannot remain stable. Redistribution of the States on the basis of language being demanded by the people, the States should be reorganised on the basis of language.

Secondly, the language and culture of an area, as has been admitted by our late Prime Minister Nehru, have an undoubted importance, as they represent a pattern of living which is common in that area. In order that these regional languages and cultures may develop and unfold their potentialities, they must administratively be organised on the basis of language. This does not mean that re-organised or reformed States must correspond, in every case, to a single linguistic territorial group. It means that the States should be reformed or re-constituted with reference to the main language of the territorial groups in question, keeping in view the legitimate claims of cognisable and sizable linguistic minorities.

Thirdly, the formation of linguistic States will bring about real and psychological unity among the diverse elements of Indian population. This is the experience of history. Unity cannot be imposed from without. It grows from within. Soviet Union has accorded equal treatment to the languages of its sixteen Unions or Constituent Republics. The same principle has also been adopted in countries like Switzerland, Canada and South Africa. Thus it is a tried method which has brought about peace and prosperity to a number of countries. There is no reasonable cause for fear that the formation of linguistic provinces would lead to territorial disintegration in India, on the other hand, it will promote unity and friendship.

Fourthly, the then existing States were not formed on any rational basis. They were created to suit the administrative convenience of the British Government. These States were the result of historical necessities. Now it was high time that the redistribution of States should take place on some other basis which is democration in nature. The reorganisationg of States on the basis of language such a basis.

Fifthly, the Congress resolution on Fundamental Rights passed

in 1937 conceded that the main purpose of the creation of linguistic States was that the culture, language and script of the minorities and the different linguistic areas shall be protected. Now Congress Party has become the ruling party. It should stick to its pledge and make good its promise. The problem of redistribution of the States is much simpler than it was during the days of British Raj. There is no longer that old division of this sub-continent into British India and Native India. Moreover, the Hindu-Muslim controversy has been solved by the Partition of India. If the Congress and its leaders, in these circumstances, failed to make good their promise they would be guilty of betrayal.

Lastly, the formation of States on the basis of language will bring to an end the state of uncertainty and unrest that might be prevalent in certain States. The internal dissensions and bitterness in the multi-lingual States have undermined their economic development. These and many other problems can be solved through re-organisation of States on linguistic basis.

There are many arguments which can be put forward against the formation of linguistic States. In the first place, re-organisation of the States on the basis of language will result in partition of India into a number of States. Indian people have had a very sad experience of the partition. The partition of the country into Hindustan and Pakistan has brought untold miseries for the masses. Further partition will spell greater disaster and foster fissiparous tendencies. Moreover, the formation of the States on the basis of language will undermine the security of the country.

Secondly, it is wrong to suppose that under the existing set-up of administration, the different regional languages and cultures will not get the opportunities for proper development. The Constitution of India provides ample means for the protection, preservation and development of language, script and literature. All linguistic minorities have the right to establish and administer educational institutions. The State will not discriminate against any such institution in granting aid. The linguistic minorities will have all the educational facilities available to the majority. Thus the different languages and culture can be safeguarded easily under the Republican Constitution without taking recourse to the formation of States on basis of language.

Thirdly, the redistribution of the States is not an easy affair. A number of factors are to be taken into account. The formation of the States on the basis of language will tremendously affect the social, political and economic life of the country. Geographical factors must also be taken into account. The partition of the existing States into smaller units will make economic exploitation of their resources a difficult affair. In certain States, like Punjab and Bengal some problems regarding defence will arise. Moreover, the parcelling out of the country into a number of States will result in increasing the cost of administration.

Fourthly, as pointed out above, many States formed on linguistic basis may not be able to set up the modern system of administration. The size of some of the States will be very small and they will not be able to bear the cost of administration. Thus they will not be administratively viable. They will not be able to afford a modern efficient system of administration.

Fifthly, India is passing through a critical phase of her history. There are problems more important than that of linguistic States which demand high priority. The question of regrouping of States is bound to create new complications and problems. These difficulties which will thus arise will create unnecessary headaches for the Central Government. Nothing will be lost if the regrouping of the States was to be delayed for some time.

Whatever may be the arguments against the formation of linguistic States, none can deny that the formation and regrouping of the States on the basis of language had become the need of the hour. The set-up of the administration was based on expediency and historical necessities. It did not take into account the sentiments and aspirations of the people. India is the land of many languages. Being independent today, it is our sacred duty to preserve the different languages and culture of our country. Only then shall we be able to achieve the unity for which we aspire so much. The fear that the redistribution of States on the basis of languages will create fissiparous tendency is baseless. The distribution of the states on the principle of language has not resulted in disaster in various states of the world like the U.S.S.R. and Switzerland. Such a redistribution has instead brought happiness for the people. Moreover Congress itself, during the period of struggle for independence, demanded the formation of linguistic States. It had taken a pledge to achieve this aim. Now, being the ruling party it took a wise step in setting up a States Reorganization Commission which submitted its report in 1956. It is heartening to note that it unambiguously gave it verdict in favour of formation of Linguistic States and that many of its proposals have already been implemented.

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THE CONSTITUTION
OF
THE UNITED STATES OF AMERICA

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty ; because apprehensions, may arise, lest the same monarch or Senate should enact tyrannical laws, and execute them in tyrannical manner. Again there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

But constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority until he is confronted with limits. Is it not strange that we are obliged to say that virtue itself has need of limits ?

Liberty is a right of doing whatever the laws permit : and if a citizen could do what they forbid he would no longer possess liberty, because all his fellow citizens would have the same powers."

—Finer

''The American Constitution was consciously and elaborately made an essay in the Separation of Powers and is to-day the most important polity in the World which operates upon that principle.

—Finer

CHAPTER I

INTRODUCTORY

In the firmament of world politics today, the name of the United States of America shines like a comet. It is regarded both as a horror and as a guide. To the teeming millions of Asia, the U.S.A. is the champion of imperialism and a supporter of colonialism—a conspirator against their freedom and independent existence. To the Western democracies of Europe, the United States of America is the builder of their shattered economy, saviour of their entity, a sentinel to protect them against the alarming advance of communism.

The history of United States of America is only four hundred years old. It has its own importance for the student of constitutional history and politics. It holds a singular interest because upon it have played most of those historical factors and forces which have moulded the history of the world such as imperialism, nationalism, industrialism, and democracy. It is here that the philosophy of John Locke which was propounded to stabilise the Glorious Revolution became the basis of another memorable revolution against the tyranny of Englishmen themselves. It is here that the celebrated doctrine of 'Separation of Powers' expounded by Montesquieu was for the first time accepted and strictly adhered to. It is here that the concept of 'Union without unity' (of federation) was for the first time mooted and proved practicable. Most of the countries of the world which chose a federal form of government have drawn inspiration from the Constitution of the United States of America.

Land and the People. The area of the United States of America is 3,022,387 sq. miles. It occupies about one nineteenth of the land surface of the globe. It lies in the temperate zone of the North American Continent, stretching 3,000 miles from the Atlantic Ocean on its East, to the Pacific Ocean on its West. On the North it is bordered by Canada and on the South by Mexico. It has several mountains some of which rise to an altitude of more than 14,000 feet. It has eight prominent rivers which make the land very fertile. The five great lakes, forming part of the boundary between the United States and Canada, comprise the largest inland body of fresh water in the world.

The population of the United States is 195 million. Nearly two to three per cent of the population consists of Negroes. About two-thirds of the people live in towns and cities and nearly one-third in the rural areas. The population shows certain peculiar trends in the U.S.A. There is a slight preponderance of women over men. The population of the towns is now on the increase and people are drifting towards the west coast of the country.

Production and Industry. Nature has been kind to the United States. She is rich in mineral resources. Coal, iron, copper, lead, zinc, silver, gold and mercury are found in abundance. Petroleum is also found in large quantities. The principal crops produced in the U.S.A. are wheat, oats, barley, rice potatoes, cotton, sugarcane and tobacco. Forest land occupies about one third of the United States.

The United States of America is an industrial country. The principal industries are motor vehicles, steel work, meat packing, petroleum, chemicals, liquors, paints and industrial apparatus. She exports automobiles, aircraft, coal, cotton, iron and steel products. She imports beverages, watches and clocks, coffee, jute products etc.

Education. The percentage of literacy is very high in America. Near about 98.9 per cent of the people are educated. Free, schools are established and supported by the States. Education up to the age of 16 years is compulsory both for boys and girls. Harvard, Chicago, Yale and Columbia are the leading Universities. The Americans also take part in sports, popular sports being tennis, skating and swimming.

Religion. Religion gets voluntary support from the people. The government gives no aid to the churches. The early settlers of America had suffered at the hands of religious fanatics. They knew, very well the importance of separation of the church from the the State. Hence the separation of the church from the State is a cardinal principle of the U.S. Government. The principal religious organisations are the Protestants, the Roman Catholics and the Jews. The freedom to worship according to one's own conscience is protected by the Constitution.

Constitutional Development. A study of the history of the Constitution of the United States of America shows how the form of the constitution has been moulded by the exigencies of time. It was the peculiar set-up of the thirteen colonies which led to the evolution of the federation. These colonies situated on the Atlantic side and largely peopled by English settlers, were of three different classes. Firstly, there were Crown Colonies each of which was ruled by a Governor appointed by the British King. He was assisted by a Council in the conduct of administration. The second class of colonies were called the Proprietary Colonies. These colonies were under the individuals who had been given the right to exercise the powers of government. Lastly, there were the Charter Colonies in which the powers of government were conferred directly upon the free men of the colony.

In the matter of government during the early part of the eighteenth century, the colonies had acquired a large measure of self-government. The colonial assemblies, elected by the people, had the right to initiate legislation. They managed local trade, police and had the right of taxation to meet the local needs. The mother-

country, however, controlled and regulated foreign trade and that, also to her own advantage. The mother-country controlled foreign affairs, navy and army and decided questions concerning war and peace. This was resented by the colonies. Naturally, a conflict between the colonies and the mother-country ensued. The colonists, did much to harass the representatives of the King. The Governors and other officers sent out from England were also persons of little tact and discretion. The result was a very great conflict of interests, between the rulers and the ruled.

There was another cause of conflict also. The early settlers of America had brought with them certain institutions of their mother-land. They worked these institutions in their new homes. One of these institutions was the English Common Law, which embodied those fundamental rights of the individuals, which even the King must respect. These rights could not be destroyed even by the parliament. It was the conflict over these rights that resulted in enmity between the colonists and the mother-country.

The Declaration of Independence. So long as the menace of the French and the Spaniards existed in North America these colonies meekly submitted to the dictates of the mother-country, but with the extinction of the French and Spanish power in the Seven Years' War, things took a new turn. A historian remarks that with the triumph of Wolfe on the Heights of Abraham, began the history of the United States. With the removal of the menace of the French holdings and pressure of the Spaniards, the colonists' dependence over Britain came to an end. Now they could freely demand the the right of self-taxation. When this was denied, the colonies began to prepare for war. A Congress of representatives of the States was called at Philadelphia in 1775. The Congress appointed George Washington, the Commander-in-Chief of the army. The French promised aid and ultimately the thirteen colonies declared war against England. On 4th July, 1776 was published the 'Declaration of Independence'. It was declared that colonies "are free and independent States. They are absolved from all allegiance to the British Crown and as free and independent States have full power to declare war, conclude peace, contract alliances, and to do all other acts and things which independent States may of right do."

Establishment of Confederation. With the 'Declaration of Independence', begins the independent history of the United States. The colonies as a consequence of the declaration became independent of the Crown and politically independent of others. Thus the first thing to engage their attention after the 'Declaration of Independence' was to prosecute the war unitedly. On 11th July, 1775, a Committee was appointed which drafted the Articles of the Confederation These Articles were approved by the Congress of the States on 15th November, 1777. The first of these Articles named the Confederation 'the United States of America.' The second Article stated that each State retained its sovereignty, freedom, independence and every

power, jurisdiction and right, which was not by this Confederation expressly delegated to the Congress.

But each State was eager to guard its own individual entity. They had come closer only for some very specific purposes and this fact was made clear in the third Article which stated, "The said States hereby severally enter into friendship with each other for their common defence, the security for their liberties and their mutual and general welfare, binding themselves to assist each other against all forces offered to or attacks made upon them, on account of religion, sovereignty, trade or any other pretence."

The Congress established by the *ad-hoc* constitution, was the only common institution of the Confederation. It consisted of the delegates of the States, each being entitled to send not more than seven and not less than two representatives. Each State had one vote. During the recess of the Congress, a Committee of the State composed of one member from each State was entitled to do any thing which the Congress was authorised to do.

It is clear from the above description that the Confederation was a loose "Union of States". The Articles of Confederation were hardly anything more than conventions. They had no binding force. The Congress of States was to control the affairs of the States, but it had no real powers. It was merely a consultative and advisory board. It could only tender advice. It could not compel any State to obey its dictates. The weakness of the Confederation became apparent soon after the war. In the words of Wilson, it was a rope of sand which bound none.

The war lasted for eight years. The Britishers recognised the independence of the colonies by the treaty of Versailles in 1783. Soon after the victory, there was a crisis in the life of the infant nation. It has been remarked above that the Confederation of States was only a very loosely knit body. As soon as the common danger which brought the States together was over, inter-State jealousy began to develop. The trade suffered heavily. Anarchy and chaos reigned supreme. But soon luck favoured the United States of America. An opportunity presented itself and the leaders of the nation succeeded in retaining their union intact.

The Philadelphia Convention. It has been remarked above that as soon as the War of Independence was over, inter-State bickering developed. The States of Maryland and Virginia quarrelled over the question of navigation of the river Potomac. In order to decide this dispute and also to consider the extension of the powers of the Confederation with regard to commerce, in September, 1786, a conference was called at Annapolis. Only five States attended the conference. Alexander Hamilton, one of the delegates induced the conference to call upon the Congress to summon a convention of delegates of all the States to meet at Philadelphia to consider the question of amending the Articles of the Constitution. Accordingly the Congress summoned the famous Confederation Conventional at

Philadelphia in 1787. Seventy three delegates were sent by twelve States as Rhode Island did not participate. The delegates to the Convention were all experienced persons. George Washington, James Madison, Alexander Hamilton, Benjamin Franklin and James Wilson were some of the highly talented and distinguished personalities. They approached the problem in a very practical way. They had two aims before them. One was to establish a stable Central Government to bring order and cohesion among the States and second was to preserve as much as possible the independence of the States. Prolonged discussions were held. Various formulae were put forward and considered. Ultimately after sixteen weeks of hot discussion, on September 17,1787, a brief document embodying the constitution of the new government of the United States was signed unanimously by the States present. It was ratified by conventions in nine States as agreed upon in the Philadelphia Convention and enforced on 4th March, 1789.

The constitution radically changed the character of the United States. It established a federal government allowing maximum liberty to the States. At the time of adoption of the constitution, some of the States kept out of the new federation, but later joined it. The number of States gradually rose from the original 13 to the present 50. The U.S.A., thus today is a federation of 50 States.

".....yet after all deductions, the U.S. Constitution ranks above every other constitution for the intrinsic excellence or its scheme, its adaptation to the circumstances of the people, its simplicity, brevity and precision of language, its judicious, mixure of definiteness in principle with elasticity in details."

CHAPTER II

GENERAL FEATURES

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 probably the briefest Constitution in the world. Originally it consisted of 7 Articles, but 24 Amendments have been added to it during the last 178 years. The constitution presents a classic example of its rigidity. The Separation of Powers, a doctrine propounded by Montesquieu, had found favour in the American Constitution in a way unknown to any other constitution in the world. The application of the principle 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 U.S. 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 people, its simplicity, and precision of language, its judicious mixture of definiteness in principle with elasticity in details."

Q. I. Analyse the salient features of the Constitution of the United States of America.

Ans. The Constitution of the United States is characterised by certain special features, some of which may be summed up as follows :

I. Written Character. Like other federal constitutions in the world, the American Constitution is written in form. It is a brief document consisting of only 7 Articles and 24 Amendments. Indeed it was a skeleton constitution since the framers of the constitution left the details to be filled in by the Acts of the Congress. The constitution was thus a starting point or 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, he is now directly elected.

2. Rigidity. The United States Constitution is probably the most rigid constitution in the world. It can be amended by a very 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 fourths of the States. The rigidity of the' constitution is obvious from the fact that during the 17 •> years it has been in operation, only 24 amendments have been made in the constitution.

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 bv the Supreme Court of the U.S.A.

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 Supreme Court.

5. Separation of Powers. The U. S. Constitution is based on the doctrine of '*Separation of Powers'*. Although 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 directly 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 term 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, today, the Separation of Powers has been limited to a very large extent. The President, today, controls the legislative policy. This fact was established in the time of Roosevelt administration. This ensures co-ordination between the executive and legislative branches of the government.

6. Checks and Balances. Recognising the importance of close co-operation 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 legislature. The Senate shares with the President his powers of making appointments to the various federal offices and conclusion of treaties and agreements with foreign States. All such appointments and treaties must be ratified by 2/3 majority in the Senate. Through this power, the Senate controls the internal administration and externa] policy of the President. The organisation of federal judiciary is determined by the Congress and the judges of the 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.

7. Bill of Rights. The constitution guarantees fundamental Tights of person, property and liberty. It is, however, noteworthy that the 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, 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.

8. Judicial Review. The constitution provides for 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 government by the judges.

9. Republicanism. 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. The constitution provides for the Pres dential type of government in the U.S.A. All powers are vested in the President. Though the constitution provides for indirect election of the President but in practice his election has become direct. The President is not politically 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, nor he may hold majority in it. The members of his Cabinet are neither members of the Congress nor answerable to it.

II. 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 wherein he or she is domiciled. It is in contrast with the idea of single citizenship as incorporated in the Constitution of India.

POINTS TO REMEMBER

The U. S. Constitution is written in form. It is rigid. It is federal in character with a weak centre. It is based on 'separation of powers' with a system of checks and balances. It derives its authority from the people. Supremacy of the constitution is guaranteed through the doctrine of judicial review. It contains a Bill of Rights for the citizens. It provides "for the Presidential type of government. The citizens of the United States enjoy dual citizenship.

Q. 2. Discuss the various factors responsible for the evolution of the American Constitution with special emphasis on the role played by the conventions.

Ans. The original Constitution of the United States of America consists of seven Articles containing not more than seven 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 1789 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. The various factors which have led to an all round development of the American Constitution may be summed up as follows :

I. Amendments : Though the process of amending the constitution has been extremely slow yet it has led to its growth. There have been only twenty-four amendments to the constitution during the last 175 years. 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 and twelfth amendments removed some ambiguities in the constitution. The thirteenth amendment abolished slavery in America. The fourteenth amendment regulated citizent ship. Equal rights of the white and coloured people were established by the fifteenth amendment. The sixteenth amendment authorised the federal government to tax incomes, without apportionment among several States. The eighteenth amendment prohibited the

manufacture, sale and transportation of intoxicating liquors. The nineteenth granted suffrage to women. The twentieth changed the dates of the beginning of the sessions of the Congress and of assumption of office by the President. The twenty-first amendment repealed the eighteenth amendment but prohibited the transportation of intoxicating liquors into a State against its laws. The. twenty-second amendment regulated re-eligibility of the Presidents. As a consequence of these amendments, vital changes have been introduced in the original constitution.

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 organization 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 twenty-four amendments. The constitution made provisions for the establishment of the Supreme Court, but its organization, 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 organization of the administrative departments. The Congress, by law determines their number, functions, organization, etc. All these laws dealing with the organisation and functioning of the government have expanded and enriched the constitution to a great •extent.

3. Judicial Interpretations. 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." 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, telegraphy, aeroplanes and radio all owe their origin to decisions of the Supreme Court. The Supreme Court has strengthened the centre at the cost of the 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. 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.

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 last 178 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 :—

1. 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.

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

3. The system of Senatorial Courtesy according to which the Senate accepts the recommendations made by the President for the appointment of the federal officers, is the result of a convention. Similarly, the rule that a candidate for election to the House of Representatives should belong to the constituency which he seeks to represent is based on a convention.

4. The practice of keeping the leader of the majority party in the Senate informed about the progress of treaty-negotiations by the President is also the result of a convention.

The above description shows that conventions play a significant part in the working of the Constitution of the United States. But it must be remembered that the extent of conventional element in the American Constitution is much less than that in the British Constitution.

POINTS TO REMEMBER

The Constitution of America is a small document consisting of only 7 Articles and some 7,000 words Later, the constitution was developed enormously by the addition of amendments, laws passed by the Congress, judicial interpretations and conventions. Each of these factors played its part in the growth of the constitution. But the most vital role was played by the development of conventions which have practically transformed the spirit of the constitution.

"The Constitution of the U.S.A. is the most completely federal Constitution in the world." —*C.F. Strong.*

CHAPTER III

FEDERALISM OF THE U.S. CONSTITUTION

The Constitution of the United States was framed by the original 13 member States under an atmosphere characterised by jealousy, bitterness, suspicion and political fear. The federation came into existence under the pressure of circumstances although the original member-States wished to maintain their political independence. The federation was thus a compromise between the centrifugal and centripetal tendencies. It was just out of fear that a weak Central Government was sought to be established by the Constitution. All possible efforts were made to protect the rights of the States against the encroachment of the federal authority. Although the framers of the Constitution gave extremely limited authority of the federal government yet under the impact of new economic and political forces, the Centre has assumed enormous authority in various spheres originally excluded from its jurisdiction. The Supreme Court has come to its rescue and has enhanced its authority through the doctrine of *'Implied Powers'*.

Q. 3. Discuss the scheme of division of powers in the American Constitution. Account for the increase of powers of the federal government.

Ans. The United States Constitution is federal. Originally, it consisted of 13 States, now it contains 50 units. It was established through centripetal process. The thirteen independent sovereign States surrendered some of their powers and created the Union (United States of America). Naturally enough, they surrendered as little powers as could be possible. The federal government has, therefore, delegated and specified powers. All other powers not reserved to the federal government or to the people were vested in the States. The residuary powers thus lie with them. 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 legislatures 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 what the States cannot do.

The constitution (Art. 1, 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 Unites 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.

The other two lists detail powers which are forbidden to the Centre and the States respectively. Section 9 of Article 1 forbids the 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 of 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 powers granted to the Centre and forbidden to the States, vest 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 consistence 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.

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 ; Judicial interpretations, amendments, laws and regulations of the Congress and President, emergencies, personality of President etc. The Supreme Court has so interpreted the constitution that the powers of the federal government have increased even at the cost of States. It developed the doctrine of 'Im*plied 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 clause giving to 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 good the authority to establish and control exclusively the Central Bank of the United States. This is how the Federal Government has acquired much authority which was originally not granted to it by the**

Many amendments have increased the powers of the federal government. The fifteenth amendment gave the powers of judicial review to the Supreme Court over state legislation. The sixteenth amendment of the constitution 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. The Congress has made many laws which have widened its powers. Similarly, Presidents have issued rules and regulations in the exercise of their authority widening the federal government. Presidents like Lincoln, Washington, Roosevelt, Wilson have exercised dictatorial powers. They have taken action even without expressing constitutional justification. President Lincoln declared war against Southern States on the question of slavery. Roosevelt's 'New Deal' policy has widened the control of Federal Government over subjects originally within State jurisdiction. Further, the growth of international relations and commerce has also enabled the Federal Government to widen its sphere of authority. Recently leadership of the United States of the western states has placed unrestricted power in the hands of the Federal Government. In times of emergencies like economic depression, war and post-war period, the people of the United States look to the national government for solving all international problems in which the country is directly or indirectly involved.

The federal government makes grants-in-aid to State governments and even local bodies. Fourteen per cent budget of States comes through these grants. Naturally the Federal Government reviews and examines the schemes and policies where this money is spent.

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.

POINTS TO REMEMBER

The Constitution of the United States enumerates three lists of subjects, *viz.,* a list of what the Congress can do, a list of what the Congress cannot do -and a list of what the Slates cannot do. In the scheme of distribution of powers, the federal government was sought to be very weak and the States were ®iven a position of vantage. But the Supreme Court through the application of the doctrine of 'Implied Powers' has considerably increased the powers of the Federal Government. Its powers have also increased through constitutional amendments and development of international relations of the United States.

Q. 4. Describe the process of the amendment of the Federal Constitution of the U. S. A. Examine critically the rigidity of the U.S. Constitution.

'The fathers of the American Constitution were cautious to avoid all possibilities of capricious alterations in the Consti-

tution.' (*Munro*). In the light of this statement, discuss the mature of rigidity of the U.S. Constitution.

Ans. One of the essential features of federalism is the rigidity of the constitution. The U.S. Constitution 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 may be carried. They are as follows :

1. An Amendment may be proposed by two-thirds majority in each House of the Congress. It must be ratified by three-fourths of the total number of the States. The ratification may be done either by State legislatures or by special conventions held in the States for this purpose. The mode of 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 State 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 amendment. These amendments must be ratified by 3/4th of all the States either through their legislatures or at specially called conventions. The mode of ratification is to be determined by the Congress.

Out of 24 amendments which have been carried 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 (the 18th Amendment had enforced prohibition) was ratified by conventions in the States.

Some Peculiarities 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. One State, for example, ratified a proposal after 80 years. But now the Congress by its resolution can place a time-limit on ratification. As for example, in the case of 18th, 20th and 21st amendments, it clearly laid down that the 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 has rejected once, it can ratify it later provided it feels like revising its decision.

(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 of members present and voting. As a matter of practice, it is the latter scheme which prevails.

(d) There are, moreover, certain provisions which cannot be amended. For example, the right of every State to equal repremention 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.

Criticism of Amending Process : (1) The system of amending the U.S. Constitution is extremely rigid. Between 1789 and 1965 nearly 1900 proposals of constitutional amendment were moved, but only 24 were finally accepted. This shows that U.S. Constitution, lacks the virtue of adaptability with the change of time.

(2) Undue rigidity sometimes hampers the path of democratic forces. If, for example, an amendent is ratified by 35 States which, may have an absolute majority of the American population, the opposition of one small State can stop it from being effective. In other words, thirteen small States with, say one-tenth of the total population may decide to oppose a proposal for constitutional amendment and may thus prevent nine-tenth of the people from effecting any change in the constitution. Thus the U.S. Constitution envisages consent of the States and not the population. This is considered to be against the spirit of democracy. The minority shall defeat the majority.

(3) The procedure for amendment is extremely difficult. It is not even easily possible to secure two-thirds majority in the Congress in favour of a constitutional amendment. Out of all the proposals made for constitutional amendment, only 27 could be passed by two-thirds majority in the Congress. Out of these 27 proposals, only 22 were ratified by the required number of States. It has therefore, been suggested that only majority vote in the Congress and subsequent ratification by two-thirds of the States should be made necessary for constitutional amendments. But this suggestion has not been seriously considered.

Despite much of criticism, the American people have proved to be flexible, and have changed the constitution if it was demanded 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."

POINTS TO REMEMBER

The U. S. Constitution is very regid. It can be amended by two different methods—but in both of them it requires ratification by at least three-fourths of the number of States. The amendment may be proposed by two-thirds majority in both the Houses of the Congress and then it must be ratified by three-fourths of the States. The States themselves may propose an amendment if two-thirds of them apnly to the Congress for this purpose. The method of Constitutional amendment in the U.SA. is so very difficult that during the last 177 years, only 24 amendments could be carried.

Q. 5. Discuss the doctrine of 'Separation of Powers as incorporated in the American Constitution. How has the separation been affected by the system of 'Checks and Balances' ?

Ans. 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. Tn India, for example, all executive power of the Union is vested in the President, but the Parliament consists of the President and 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 the fathers of the American Constitution were deeply impressed by the theory of 'Separation of Powers' as propounded by Montesquieu. In their attempt to make the three wings as separate as possible, they have made each one of them independent from 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. The federal judiciary is also independent of both the executive and the 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 weaken the authority of government further, the fathers of the Constitution introduced *checks and balances,* so that one organ obstructs 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.* 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 Tatify the Treaty of Versailles which had been accepted by the 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 his external policy through its power of ratifying all treaties, and agreements to be made with foreign States. The Senate, moreover, is the court of impeachment against the President and other high officials of the United States. The President, in turn, controls the Congress in the sense that all Bills passed by the Congress must be submitted to him for his signature. He may veto a Bill, in which

case the Congress can override it by re-passing the bill with 2/3 majority voting separately in the two Houses. He can exercise his. *pocket-veto* during the last ten days of the session of the Congress. Again, both the President and the Congress have certain checks on the judiciary. The President appoints the judges of the Supreme-Court in consultation with the Senate. Their salaries etc., are 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 veto. It can veto the laws passed by the Congress and the orders issued by the executive if they are found to be at variance with the spirit of the constitution. The Supreme Court sets the framework, both negatively and positively, within which the government works.

Thus we see that the principle of separation of powers has been considerably marred in actual practice by the principle of *checks and balances.* These two principles pervade the American politicial system, from top to bottom. According to Finer, the problems that have arisen as a result of this in the United States, have been very obstinate and have frustrated the modern social will. In his 'American Government and Polities', Charles Beard states, "By the time a proposed law runs the gauntlet of all these independent agencies of government, the passions of those who support it are likely to be cooled and the will of majority tempered by much reflection."

But there are others who regard this system of checks and balances as a necessary corollary to the principle of separation of powers. There can never be a complete separation if administration, is to be run smoothly. They say that in the American system, too, the ultimate power of the people does prevail. According to Lord Bryce, "The ultimate fountain of power, popular sovereignty, always flows full and strong, swelling up from its deep source, but it is thereafter diverted into many channels each of which is so confined by skilfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any. point where the stream threatens to break through."

POINTS TO REMEMBER

The principle of separation of powers is one of the most important features of the American Constitution. The constitution establishes three separate and distinct organs of the government. The executive functions are vested in the President. The law-making functions are performed by the Congress and the federal judiciary performs the judicial functions. In order to avoid the rigours of the 'Separation of Powers' the constitution introduces a system of 'Checks and Balances.' The power of one organ is made a check upon the others.

PROBABLE QUESTIONS WITH HINTS

Q. 'If power is not to be abused then it is necessary in the nature of things that power be made a check to power.' In the light of this statement justify the system of checks and balances as introduced in the U.S. Constitution.

Q. 'The outstanding contrast between the Constitution of England and the U. S. A. is the great extent to which in the U.S.A. the legislature, the executive and the judiciary are independent of one another.' Elucidate. *(P.U. 1949).*

[For answer, refer to the question dealing with the separation of powers and checks and balances.]

"The American President provides a perfect illustration of a non-Parliamentary or fixed Executive." —*Sir B.N. Rau.*

CHAPTER IV

THE UNITED STATES EXECUTIVE

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 other countries too. But their authority is greatly limited by the powers of the legislatures. They are constitutional or nominal heads of their State. The Indian President, for example, cannot afford to 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 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 advisors. It has been rightly characterised as the 'President's Family,' and the head of the family, the President, inevitably dominates them.

Quite a number of factors are responsible for the state of affairs. The constitution is very clear and unequivocal in giving all executive powers to. the President. Secondly, he is directly elected by the people and as such enjoys, greater measure of popular support.

Indeed the American Constitution has made the President a real executive head rather than a titular one as is the case in Parliamentary governments.

Q. 6. How is the President of the United States of America elected ? Explain the difference in theory and practice regarding the election of the President. What is the position regarding his re-eligibility ? How is he impeached ?

Ans. 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 *2* members in the Senate, it 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 legislatures, 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.

The American political system moves along with the calendar. The Presidential Electors are elected on the Tuesday after the first Monday in November of every leap year. These electors meet in the capital of each State on the first Monday after the second Wednesday in December, 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 6th 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 State 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 U.S. 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 parties in each State, then, nominate their own candidates for the Presidential electoral college. The ballot papers are so printed that by one cross, a voter can vote for the whole list of Presidential electors put up by a particular party of his choice. The victory of a particular party in the election of Presidential electors means the election of that party's candidate to the Presidentship. The formal election in each State and counting of votes by the Congress, are conducted just as a necessary constitutional formality. Thus to all intents and purposes, the Presidential election in the United States has become direct. The country knows weeks before the actual date of election as to who is going to be elected. The voters in the States do not, in fact, cast votes for the Presidential Electors, but they cast a direct vote in favour of Presidential candidates whose names are already known to them. The election of the electoral college is just a formality. If the election of this intermediary body was to be excluded, the same result would accrue. Thus with the growth of strong political parties, the power of electing the President has been actually transferred with a formal constitutional amendment to the people although the framers of the constitution wished it otherwise.

Qualifications. The constitution provides that a candidate for Presidency must fulfil the following conditions :

(a) He must be a natural 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 a year. It has been revised from time to time and now it stands at $1,00,000 a year apart from various other allowances and privileges. Emoluments and allowances of the President cannot be reduced during the course of his office. He is entitled to the use of free residential accommodation known as the White House.

Tenure and Re-eligibility. The President of the United States holds office for 4 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 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 1951, the total term for any President has been fixed at a maximum of 10 years. It means that normally a person 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 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 he likes.

The Succession. The original constitution is silent as to who shall succeed to the Presidency in case both President and Vice-President die or their offices fall vacant on account of resignation or removal. The latest Act passed in 1947 prescribes the 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 State, the Secretary of Treasury and one or two other members of President's Cabinet.

Impeachment: The President may be removed from office before the expiry of his normal term through impeachment. The House of Representatives adopts by resolution articles of impeachment charging the President with certain high crimes and chooses ieaders 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 more than the removal of the President from office and disqualification to hold any office of trust and responsibility under the 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.

POINTS TO REMEMBER

The U. S. Constitution provides for indirect election of the President. He is to be elected by an Electoral College consisting of as many members as. there are in the Congress. Each State elects Presidential Electors equal to the number of its representatives in the Congress. A candidate securing absolute majority of votes is declared elected, failing which the House of Representives. elects one from amongst the first three candidates securing the highest votes. Although the constitution provides for indirect election yet in practice it has become direct on account of the growth of strong political parties. The President may be removed from the office before the expiry of his normal term through impeachment. The House of Representatives refers the charge against the President and Senate convicts him by its two-thirds majority.

Q. 7. Discuss the powers and position of the American President.

'The President of the United States governs but does not: reign.' (*Sir Henry Maine)* Elucidate.

Ans. 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. Haskin 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.

"The Constitution intended that the executive should be more than a mere executive : it very considerably modified the pure idea of the separation of Powers. He has become a very active legislative leader as well as an executive."—*Finer.*

(a) In the first place, the original constitution confers certain, powers and privileges, *(b)* 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 method 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) 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) 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. (e) Lastly, the powers of the President increase enormously during emergencies. The President, for example, had almost dictatorial powers during two World Wars.

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

HIS EXECUTIVE POWERS

1. 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 the courts and enforces the constitution and laws of the country. He is responsible to protect the Constitution, Laws and Property of the U.S.A. He can use the armed forces for this purpose.

2. 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. During war, President's military powers increase enormously. He becomes the sole incharge of war operations. During World War II, President Roosevelt was given almost a blank cheque to conduct war on the part of the United States. He became a sort of constitutional dictator.

3. Dictator 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. 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 organisation of the League of Nations, for example, were foiled by the hostile Senate. The fact of the matter is that 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. Then the President can enter into 'executive agreements' which do not require ratification by the Senate. President Roosevelt and Taft exercised this power freely. These agreements are no less important than others. Although the power to declare war vests in the Congress yet the President can make war unavoidable and necessary by his conduct in the administration. Then he has the exclusive right to terminate hostilities. 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 is again on account of the wilful policy of Presidents Truman, Eisenhower and Kennedy that People's Democracy of China has not yet been recognised by America.

All these facts clearly show that the President of the United States is the dictator of foreign relations, Washington, the first President, proclaimed the policy of 'American Neutrality' in 1793. President Munro enunciated the famous 'Munro Doctrine'. President Wilson and Roosevelt steered the ship of the State during the first and second world wars respectively. President Truman propounded his 'Truman Doctrine.' President Kennedy dictated American relations with foreign States with full vigour and force.

4. Appointments. The President makes a large number of appointments in 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 to by the President with the consent of the Senate and members of the Inferior Services' are appointed by the President alone, according to civil service rules. The officers belonging to superior category number about 1600 and 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 interfere in the President's choice regarding the appointments of his own Cabinet, i.e., heads of the federal depart-

meats, 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. The President, however, has no difficulty in this connection if his own party has majority in the Senate. A number of services especially of local nature are appointed by the President according to 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 comes into 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 reappointed by the President after the end of session if at all removed during session. Above all, it may be noted that the President has the sole right to remove federal officials from services. The President, however, cannot remove judges of the federal judiciary, members of various boards and commissions appointed under civil service rules.

HIS LEGISLATIVE POWERS

Consistent with the theory of Separation of Powers, the constitution confers upon the President a limited legislative authority. 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 has 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 possible with the British Prime Minister. The Congress may make laws against the wishes of the President, but 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' in practice. Some of his legislative powers may be summed up as follows :

I. 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 often days. This is known as *Pocket Veto.* (c) He may reject a Bill and may return it to the House with or without his amendments. In such a case, the Bill may be repassed by the Congress by its two-thirds majority in each House and it will be

obligatory on the part of the President to give his assent. This is a direct legislative power in the hands of the President. During the last ten days of the session of the Congress, he enjoys an absolute veto. 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 and the fact is this power has been frequently used by the various Presidents. Otherwise too a Bill rejected by the President must 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 the President are totally Trilled. Even the President may check the enactment of a particular legislation by giving a threat of his direct veto in advance.

2. Messages. The President may send messages proposing some legislative measures. As the messages come from the highest functionary of the State, these cannot be easily ignored by the Congress. President's messages stir 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.

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 Twentienth Amendment, the need of special sessions has become less because the interval between regular sessions has been lessened.

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 bargains with members of the Congress to get their proposals for legislation passed by them.

5. Appeal to Public 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 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 errand.

6. Personal Influence. Most of the legislative programme of the Congress is discussed by the President at the dinner 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.

7. Delegated Legislation. In addition to an immense influence exercised by the President on the Congress, 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 makes laws in general outlines. The details are left to be filled in 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 1941. During the same period the Congress passed only 4,553 laws.

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 prepared. 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 difficult to amend it on account of its niceties. 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 except those impeached by the Senate. He cannot grant pardon or reprieve for punishment under State laws. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

General Estimate of President's Powers and Position. 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 those 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

all 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 then the ceremonial head of the Republic and performance of any dignified function is. incomplete without his presence or message. We may conclude with the remarks of Laski 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."

POINTS TO REMEMBER

The American President - is the most powerful head of the State. The constitution did not make him so powerful but later on through Congressional legislation, judicial decisions and development of convention, he has amassed plenitude of powers.

His Executive Powers. He conducts federal administration. He is the Commander-in-Chief of the armed forces. He represents the United States in foreign relations and formulates the foreign policy. He makes a large number of appointments through senatorial courtesy.

His Legislative Powers. He has suspensive and pocket veto. He may send messages to the Congress embodying his proposals for legislation. He may-convene special sessions. He can influence the Congress through patronage. He may appeal to public opinion. He has vast powers of delegated legislation.

His Financial Powers. The Budget is prepared under his guidance. It is. generally passed in original.

His Judicial Powers. He may grant pardon, reprieve and respite to all offenders convicted for breach of general laws. He shares in the appointment or the judges of the Supreme Court.

Q. 8. Compare and contrast the powers and functions of the American President with those of the Indian or British. Prime Minister. In what way does he differ from the Indian President ?

Ans. 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 Indian Prime Minister may be contrasted in respect of their functions and powers. The Indian and. the British Prime Ministers are basically similar in respect of position and powers. The contrast and comparison may be summed up as. follows :

1. The American President's term of office is secure 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 impracticable procedure. The Indian Prime Minister on the other hand, depends for his term upon the Lok Sabha. 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 directly elected by the people. The Indian Prime Minister is appointed by the President from the majority party in the House.

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

4. The President is not responsible to the legislature for his. actions, whereas the Prime Minister is answerable and accountable to the Lok Sabha. The President, moreover, does not guide the course of legislation, nor is he a member of the Congress. The Prime Minister* on the other hand, is the leader of the House and actively 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 Indian Prime Minister is always the leader of the majority party and can get the necessary legislation passed. In this-respect he is comparatively more powerful than the American President.

6. 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. 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 advisers. The advisers only advise. The President makes the decisions alone.

7. The American President's power of making appointments is shared by the Senate. There is no such restraint on the powers of the Prime Minister. All high appointments are made by the Prime Minister although formally they are made under the signatures of the President.

8. The American President derives all his powers from the constitution. The Prime Minister of India, on the other hand, derives his powers from constitutional conventions. Theoretically all power is vested in the President of India, and the Prime Minister and his colleagues are appointed only to aid and advise the President.

American and 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 by the direct vote of the people. The Indian President's election is absolutely indirect Whereas the American President holds office for 4 years and can seek re-election only once, the Indian President holds office for 5 years and can be re-elected for any number of terms. The American President is not responsible to the legislature, but the Indian President is a part of the legislature. The Indian Parliament consists of

the President and two Houses. Moreover, the Indian President has to act normally on the advice of his Cabinet which is selected from the legislature and is jointly and severally responsible to it. The Indian President is more powerful than the American President in one respect. The latter cannot interfere with the governments in the States. But the Indian President can proclaim a state of emergency in any State and can assume to himself the administration of that State.

Both the Presidents, however, can be removed only by impeacment, though the methods of impeachment differ.

(For an elaborate answer, refer to the comparison given under the Indian Constitution portion in this book).

POINTS TO REMEMBER

There is a world of difference in the position and status of the American "President and the Indian Prime Minister. The President of America is elected for a fixed term of 4 years whereas the term of the Indian Prime Minister office depends upon the fluctuating will of the legislature. The President is both the head of the State and the government whereas the Prime Minister's is only the head of the government. The President is elected by the direct vote of the people but the Prime Minister is only the nominee of the President of India. Whereas the President of America has no responsibility towards the legislature, the Prime Minister is answerable for his policies before the House. The American President has no control over the legislature but the Prime Minister is the leader of the House. The President can easily ignore the wishes of his Cabinet but the Prime Minister cannot easily do so. The Prime Minister has greater patronage in his hands. The President of America is both the constitutional and real head of the State but the Indian President is only a nominal head. Whereas the American President is elected directly, the Indian President is the indirect choice of the people.

Q. 9. Discuss the working of a 'Cabinet System' in the U.S.A.

Ans. 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 have been created, each of which is under the charge of a Secretary. These Secretaries are the principal advisers of 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. At present there are ten such departments. They are as follows :

Department	Head of the Department
1. State	The Secretary of State (Minister Tor Foreign Affairs)
2. Treasury	The Secretary of the Treasury (Minister for Finance)
3. Defence	The Secretary of Defence (Defence Minister)

Department	Head of the Department
-4. Justice	The Attorney-General (Minister for 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 and Welfare	The Secretary of Health and Welfare (Minister of Health)

The American Cabinet system differs greatly from the Cabinet system in other countries, like India or England. The U.S. President cannot put his responsibility on the shoulders of the 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 the people 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. 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 the 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 noes and 1 aye. Therefore the aye has it." This shows the utter subordination of the Cabinet to the President. This cannot happen in countries like India or England. The American Secretaries are appointed by the President according to his free will and can hold office only so long as they enjoy bis confidence. He can dismiss them at will. 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 the Indian or

British Cabinet where all decisions are taken by a majority vote and regular records are maintained.

The members of the President's Cabinet do not sit in the Congress. However, they may be asked to appear before Congressional Committees to defend the executive actions, and to present the view-point of the President regarding certain legislation. One of the main reasons for the weakness of the Cabinet is that its members are not elected representatives of the people. As compared to this, the President is the popular representative. The Secretaries are purely assistants of the President, and are appointed by him. The consent of the Senate is a mere formality. According to Herman Finer, "these men are so obviously the personal assistants of the President that it would be not merely a deplorably ungraceful action of the Senate to refuse a man of his own choice in such matters but it would lead, if the matter concerned sufficient members, to a break-down of government." However, the Senate does assert its power sometimes as was done in 1953, when President Eisenhower could not appoint a man of his choice as he was not favoured by the Senate.

To all intents and purposes, the Cabinet is the 'President's Family', and the President, as head of the family, dominates. 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 captain.

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." In the end we can say that there are many to share the powers of the President but no one to share his responsibilities. He is a 'solitary' head of the state as well as of the government.

POINTS TO REMEMBER

The American Constitution does not provide for a Cabinet—its members are only Secretaries in charge of departments—these are appointed by the President from amongst his supporters with the consent of the Senate—in practice they are personal servants of the President—they have only an advisory capacity—they are not the members of the Congress—they can be removed by the President at his sweet will.

Q. 10. Write a short note on the Vice-President of the United States. *(P.U. 1951)*

Ans. The constitution provides for the office of Vice-President of the United States as well. He is elected along with the President in the same manner. The Presidential electors cant two votes—one for the Presidential candidate and the other for 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 the 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 the Presiding officer has very little of authority, because the Senate has its own rules and customs which the Presiding officer must follow.

(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. Vice-President Johnson succeeded to the Presidential office in 1963 on Kennedy's death. There have been eight such occasions when Vice-Presidents succeeded to the Presidential office mostly on account of death of the Presidents.

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

But the fact remains that the office of Vice-President *is* a very weak office because of an absence of some significant role. Roosevelt called it as 'an office unique in its functions or rather in its lack of functions.' Benjamin Franklin condemned the Vice-President as 'His superfluous Highness'.

PROBABLE QUESTIONS WITH HINTS

1. 'To say that the American President does not make laws is to talk philosophy, not fact.' Elucidate.

'The American President is a plebiscitary executive with limited powers but large potentialities.' Explain and illustrate. *(P.U. 1940, 43)*

[For answer, refer to the powers and position of the American President.] *(P.U. 1947; Agra 1950)*

2. "The American Cabinet differs in fundamental respects from the British Cabinet. It is a body of advisers to the President and not a Council of Colleagues with whom he has to work and upon whose approval he depends Discuss and illustrate.

"The 'Cabinet' in the United States is characterised as the President's Family." How far do you agree with this statement ?

[For answer, refer to the relation between the President and his Cabinet.]

"It is eager, even unduly eager, to discover and obey the wishes of its constituents, or at least of the party organizations." —*Lord Bryce on the U.S. Congress.*

CHAPTER V

THE CONGRESS

The American Constitution vests the legislative powers of the federation in a bicameral legislature, known as the Congress. The Upper and Lower Chambers are called the Senate and the House of Representatives respectively. The legislative powers of both the Chambers are co-equal, except that a Money Bill can only originate in the House of Representatives. But in effect, the Senate is. more powerful than the House. The Senate enjoys certain executive and judicial powers which the House does not. The Senate is not only more powerful than the House, but it is also the most powerful Second Chamber in the world.

In the legislative sphere, both the Chambers have equal powers. A Bill must be passed by both the Houses. On receiving the assent of the President it becomes a law. If the President does not return the Bill within 10 days, it becomes a law even without his assent. But if the President rejects the Bill with or without his proposals, it goes back to the House in which it originated. If the Congress again passes it with two-thirds majority in each House, it becomes a law and the President then cannot withhold his assent. But if the President keeps the Bill with him for 10 days and the Congress adjourns within that period, the Bill dies a natural death if the President does not sign it. This system is known as the President's 'Pocket Veto*.

The Congress has immense powers in the legislative sphere. Indeed its powers over legislation are only limited by the Supreme Court's powers of judicial review. The President has only a suspensory veto which does not affect its powers a great deal. At best it can only delay its bill. The Congress has had a great hand in the development of the American Constitution. It can also propose amendments to the constitution. Unlike the legislatures in other countries, the American Congress is its own master. It convenes its sessions and adjourns them without interference from the executive. It does not control the executive in the manner in which the executive is controlled by the legislature in a parliamentary democracy.

Q. 11. Describe the composition, organization and powers of the American Senate.

Ans. The U.S. Congress is a bicameral legislature, the Senate being its Upper Chamber. The U.S.A is now a federation of 50 States and the Senate represents all the States on the basis of parity It has a strength of 100 members. Each State sends two Senators, irrespective of its size and population. Formerly, the Senators were elected indirectly by the legislatures of the States as provided for in the original constitution. But this method was given up in 1913 when the Seventeenth Amendment to the constitution was effected. The Amendment provided for direct election of the Senators by the people of the State concerned.

Its Life : The Senators are elected for a term of six years, one third retiring every two years. The retiring Senators are eligible for re-election. Rather, every good Senator is elected over and over

again. There are numerous examples of persons remaining members of the Senate for over 18 years. The Senate has a continuous life as it is never dissolved as a whole.

Qualifications : The citizens of the U.S.A. not less than 30 years of age can contest election to the Senate. They must have been residents of the U.S.A. for nine years at least. They must be residents of the States which they want to represent, at the time of elections. They must not be holding any office of profit under the Government of the United States.

Its Presiding Officer : The Vice-President of the U.S.A. not being its member is the *ex-officio* Chairman of the Senate. He is. neither the leader of the majority party as is the case with the Speaker of the House of Representatives, nor is he partisan in the performance of his duties. He does not have as much influence over legislation as is exercised by the Speaker of the House of Representatives.

The Senate also elects from among its own members a *President pro-tempore* who presides in the absence of the Vice-President. He is, in fact, the nominee of the majority party in the Senate.

Its Committees : The most significant aspect of the organization of the Senate lies in the fact that it is divided into a number of committees each of which performs a particular function of the Senate. Some most important committees are on finance, appropriation, foreign relations, judiciary and inter-state commerce All issues before the Senate are referred to the relevent committees for opinion and advice. A Senator cannot be the member of more than two committees simultaneously. The Chairmanship of a committee is generally offered to a veteran Senator.

Unlimited Debates : The debates in the Senate are almost unlimited in extent. The Senators enjoy greater freedom of speech than the members of the House. A Senator may go on speaking on a particular bill for any length of time. He may even talk over a bill to death. This system is known as *filibustering.* A minority of Senators may intentionally misuse the privilege of unrestricted freedom of speech with a view to delaying and even preventing action. To quote an example, in 1903 Senator Tillman being opposed to a certain clause of a particular bill, began reading Byron's *Childe Harold'* and announced to the House that he would read on and on unless his view-point was accepted. Finally, the Senate had to yield to his wishes. In 1917, a group of 12 Senators defeated an important bill through *filibustering.* The same year, the Senate had to amend its rules in order to prevent this practice.

According to the amended rules, a debate can be put to an end by a decision taken by two-thirds majority of the Senate. Such a motion must be initiated by at least 16 Senators. The rule was applied for the first time in 1919 to bring to an end the discussion on the Treaty of Versailles. Since then it has been applied effectively for three times more. But this rule has not been able to put any

positive check on the unrestricted freedom of speech in the Senate because two-thirds majority is not easily available in the Senate. It is to be noted that under amendment of the rules of procedure in 1917, two-thirds majority of members present in the Senate was required to put an end to a debate but the closure rule of 1917 was further amended in 1949 and now according to new rules, two-thirds majority of the total membership of the Senate is required to put an end to a debate. Thus the closure of debate has become more difficult.

Its Powers : The Senate enjoys extensive legislative, financial, executive, judicial and miscellaneous powers. These may be discussed as follows :

1. Legislative and Financial : The Senate enjoys equal and co-ordinate legislative authority with the House of Representatives. Ordinary bills may be initiated in either House but the money-bills can only be originated in the Lower House. But this privilege of the House of Representatives is not of much significance because the Senate has vast amending powers. The Senate may strike out everything except the title of a money-bill. It may even substitute an entirely new bill and may send the same back to the House. As regards ordinary legislation, the legislative history of the Congress shows that all important bills are originated in the Senate and then referred to the House. A bill becomes a law when assented to by the President after having been passed in both the Houses. In case, there is disagreement between the two Houses, a Conference Committee consisting of 3 to 9 members from each House is constituted to resolve the deadlock. Again, the legislative history of the United States shows that it is the Senate which wins the point ultimately. Deadlocks between the two Houses are very frequent but most of them are resolved by mutual give-and-take policy. All these facts prove that the Senate, unlike other Upper Houses, enjoys predominant position over the Lower House. It may be noted that the House of Lords enjoys simply a delaying power of one year as regards non-money bills and of one month concerning money-bills. The Indian Rajya Sabha has a weak position as compared to the Lok Sabha in ordinary legislation and has practically no control over financial legislation.

2. Executive Powers : The Senate enjoys a unique position as a legislative organ in the world since the constitution has conferred upon it certain direct executive powers to check the monarchical ambition of the President. All high appointments made by the President are subject to the consent and advice of the Senate. But by the growth of a convention known as '*Senatorial Courtesy*', the President is simply supposed to get the approval of one or two Senators representing the State wherein the appointment is to bo made. Again, all the treaties made by the President with foreign States must be ratified by two-thirds majority of the Senate before they are finally concluded. Although these international treaties

and agreements are to be placed before the Senate in the final form when it is difficult for it to withhold assent yet no wise President will launch his foreign policy without taking the Senate into his confidence. If the President has some doubts about the opposition of the Senate, he consults the members of the Foreign Relations Committee of the Senate in advance and solicits their views. The disapproval of President Woodrow Wilson's foreign policy by the Senate is a standing warning to all future Presidents.

Thus we find that the Senate controls the internal administration of the President through its power of endorsing appointments made by him and it exercises influence over his foreign policy since Treaties and agreements must be finally ratified by it.

3. Judicial Powers : The Senate is the court for impeachment of the President, Vice-President and other high ranking officials of the United States. The charges are to be preferred by the House of Representatives and the impeachment is to be conducted by the Senate. The Senate turns into a regular judicial tribunal when it sits as a court. Prosecution is conducted by a Committee of members of the House of Representatives especially appointed for this purpose. Again, judges of the Supreme Court are appointed by the President with consent and advice of the Senate. Thus the Senate has a lot of judicial patronage in its hands.

4. Miscellaneous' Powers : (a) The Senate shares with the House of Representatives the power to propose amendments to the Constitution. (b) The Senate decides the Vice-Presidential election when no candidate gets an absolute majority of votes in the election and elects one out of the two candidates securing highest votes. (c) The Senate appoints committees to investigate and report on the administration of the President. The committees expose the scandals and inefficiency of the administration, if any. The Senators dominate the politics of the country and its investigation committees are politically vigorous. The administration is generally afraid of such committees. Thus, the Senate exercises an effective control over the administration through these committees.

POINTS TO REMEMBER

1. Senate was created to aid and advise the President.
2. Senate was established to be a check on the President.
3. Senate was created to safeguard the interests of the owning class.
4. Senate was established to look after the interests of the States.
5. Senate was created to be a pool of wisdom

The Senate consists of 100 members, two from each State. It has a continuous life ; one-third of its members retire every two years. The Vice-President of America is the ex-officio Chairman. It works through a number of commit tees. The Senators have unrestricted freedom of speech which has led to the evil practice of filibustering which implies making of long speeches to prevent or delay legislative work in the House. It has vast legislative, executive, judicial and miscellaneous powers. It has equal and co-ordinate legislative authority with the House in both ordinary and financial legislation. It shares with the

President his powers regarding appointments and treaty-making. It is the sole court of impeachment. It has the powers to propose amendments to the constitution jointly with the House. It decides the disputed election of the President. It appoints committees of investigation.

Q. 12. 'The Senate of the U.S.A. is the most powerful' Second Chamber in the world.' Discuss. (P U. 1954)

'The Senate is the only example in the world of a Second Chamber that is incontestably more powerful than the first and more popularly elected House.' Elucidate.

Ans. The powers and functions of the Senate prove beyond any shadow of doubt that not only is it more powerful than the Lower House, but it is also the most powerful Second Chamber in the world. The following points clearly prove the strength of the U.S. Senate:

I. Direct Executive Powers : The Senate is the only legislative organ in the world, which enjoys some direct executive powers. It shares with the President his power of making top-ranking: appointments and through this privilege, it controls the internal administration of the federal government. Then no treaty or agreement with a foreign State concluded by the President is valid without ratification of the Senate. Through this power, the Senate controls the external policy of the President. It is to be noted that these powers are exclusively exercised by the Senate. The House of Representatives has nothing to do with them. This difference raises the prestige and dignity of the Senate and indirectly lowers the prestige of the House.

2. Absence of Parliamentary Government : The absence of Parliamentary form of government has also indirectly helped the Senate to acquire a domineering position over the House. In countries with Parliamentary form- of government, the Lower House attains a higher status than the upper one, on account of the fact that it has control over the executive. In the U.S.A. the position is rather reverse. It is the Upper House which has some control over the executive and the Lower House is devoid of any such power.

3. Small Membership and Long Tenure : The membership of the Senate is small but its tenure is long. On the other hand, the membership of the House of Representatives is large and tenure is short. The Senate consists of only 100 members. This small size makes it really a more deliberative body and adds to its importance. The House of Representatives is an unwieldy body consisting of 435 members. The large size of the House make its deliberations, less effective. Then the Senators are elected for a term of six years whereas members of the House are elected only for a short term of 2 years. The Senators are, therefore, not worried about their elections after every two years. Moreover, during a brief span of two years, no party can do full justice to its programme and policy. The constitutional practice in the United States shows that the Lower House has to concede much to the Senate in order to expedite business.

4. Membership consists of Senior Politicians. Senior politicians and men with legislative experience and wider knowledge of public affairs, usually aspire to the membership of the Senate because of its longer term and greater prestige than the Lower House. The result is that the Senate becomes superior to the Lower House in intellectual quality, legal talents and political wisdom.

5. Direct Election of Senators : Unlike the members of the Second Chambers in England, India or Canada the U.S. Senators are directly elected by the people. It is a matter of common experience that an indirectly elected Upper Chamber finds it difficult to resist the will of the Lower House which is elected by the direct vote of the people in these countries. But in U.S.A. the Senate can claim its equally representative character with the House. The latter is, therefore, not in a position to dominate the former.

6. Equal Legislative and Financial Powers. The Senate enjoys equal powers in the legislative and financial spheres with the House both in theory and practice. In England, India or Canada, the Upper House is given a lesser authority than the Lower House. Since in United States, both the House of Representatives and the Senate have equal and co-ordinate powers regarding ordinary and financial legislation, the deadlocks are frequent. In order to resolve such deadlocks, a Conference consisting of equal members from both the Houses is constituted. The legislative history of Congress shows that it is the Senate's view-point which ultimately prevails. It is natural because the Senate consists of seasoned statesmen and stalwart politicians.

7. Greater Freedom of Speech The Senators enjoy greater freedom of speech than the members of the Lower House. A Senator can go on speaking for any length of time. This enables a full-length debate on every matter and every measure is discussed from all view-points.

8. Court of Impeachment. The Senate has the sole right to try impeachments against the President, the Vice-President and other, high officials of the state, both civil and political.

9. Solidarity of the Senate. The Senate is the one legislative organ in the world, the members of which have solidarity and unity irrespective of their political affiliations. As for instance, when President Roosevelt tried to bypass *Senatorial Courtesy* in 1938, it stood solidly against him. Even Senators of his own party did not support him. They thrive on the principle of 'live and let live'i The entire Senate stands as one unit whenever any attack on its authority is made.

F.J. Haskin sums up the position of the Senate as follows:

"There are things which the President and the Senate may do-without the assent of the House of Representatives, and things which the Senate and the House may do without assent of the President yet the President and the House can do comparatively a little without. the assent of the Senate."

All these facts prove that no other Second Chamber including the British House of Lords, the Indian Rajya Sabha and the Canadian Senate enjoys as much powers as are enjoyed by the Senate of America.

Defects in the Senate : There are critics who point out certain defects in the Senate. Some of them may be pointed out as follows :

(a) Unrestrained freedom of speech in Senate leads to unnecessary wastage of time and energy.

(b) The 'Senatorial Courtesy' is only another name for favouritism and nepotism.

(c) The U.S. Senate is based on the principle of equality of representation to all constituent States irrespective of size and population. To many, this equality among un-equals appears to be unreasonable and undemocratic. This geographical representation gives to the States with one-eighth of total population more than half the Senators.

(d) The Senate does not represent the specific interests of the States since all decisions are taken by it on party lines. The Senators now do not consider themselves as ambassadors of their States. They deem themselves to be representatives of the nation and not of States which they represent.

POINTS TO REMEMBER

The Senate is the most powerful Second Chamber because : (1) It enjoys direct executive powers ; (2) the Lower House does not control the executive ; (3) its membership is small but tenure is long ; (4) senior politicians belong to this House ; (5) the Senators are directly elected ; (6) it enjoys equal powers with the Lower House over legislation and finance; (7) the Senators have greater freedom of speech ; (8) it has the sole right to try impeachments and it has control over foreign relations and higher appointments ; and (9) it has a unique solidarity in its ranks.

Q. 13. Describe the composition and functions of the "House of Representatives. Why is it a weaker Chamber ?

Ans. While the Senate represents the States, on the federal principle of equality, the House of Representatives represents the U.S. citizens on national principle based on population. The first House of Representatives consisted of 65 members but now its membership has permanently frozen at 437 unless changed by a law of the Congress. The House of Representatives consists of 437 members. The number of representatives for each State is fixed by the Congress in proportion to its population. The constitution, however, lays down that no Representative shall represent less than 30,000 citizens and each State must send at least one representative. The term of the House of Representatives is two years. It cannot be dissolved earlier. It meets at regular intervals though special sessions can be convened by the President at any time.

Qualifications : A candidate for election to the House of

Representatives must possess the following qualifications :

1. He must be at least 25 years of age.

2. He must have been a citizen of the U.S.A. for at least 7 years.

3. He must be a resident of the State from which he wants, to contest election. In some States, the candidate is also required to be the resident of the constituency from which he wants to contest election.

4. He must not hold any office of profit under the Government of the United States.

Privileges : 1. Each member is entitled to a fixed salary andi several allowances.

2. He is allowed to write and send letters in his constituency free of postage.

3. He enjoys immunity against prosecution for anything said in the House.

The Speaker : The House elects its own Speaker who presides over its sessions. This is in contrast with the Senate where the Vice-President of U.S.A. is the *ex-officio* President. The election of the Speaker is held purely on party lines. He is the nominee of the majority party. The position of the Speaker of the House of Representatives is different in many respects from that of the Speaker of the House of Commons in England. The Speaker of the House of Commons is elected unanimously whereas the Speaker of the House of Representatives is elected by the majority party. The Speaker of the House of Commons is neutral chairman and breaks off all party affiliations the moment he takes up the chair. The Speaker of the House of Representatives on the other hand is a partisan and openly favours the party to which he belongs. The Speaker of the House of Representatives comes down from his chair and openly takes part in debates. The Speaker of the House of Representatives is virtually the leader of the majority party and legislative leadership devolves upon him. In a Parliamentary democracy like England, the leadership of the House lies in the hands of the executive but in the U.S.A. leadership is vested in the Speaker because of the absence of the executive from the House.

Functions of the Speaker : 1. He presides over the sittings of the House and maintains order and decorum in the House.

2. He recognises members on the floor of the House, i.e., he allows members to speak.

3. He decides points of order raised by the members.

4. He puts questions to the vote of the House and declares the results thereof.

5. He interprets and applies the rules of procedure of the House. His rulings in this connection are more or less final.

6. He represents the House in its collective capacity and protects its dignity and grace.

7. He maintains law and order in the premises of the Chamber.

8. He protects privileges of the members.

A majority of the House may over-ride the ruling of the "Speaker but it rarely happens.

Prior to 1911, the Speaker used to appoint the Chairman and members of all the Committees of the House: He appointed such Committees as would favour his views. In this way, the Speaker used to have a complete control over the Committees whereas Committees had complete control over the work of the House. As a Chairman of the Rules Committee, he would place on the agenda of the House only those measures which he desired to be enacted. He was thus a legislative autocrat, pure and simple. A crushing blow was given to the legislative authority of the Speaker in 1911 when the House took the appointment of Committees into its own hands and removed him from the chairmanship of the Committee. But that has mot made the Speaker a non-entity. He still exercises extensive powers as he is the leader of the majority party. Finer has well described the position of the Speaker as follows : "While until 1910 powers were concentrated in the Speaker and his friends by grace, these are now concentrated in the Speaker's friends and the Speaker."

Functions : As compared to the Senate, the House of Representatives has less authority. It enjoys co-equal and co-ordinate authority with the Senate in legislative and financial spheres. Ordinary bills can originate in any one of the Honses but money-bills can be initiated in the House of Representatives only. But this privilege of the House is not of much significance because the Senate can amend or reject both ordinary and money bills. In case of disagreement, the decision is either taken through mutual give-and-take or a Conference Committee consisting of 3 to 9 members from each House is constituted to resolve the deadlock. But the legislative history of the United States shows that it is the Senate whose will prevails in the end.

The House has got no executive powers because the executive is neither responsible to nor removable by it as in the Parliamentary system, nor does it possess any direct executive powers and control like the Senate.

It shares the judicial powers of the Senate in the sense that -charges against the President and other federal officials for impeachment are to be preferred by it.

It decides the election of the President when no candidate secures an absolute majority of votes. It elects one out of the three candidates securing the highest votes.

It shares with the Senate the power to propose amendments to the constitution.

A Weak Chamber : An analysis of the powers and functions of the House of Representatives reveals that it is a very weak chamber. This may be explained by the following factors :

1. The first and foremost reason for the weakness of the House is that the Senate enjoys co-equal powers in the sphere of legislation and finance. In other countries the Lower Chamber is usually placed in an advantageous position by making the finance its exclusive preserve. In the U.S.A. while money bills must originate in the House, they can be amended or rejected by the Senate in every sense except their name.

2. The Senate being a directly elected body, detracts from that popular character of the House, which is otherwise the privilege of Lower Chambers. In other countries like India, England, and Canada, the Upper Houses are either indirectly elected or nominated.

3. The executive is neither responsible to the House, nor does it spring from it. This makes the House inferior to the Lower Chamber of a parliamentary democracy where the executive is accountable to the Lower House.

4. Unlike the Senate, the House does not share the executive powers of the President as regards appointments and treaty-making.

5. The tenure of two years for the House is very short. This does not encourage talented people to come into it. They rather look forward to going into the Senate.

6. As compared to the Senate, the membership of the House is very large. There is a time limit on the speeches. This fact does not enable the speakers to make the debates lively and exhaustive. It lacks leadership which is provided by the Cabinet in the House of Commons.

All these factors have contributed towards making the House of Representatives a very weak Lower Chamber. Unlike other countries where the Lower Chambers are really more powerful, in the U.S.A., the Lower Chamber justifies its name. However, the House represents the various sections of American life as it has a large membership. Patterson has aptly remarked that the House "is the nation in miniature."

POINTS TO REMEMBER

The House of Representatives is the Lower Chamber of the American Congress. It is elected directly on population basis. It has co-equal powers with, the Senate in legislative sphere. All Money Bills must originate in this House. It has no executive powers like that of the Senate. It is a very weak legislative organ. Various factors are responsible for its weak position.

Q. 14. Discuss the powers of the U.S. Congress. Anglyse some distinctive features regarding the working of the U.S. Congress.

Ans. Although U. S. Congress is primarily intended to be a Jegislative organ yet the system of *checks and balances* gives it cer-

tain non-legislative functions which are no less important than its legislative functions. Its functions may be brought out under the following heads :

Legislative and Financial Functions : The Constitution of United States vests only limited powers in the Congress. It has been given law making powers only regarding eighteen subjects and all the residuary powers have been vested in the federating States. Some of its more important functions may be listed as below :

(a) The Congress determines the extent, nature and organisation of armed forces of the United States. It has the sole power to declare war. Termination of hostilities cannot, however, be done by it. This power is enjoyed by the President.

(b) It has the power to regulate monetary system of the country.

(c) It has the power to levy and collect taxes, duties and excises. It can appropriate money for purposes of defence, payment of national debts and for the general welfare of the United States. It has unrestricted powers regarding appropriation of money. It can lend money to foreign States, grant subsidies to private enterprise and give grants to the States.

Executive Functions : The Senate, the Upper House of the Congress, shares with the President his powers regarding appointments and treaty making. Through the power to endorse nominations made by the President, the Senate shares the internal administration of the President. Through the power to ratify treaties made by the President, the Senate controls the external policy of the President.

Besides, the Congress indirectly controls and directs administration of the United States in the following ways :

(a) It can create by law various departments and offices of the Government of the United States.

(b) It fixes the salaries and functions of the various officials in Federal Services. It also sanctions money for each and every official and department under the Federal Government. Through these powers, the Congress controls the executive and general administration to a very great extent.

The Legislative Reorganisation Act of 1946 emphasises the importance of continuance of vigilance over the execution of all laws, by the Standing Committees of both the Houses. Both the Houses are authorised to appoint investigating committees to look into the work of any administrative branch. Through the investigating committees, the Congress exercises a large measure of control over the Presidential administration. Many a time, scandals and inefficiency of administration have been exposed by such Committees.

Judicial Functions: *(a)* It can determine by law the composition of the Supreme Court and define its appellate jurisdi-

tion. It can create Inferior Federal Courts. (b) It can impeach the President, Vice-President, and other Federal officials.

Electoral Functions : Congress has some indirect electoral functions as well. It meets every four years to count votes cast for Presidential and Vice-Presidential candidates. If no Presidential candidate secures an absolute majority of votes, the House of Representatives elects one out of three securing highest votes. In this case, representatives of each State are to act as one unit. When no candidate secures an absolute majority for Vice-Presidency, the Senate elects one out of the two candidates securing highest votes.

Constituent Functions : A proposal for constitutional amendment may be initiated by the Congress with two-third majority in each House or by a special Convention called by the Congress on the request of two-thirds of States:

Miscellaneous Powers : *(a)* Congress has the right to admit new States in the U.S. Federation and make rules for regulation of territories belonging to the United States.

(b) Not only does Congress make laws regarding subjects enumerated in the constitution, but also it makes laws regarding subjects which are considered to be implied in the enumerated ones. Thus the doctrine of *Implied Powers* enunciated by the Supreme Court, has considerably enhanced the powers of the Congress.

Distinctive Features of the Working of the Congress': The working of the Congress is characterised by certain distinctive features which may be summed up as follows :

(a) Absence of the leadership of the executive is an important feature of the U.S. Congress. There is neither any government nor any opposition in both Houses of the Congress as one finds in a parliamentary democracy like India or England. The executive is neither the creation of the Congress nor is it directly answerable (responsible) to it for its policies, nor it is removable by it. In the absence of the domination of the executive over the House of Representatives, the leadership of the House has fallen in the hands of the Speaker, Chairman of the various Committees and the Floor Leader chosen by the *'caucus'* of the majority party. The. Floor Leader is next to the Speaker. He performs the functions of a party whip. The leadership in the Senate is enjoyed by the chairman of the important Committee and the Floor Leader. The chairman of the Senate, who is an outsider, does not enjoy any leadership. Some times, he may even belongs to the minority party in the Senate.

(b) The second feature of the Congress, is that it has to deal with an enormous, amount of busings every year. The number of Bills, resolutions and reports that come before it during a shorts term of two years is generally in the neighbourhood of thirty thousand. It deals with all sorts of problems concerning internal administration, international relations and political economy.

Not only does the Congress deal with problems affecting general interests of the nation but also it deals with problems affecting specific interests of groups and localities. The United States is a highly industrialised State and there is a lot of 'economic surplus" which is to be distributed in the from of subsidies to various industries and enterprises. The members of the Congress want to have as large a part of this surplus as possible for their adherents and followers. This gives rise to strange practices like *pork-barrel* and *log-rolling* legislation.

The term *pork-barrel* has its origin in a custom prevalent during early plantation days. The Southern States of America owned slaves. The owners would periodically distribute pork among their slaves as special reward for their labour. On the appointed day, a barrel containing pork was opened and the contents were distributed. Now this term denotes a piece of legislation meant to distribute 'economic surplus' among private individuals and groups, of individuals. A member of the Congress requires the support of other members for the purpose. This fact has given rise to another practice known as *log-rolling.* This term has also its origin in the life of early settlers who wanted the support of other persons in the colony in felling down the trees and rolling the logs of wood for the construction of their wooden cabins. The term *log-rolling* now denotes that members of the Congress who want to have public funds for some private interest must seek the co-operation of other members. A policy of give-and-take has to be followed. A lot of legislation is passed through the method of *log-rolling.*

(c) The legislative work of the Congress is also affected to a great extent by another institution known as *'lobbying'.* These *lobbyists* vigilantly guard the interests of the industrial organisations, which they represent. Whenever a proposal for legislation is introduced in either House of the Congress, they study it from various, angles and judge whether or not it is going to affect them. In case it affects a particular industrial organization adversely, they bring to bear all possible pressure on members of the Congress through various devices like personal contacts, telephonic calls, telegrams, articles in the Press and even bribery. Thus we find that a lot of the Congressional legislation is influenced by these *lobbyists.*

(d) The working of the Congress reveals that national interests are often sacrificed over local interests. The original attitude always dominates the entire membership. It is perhaps due to this fact that a 'member of the House of Representatives is constantly aware of the fact that he is to face his electors after two years and he tries his utmost to nurse his constituency in order to be reasedcably sure of his re-election. In England, an M.P. cannot afford to disobey his party High Command even if he is to displease his electors. In America, however, neither a Senator nor a Representative would obey the party call against the Wishes of his State or district.

(e) Another distinctive feature of the U.S. Congress lies in? the fact that the Committees have a vital role in legislation. Bills are referred to Committees before their principles are approved by the House. The Committees may not report a Bill back to the House. Thus Committees may kill various bills.

(f) Bills in the Congress are usually moved by private members since the executive is not present in either House to give lead in legislation.

(g) The Senate, the Upper House of Congress, is unusually more powerful than the House of Representatives which is the Lower House.

(h) The President has suspensory veto which may in certain, cases be an absolute veto. His veto is also absolute during the last ten days of the session of the Congress.

(i) The judicial veto in the hands of the Supreme Court has considerably demoralised the Congress. The members of the Congress while initiating legislation have not only to think what their constituents want but also what they do will be finally acceptable to the Supreme Court or not, in case its validity is Challenged. The Supreme Court is, in fact, the super legislature of the United States.

POINTS TO REMEMBER

The Constitution of the United States vests limited powers in the Congress. It has the power to levy and collect certain taxes. It determines the organisation of the armed forces. It can declare war. It makes laws to regulate monetary system and admit new States in the federation. It indirectly controls and directs the administration of the United States. It determines the organisation of the Supreme Court and can impeach the President and other civil authorities of the United States. It decides the election of the President and Vice-President. It initiates proposals for constitutional amendment. The working of the Congress is characterised by the following features ; (a) There is absence of executive leadership in the Congress. (b) It has to deal with an enormous amount of legislation which is carried on under the influence of pork-barrel, log-rolling and lobbying, (c) The Committees play a vital role in legislation, *(d)* The bills in the Congress are generally moved by private members. (e) The Senate is usually more powerful than the Lower House, (f) The President has sufficient legislative veto in his hands.

Q. 15. Discuss the Committee System in the U.S.A. Compare it with that in England.

Ans. The modern States are positive and welfare States in, character. The legislatures are making new laws to meet the requirements of the changing social and economic life of the people. They are amending and repealing old laws which have out-lived their utility. The legislatures are thus hard pressed for time; Moreover, the size of the legislatures has become large-and, therefore, the true purpose of a legislative measure cannot be property understood and a healthy discussion on its consequences cannot be held usually as exhaustively as necessary. To remove this defect, the legislative bodies throughout the world, assign preliminary work to the Com-

mittees of the House. The underlying idea is to save time and gain efficiency. These provide technical and expert knowledge to the House, which it otherwise lacks. On account of a very large number of bills and measures introduced in the U.S. Congress, the use of Committees is all the more necessary.

The House of Representatives has a Committee system somewhat similar to that of the House of Commons in England. It has a number of regular Committees of which a dozen have important work to do. Its Committee system may be discussed as follows ;

1. Standing Committees : A major portion of the work is done through the Standing Committees in America. A Standing Committee generally consists of 12 members but membership can be decreased or increased. Each party is represented on these Committees in proportion to its strength in the House. The members of these Committees are chosen by the party leaders. The House merely endorses the choice of the party leaders. A Standing Committee is often referred to as the 'House in Miniature.' The Chairman of each Committee is selected by seniority rule as the senior-most member of the majority party represented on a particular Committee becomes its President. By this method, only experienced men can become Chairmen of these Committees. But the system is not without defects. A new man who is able and experienced cannot have a chance to serve as a Chairman. A Chairman has an important role to play. He guides and directs the proceedings of the Committee, leads the debates and reports their results to the House.

Before the passage of the Legislative Reorganisation Act of 1946, there were some 47 Standing Committees, but their number was reduced to 19 under the Act. There are 15 such Committees in the Senate. The more important of them are Committees on Ways and Means, Appropriation, Banking and Currency, Military Affairs, Public Land etc.

The Standing Committees in the United States have a very great importance. The Bills are referred to these Committees before the principles thereof are approved by the House. The life of the Bills depends upon their will. A committee may not return the bill at all. It is then killed there.fr The House can ask a Committee to report a particular bill back by absolute majority. But it is very difficult to get. The Committee may draft its own bill on the same subject and report the bill with it to the House. Thus Committee are described as 'little legislatures' or 'real legislatures'.

2. Committee on Rules. It is a Very important Committee. Before 1911, this Committee exercised dictatorial powers. The Speaker of the House used to be its Chairman and its other two members were also appointed by him. In 1911, a law was passed by the Congress according to which the Speaker ceased to be its Chairman and membership was increased to 12. Its members

are selected by different parties in the House in proportion to their strength.

The main function of the Committee is to make rules of procedure for the House. It also controls the procedure in the House. It may indicate to the House as to what clauses of the bill shall be amended and what shall not be. It can suspend the debate on a bill in the House and can introduce a bill of its own on the same subject and ask the House to discuss that first.

3. Select Committees. These are selected by the Speaker from time to time. These are constituted for particular purposes and are dissolved when the work is done.

4. Conference Committee, A Conference Committee is constituted to confer with a similar Committee of the Senate when there is a deadlock between the two Houses. A Conference Committee consists of three to nine members from both the Houses.

5. Committee of the Whole House. For the consideration of Money-Bills or other important controversial Bills, the House resolves itself into a Committee of the whole House. The quorum is 100. The rules of procedure arte less rigid. Voting is generally done by show of hands. It is not presided over by the Speaker. A special President is nominated by him for this purpose. When the deliberations are over, the President leaves the chair which is again taken over by the Speaker. The matter is then reported to the House in its original capacity. It deals with all kinds of money bills and also with private bills

British and American Committee Systems Compared'. Both the British House of Commons and the American House of Representatives make an extensive use of Committees, but there are vital differences in their working. In the House, of Commons, the Committees play a secondary role though an important one but in the House of Representatives they play a primary role.

Firstly, the House of Commons has not delegated its legislative powers to the Committees. The function of the Committees is to revise the Bills and offer technical advice. In the U.S.A. the Standing Committees are real legislative bodies. President Woodrow Wilson called them 'miniature legislatures'. Bills are given a proper shape in the Committees. Thus, Committees in the House of Representatives determine initially the contents of legislative policy of the House. In the House itself, procedure is controlled by the Committee on Rules which exercises a control similar to that of the Cabinet in the House of Commons.

In the *second place,* Chairmen of the Committees of the House of Commons are neutral and impartially conduct the proceedings in the Committees. The Chairmen of the Committees of the House of Representatives are, on the contrary, thoroughly partisan.

In the *third place,* the Committees in England work under the leadership of the Cabinet. In America, due to the absence of the

executive in the House, this leadership is enjoyed by the Chairman of the Committees.

In the *fourth place,* in England the Committees must report back all the Bills referred to them without exception within the time specified by the House but in America the Committees may not report the Bills back to the House unless demanded so by the majority of the House. In this way, most of the Bills are killed by these Committees.

In the *fifth place,* in England the Bills are sent to Committees after their principles have been approved by the House at the 2nd reading stage. The Committees have to report the Bills back within a specified time. In the House of Representatives they are referred as soon as they are initiated in the House. The House discusses a Bill only after it emerges from a Committee.

In the *sixth place,* in England the Committees are free from the influence of vested interests. In America, on the other hand, various Bills are shaped during the Committee stage by special interests through *lobbying, pork-barrel* and *log-rolling.*

POINTS TO REMEMBER

There are different typesof Committees in the House of Representatives. In the first place, there are Standing Committees which carry on a large bulk of legislative work. The parties in the House are represented on the Committees in proportion to their strength in the House. In the Second place there is a Committee of Rules which makes rules of procedure for the House. In the third place, there are Select Committees which are appointed by the Speaker to consider a particular Bill. In the fourth place, there is the Conference Committee constituted to resolve a deadlock, if any, between the two Houses. Lastly, there is the Committee of the whole House which considers Money Bills and other controversial Bills. The Committee-system of the U.S.A. is essentially different from that of England. The Committees in the United States have greater powers than those in England. They may report the Bills back to the House or not. The Bills are referred to them before the principles involved in the Bills have been approved by the House.

Q. 16. Describe the process of law-making in the U.S. Congress. How does it differ from the British system ?

Ans. Ordinary Bills can be initiated in either House of the Congress, but Money Bills can only be introduced in the Lower House, *i.e.,* the House of Representatives.

An ordinary Bill is to pass through the following stages before it is deemed to have been passed in one House

1. Introduction. Any member of the House may introduce a Bill by dropping a copy of the Bill in the 'hopper'—a box on the Clerk's table in the House and the Secretary's in the Senate. The Bills are then immediately printed and copies are made available the members. It is to be noted that all important Bills are in duced in the names of the Chairmen of the Committees concerned.

2. The First Reading. The First Reading of a Bill may be done on the same day or some other day may be fixed on the agenda of the House. On the day and time fixed on the agenda of the

House, the Bill in question is brought forth for the First Reading. The First Reading is formal and, in fact, no reading at all. The Bill is considered to have been read for the first time by having its title printed in the Journal and the Congressional Records. The Bill is then referred to an appropriate Committee. In case of doubt, the Speaker decides as to which Committee the Bill should be referred.

3. The Committee Stage. The Committee scrutinizes a Bill in all its details. It may consult the Congress library and reports of the special investigation Committees. It may even invite outsiders interested in the Bill to know their opinions. It may appoint a still smaller Committee consisting of 3 to 4 members to make a specialised study of the Bill. The Committee has got four alternatives to deal with the Bill in the final form.

(a) It may favourably report the Bill back to the House without any change whatever.

(b) It may report the Bill back to the House with suggested amendments.

(c) It may condemn the Bill wholesale and may substitute a new Bill.

(d) It may not report the Bill back to the House at all. It has been estimated that some 50 to 75 per cent of all the Bills referred to these Committees are killed or pigeonholed in this manner.

The Rules of the House, however, prescribe that the majority of the House may compel a Committee to report back a Bill within fifteen days but this majority is not always available in favour of most of the Bills. This is known as 'Rebase Rule'. During 1923 to 1939, 8 such discharge rules were passed. The House approved 4 of these Bills and only one of them could finally become law. This rule, therefore, is not of much practical value. The Committees remain as strong as ever.

The Second Reading. If the Bill is reported back to the House, its Second Reading is resumed. Every clause of the Bill is discussed and debated upon. Amendments and counter-amendments are proposed and passed by voting. When the Bill is finally passed in the Second Reading stage, it is generally printed before being submitted for the Third Reading. In some cases the Bill may not be printed and the House may proceed to its Third Reading.

The Third Reading. At this stage only the title of the Bill is read and the Bill is voted upon as a whole.

After the Bill has gone through the House successfully, it is certified by the Clerk and sent to the Senate. It passes through a more or less similar procedure in the Senate as well,

If the Senate rejects the Bill *in toto,* the Bill is killed. If the Senate proposes some amendments, the Bill comes back to the House. If the House agrees, well and good. If it does not agree

to the amendments proposed by the Senate, an effort is made to come to an agreement through give-and-take policy. If this attempt also fails, the Bill is referred to a Joint Conference Committee consisting of three to nine members from each House. If this committee does, not reach a compromise, the Bill is killed. If an agreed decision is arrived at, the Bill is referred to the President for his approvals The President is required to send back the Bill within a period to ten days with or without his approval. If the Bill is approved the President, it becomes a law. If it is rejected by him, the same may be re-passed by the Congress in both of its Chambers by two-thirds majority in which case the President cannot withhold his. assent. If the President reserves the Bill with him and the Congress; goes out of session within the period of ten days, the bill dies an automatic death. It is known as 'Pocket-Veto' of the President.

Procedure Regarding the Passage of Financial Bills : Money Bills can only be initiated in the House of Representatives. The Director of the Budget prepares the Budget of the United States under the direction and control of the President. Like the Indian or British Budget, it consists of two parts—a statement of probable revenues and the appropriations necessary for different departments, of the government.

The Budget is introduced in the House on the responsibility of the President. It is then referred to an appropriate Committee. The revenue Bill is referred to the Committee of Ways and Means and the Appropriation Bill is referred to the Committee on Appropriations.

The Committee on Ways and Means holds public hearings of interested parties which may be affected in one way or the other. After this, the Bill is reported back to the House with or without amendments. The House then discusses and debates upon every item of the Bill. The minority is given an opportunity to criticise it. After having been passed by the House, it is referred to the Senate. The Senate can amend it in any way it likes. In the event of disagreement, the procedure is the same as for ordinary Bills. The Bill becomes an Act on receipt of the signature of the President.

The Committee on Appropriations considers the Appropriation Bill. The Committee resolves itself into a number of sub-Committees, to study the different estimates. The sub-Committees consult the officials of the relevant departments and verify the expenditures proposed in the Bill. Finally, the Bill is considered as a whole and submitted to the House with or without amendments. The members, of the House may propose amendments. When the Bill has been passed by the House it is referred to the Senate. In the Senate again the Bill passes through similar procedure. The rest of the procedure is the same as for ordinary Bills.

Distinctive Features of Legislative and Financial Procedure :

(a) All ordinary Bills are moved by private members whereas these are mostly initiated and piloted through the House by the Ministers in England or India.

(b) The Bills are referred to Committees before the principles involved therein have been approved ,by the House unlike the practice in England or India where the principles involved in the Bills, are approved in the Houses before reference to the Committees.

(c) The Committees may not report back the Bills to the House and may kill them totally. There is no such practice in England or India.

(d) There is no unified responsibility in financial affairs in the, U.S.A. as is the case in England or India. The Budget is prepared by the Director of the Budget under directions and control of the President. But neither the President nor the Director of the Budget can appear before the House to defend their proposals. The fact of the matter is that the Budget may be completely mutilated by the Committees of both the Chambers of the Congress. Various items of expenditure and revenue may be increased or decreased at will.

Although in practice, it is seldom done but theoretical position is that the Committees and the Congress can treat the Budget in any manner they like. Things of this nature are not possible in England or India. A cut motion passed against the will of the Cabinet is tantamount to a vote of no-confidence in England or India.

(e) The Senate in U.S.A. has far greater powers than the British House of Lords or the Indian Rajya Sabha in financial matters. It has co-equal powers with the House. In case they fail to reach a compromise in the Joint Conference Committee, the Bill is killed.

(f) There is huge waste of money and labour in printing all Bills introduced even when they have no chance of being passed in either House.

(g) Congressional or House Enquiry Committees often claim and exercise judicial functions, *e.g.,* Committee for un-American activities.

(h) The whole system is based on *checks and balances.* The President is controlled by the Congress. The President in turn can by his actions and policies compel the Congress to follow his lead in international affairs by creating a situation where Congress has no option except to follow his lead, *e.g.,* in case of war.

POINTS TO REMEMBER

Ordinary Bills may be initiated in either House of the Congress but Money Bills must originate in the House of Representatives. The Bill has to-pass through various stages. Introduction : Any member of the House may introduce a Bill by depositing it on the Clerk's table or handing it over to the Speaker. The First Reading is just formal. The Bills are then referred to appropriate Committees. The Bills are shaped, remodelled and often killed at the Committee Stage. The Bills are passed clause by clause in the Second Reading. The Bills are voted upon in full in the Third Reading. The Bills are then referred to the Second House, where again they have to pass through a similar procedure. In case of disagreement between the two Houses, a Conference Committee consisting of equal members from both Houses is constituted.

In the final stage the Bills are referred to the President for approval and signatures. The financial procedure is a bit different. The Budget is prepared by the Director of Budget under the control and direction of the President. It consists of two parts—probable revenues and the appropriation necessary for different departments of the government. The Revenue Bill is considered by the Committee on Ways and Means and the Appropriation Bill is considered by the Committee on Appropriations. The legislative procedure in the United States is characterised by some distinctive features.

PROBABLE QUESTIONS WITH HINTS

1. It is said that the Federal Senate has proved to be the most successful of all political institutions in the **U**.S.A. Do you agree ? Give reasons.
(Agra 1941; P.U. 1950)

[For answer, refer to the question dealing with the powers of the Senate]

2. If you were offered a seat in the Congress, would you choose the House of Representatives or the Senate ? Give reasons for your choice.

[For answer, discuss the various points of superiority of the Senate over She House in a comparative way,]

"This great tribunal is a balance wheel in the governmental machine of the United States."

—F.J. Haskin on U.S. Supreme Court.

CHAPTER VI

THE SUPREME COURT

The U.S.A. is a federation of 50 States. A federal structure is a dual policy. It involves distribution of powers between the federal Centre and federating Units. There is thus every possibility of disputes arising between the Centre and the Units. Then the constitution of a federation is a written document. Existence of a federal judiciary with special powers to adjudicate in disputes between the Centre and the Units and to interpret the constitution is therefore, imperative. Moreover, the federal constitution is the supreme law of the land. The judiciary is entrusted with the function of protecting the spirit of the constitution. The Supreme Court of the United States is especially armed with extensive powers to defend the constitution. It may declare *ultra vires* a law passed by any legistature or an executive order issued by any executive organ in the United States, if the same is contrary to the spirit of the constitution. Importance of the federal judiciary in the U.S.A. is all the greater because the constitution is based on the principal of *'separation of powers'* with a system of *"checks and balances'.* It is the judiciary which keeps all the organs and functionaries of the government within their respective spheres of authority.

The Supreme Court plays a very vital role in the political structure of the United States. The constitution vests the judicial power of the federation in the Supreme Court and such other courts as the Congress may 6et up from time to time. Besides the existence of the federal courts, each State has its own system of judicial courts to administer the State laws and interpret State constitutions. The federal judiciary consists of the Supreme Court, 10 Circuit Courts, one or more District Courts in each State. Besides, there are the Courts of claims and Customs. The Supreme Court, it is obvious, stands at the apex of the whole judicial system.

A Circuit Court consists of 3 to 5 judges. The Circuit Courts have no original jurisdiction. They deal only with appeals which are filed against the decisions of the District Federal Courts. In most cases decisions of the Circuit Courts are final. It is only in rare and specified cases that appeals against their decisions may be taken to the Supreme Court

At the bottom of the judicial hierarchy, there are District Federal Courts. **In** every State, there may be one or more District Federal Courts. The number of judges may vary from one court to the other on the basis of the amount of work it has to deal with. The District Courts have original jurisdiction in disputes arising under the federal laws. In most cases appeals against their decisions are taken to the Circuit Courts and in some to the Supreme Court. The Court of Claims which was established by the Congress in 1855 hears cases regarding claims of money against the Government of the United States. The Court of Customs decides disputes regarding Customs and Duties. It was established in 1926. In the U.S.A., with the exception of the Supreme Court, courts are at the mercy of the Congress which may close down any one of them or create one or more new ones and may determine their authority and organization.

The Supreme Court of the U.S.A. is probably the strongest of all judicial tribunals in the world. It has played a notable role in the development **of** the American Constitution. It has adapted the constitution to the changed conditions of 20th century. With its power to act as the guardian of the constitu-

tion, it has strengthened the Centre at the expense of the States, as and when the need for such an action arose. It also enjoys a unique position because of its independence from interference by the executive or the legislature. The functions of the Supreme Court are so numerous and so important that Herman Finer aptly remarks : "Such a court, with such functions, is the most original, the most distinctive American constitution to political science. It is the cement which has fixed firm the whole federal structure."

Q. 17. Describe the composition and functions of the U.S. Supreme Court. What is its role in the American political system ? *(V. Important*

Ans. The Supreme Court of the U.S.A. is the highest judicial, tribunal in the federation. The constitution vest? all the judicial powers of the federation in this court and other inferior courts to be established by the Congress. The number of judges of the Supreme Court has not been fixed by the constitution. Formerly there were six judges, but now there are nine, including the Chief Justice although the number can be increased or decreased as and when necessary by a law of the Congress. The number of judges has stayed at 9 for the last fifty years. President Roosevelt wanted the Congress to increase the number of judges to 15 but the Congress refused to oblige him.

Appointment. Like all other high ranking appointments, the judges of the Supreme Court are appointed by the President with the consent of the Senate. The Senate confirms the nominations of the President after a good deal of scrutiny. The Judiciary Committee of the Senate makes a careful examination of nominations made by the President. The report submitted by the Committee is then considered by the Senate as a whole. When 2/3rd majority of the members of the Senate give their approval, the President issues the commission. As a result of this procedure, the judges of the Supreme Court have been, with a few exceptions, lawyers of distinction and men of a great calibre although no regular qualifications are prescribed by the constitution.

The judges once appointed enjoy perfect security of service. They hold office during good behaviour and cannot be removed except by impeachment. Their salaries and emoluments cannot be altered during the course of their service to their disadvantage. No age of retirement is fixed by the constitution. A convention has been established that if a judge has reached the age of 70 and has served, on the Court for a period of 10 years, he must retire. After retirement, the judges get full pay and are still considered to be federal judges.

Its Powers. The jurisdiction of the Supreme Court is both original and appellate. Its original jurisdiction extends to the following cases:

(i) Cases affecting ambassadors, public ministers and consuls.

(ii) Inter-governmental cases in which Federal Government or States are parties.

'Its appellate jurisdiction extends to all other cases falling under the federal judicial authority. It Can hear appeals from the lower federal courts and from the State High Courts, in cases which involve the interpretation of the constitution in letter and spirit.

Sessions. The Supreme Court has its own officials and makes its own rules of procedure. The Court meets at Washington every year from October to May. The quorum is six and majority of five judges must decide for or against the case. The cases are heard on Tuesday, Wednesday, Thursday and Friday. On Saturday, the judges confer among themselves. The decisions are arrived at by a majority vote. On Monday, the judgments are delivered.

Role of the Supreme Court. The Supreme Court of the United States of America has played a vital role in the evolution and development of the American political system. The theory of Separation of Powers has given it independence from the control of the executive and the legislature. But in consistence with the system of checks and balances, it exercises certain control over the executive and the legislature if they go against the constitution by exceeding powers granted to them.

The Supreme Court has played a double role. In the first place, it has acted as the guardian and custodian of the constitution and fundamental rights. In the second place, it permitted the constitution to develop and expand with the march of time.

(a) Guardian of the Constitution and Rights. The Supreme Court is the final interpreter of the constitution. As a guardian of the constitution, it protects the States against any encroachment by the Central Government and *vice versa.* It protects the individuals against invasion by the Centre and the States. It keeps the powers of the various organs and functionaries of the government of the United States within their respective spheres of authority. Hence the justification of Haskin's remarks that this great tribunal (Supreme Court of America) is a balance wheel in the governmental machine. It possesses judicial review. It can declare null and void a law passed by the legislature or an executive action taken by any executive organ in the United States if the same goes against any provision of the Constitution. It is thus the final Court to judge the constitutionality of any law or executive decision. It can, however, move into the matter only if a case is brought before it. The power, of *judicial review* has been employed so very frequently that it is estimated that by 1937, the Supreme Court had declared *ultra virus* some seventy laws passed by the Congress and some three hundred State laws. Laws may be declared null and void months and years after these were enacted. The Supreme Court declares laws and orders null and void on the basis of 'Due process of law' clause. It means that a laws may be declared unconstitutional if it does not satisfy the rules of reason. In practice, it implies that a majority of the judges of the Supreme Court may declare any law or executive action as invalid if it appears to them as unreasonable, unjust or immoral.

In this way the Supreme Court of America has assumed the position of a super-legislature. Its authority hangs like a sword of Damocles on the heads of the legislature and the executive, Legislation in United States in the words of Jefferson is only a lottery. The judges of the Supreme Court not only interpret the constitution but also determine political and economic policy of the United States. As for example, the Supreme Court declared *ultra vires* many important measures of the New Deal Legislation inspired by President Roosevelt not from purely legal angle but from political bias and prejudice. It is not for the people of the U.S.A. to say what law they want. It is for the Supreme Court to declare what law is constitutionally good. In the opinion of Chief Justice Hughes, "We are under a constitution but the constitution is what the judges make of it." Thus the Supreme Court has become 'Super Legislature' or 'Third Chamber of Legislature.'

(b) Development of the Constitution ; As pointed out above, the Supreme Court has also contributed a good deal towards, the development of the Constitution. It is on account of the liberal interpretation by the Supreme Court that the U.S. Constitution framed in the 18th century to satisfy the requirements of thirteen States with a small population which lived in pastoral-cum-agricultural age, still holds good in the 20th century when America is one of the most industrialized and civilized countries of the world. It is again on account of the interpretations by the Supreme Court, that a skeleton Constitution comprising 7 Articles and containing some 7,000 words, is now meeting the requirements of a highly complex governmental structure of the United States.

By its power of judicial review, the Supreme Court has always interpreted the constitution to meet the needs of the times. By evolving the doctrine of *Implied Powers,* it has made the Centre strong at the cost of the States. Without this the U.S. federalism might have failed in these times of growing centralism. An example of application of the doctrine of *implied powers* of the Centre may be given from the following case quoted by A. Apadorai :

In 1791, Congress authorised the establishment of the Bank of the United States. The Bank was entitled to operate its branches throughout the country. Accordingly the Bank opened its branch at Baltimore in the State of Maryland. In 1818, the legislature of Maryland imposed a stamp duty on the circulating notes of the bank. The Baltimore branch refused to pay the tax. The State sued the cashier of the bank. The Maryland State High Court up held the law. An appeal was lodged with the Supreme Court which declared that according to a clause in the Constitution (empowering the Congress to collect taxes, to borrow money etc.) the Congress had an, *implied power* to start the bank and, therefore, the state law was illegal and against the constitution. The powers of the National Government to regulate inter. State commerce, railways, telegraphy aeroplanes and radio all owe their origin to the decisions of the Supreme Court. The decisions and interpretations of the Supreme

Court have played so great a role in the evolution of the constitution that some commentators have called the Supreme Court a continuous constitutional convention. Munro remarks, "One might almost say that the constitution undergoes some change every Monday when the Supreme Court hands down its decisions."

Critical Analysis : 1. The power of judicial review in the hands of the Supreme Court has demoralized the popular legislatures in United States. It is an anomaly that judges should have greater powers than the representatives of the people, who constitute the legislature. This power of the Supreme Court has undermined the prestige and sense of responsibility of the Congress. The Supreme Court, according to Laski, has assumed the position of a super-legislature. This fact leads not only to bad legislation but also results in a large amount of good legislation being never attempted. One fails to understand how a lawyer can be a better judge than a politician in such matters and how he can understand the needs of the people better than the politicians. The judges only enforce laws, and not justice.

2. Its method of arriving at decisions is defective. Generally the decisions are taken by a majority of five over four. This means that veto always lies in the hands of one man. This way one judge - can stand against the popularly elected Congress and the President. His will prevails against their will. The judgments of the court are political and conservative. It is because of this factor to a very large extent that America lacks most in progressive legislation.

3. The Supreme Court can declare a law as invalid not because it violates a certain provision of the constitution but because it does, not appeal to the sense of reason of the judges. Legislation in the United States thus depends upon the whim and fancy of the judges of the Supreme Court. This right of the Supreme Court is a Veto on the representatives of people.

4. Absence of any upper age limit for retirement may and often does make a judge continue to sit in the Court long after he ceases to be an efficient judicial head. This makes the Court reactionary.

5. The judges of the Supreme Court are generally old people having orthodox and reactionary views. They have always defended the rich against the poor. They have jealously protected the property rights. The Supreme Court has thus proved to be a citadel of vested interests and not a bastion of popular liberties. It has always opposed any progressive piece of legislation. It declared laws regarding income tax, minimum wage, limited hours of work for factory workers unconstitutional and even upheld slavery.

However, in spite of all this criticism, the Court has played a very vital and important role as the guardian of the constitution. The constitution, today, is what the Supreme Court says it is.

POINTS TO REMEMBER

The Supreme Court of U.S.A. is the highest judicial tribunal in the federation. It lies at the apex of judicial hierarchy. It consists of a Chief Justice and eight other judges. The judges are appointed by the President with the consent of the Senate. They cannot be removed from service except by impeachment. The Supreme Court has both original and appellate jurisdiction. Its original jurisdiction extends to cases affecting ambassadors; public ministers and consuls, It extends also to all those cases where a State Government is a party. It hears appeals against the decisions of the Lower Federal Courts and State High Courts if the case involves interpretation of the constitution. The Supreme Court acts as the guardian and custodian of the constitution. It can declare a law unconstitutional if it contravenes any provision of the constitu. tion. The Supreme Court has played a vital role in the development of the constitution. By the doctrine of implied powers, it has strengthened the Centre at the cost of the States and has fulfilled a greet need. It has changed the constitution beyond recognition through its liberal interpretation. The Supreme Court of America has some defects as well.

PROBABLE QUESTIONS WITH HINTS

1. 'The Supreme Court by exercising its powers of judicial review, has become, in fact, a third Chamber in the United States.' (*Laski*) Comment.

'The federal judiciary in America is the cement which has fixed firm the federal structure.' Discuss.

[For answer, refer to the role of the Supreme Court in the American political system as discussed under Q. 17.]

"The major political parties in America may be compared to empty bottles, each bearing a table denoting the kind of liquor it contained." —*Lord Bryce.*

CHAPTER VII

POLITICAL PARTIES

Gettle defines a polical party as 'a group of citizens more or less organised, who act as a political unit and who by the use of their political power aim at controlling the government and carrying out their policies.'

Political parties and democracy go hand in hand. Both are inseparable. Political parties render a very useful service to the cause of democracy. They formulate, mould and organise public opinion. They clarify various issues facing the people. They offer clear-cut solutions to social, economic and political problems and carry on extensive publicity and vigorous propaganda in order to popularise them. The political parties fight elections. They establish a link between the government and the people. They clothe the dry bones of the mechanism of the government with flesh and impart energy and driving force to it.

The fathers of the American Constitution, however, were afraid of the masses and political parties. They framed the constitution as a safeguard against democracy. The Presidential form of government was sought to be established and the Parliamentary form of government was avoided in order to keep the government away from the dominating influence of political parties. They provided for indirect election of the President, again to keep this exalted office away from the influence of the masses. But the hopes of the framers of the constitution were shattered by the growth of strong political parties soon after the promulgation of the constitution. They are now dominating the entire political system of America. In many respects, they have even changed the spirit of the constitution. The indirect election of the President has today become direct because of the working of political parties.

The relationship between the political party controlling a majority in the Congress and the Presidential office is so intimate and subtle that it is impossible to draw a line and say 'here the party ends and the government begins'. This fact may be illustrated with a few examples.

In theory the President makes appointments to the numerous federal offices subject to confirmation of the Senate. He is supposed to be free in making these appointments. In actual practice he has no free hand in the matter. Appointments to most of the offices are made in consultation with the leaders of the President's party across a dinner table. Again legislation is supposed to be the business of the two Houses. But in actual practice laws are made by the party-in-power under the directions of the party bosses.

The influences of the political parties over government does not end with the fact that the chief government officials have to consult influential party leaders : it is operative at lower levels as well. It is the party machine which selects candidates for various elections, conducts election campaigns and brings voters to polling booths. It is through the political parties that public opinion is moulded and formulated.

It is thus that the role of political parties in America is no less important than anywhere else,

Q. 18. Critically examine the character of the American parties. *(Agra 1940,47; P.U.1941, 43,46)*

Ans. The term political party in America is not understood in the sense in which it is understood in England or India. In the latter countries, a political party means a group of persons working on set principles, thinking more or less alike on the political, social and economic problems confronting the country and having more or less similar solutions for them. Thus in England or India, the political parties are divided on the basis of principles. As for example, the Conservative and Labour Parties in England have clearly distinct programmes and policies. The Conservatives are avowed pro-capitalists and support the existing social and economic order. They advocate private ownership of property and other means of production. They stand for the privileges of the House of Lords and Monarchy. They follow an imperialist policy abroad. The Labourites, on the other hand, stand for a semi-socialist programme. They are in favour of progressive nationalisation of key industries. They are against the privileged position of the House of Lords. Thus we find that the Conservatives and the Labourites are divided on the basis of definite economic principles. But there are no such fundamental doctrinal differences between the two major political parties in the United States. The programmes and the policies of the Republican Party and the Democratic Party are almost identical. Both are ardent supporters of capitalism. Even in foreign policy, the two parties do not differ much because both are equally emphatic on their anti-Soviet and anti-China policy. They differ only in emphasis on certain aspects of foreign policy. All this means that the American political parties are not divided on clear principles and doctrines.

The American parties further differ from British parties in so far as their members may not believe in the official programme of the party and still can continue as its members and support it. That cannot happen in case of British parties. In England, every party has clear and distinct programme of its own and all the members are wedded to the principles which the party stands for. The American parties, on the other hand, have within their rank and file, persona who believe in different principles and who - would like to present different solutions for various problems. For instance, a Democrat from Pennsylvania will support high tariffs, though the Democratic Party as a party supports low tariffs. From doctrinal, point of view the Democrats from Pennsylvania should have no place in the party, but such is not the case. Thus major political parties of the United States have all shades of opinion represented on them. Each Party has conservatives, liberals and socialists in its ranks. There appears to be a great justification in the remark of Brogan that, "the American parties are names which conceal all the range of potent American public opinion and if one party were suddenly to be extinguished, there is no shade of opinion in it which could not be represented in the surviving party." Lord Bryce compared the major parties in

America to empty bottles, each bearing a label denoting the kind of liquor it contained.

The American parties differ in another aspect also. Party membership of a person is determined by the attachment of his ancestors to a certain party. A large number of persons are either Republicans or Democrats because their parents or grand parents were so. Another factor determining the membership of a Party is the State to which a person belongs. Localism is one of the chief characteristics of these parties. There are States which are completely under the influence of either the Democratic Party or the Republican Party. They are, further, distinguished by the 'economic' interests that dominate them. The industrial, financial and commercial sections from the very beginning are with the Republican Party while the Democratic Party has always been supported by farmers and planters.

If the line dividing the parties is not distinct and clear, naturally the question arises on what principles elections in America are fought. The answer, as one writer puts it, is a simple one. 'The party in power defends the administration of the President and the party out of power bitterly attacks it.' Members of one party may serve under the administration of another party. For example, Eisenhower served under Truman. Mr. Bunker, once the U.S. ambassador to India, was a Democrat and represented a Republican President.

The American parties are dominated by local bosses. They determine who shall get tickets and they finance the party machine in their State or area. There is very little central control upon local units of these parties.

In spite of the fact that the political parties have no clear-cut policies, they have completely dominated the political life. Explanation of this phenomenon can be sought in the following factors.

(a) America is a country of endless elections. Elections are held for federal and State legislatures. In some States, judges and executive officers are also elected. Tenure of the legislatures is generally very short. The result is that every year there are elections for one body or the other. For successful election campaigns, the political parties are indispensable.

(b) The U.S. Government usually has an 'economic surplus' which is to be distributed amongst different interests in the form of subsidies and grants. Thus the "spoils system" gives a good deal of patronage to the party which comes into power. This temptation keeps the parties always active and well-knit units.

(c) The importance of political parties in America is all the greater, because her government is based on the principle of 'Sepatation of Powers' combined with 'checks and balances'. The party-in-power co-ordinates the activities of the executive and the legislature and thus avoids deadlocks which may otherwise be frequent.

POINTS TO REMEMBER

The political parties in America are not divided on the basis of any doctrinal differences as these are separated in England or elsewhere. Both the Republicans and the Democrats have more or less identical programmes and policies, in internal and foreign affairs. In the second place, the American parties have in their rank and file persons professing various political creeds and principles : Thus there is no political solidarity among the members of a party. Party membership of a person is also determined by the political alignment of parents and grand parents. Sometimes, membership of a party is determined on the basis of the State in which a person is domiciled. In spite of very little doctrinal differences among the parties, they dominate the political life of America. Explanation of this phenomenon may be sought in endless elections in America, and distribution of economic surplus.

Q. 19. 'The American political parties are sectional and tion-doctrinal.'Elucidate.

Ans. It has already been discussed in the previous question that the American political parties are not separated on the basis of any doctrinal differences. America is a highly industrialised country wherein private enterprise has reached the highest pitch. The different sections of capitalists have their sectional vested interests. Politics is a hand-maid of these groups of capitalists. They support with men and money their party and use it for deriving privileges born out of power when the party controls the administration. Success of one political party confers wide economic benefits upon its supporters.

Everywhere in the world, politics and economics are closely connected. But nowhere have the economic interests dominated the national politics so much as in America. The American parties, belong to different sections of society based on different economic interests, The Republican Party finds its centre of economic gravity in the industrial and financial interests of the nation. The Democratic Party derives its support from the agricultural interests of the country. Hence the sectional character of the parties. No doubt owing to industrialization this old line of distinction has become blurred, yet another type of sectionalism has come into existence. American Government usually has 'economic surplus' which has to be distributed among different interests. There are four main sectional interests in the country : (a) the industrial section producing both for export and home consumption, (b) the financial section including all kinds of financiers, (c) the labour section, and *(d)* the agricultural section. The attempt of each party is to secure as large a portion of the economic surplus for its own section as it cart and each of the principal parties identifies itself with the economic interest of those who contribute to *its* fund and ranks.

In order to appreciate the remark that the American parties are sectional and non-doctrinal it is necessary to study the origin and growth of the parties. The framers of the constitution were opposed to the party system. George Washington wanted to establish the tradition of a non-party President. But the circumstances soon asserted themselves and the parties grew in the country. After the establishment of the Federal Government, power passed to a

At first Parliament tendered only legislative advice but soon the Parliament secured for it the initiative in legislation, leaving the powers of veto or assent with the King.

The Period of Transition : During the Tudor and Stuart periods, England passed from absolutism to constitutional government. The Tudor period was a period of absolute rule. But those were the days when various social, political and economic conditions necessitated absolute monarchies. The Tudor tradition of absolutism, with disregard for Parliament was carried on by two Stuart Kings—James I and Charles I. But soon an acute struggle between the King and Parliament ensued. Parliament's demand was : 'No taxation without representation.' It ultimately resulted in a civil war in which the Stuart King Charles I was beheaded. At the victory of Parliament, came the Commonwealth of Cromwell which was disliked by the general masses and the country soon reverted to monarchy. Though Charles II, the restored King, did not act arbitrarily like his father, yet in many cases he acted on his own initiative without consulting the Parliament. Again a struggle ensued during the period of his successor James II which culminated in abdication of the King. Thus a long period of struggle between the King and the Parliament ended with the establishment of supremacy of Parliament.

During the succeeding centuries, the powers of the Crown gradually disappeared. The House of Commons gradually became more important than the House of Lords. By the Septennial Act of 1716, long and regular sessions of the House of Commons were held. The extension of franchise made the House of Commons a real organ of popular will. The Parliament Act of 1911 gave it complete financial control and over-riding powers in ordinary legislation. Its powers increased enormously and the House of Lords lost its importance.

The Cabinet : We have mentioned above that the Cabinet arose out of Privy Council which was an offshoot of the *Curia Regis* or Permanent Council. The immediate predecessor of the Cabinet was 'Cabal' of Charles II. It was the inner secret Council selected by Charles II for the conduct of public business because he found the Privy Council too large for the purpose. This inner Council met in a small room or cabinet, hence the name Cabinet was given to the Council. In the beginning, the Cabinet had no powers apart from the Privy Council but later on, it was given all the powers of its parent body except judicial powers.

With the rise of political parties in England grew the powers of the Cabinet. William III found that he could not rule with a Cabinet, the members of which belonged to different parties. Thus he established the practice of choosing the members of the Cabinet from one party only—a party which gained majority in Parliament The Whig Junto of 1696 is regarded as the real beginning of the Cabinet system. Ignorance of Hanoverian Kings regarding the political life of England

led to further increase in the powers of the Cabinet. The first Hanoverian King George I was quite unacquainted with English language and politics. He, therefore, abstained from attending the meetings of the Cabinet, which came to be presided over by one of its members Who came to be known as Prime Minister. Walpole was the first Prime Minister. He would preside over the meetings of the Cabinet and communicate its decisions to the King. At the end of the eighteenth century certain principles of Cabinet Government were firmly established. They are as follows :

(1) The members of the Cabinet should belong to either House of Parliament. (2) They must hold similar political views. (3) They must command the support of a majority in the House of Commons. (4) They must be jointly responsible to the House of Commons. (5) They must work under the leadership of the Prime Minister.

Thus through a series of changes, the British Government developed from a highly centralized monarchy into one of the most advanced democracies of the world.

''The English Constitution has made a circuit of the Globe and has become a common possession of civilized man "

—G. B. Adams

CHAPTER II

GENERAL FEATURES

De Tocqueville remarked that the English people had no constitution. This saying of a great political and constitutional expert, is quoted very often, but only to be refuted. England has a constitution, although it is not written, in a single document. The British Constitution is found in statutes, customs, and conventions. De Tocqueville probably understood that a constitution meant only a written, precise and one comprehensive document. If that be really the definition of a constitution, then England has no constitution. A constitution means certain principles on which the government in a state is organised and which determines the relation between the people and the government. England not only has its own constitution, but it has also provided inspiration and motif for a number of other constitutions in the world. England is the homeland of parliamentary democracy. Other countries have borrowed many of its institutions and principles. We, in India, have also provided for a parliamentary democracy on the model of the British Constitution. Herein we find justification in the remarks of G.B. Adams that the British Constitution has made a circuit of the globe and has become the common possession of civilized man.

Q. I Discuss and analyse the salient features of the British Constitution.

Ans. The solient features of the British Constitution may be analysed as follows :

I. Unwritten : By far the most important feature of the British Constitution is its unwritten character. There is no such thing as written, precise and compact document which may be called the British Constitution. It was really this aspect of the British Constitution that led De Tocqueville to remark that England has no Constitution. The English Constitution has evolved through the ages, and is largely found in judicial decisions, statutes, customs and conventions. Conventions are political usages which have developed during its working and have come to stay as a vital part of the Constitution. They are now deep-rooted in the political system of Great Britain. Though these conventions have not been enacted in a statute and thus have no legal sanctions behind them, yet these are scrupulously followed by the governments and the people. They have even replaced law. This is in contrast with the system in India, U.S.A., France, Switzerland, the U.S.S.R. and other countries which have precisely written constitutions.

2. Evolved : The English Constitution is child of evolution. It can be traced back to the remote past. It was never enacted in

the form of laws by any constitution-framing body duly elected by the English people at any stage of history. It has grown like an organism and developed from age to age. As Munro points out, "the British Constitution is not a completed thing but a process of growth. It is a child of wisdom and chance whose course has sometimes been guided by accident and sometimes by high design.".

3. Unitary : The British Constitution has unitary character as opposed to federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. The Executive organs of state are subordinate to it and exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not political autonomous units as in a Federation.

4. Flexible : The British Constitution is a classic example of flexible constitution. It can be passed, amended and repealed by simple majority of Parliament since no distinction is made between a constitutional law and an ordinary law. Both are treated alike. The element of flexibility has lent the virtue of adaptability and adjustability to the British Constitution. This quality has enabled it to grow with the needs of time.

5. Parliamentary: It establishes a Parliamentary system of government. Parliament is sovereign. The executive powers are exercised by the Cabinet which is a committee of Parliament and is collectively responsible to the House of Commons. It can be removed by a vote of no-confidence passed by the House of Commons. It differs from the Presidential form of Government as it prevails in the U.S.A., where the President is independent of the Legislature. In Britain, the Executive is subordinate to Parliament.

6. Sovereignty of Parliaments The pattern of government in Britain is not only parliamentary, but it also stipulates the sovereignty of Parliament. Legally, Parliament can make, amend and Tepeal any law whether ordinary or constitutional. Its command is law and it is final. Neither it requires ratification nor is subject to judicial review. No court in the country can challenge the validity of laws passed by Parliament. The Executive is subordinate to it. This fact led De Lolme to remark that "the British Parliament can do anything but make a man a woman and a woman a man." The position of the British Parliament is an sharp contrast to the position of the Indian Parliament or the American Congress. The constitutions of these countries define the powers of these legislatures and then laws passed by them may be declared unconstitutional by their respective Supreme Courts if the same go against the spirit of the constitution.

7. Rule of Law : Another most important feature of the British Constitution is the Rule of Law. (1) All persons are equal before law irrespective of their position or rank. (2) This doctrine emphasises the supremacy of the law and not of any individual.

(3) No one can be detained or imprisoned without a fair and proper? trial by a competent court of law. Nor a person can be punished or deprived of property except for breach of law established in an ordinary Court of Law in an ordinary procedure. A corollary to this principle is the doctrine that, "the King or Queen can do no wrong." That means that the King or Queen cannot be tried on punished by any court of law. It further implies that the ministers, are legally responsible for the actions taken by them in the name of the sovereign. They cannot seek shelter in the legal immunity of the King or Queen.

8. Gap between Theory and Practice : Unlike other constitutions, there is a great gap between theory and practice in the English political system. This fact results largely from the unwritten character of the constitution which is mainly based on conventions and customs. In theory it is the King or Queen who is sovereign, but in practice it is Parliament which is sovereign. The Queen cannot veto any Bill passed by Parliament, although she has the right to do so in theory. The convention is that the Queen shall sign even her Death Warrant if passed by the two Houses of the Parliament. The Queen is only a figurehead. She must accept the advice of the Cabinet which is responsible to Parliament. The Queen, in theory is the fountain head of justice but in practice all honours and titles are conferred by the Prime Minister except the Order of Garter and Order of Bath and all high appointments are made by him. In theory, the 'Queen can do no wrong', but in practice, she does little. Every action of the Queen is countersigned by a Cabinet Minister. Prof. Munro rightly remarks that the Queen retains the symbolism of absolute powers although she has completely lost the substance of it.

9. Mixed Constitution : The British Constitution is a queer mature of the monarchical, aristocratic and democratic principles which are reflected in the Queen, the House of Lords and the House of Commons respectively. However, all these institutions go to strengthen, in their own way, the democratic forces. The ultimate supremacy is exercised by the House of Commons. According to Ogg, "the Government of U.K. is in ultimate theory an absolute monarchy, in form a constitutional limited monarchy and in actual character a democratic republic."

10. Role of Conventions : A necessary corollary to the unwritten character of the constitution, the conventions play a vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure passed by Parliament, by convention, she cannot do so and the same has become a rigid principle of the constitution itself. By conventions again, the Queen cannot go against the advice of the Cabinet, even though this rule is not found in any statute.

POINTS TO REMEMBER

There is no written document which may be called the Constitution of Britain. It is unwritten. It is an evolved constitution. It is unitary in character.

It is- flexible in nature. It is parliamentary in form. The Parliament is sovereign. The Rule of Law forms an important principle of British Constitution, There is a gap between theory and practice. A vital role is played by the conventions.

Q. 2. What are the sources of thd British Constitution ? Is it correct to say that the British Constitution does not exist? Isit "a child of accident and design" ?

Ans. The British Constitution is not contained in any single written document. It was never enacted by a representative body duly elected by the British people for the purpose. It was never promulgated on a specific date in history. It consists of various elements lying scattered all over the British history. According to Lord Bryce it is "a mass of precedents carried in men's minds or Tecorded 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." The sources of the constitution are partly written and partly unwritten. They may be broadly brought out as follows :

1. Great Charters, Petitions and Statutes : One of the main sources of the British political system lies in great charters, petitions and statutes enacted at different times in the historical evolution of political institutions. The Magna Carta 1215. the Petition of Rights 1628, the Bill of Rights 1689, the Act of Settlement 1701 as modified by the Abdication Act 1936, the Act of Union with Scotland 1707, the Parliament Act 1911. as amended in 1949, the Government of Ireland Act 1920, the Ministers of Crown Act 1937, have been great landmarks in the evolution of the British Constitution. Through these measures the Britishers secured their democratic rights and gradually left the Monarch absolutely helpless in the hands of a democratic Parliament. But all these form a very little portion of the body of British Constitution. They do not, as Munro points out, make a comprehensive code. Most of them have been the results of the need of the hour and are of historical value only today. In addition to some of the major statutes mentioned above, there have been various ordinary statutes; which have also •contributed much to the growth of the British Constitution. These laws are not marked by much constitutional enthusiasm, but all the same they are very important. To this category belong the various parliamentary enactments extending the right to vote to the British people like the Reform Acts of 1832, 1867, 1884, 1918, 1928 and 1948.

"2. Conventions : Another most important source of the British Constitution lies in its conventions. These conventions are not a part of written law, nor can they be enforced through the courts. But they are obeyed by the people because they are helpful in the smooth working of the government. For example if the Queen refuses assent to a parliamentary enactment, she would perfectly be within her rights. But this would bring down a constitutional crisis.

and thus by convention she must not refuse assent to a Bill duly passed by Parliament. Such conventions are the very soul of the British Constitution.

3. Judicial Decisions : The judicial decisions form another source of the constitution. The judges interpret all the statutes and charters etc., and Jay down their scope and limitations. To some extent the British judges develop the constitutions much in the same way as is done by the judiciary in federal constitutions like that of India or the U.S.A.

4. The Common Law : Another source of the constitution may be traced in the institution of Common Law. This law embodies principles not laid down by Parliament nor ordained by the monarch, but which developed in England independent of both and slowly gained recognition throughout the realm. The common law developed out of customs and usages. The judges recognised some customs of the realm, applied them to individual cases and set precedents for decisions in later cases. As for example, in other countries the rights and liberties of the people are expressly guaranteed in the constitutions in the form of fundamental rights, but in England they are guaranteed by the common law. For instance, nobody can be denied his liberty except for the violation of law, proved in a court of law.

5. Commentaries of Eminent Jurists : Legal authorities and eminent jurists have written comments on constitutional law of England. Although these comments are mere legal arguments, yet their opinions cannot be easily ignored since they throw a flood of light on the spirit in which a particular law should be interpreted. Arson s *Law and Customs of Constitution*. May's *Parliamentary Procaine* and Dicey's *Law of the Constitution* are regarded to be authoritative comment on law and practice of English Constitution.

Existence of the British Constitution : It was De Tocqueville who remarked that England had no constitution. He was led into this belief by the absence of any written document which might he called the British Constitution. However, in practice this argument does not hold water. It is true that in England there has never been a written constitution except for the shortlived experiments of the Cromwellian era.

But what makes a constitution is not a formal document but the actual observance of fundamental rules relating to the governs ment of the country. As Bryce remarks such rules do exist in England in the form of a host of conventions, customs, usages and judicial decisions which have been generally recognised together with certain number of charters and statutes. If we mean by the term constitution only a written constitution, with some definite, and precise rules embodied in black and white, then of course, England does not possess a constitution. But if we mean by constitution a body of fundamental, rules and usages, written or unwritten, accep-

ted as the basis of the government, then England certainly possesses a constitution. The British Constitution is not to be found in a definite and precise document. It is as Munro points out, a complex amalgam of institutions. It is a compendium of charters, statutes, decisions, precedents, usages and traditions, some of them are definitely set down in writing but are changeable at any moment ; while others are living only in the understanding of the people. British Constitution is not entirely unwritten. Substantial portions of it have been embodied in great constitutional charters like Magna Carta, Bill of Rights, Act of Settlement, Acts of Union with Scotland and Ireland, though they sum up only a small portion of the total. We may also include all the Reform Acts and the Parliamentary Acts of 1911 etc. But these are the conventions which are the very centre and soul of the British Constitution, since major portion of the Constitution rests upon conventions rather than on laws.

With this understanding one would agree that Britain has a constitution much in the same manner as other countries have. Rather, the British Constitution is the oldest in the World and the British people are fully aware of its existence. Not only do they respect it but also guard it very jealously. De Tocqueville's assertion, therefore, was based on a wrong assumption. What Tocqueville resented, namely the absence of any written document, is in reality the glory and strength of the British Constitution. The special virtue of the British Constitution is its extreme flexibility which enables it to adapt itself to the changing times without any difficulty.

A Child of Accident and Design : The British Constitution was never framed by any representative body at a specific time in the history of Britain. It has grown and evolved during the course of centuries. It has, therefore, been aptly described as a child of accident and design.

This estimate of the British Constitution is quite correct. Much of the growth of the constitution is accidental. It is the product of a slow process of growth whose course has been guided partly by design and partly by chance. It has not been framed or adopted by any constituent body consisting of British people's representatives, at any particular time. This is in contrast with the constitutions of India, U.S.A. and France, which are the result of deliberate efforts of their people. Also it was not ordained or enforced by any monarchy It has gradually evolved itself from the feudal days to suit the modern machine age.

Almost all important political institutions in England like Bicameralism, Cabinet System, Constitutional Monarchy were born out of chance and expediency. Even the office of Prime Minister grew up instead of being created. There are numerous instances like .that. Strachey is thus justified in saying that the British Constitution is 'the child of wisdom and chance'.

POINTS TO REMEMBER

The sources of the constitution are charters, statutes, conventions, judicial decisions, common law and commentaries of eminent jurists. The British Constitution does not exist in real sense as there is no set political system. The only thing is that the constitution is largely UDwritten. It has gradually evolved during the course of centuries and as such is a child of accident and design. It was never framed or adopted by a body of people's representatives at any time, nor was it enforced by any monarch. It just grew up out of expediency and chance.

Q. 3. What is meant by the phrase 'conventions of the constitution' ? Give some examples from the British Constitution. How and why are they enforced ?

Ans. Two sets of rules are required for the successful working of the constitution of a country. One type of rules are those which are enforced by the courts and are known as laws. Another type of rules are those which are not recognised by the courts of law and are known as conventions. Dicey makes a clear distinction between laws and conventions. The laws are rules made by a legislative authority, enforced by the executive and applied by the courts. Conventions, on the other hand, are neither made by any legislative authority nor enforced and applied by executive and the judiciary. They are merely some understandings, habits and practices which regulate the working and day to day activities of the government and form an unwritten part of the constitution.

Human nature is conservative and it always delights in following the experience of the past, making necessary adjustments to suit the new requirements. Rules once evolved and subsequently followed become customary and binding. All rules evolved in such a manner followed and considered binding by the people in the matter of government are characterised by Dicey as the conventions of the constitution.

The line of demarcation between laws and conventions is, however, very thin. A convention of today may become a law tomorrow. As for example, the office of Prime Minister owed its existence to a long established convention but it was given legal recognition with the passage of Ministers of Crown Act, 1937. The same Act legally recognised 'Party', 'Opposition' and the 'Leader of the Opposition'.

In England the importance of conventions cannot be exaggerated because the whole working of the constitution rests upon them. The conventions secure continuous co-operation between the various organs of government. Conventions are necessary for the proper working of the constitution. If the British Constitution is stripped of its conventions and displayed in its legal nakedness, it weld be unrecognisable.

A complete list of the conventions may not be given. The following, however, are some of the important conventions which are recognised and acted upon.

(a) In relation to the King or Queen : 1. The King or Queen must summon the leader of the majority party in the House of Commons to form the government after the general elections are over. The Prime Minister is given a free hand in the selection of his colleagues.

2. The King or Queen must accept the advice of the Cabinet.

3. The King or Queen must give his or her assent to a Bill passed by the two houses of Parliament, even if it is their death warrant.

4. On the resignation of a Ministry, the King or Queen has to summon the leader of the opposition to form a Ministry.

(b) In Relation to the Cabinet: 1. The Cabinet holds office only as long as it retains the confidence of the majority in the House of Commons. The Cabinet must resign if it loses the confidence of the majority in the House. As an alternative, the Prime Minister of the defeated Ministry has the right to ask the King or Queen to dissolve the house. By way of another convention, the King or Queen must accede to such a request of the Prime Minister and must order fresh elections. If the defeated Ministry gains majority in the House again, it will continue in office and if it fails to win at the polls, it must resign before facing the new House. It cannot request the King or Queen to dissolve the House for the second time.

2. All the ministers are collectively responsible to the Parliament. Even if one minister is defeated, the whole ministry must resign.

3. The Cabinet cannot declare war or conclude peace without the approval of the House.

4. The Cabinet is an extra-legal committee of the legal executive called the Privy Council and exercises all the powers of that body in practice. All members of the Cabinet become automatically members of the Privy Council.

5. The Prime Minister of England must belong to the House of Commons. The convention was established in 1922, when Lord Curzon was not chosen as Prime Minister because he belonged to the House of Lords.

(c) In Relation to Parliament: 1. The Speaker of the House of Commons must keep himself aloof from party politics. After election he becomes politically neutral.

2. 'Once a Speaker always the Speaker' is another significant convention regarding the office of the Speaker. The Speaker of the outgoing House is returned unopposed from his constituency it parliamentary election. He is then unanimously elected by the House as Speaker. Thus he is allowed to continue as Speaker as long as he desires.

3. Parliament must meet at least once a year.

4. The lay peers do not take part in the working of the House of Lords when it sits as the Highest Court of Appeal. Only Law Lords especially nominated to the House of Lords are to perform its judicial functions.

5. It is a matter of convention, that every Bill must have three readings before finally voted upon in each House of Parliament.

6. Again there is a convention that a speech from government benches must be followed by a speech from opposition.

7. Peers are appointed on the advice of the Prime Minister.

Sanction behind Conventions : Conventions are political usages which have grown in the course of the working of the Constitution. They have not been enacted by the Parliament and hence have no physical sanction behind them as Law of the Parliament has. Yet these conventions are obeyed both by the people and the government and are taken cognizance of even by Courts. Prof. Dicey was of the opinion that these conventions are obeyed because their breach shall ultimately bring the offender in conflict with law and then it will entail legal punishment. As for instance, if the King does not summon Parliament for more than a year, serious consequences would follow. The Army Act would lapse. Consequently the maintenance of armed forces will become illegal. The Finance Act will also lapse and the Cabinet shall not be legally entitled to raise taxes and spend money.

Prof. Dicey's view is only partially correct. Not all conventions are bound up with law. As Dr. Jennings has pointed out, the violation of every convention does not necessarily lead to the breach of a law. For example, if the Cabinet refuses to resign when a vote of no-confidence is passed by the House of Commons no legal consequences will follow. Lowell while endorsing the opinion of Jennings points out that England is not obliged for ever to hold annual sessions of Parliament. Being a sovereign body, it can pass a permanent Army Act and grant taxes for a number of years.

Lowell points out that conventions are supported by something more than the mere realisation that their violation may bring about breach of law. According to him, public opinion is the real sanction behind conventions of the constitution. It is a convention that Parliament must be convened every year and that the Cabinet defeated in the House of Commons over a vital issue will resign or appeal to the electorate. If these things do not happen, there is bound to be resentment in the public. This fear of annoying the public, compels the political parties to obey the conventions. If the conventions are not obeyed, there would be numerous complications in the working of the government which no statesman with any interest in the future of his party can for a moment overlook. The conventions are rules of constitutional morality and code of honour. They reflect the present political needs in Britain. They reflect the political theory accepted by people of that country. These are obeyed because

these are the motivating forte of the Constitution. They have indeed oiled the wheels of democracy. These are, in fact, the most vital part of the Constitution and have determined its growth and transformed absolute monarchy into a crowned republic.

POINTS TO REMEMBER

The conventions constitute a vital part of the British Constitution. These may be defined as those understandings, habits and practices which regulate day to day working of the government. There are conventions relating to the King, the Parliament. There is a controversy among the constitutionalists as to why conventions are obeyed. Prof. Dicey is of the opinion that conventions are obeyed because their breach would bring about a clash with existing laws. But this is not a satisfactory explanation because breach of every convention does not necessarily bring about a conflict with some law. In the opinion of JLowell, public opinion is an effective sanction behind the conventions. No statesman with any interest in the future of his party can violate a convention.

Q. 4 Discuss the nature of soverignty of Parliament in England.

Ans. British Parliament is a sovereign body. It consists of House of Commons. House of Lords and the Monarch. Sovereignty of Parliament means its legal supremacy. There is neither any other authority above it nor any authority beyond its control.

Sovereignty of Parliament has two aspects — positive and negative. Looked at from the positive angle, it means that there is no law which the Parliament cannot make. It is competent to pass, amend and repeal both ordinary and constitutional laws. It is both a legislative body and constituent assembly. Parliament gained sovereign powers after a long struggle for supremacy with the kings at various stages of British History. It can make laws regulating private rights and public rights. It controls army, executive and judiciary. It can make laws annulling a decision of a court of law. It can establish an absolute monarchy or a Communist society by an ordinary law. The laws passed by it, ordinary or constitutional, do not require any ratification. Its word is law and a final law. The Parliament can extend its own life, can legislate for abdication of a monarch or restoration of a king. In 1660, it restored Charles II to the throne, in 1936 it passed Abdication Act of Edward VIII. It passed Septennial Act fixing its life at 7 years and then reduced it to 5 years by an Act passed in 1912. It can adjudge a minor of full age, neutralise an alien or legitimise a bastard. De Lolme has well said, "...Parliament can do everything except making a woman a man and changing a man into a woman." When Parliament legislates, the whole nation legislates. It personifies the British people.

The Parliament has not only passed constitutional laws for Britain but also for so many other countries of the Commonwealth.

Lastly, it may be noted that unlimited authority of Parliament regarding law-making resides in Parliament alone and not in any executive organ. Executive in England does not enjoy the authority

to issue decrees having the force of law unless the power is conferred upon the executive by Parliament itself.

Looked at from the negative angle, sovereignty of Parliament means that there is no authority in the country which can question the legality of the laws passed by the Parliament. There is no judicial review. The courts of England have no right to question the authority of Parliament though they can interpret the law passed by it. The judges do not and cannot declare any parliamentary legislation invalid.

Limitations : However, in spite of legal sovereignty, the Parliament is restricted in practice. According to Prof. Dicey, there are two kinds of limitations on the parliamentary sovereignty : one being external and the other being internal. Externally Parliament is bound by the public opinion. It cannot pass any law or laws which may enrage the masses. The fear of public revolt puts a definite limit to the powers of Parliament. Internally its sovereign power is bound by its nature. It shall pass only those measures which are likely to be approved and liked by the members who compose Parliament. Thus the internal limitations arise from the composition and character of the Parliament itself. Further one Parliament cannot bind the other. Every Parliament is supreme and can amend or repeal all laws passed by its predecessors. This is, however, not a limitation but an incident of sovereignty.

It should be noted, however, that the Parliament is supreme in theory alone. In actual practice it has never been so supreme. The powers of the Monarch have decreased but the powers of the Cabinet have steadily increased. The Cabinet thus backed by a strong majority controls all legislation. Parliament in practice does little more than register the wishes of the Cabinet. Apart from the limitations referred to above, there are certain other practical restraints over the authority of the Parliament. Some of these are given below :

(a) No Parliament can pass a law violating the spirit of International Law.

(b) As a matter of convention, no Parliament can pass a law which is likely to affect the interests of Trade Unions, Chambers of Commerce and the like without consulting the bodies concerned.

(c) No Parliament shall make a law which affects fundamentally the general policy of the State unless it has been an issue at a general election. For instance, the Parliamentary Act of 1911, which substantially curtailed the powers of the House of Lords was passed after registering the decision of the electorate in general elections.

POINTS TO REMEMBER

The Parliamentary sovereignty is an outstanding feature of the British Constitution. It has two implications. Positively, Parliament can make, repeal both ordinary and constitutional laws. Negatively, no court

in the realm can challenge the validity of the laws passed by the Parliaments Although legally Parliament is supreme in all respects, in practice it is not so. Its authority suffers from various limitations. The public opinion is an external limitation. The composition and character of Parliament is its internal limitation. International law is still another restriction. The Parliament by way or practice cannot pass legislation in respect of various public bodies like the Trade Unions. It cannot introduce a fundamental change in public policy without the consent of the electorate.

Q. 5. 'The Rule of Law is an essential guarantee of the-liberty of the English people.' Elucidate.

Discuss the nature of the Rule of Law in England. Are-there any exceptions to it ?

Ans. The Rule of Law is a unique feature of the British. Constitution. Ordinarily it means that there is government of laws-and not of men in England. Law is supreme over all. None can claim exemption from law. According to Dicey, it has the following implication :

1. 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 legal manner before the ordinary courts of the land." In simple words, it means that no citizen of Great Britain can be arrested, detained or imprisoned without a fair and proper trial in a court of law. This principle further implies that there should be an absence of arbitrary power in the hands or the executive. No person should be deprived of his life, liberty and property arbitrarily. It establishes the supremacy or predominance of regular law, as opposed to the influence of arbitrary power.

2. Second implication of Rule of Law lies in the fact that "no person is above law and every person, whatever his rank, or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals." In this sense, the government officials are bound to obey the ordinary laws which govern the private citizens and are subject to the jurisdiction of the ordinary tribunals. This is in contrast to the system of the administrative law prevailing in France and other continental countries where disputes involving the government or its officials are beyond the sphere of the ordinary courts and must be dealt with by special courts known as administrative courts. In England, such is not the case. "With us," says Dicey, "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification, as any other citizen."

This aspect of the Rule of Law is of great importance. As. Maitland points out, jt ensures ministerial responsibility in the legal sense. The ministers are not only politically responsible to Parliament, but they are also responsible before the ordinary courts of law They can be sued or prosecuted for any illegal action taken by them in their official capacity.

3. In the third place, the Rule of Law implies that since various rights of the people like the right to personal liberty, the right to public meeting etc., are in England the result of judicial) decisions determining the rights of private persons in particular cases brought before the courts, the constitution is the result of the ordinary law of land. In other countries like India or U.S.A. these general principles of the constitution are laid down in written constitutions. This system is regarded to bs defective by some constitutionalists because these rights are capable of being suspended or taken away. But it is an incorrect estimate because rights or the people in England are thought to be inherent in the law of the land, and it is felt that they cannot be taken away without bringing:, a revolution in the habits of the people.

Exceptions to the Rule of Law : There are certain limitations, which the principles of the Rule of Law suffer from. These limitations may be brought out as follows :

1. The Crown is not liable for the wrongs done by its officers.. A government official is personally responsible for his mistakes. But since the government cannot be held responsible, the wronged may go without an adequate compensation or relief because the wrongdoer may not have sufficient resources to pay the damages. Ins France where system of administrative law prevails the wronged can secure proper relief from the government for damages done by its. officials.

2. England is fast developing into a welfare state and the activities of the executive are extending to various fields such as. education, public health, town-planning etc. As a result of extension of functions, it has become customary to entrust the executive authorities with judicial powers. As a consequence, the distinction between the Rule of Law and the Administrative Law, so sharply drawn by Dicey, is fading away. Thus the Roads Act 1920,. authorises Minister of Transport to decide appeals about the refusal of licenses to run omnibuses. The Board of Education decides appeals about the opening of new schools. An appeal against an order of a County Council lies with the Minister of Health. This is a kind of administrative law. Under it the administrative agencies exercise the jurisdiction of a judicial nature over the rights and property of citizens.

3. Judges cannot be held responsible for anything done by them in the official course of their business.

4. Foreign rulers and diplomatic representatives cannot be tried by any court in England for any wrong committed by them.

5. The servants of the Crown have practically no protection against the Crown even though they are dismissed without a just cause.

6. Till the passage of the Reform Act 1947, peers could only be tried by peers which was clearly a violation of the Rule of Law.

7. The Monarch has the power to grant or refuse passport to travel in any country and such orders cannot be challenged in a court of law.

8. The action of the Home Minister regarding naturalisation of aliens cannot be challenged in a court of law. Likewise cancellation of citizenship cannot be challenged.

9. Trade Unions enjoy a lot of immunity from law.

In fact, today it is the 'Rule of Law of Parliament'. It can pass any new laws and repeal old laws. It can establish administrative courts or restrain liberty of the people. It may order arrest and detention without judicial trial of any person and arm the government with wide discretionary powers as under the Emergency Act.

All these facts clearly indicate that the Rule of Law in England suffers from various limitations. Even Dicey himself admitted in 1915 and remarked that "the ancient veneration for the Rule of Law has suffered during the last 30 years a marked decline."

POINTS TO REMEMBER

The Rule of Law is an essential requisite of the British Constitution. According to Dicey, it has three implications. In the first place, it implies that no person in England can be arrested, detained and imprisoned without a fair and proper trial in a court of law. In the second place, it means that every person in England from the Prime Minister to a peon is amenable to the jurisdiction of ordinary courts administering the ordinary law. Lastly, rights and liberties of the people are inherent in the ordinary laws of the land. The Rule of Law suffers from limitations as well. Under the Rule of Law as enunciated above, a person wronged by a government official may not have adequate compensation. England is fast developing into a welfare state resulting in an extension in the functions of the executive. The various administrative organs are, therefore, entrusted with semi-judicial functions. Administrative law is automatically coming into existence. Rulers of foreign states and diplomatic representatives are not subject to the jurisdiction of the British Courts.

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"There are many subtle distinctions in the vernacular of the British Government but none is more vital than the distinction between the King and the Crown." —*Gladstone*..

CHAPTER III

THE MONARCHY—THE NOMINAL EXECUTIVE

Except for a decade of Puritan Commonwealth, the institution of monarchy has existed in England since Roman times. During the past tea centuries, England had fifty-three monarchs. With the exception of five women, all have been men. The longest reign was that of Queen Victoria extending over sixty-four years and the shortest period of reign was that of Edward V who ruled for a few months in 1483. It was only for eleven years. **(1649**—1660) that England remained without a monarch.

The British Monarchy is a hereditary institution which is regulated according to Laws of succession passed by Parliament from time to time. The succession to the throne in present times is regulated according to the Act of Settlement, 1701 as amended from time to time. The Act provided that the throne of England should pass over to the heirs of the Princess Sophia of Hanover. Till 1914, the Royal Family was designated as the House of Hanover, but after that, it passed on to the House of Windsor. According to a provision in the Act, only Protestants are eligible to succeed to the throne. Besides, by usage the throne descends according to the principle of primogeniture which means that the elder son is to be preferred to the younger. Male heirs are preferred to female heirs of the same degree. In. case no direct heir to the throne is available, Parliament would have to provide for a new dynasty by amending the rules of succession. The eldest son of the King, if any, is bestowed the title of Prince of Wales. The present Queen Elizabeth II succeeded to the throne after the death of her father King George VI, she being the eldest daughter, and there being no male issue. There is a great distinction between a Queen who succeeds to the Crown in her own right and a Queen who gains her title by being the wife of a King. The formes exercises the functions of the Crown but the latter does not.

The **British** Monarchs receive an annual grant from the national treasury. It is called Civil List. Parliament determines by law an annual Civil List to be paid from the national treasury for the maintenance of the Monarch and his family. At present it amounts to about four hundred thousand pounds per year.

Q. 6. State clearly what you understand by the term 'Crown' in the English Constitution. Bring out the distinction between the King and the Crown. Discuss in brief the powers of the Crown.

'The King or Queen of England reigns but does not rule. Examine the nature of the British Monarchy in the light of the statement.

Ans. The constitutional history of England begins with an absolute monarchy. The King had the supreme authority. He was source of laws, head of executive authority and fountain head of justice and honour. But with the growth of democratic ideas, the

powers of the King as a person began to be transferred to the Crown as an institution. By and by, he was reduced to the position of a nominal or constitutional head and his powers began to be exercised by the Crown which is a strange combination of the King, the Privy Council, Cabinet and Parliament to some extent. The distinction between the King or Crown is the distinction between the monarch as a person and monarchy as an institution. The King is a person whereas the Crown is the name of an institution. The King as a human being, is born, gets crowned and ultimately dies. The Crown as an institution, is perpetual. The distinction is clear from the following oft quoted maxim of the British Constitution : "T he King is dead, long live the King." The word King used in the first part of the sentence refers to the King as a person and he same word used in the second part of the sentence refers to the Crown as an institution. This shows that the King as a person can die but Kingship or Crown as an institution cannot die. It is immortal. It is only an abstraction. In the words of Sydney Low it is only a myth. Bagehot calls it 'a convenient working hypothesis'. Munro regards the Crown as 'an artificial juristic person'. Ogg defines the Crown as 'the supreme executive and policy framing agency which means practically a subtle combination of King Ministers and to a degree Parliament.' This shows that the King is only a part of the Crown. The King as an individual does not exercise the powers of the Crown ; he exercises them on the advice of his ministers who are responsible to Parliament which represents the people. Every act of the King must be countersigned by a minister.

The distinction has arisen because of the peculiar manner in which the British people have fought against the powers of the King. They did not abolish monarchy but forced the Kings from time to time to surrender their powers and prerogatives and use the remaining according to set rules. Gradually, the Kings surrendered their powers to the Cabinet and Parliament. The monarchy has been retained but it has been fitted in the framework of democracy. The Queen in Great Britain today is not a demi-goddess but a nominal and constitutional head of a Parliamentary democracy. She is bound by the laws and customs of the country. No doubt, she wears the crown and enjoys great prestige but she has no powers. The powers once exercised by a monarch have now been transferred to the Crown as an institution. It is very strange that the distinction between the King and the Crown is only conventional. Law does not recognise it. In legal theory the King is still the source of all authority. This distinction between the King as a person and Kingship as an institution thus explains the gap between theory and practice that exists in the British Constitution and which is one of its mail characteristics.

Powers of the Crown : The Crown enjoys extensive and far-reaching powers. With the growth of a positive state in England, the

powers of the Crown are progressively increasing. These powers may be grouped under the following heads :

Executive : The Crown is the Chief executive head of the State. The whole administration is run in the name of His Majesty or Her Majesty, It looks to the enforcement of all national laws. It makes appointments of all high officials of the government. It can dismiss them at will except the judges who can be removed only on the resolution of both the Houses of the Parliament. The King is the Supreme Commander of the armed forces. In this capacity, all -appointments in army, navy and air force are made by him. The Crown conducts the foreign relations of the country and deals with the dominions and other dependencies. It appoints and receives -ambassadors, ministers, consuls and diplomatic representatives. It can declare war, conclude peace and make treaties with foreign powers without consulting the Parliament. As a matter of practice the Cabinet will not ratify if it is liable to be disapproved by the Parliament.

Legislative : The Crown summons, prorogues and dissolves the Parliament. The British Parliament consists of the King and the two houses of Parliament. All Bills passed by the Parliament are required to be approved by the King or Queen though this assent has never been refused since the reign of Queen Anne. The Crown, of course, influences legislation through its power to create new peers in the House of Lords. Every session of Parliament opens with a speech from the throne, which outlines the general policy and legislative programme of the government. It can issue ordinances in relation to Crown colonies. The legislative powers of the Crown are steadily increasing due to 'Delegated Legislation'. The Bills are passed by the Parliament in broad outlines and details thereof are completed by the crown through "Orders-in-Council".

Judicial: The Crown is the fountain of justice. The whole judicial system operates in the name of the King. It appoints all the judges but it cannot dismiss them unless a joint address is presented by both Houses of Parliament. It enjoys the powers of pardon and reprieve.

Ecclesiastical: The Crown is the head of the Church of England. It is the defender of the Faith. It makes appointments of archbishops, bishops and other church dignitaries. It summons church conventions.

Miscellaneous: The Crown is the fountain of all honours. It confers titles and honours on such British subjects as distinguish themselves in different spheres of activity. It directly controls the colonies. It makes laws in the form of Orders-in-Council. The King has now no powers with regard to Dominions as allegiance of the Dominions to the British Crown is absolutely ceremonial.

Unreality of Queen's or King's Powers : Though all the powers memtioned above are used in the name of the monarch yet these are powers of the Crown which is a subtle combination of the King

these or Queen, the Privy Council, the Cabinet and to a degree Parliament. The King as a person is only a part of the Crown. Some of these powers are exercised by the Cabinet as a whole, some by the Prime Minister alone, some by individual ministers and some by the King on the advice of the Cabinet. It is very rare that the King can do anything on his own initiative and responsibility. The King himself is only a rubber stamp which is affixed on orders issued by responsible ministers. For all practical purposes, his position is that of a harmless figurehead. He cannot even refuse to agree with the ministers if they were to present him his own death warrant to which Parliament has given approval. In the Honours List issued on the New-Year Day or on his birth day, he may have to honour a man whom he not only does not know but also detests. As early as the time of Charles II, one of his courtiers after an evening party wrote on the door of the royal bed chamber the following words:

"Here lies our sovereign Lord the King.
Whose words no one relies on :
Who never says a foolish thing,
Nor ever does a wise one."

This is still a correct estimate about the position of a British monarch. The King or Queen cannot do any wrong because they are not supposed to do anything on their own responsibility. In early days, the ministers were the counsellors of the Kings. It was for them to advise and for the monarch to decide. Now the parts are almost reversed. The King or Queen is simply consulted but the ministers decide and act. All this proves that the King is merely a "dignified appendage to a veiled republic and does nothing worth the name." This fact also justifies the remarks that the King or Queen reigns but does not rule.

POINTS TO REMEMBER

There is a very subtle distinction between the King and the Crown. In, the middle ages kings had absolute powers. But with the growth of democratic ideas, powers of the King as a person have been transferred to the Crown as an institution. The King is only a part of the Crown as it consists of the King, the Privy Council, the Cabinet and Parliament to some extent. The King is only a powerless part of the Crown. The Crown enjoys extensive powers in the executive, judicial legislative, ecelesiastical and miscellaneous spheres. But these are not the powers of the King. These are n.ostly exercised by the Cabinet, the Privy Council and Parliament. The King is only a harmless figure head. In earlier days, whereas the King acted and his ministers advised, now the ministers act and the King simply advises. There is thus a great justification in the remark that the King or Queen deigns but does not rule.

Q. 7. 'If the Crown 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 is not only useful but an essential part of the vessel." Discuss the importance of monarchy in the light of this statement.

'One of the most remarkable phenomena of modern political development has been the security of the British Kingship.' In the light of this statement explain why the institution of Kingship still persists in England.

Ans. To many foreigners brought up under republican atmos-

phere, the institution of monarchy appears to be a misfit, an anachronism, in modern democracy. They feel amazed at the survival of monarchy in the 'Mother Democracy'. Twentieth century has seen the fall of many monarchies in the world. But strangely enough the hold of the British monarchy over the people is constantly increasing. It is true that the King is no more the absolute supreme authority. He has lost most of his powers to the Parliament and the Cabinet. He is left only with a shadow of his original powers. That is, in fact, one main reason why Kingship survives in England to this day. Whenever there is a constitutional crisis, he exchanges existence for powers. He always surrenders real powers;

The King has become merely a figurehead. The absolute monarchy of olden days has been transformed into a Crowned Republic. The Cabinet representing the people has become the working instrument of State. The King is no longer the directing force in the political and administrative machine of the British State. That is one reason why the monarchy survives in Britain. Among others, following are the reasons of its survival:

1. Conservatism : The British people are highly conservative people, not at all given to doing things in a radical or revolutionary manner. They are in favour of preserving and conserving ancient ideas and institutions with due modifications and reforms. Monarchy is one of the oldest political institutions and British people on account of their conservative nature would not do away with it.

2. Lack of Republican Sentiment: The modern age has seen the fall of monarchies in the world. But the monarchy in England is becoming more and more popular because there is very little republican sentiment in England. The British people did not abolish the institution of monarchy when they could have done it easily. In 1689, King James II, left the throne of England and fled away to France. The British people had a golden opportunity to establish a republican form of government but this was not done. Instead they called upon William of Orange and his wife Mary to occupy the vacant throne. Only once in the history of England, the republican government was established under Cromwell from 1649 to 1660. But that too was replaced by monarchy. Even at present, there is very little opposition to this institution. Except the Communists, no section of British public wants to abolish the institution of monarchy, not even the Labour Party which highly criticises the aristocratic House of Lords.

3. Symbol of Imperial and Commonwealth Unity : The inherent conservatism of British people would not have saved this institution from destruction, had it not been useful to the nation in many other ways. The King has proved to be a symbol of

Imperial unity and has thus kept bound together the various peoples with different religious, economic and political development and social systems. Abolition of monarchy will involve the dissolution of the British Empire.

Now the monarch is the symbol of Commonwealth unity. He or she is the golden chain which binds the Commonwealth nations, together. The Commonwealth countries are sovereign states. The Queen is a symbolic head of the organisation. It gives a sense of superiority to the British nation, though legally she enjoys no superior status to that of the head of other member-states. It is difficult to believe that in case England were to transform herself into a Republic with an elected President, the people in the Commonwealth countries would recognise him and would owe the same allegiance as they owe to a non-partisan King or Queen of royal blood. These countries may claim chairmanship of the Commonwealth by rotation. Removal of Kingship would involve many difficulties in the relations of the U.K. with dominions. They would, then, elect their own independent heads of State. The common racial allegiance between Britain and the Dominions that the Queen provides would be lost and it will lead to fissiparous tendencies in their economic and political relations too.

4. Titular Head of Parliamentary Government: England is having parliamentary form of government which presupposes, the existence of a chief executive with nominal powers. If the British were to abolish monarchy, they would require a certain constitutional head of the State. The only alternative is an elected; President with a definite term as is the case in India and France. But this would not be a change for the better. The elected President can be either strong or titular. If a strong President is appointed it will, subvert the parliamentary system. If a weak and titular President is preferred, the King already is. Why to make the change ? The King is non-political titular head but it would not be possible in case there were an elected President. Moreover, permanent tenure of the King or Queen brings about stability in the government. "Being the legal executive head of the State, all authority temporarily reverts to him when a Ministry resigns: During the brief interval of the resignation of one Prime Minister and the appointment of the other, he is the sole repository of powers and, being a person who stands aloof from party strifes, he can be depended upon for honesty and impartiality in his acts. He is the umpire who sees that the game of politics is played according to the rules." Moreover, monarchy provides a useful focus for patriotism. In the words of Earl of Balfour he is not the leader, of a party, nor the representative of a class, he is the chief of a nation. He is everybody's King. He is thus a useful focus for patriotism. As Jennings points out "British people can damn the government but cheer the King. They are always loyal to the King even though they oppose the government." Thus the King as the head of parliamentary democracy as it exists in England, is decidedly preferable to a President as the head of the State.

5. Head of Social Life : The King is the head of social life in England. He is the leader of the British nobility and gentry. The social and moral standards set by the royal family become a sort of ethical code for the English nation. All styles and fashions in British society emanate from the Royalty. The royal family keeps the imagination of the people tied to what they are doing in the field of non-governmental functions. Many movements for improving the conditions of the masses have been patronised by the members of the royal family. Many schemes for providing better housing, medical aid and relief in distress are inspired by the members of the royal family.

6. Influence in Politics : No doubt, the King has lost all his powers, but he is not without influence. He has the right, in the words of Bagehot, to be consulted, to encourage and to warn. There are instances in the history of England when monarchs rendered signal services to the nation by giving proper encouragement and timely warning to their ministers. The letters of Queen Victoria make it abundantly clear that she was an active agent in the conduct of government. She played a considerable part in the selection of her ministers. She secured the appointment of one and prevented the appointment of the other. Her son, Edward VII, had also a powerful influence. Similarly, George V is believed to have played a notable part during Irish crisis of 1911-14. The degree of influence which a British monarch wields, depends upon the personality of the monarch. Anyway, there is no denying the fact that British monarchs have rendered valuable service to the British people.

7. Royal Connections : Till the second world war, the monarchy was used by the British government for influencing the foreign policies of European States through its royal connections with ruling monarchs of those States. With the fall of most of the monarchies after the war, however, this usefulness has decreased.

8. Not a Costly Institution : Last but not the least, the reason for maintenance of monarchy lies in the fact that it is not a very expensive affair. Queen (Elizabeth's Civil List is about £470,000 besides £240,000 paid to the members of the royal family Decidedly it is not much. It is only about 1% of the total revenues of England An elected President, too, cannot be paid less than that.

All these factors justify the importance and significance of the institution of monarchy in England. There appears to be full justification in the remark that the Crown 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 is not only useful but also an essential part of the vessel and this is why that despite its anachronism in democracy, the British monarchy is becoming more and more popular. As Ogg points out the country will and should continue as now a 'Crowned Republic.'

POINTS TO REMEMBER

The existence of British monarchy is justified on the following grounds ; (a) The Britishers are inherently conservative and would not abolish monarchy which is an ancient institution. (b) There is complete absence of any republican sentiment among the English people. They had two chances once in 1649 and then in 1689, but they did not avail of them, (c) The monarchy, in England has proved to be a symbol of Imperial and Commonwealth unity. (d) England has a parliamentry democracy which necessitates the existence of a titular head. The monarch is the most suitable non-partisan executive head, (e) The King or Queen is the leader of the social life of English gentry and nobility. (f) The Kings exercise and have exercised a notable influence in politics. Like umpires they see that the gam of politics is played according to the rules of the game. (g) Its royal connections are an asset. (h) It is not costly. The institution of monarchy is becoming rather more popular than before.

Q. 8. Discuss the proposition that the King can do no wrong. *(P.U. 1948; Calcutta 1943)*

Ans. The statement that the King can do no wrong illustrates the position of the King or Queen in the English Constitution. It means that the King can do nothing, right or wrong, of a discretionary nature and having legal effect. The proposition has the following two implications :

(a) The king is not responsible to any court of law in the country for any act of omission and commission. He is above the law of the land and cannot be arrested and tried in any court of law for any crime committed by him.

(b) Since the King can do no wrong, it follows that he cannot authorise a person to do any wrong. No one can plead the authority of the King in defence of an illegal act done by him. The Danby case of 1679 established this fact clearly. Danby as Foreign Minister had some secret deal with France without any consultation with his colleagues in the Cabinet. Denby was accused of induiging in an anti-State activity but he pleaded innocence on the ground that all that he did was done under the instructions of the King. In his opinion, the King and not he should have been held guilty. This opinion of his was refuted by the courts and he was impeached by Parliament for his crime. The Danby case unmistakably established the truth that the ministers alone are responsible for their actions taken in the name of the King or Queen. As a result of this convention, all acts in the name of the King or Queen are countersigned by a minister who is politically responsible to Parliament and legally responsible to the courts of law in the country. In no case a minister can seek justification of his illegal action in the fact that action was taken by him in the name of the King. Thus the doctrine of ministerial responsibility which is the bed-rock of British parliamentary system, is the logical outcome of this constitutional maxim. It has reduced the King to merely a figurehead and deposited all real powers in the Cabinet.

POINTS TO REMEMBER

The statement that the King can do no wrong is an important maxim of the English Constitution. It has double implication. In the first place, it

means that the King or Queen cannot be sued in any court of law for any illegal action. In the second place, it implies that every action of the King or Queen lis to be countersigned by some minister. No minister can seek shelter in the egal immunity of the King.

PROBABLE QUESTIONS WITH HINTS

1. "If the Crown is no longer the motive power of the ship of the State, it is the spar upon which the sail is bent and as such it is not only useful but an essential part of the vessel also."—(Lowell). Elucidate.

(P. *U. 1945Y*

[For answer refer to the importance of monarchy in the British Constitution.?

2. "The Government of the United Kingdom is in ultimate theory an absolute monarchy, in form a limited monarchy and in actual character a. democratic republic."—(Ogg) Discuss.

[Discuss with reference to the nature [of monarchy discussed under question no. 6.]

—O—

"The British Cabinet is the most curious formation in the political world of modern times." —*Gladstone.*

CHAPTER IV

CABINET—THE REAL EXECUTIVE

The Cabinet is the real as distinguished from the nominal executive in Britain. Though every action of the government is taken in the name of the King yet real and effective powers are exercised by the Cabinet. The Cabinet lias been aptly described as "the steering wheel of the ship of the State."

The Cabinet must be distinguished from the Privy Council and the Ministry. The Privy Council is a defunct body consisting of some 350 members. All Cabinet Ministers are the members of the Privy Council because till recently the Cabinet was not recognised by law. Hence no one is ever officially appointed as Cabinet Minister. He is appointed a Privy Councillor and then summoned to Cabinet meeting. The Privy Council is thus a bigger body and the Cabinet is a small body of ministers who take all decisions regarding the policy of the government. The work of the Privy Council is mainly of formal character. The meetings of the Privy Council as a whole are convened only when there is the Coronation of the King or Queen or some other solemn ceremony is to be performed. Ordinarily 4 or 5 Cabinet Ministers (who are also Privy Councillors) meet at Buckingham Palace and act in the name of the Privy Council.

A distinction is also made between Cabinet and Ministry. The Ministry is a body which includes all the Cabinet Ministers. The Ministry consists of all ministers who are members of either House of Parliament and are responsible to it for their policies. They hold office so long as they enjoy the confidence of the majority in the House of Commons. The Cabinet is a smaller body consisting of important ministers selected by the Prime Minister. There are more than sixty ministers in the Ministry but only about seventeen or eighteen Ministers enjoy Cabinet rank. The Ministry does not meet as a body for the transaction of governmental business. It has no collective function. It is only the Cabinet which meets as a body and formulates the policies of the government. A minister is only the head of a certain department and is not concerned with the determination of the government policy All the decisions taken by the Cabinet are communicated to all the ministers The following ministers are invariably taken in the Cabinet—the First Lord of Treasury, who is the Prime Minister himself, the Chancellor of Exchequer, the Minister of Defence, the Secretary of State for Foreign Office, the Secretary of State for Home Office, the Secretary of State for Commonwealth Relations, the Secretary -of State for Colonial Office, the Lord President of the Council and the Lord Privy Seal.

Q. 9. Trace the growth of Cabinet System in England.

(Agra—1948)

Ans. Laski says, "The Cabinet is essentially a committee of that party or Coalition of parties which can command a majority in the House of Commons". In England, every act of the State is done in the name of the Crown. But the Crown is the nominal executive only. The real executive is the Cabinet. On Cabinet's shoulders rests the responsibility of carrying on the administration. The Cabinet s) stem has been regarded as the greatest contribution

of the English people to the art of government. Gladstone called it the most curious formation in the political world of modern times. In Bagehot's opinion it is a hyphen which joins, a buckel which fastens the legislative part of the state to the executive part. Its importance in the British political system is great. Lowell regards it as "the key-stone of political arch' and Muir calls it 'the steering-wheel of the ship of the State.'

The Cabinet has been defined as a body of royal advisers, chosen by the Prime Minister in the name of the Crown. The members of the Cabinet must invariably be members of either House of Parliament and belong to the party in power in the Lower House, They must acknowledge the supremacy of the Prime Minister and follow the policy laid down by the Prime Minister. They must resign from their office as soon as they lose the confidence of the House of Commons. All these features of the Cabinet system are the result of a long process of evolution, which took several centuries. Its story is narrated below :

1. During the Norman rule in England, the body of King's advisers and administrators was known as '*Curia Regis*' or' Royal Council'. It performed miscellaneous functions. It advised the King and administered justice. It was consulted by the King in times of need and also looked after his finances. During the reign of Edward VI its name was changed and it came to be known as Privy Council. The Cabinet is the child of this Privy Council. Up to the reign of Charles I, the Cabinet was only a small body of King's advisers, informally and irregularly chosen by the King. In the reign Of Charles II, the Cabinet acquired a formal shape. He appointed a body of advisers and councillors Which was known as 'cabal'—a word formed by taking the first letters from the names of his five ministers, i.e., Clifford, Arlington, Buckingham, Ashley and Lauderdale. But it was not a Cabinet in any sense of the term. The Cabinet later grew out of the Privy Council as a special committee. Several times its members were impeached for the wrongs committed by them. Their impeachment established the principle of ministerial responsibility. At the same time, party system which is essential for the proper working of the Cabinet system developed in the period of Charles II. Thus the two essential features of the Cabinet system—9 the principle of ministerial responsibility and party system—came into existence during the reign of Charles II.

2. The Cabinet system further developed during the period of William III and Queen Anne. The Glorious Revolution had firmly established the principle of the sovereignty of Parliament. The Whigs and the Tories were two parties whose policies and forms acquired a clear shape. Both these factors helped in the growth of the Cabinet system. In the beginning William III chose his ministers from both the parties. But this practice failed to bring about homogeneity in the Cabinet which is very essential for the purpose of proper administration. William III was compelled, in

call upon the Whig Party to form the Cabinet. The Whigs were at the time in power in the House of Commons. Thus was established the convention that the members of the Cabinet should belong to the party having majority in the House of Commons.

3. The Cabinet system in England received its final shape during the Hanoverian rule. George I was a German by nationality.. He was quite ignorant of English customs, language and politics. So he could not take part in the deliberations of the Cabinet. Another man was required to take his place to preside over the meetings of the Cabinet. Thus the post of Prime Minister came into existence. A person from among the members of the Cabinet took the chair. He came to be called the Prime Minister. Sir Robert Walpole, in 1742, by resigning from his office after his defeat in the House of Commons, established the convention that the Cabinet should resign as soon as it lost the confidence of the House. This convention got firmly established gradually and with it the growth of the Cabinet system became complete.

POINTS TO REMEMBER

The Cabinet is the real executive as against the King or Queen who is. only a nominal head. The Cabinet has been defined in colourful phrases by various constitutionalists. The Cabinet , came into existence as a result of historical evolution covering a period of centuries. During Norman rule in England, Curia Regis or Royal Council came into existence. During the reign of Edward VI, its name was changed and it came to be known as Privy Council. The Cabinet is the child of the Privy Council. The Cabinet system further developed during the reign of William III and Queen Anne. The principle or party government was established during this period. During the reign of George I, the office of Prime Minister came into existence.

Q. 10. How is the Cabinet formed in England ? Discuss its functions and importance.

'The Cabinet is the keystone of the political arch. *(Lowell)* Discuss.

'The Cabinet is the steering Wheel of the ship of the State.' *(Ramsay Muir*) Discuss.

Ans. Formation of Cabinet: A new Cabinet is formed after general election to the House of Commons or when the Cabinet-in Power is defeated by an adverse vote of the House.

A minister must be a member of either House of Parliament. A non-member may also be appointed minister but he has to become the member of Parliament either by being made a peer or by a 'safe constituency' being made available for him in the House of Commons. All the ministers are appointed by the King or Queen although it is just a ceremonial affair. The King must send for the leader of the party controlling a majority in the House of Commons and he is asked to form the Ministry. The leader is designated as Prime Minister. In case a Cabinet-resigns, the King must call the leader of opposition and appoint him as Prime Minister without any

Further consultation. The Prime Minister, then, puts up a list of his. colleagues who are appointed ministers by the King without any hesitation. Although the Prime Minister enjoys a good deal of freedom of choice in the selection of his colleagues yet he cannot ignore important members of his party. He must keep into account the need for maintaining party solidarity and claims of the senior men in the party. The selection of ministers is not an easy job. Disraeli called it 'the work of great time, great labour and great responsibility'. Prime Minister is central to the formation, continuance and dismissal of the Cabinet. If a minister differs with his policy, he resigns from the Cabinet.

As is clear from above, the King has little freedom of choice in the formation of the Cabinet but the King may have freedom of choice when no single party in the House of Commons wins an absolute majority or when the Prime Minister resigns or dies. Queen Victoria exercised this freedom at various occasions. In 1894, Gladstone resigned. Queen Victoria appointed Lord Rosebery although he did not have a sound claim to the leadership of his party.

Another important factor which is noteworthy is that the Prime-Minister must belong to the House of Commons. This convention was established in 1923 when the King had a choice between Mr. Baldwin and Lord Curzon. The King appointed Mr. Baldwin and set aside the claim of Lord Curzon because the latter was a member of the House of Lords. Similary in 1940 Mr. Churchill was selected in preference to Lord Halifax. Jenning supports this convention on the plea that "the Prime Minister should have his finger on the pulse of the Parliament which is the House of Commons."

How to throw a Cabinet out of Office : The Cabinet may be thrown out of office by an adverse vote in the House of Commons, by any of the following methods :

(a) A token cut may be made in the salary of a minister during budget discussion.

(b) The House may reject a Bill initiated by a minister and declared vital by the Cabinet.

(c) The House may pass a certain Bill opposed by the government.

(d) The House may pass a vote of censure against a certain, minister.

(e) Lastly, the House may pass a straight vote of no-confidence regarding the general policy of the government.

Although the Cabinet can be ousted from office in a variety of ways yet it is now seldom possible for the House of Commons to throw a Cabinet out of office. A Cabinet continues in office through a subservient majority in the House and if there is an imminent danger of defeat of the government -in the House on a particular issue, the Prime Minister seeks earlier dissolution of the House.

Functions of the Cabinet: The Cabinet enjoys a pivotal position in the machinery of the government. The position of the Cabinet has been described by philosophers in colourful phrases. Ramsay Muir calls it 'the steering wheel of the State.' Lowell calls it 'the key-stone of the political arch.' It controls both administration and legislation. Some of its functions may be briefly described as follows:

1. Executive Functions : The Cabinet is the real executive as against the nominal executive represented by the King or Queen. Although according to the Constitutional. Law all executive authority is vested in the King yet in actual practice, the effective and real executive authority is wielded by the Cabinet. The Cabinet formulates the general policy of the government. It determines the foreign policy of the government and decides questions regarding war and peace. The minister in charge of foreign affairs negotiates treaties and agreements of all sorts with foreign states on behalf of the Cabinet. The treaties are ratified by him without any formal approval of Parliament.

All important appointments are made by the ministers. Each minister is in charge of a particular department and conducts the administration thereof. The Cabinet co-ordinates the activities of the various departments of the government and decides interdepartmental disputes.

2. Legislative Functions : Not only does the Cabinet control the executive branch of the government but also it controls legislation. The Parliament is summoned and prorogued by the King on the advice of the Cabinet. The House of Commons may be dissolved before the expiry of its normal term by the King on the advice of the Prime Minister. The speech of the King in Parliament in the beginning of each session is prepared by it. In fact, the general policy of the Cabinet and its legislative programme are outlined in this speech. All important Bills passed by the Parliament are introduced, explained and defended on the floor of the House by members of the Cabinet. A Bill that does not enjoy the support of the Cabinet has little chance of success in Parliament, Some eighty five per cent of all the Bills introduced in the Parliament are those which are initiated by the ministers.

3. Financial Functions: The budget is prepared by the Chancellor of Exchequer, an important member of the Cabinet. It is introduced by him in the House of Commons. The budget before its introduction in the House is not disclosed in the Cabinet meetings, although disputes regarding estimates for various departments are settled in the Cabinet.

Invariably, the budget is passed as it is with the support of a loyal majority in the House of Commons. No demand for grant can be cut down without the willing consent of the Cabinet.

4. Judicial Functions : The judges of the important courts are appointed by the King on the advice of the Lord Chancellor, a member of the Cabinet. The power of parddn, reprieve and respite is exercised by the King on the advice of the Secretary of State for Home Affairs.

The powers and functions of the Cabinet show that it dominates and controls almost every activity of the government. It is the most vital part of the government machinery. It is the engine of the ship of state. It controls the King, the Parliament and through that the electorate.

POINTS TO REMEMBER

A Cabinet is formed after general elections to the House of Commons or when the Cabinet-in Power is defeated by an adverse vote of the House. A minister must be a member of either House of Parliament. The King or Queen has little discretion in the appointment of ministers. A Ministry may be thrown out of office by an adverse vote in the House of Commons. Lack of confidence in the Ministry can be indicated in a number of ways. The Cabinet enjoys a pivotal position in the administration of the country. It performs all the executive functions bf the Crown. It makes appointments of all civil and military officials. It can declare war and peace. It initiates and pilots some 90% of all the Bills in the House of Commons. No Bill has a chance of success if it does not enjoy the support of the Cabinet. The budget is prepared by the Chancellor of Exchequer and is passed as it is. The Cabinet enjoys the judicial powers of the King or Queen.

Q. II. Discuss the salient features of the Cabinet System of Government as it obtains in Great Britain.

(P.W 1948, 1949; Allahabad 1948)

Ans. The Cabinet system of Great Britain works on the basis of some rigid principles which are mainly the outcome of various conventions. Although these principles do not form a part of the law of the land yet these are scrupulously observed and followed. These principles present a topical model of a parliamentary democracy. Success of this system serves as an inspiration to other nations of the world and they aspire to follow 'the same principles in their system of government. The Cabinet system of government is thus a valuable contribution of the British people to Political Science. The features of the Cabinet system as it obtains in Great Britain may be summed up as follows :

v

1. Exclusion of the King: The King, under Cabinet form of government, is no longer the determining and deciding factor in the conduct of government authority; Entire executive power is exercised by the Cabinet in the name of the King. As the King takes no part in politics he is not supposed to preside over the meetings of the Cabinet wherein decisions regarding the executive policy of the government are taken. The exclusion of the King from Cabinet meetings was originally a matter of sheer accident during the reign of the King George I, but now it is a fundamental convention of British parliamentary democracy.

2. Political Homogeneity: Members of the Cabinet usually belong to the same political party and have similar political views. For over two hundred years prior to 1915, every Ministry was constituted on the basis of this principle. But during critical days of World War I, a composite government representing all the three parties was constituted. Since 1931, this practice has been followed many a time. There have been national governments under Ramsay Macdonald, Baldwin, Chamberlain and Churchill.

3. Close Relationship between the Executive and the Legislature : All the members of the Cabinet must be members of either House of Parliament. A non-member of Parliament may also be appointed minister but if he is not made a peer, he must become the member of the House of Commons within six months. Since the ministers belong to the. majority party of the House, a close contact is established between the executive and the legislature. This is in sharp contrast with the American political system which is based on the principle of separation of powers and which seeks to keep the executive and the legislature separate from each other.

4. Unity of the Cabinet: The Cabinet always acts as a unit. The members of the Cabinet may have difference in the Cabinet meetings but once a decision is taken, the dissenting members cannot express their dissenting opinions before Parliament or the people. They are supposed to face them with one voice. Lord Melbourne is stated to have remarked to his Cabinet colleagues r "It does not in the least matter what we say in the Cabinet meeting! but we must all say the same in the public. But this practice was. broken in 1932 when the Cabinet agreed to differ and three ministers were allowed to voice their differences with the Cabinet in the Parliament on certain matters of trade policy.

5. Ministerial Responsibility : The responsibility of ministers, is two-fold. It is legal and political. Legally every minister is responsible for the advice that he may give to the King. That is why every act of the King must be countersigned by a minister, who will be responsible before the court of the law for the legality of his. actions. This is illustrated by the saying, "The King can do no-wrong." Political responsibility implies that the ministers are responsible to the House of Commons and must resign whenever a vote of no-confidence is passed against them But in actual practice the Cabinet seldom goes out of office on losing the confidence of the House. It dissolves the House of Commons before its own removal. It resigns after the general elections if it fails to win majority at the polls. Thus it does not consider itself to be responsible to the House ; instead it feels its responsibility to the electorate.

The responsibility to the Parliament is also *collective*. The Cabinet always acts as a unit. A vote of no-confidence against one Cabinet minister is considered to be a vote of no-confidence against the whole Cabinet. The Cabinet must sink or swim together. But

there have been occasions when a blundering minister whose policy the House of Commons or the public does, not approve, is asked to resign alone while the rest of the Cabinet continues.

6. Leadership of the Prime Minister : The Prime Minister is the leader of the Cabinet. He forms the Cabinet and allots portfolios to ministers. The Cabinet ministers work under his guidance and direction. He presides over the meetings of the Cabinet. He is consulted by other ministers regarding the major problems of their departments. He co ordinates the activities of the ministers and settles disputes among them. He can call for the resignation of any minister if he does not approve of his policy. It happened so a number of times. In 1922 Mr. Montague, the Secretary of State for India was dismissed. In 1935 Sir Samuel Hoare resigned for he had differences with Baldwin, the then Prime Minister. In 1938, Mr. Anthony Eden had to resign because he differed with the Prime Minister Mr. Chamberlain.

7. Secretary of Cabinet Meetings: All the members of the Cabinet are supposed to observe secrecy in connection with the proceedings of the Cabinet meetings. They are not supposed to divulge secrets before the people or the Parliament. The Cabinet is thus a secret body collectively responsible for its decisions. It deliberates in secret and its proceedings are highly confidential. The Privy Councillor's oath imposes an obligation not to disclose Cabinet secrets. Till 1917, no records were kept and only the Prime Minister could take notes of the points discussed. Now, however, there is a separate full-fledged secretariat and the proceedings, are recorded. But no formal reports of proceeding are, however, published. All members are under strict oath of secrecy. However the secrecy is violated when a minister who differs with Cabinet policy and resigns and makes a statement giving reasons of his resignation. It is also violated when memoirs of a minister are published, The King gets a summary of the minutes of proceedings of the Cabinet and also all the despatches received or sent out by the Cabinet.

8. Cabinet Committees : The Cabinet acts through various sub-committees. For example, the Defence Committee is the most important. It is presided over by the Prime Minister and includes ministers concerned with defence, the Chancellor of Exchequer, the supply minister the labour minister, the three Chiefs of Staff, etc. Then there is a Foreign Affairs Committee presided over by the Prime Minister. In includes Secretary of State for Foreign Affairs Chancellor of Exchequer, Defence Minister, Minister for Trade etc. The economic committee is presided over generally by Deputy Prime Minister or another important minister. It deals with economic policy. The decisions of these committees are generally accepted by the Cabinet.

POINTS TO REMEMBER

The Cabinet system of England is based on some rigid principles to which no exception is ordinarily made. The first feature, is political homogeneity

Which means that normally all the ministers should belong to a single political party. Close relationship between the executive and the legislature is the second important principle. The members of the Cabinet are not supposed to express their dissenting opinions before Parliament or the people. They must speak with one voice. Ministerial responsibility is another outstanding feature of the Cabinet system. This responsibility is both political and legal. The Prime Minister is the leader of the Cabinet. The ministers are supposed to. maintain strict secrecy about decisions and proceeding of the Cabinet meetings.

Q. 12. 'The Cabinet in England has become virtual dictator.' Discuss.

"The control exercised by the House of Commons over the Cabinet has become weak and ineffectual." Comment and examine the relation between the House of Commons and the Cabinet as it has developed in the 20th century.

(P.U. 1940; 1941; Dacca 1943)

"The House of Commons acts in accordance with Cabinet's discretion and leadership." (*Munro*) Examine the truth or otherwise of the statement.

Ans. In Great Britain, Parliament was sovereign in theory as also in practice till the close of the 19th century. But in the 20th century, Parliament which in practice means the House of Commons has lost much of its powers to the Cabinet which is in structure A committee of the House of Commons. In theory the ministers are responsible to Parliament. The tenure of their office depends upon the will of the House of Commons. It can remove the Cabinet by a vote of no-confidence. The Cabinet is under the general control and supervision of the House of Commons. The Cabinet cannot raise a penny by way of taxes nor can it spend a farthing without the consent of the House of Commons. But in actual practice, the boot is on the other leg. The Cabinet has become the masted of its own master. It controls the House of Commons so? much that it has become merely the registry' office of the Cabinet. The Cabinet has become almost dictator.

The Cabinet enjoys the support of majority in the House of Commons. Once a Cabinet comes into power, it cannot be ousted by an adverse vote in the House. The last Cabinet which was thrown out of office by a vote of no-confidence was the Liberal Government of 1895. Thus the power of the House to remove Cabinet has fallen in disuse.

The Cabinet controls legislative policy. It formulates, initiates, and defends legislative measures in the House. The House has to accept them. The House has become a rubber stamp to place legal stamp on the political decisions of the Cabinet. There is even truth in the remark that it js the Cabinet which legislates with the approval of the House of Commons. This approval of the House Of Commons is 'never refused. About 85% of all the Bills are introduced and piloted by the Cabinet. Private members of the

House of Commons may introduce Bills but these have very little chance of success if these are not supported by the Cabinet. Some seven-eighth of the time of the House is consumed by government measures. It is the Cabinet which decides what legislative business shall be taken up by the House and what time shall be allotted to it. The Cabinet summons, adjourns, and prorogues the Parliament.

Not only does the Cabinet control ordinary legislation but also it enjoys full control over State finance. The budget is prepared by the Chancellor of Exchequer and it is passed as it is. The private members of the House may put up proposals for reduction of expenditure but usually these are ineffective because their proposals are rarely carried. The members do not understand the complexities and technicalities of the budget and they can recommend little change except holding a general discussion.

The Cabinet makes treaties with other States without previous consultation of the Parliament. Once a treaty is signed by the Cabinet, it becomes valid because no previous ratification by the Parliament is required. The Cabinet may make secret commitments with other governments and may face the Parliament with fair *accompli.* It may take even military action as the Eden government did in case of attack on Suez without consulting the Parliament.

In short, it is Cabinet which has taken over all the functions of the House. The latter has become only a registering body. Its authority has suffered almost in all directions. Ramsay Muir refers to this phenomenon as the growing dictatorship of the Cabinet. The following are the reasons of the growing strength of the Cabinet at the cost of the House of Commons.

1. Party Discipline : The main reason of Cabinet dictatorship lies in the growth of rigid party discipline. In the 19th century, the parties were not so well organised as these are today. The number of voters used to be very small off account of restricted franchise. Most of the candidates would contest elections independently. They would go to their constituencies, preach their own doctrines and meet their own expenses. They were not thus pledged to the support of any party-government. There was, therefore, a good deal of free voting in the House of Commons. The ministers were considered to be hired functionaries and could be dismissed whenever their policy was not liked by the House. This position has changed altogether now on account of the introduction of universal franchise. The number of voters has increased immensely. The constituencies have become big. The cost of electioneering has increased. Now it is not within the means of an independent candidate to approach the voters and canvass for himself. Independent electioneering has thus become difficult. In order to be successful, its is, therefore, essential that one should be the member of one party or another. On account of the increase dependence of a person on party, party discipline and organisation have become very rigid The members of a party are pledged to its support under all circum

stances. Inside the House, they are bound by discipline to vote in favour of the party. Voting against the party is regarded as breach -of discipline for which a person is liable to be expelled from the party. Expulsion from the party is considered to be political death. The fear of disciplinary action keeps the members tongue-tied and "they do not have the guts to oppose the party leadership even if they do not see eye to eye with them. All this means that once a certain party wins majority of seats in the House of Commons and it forms its Cabinet, it will continue in office without any fear and fright. The members of the party will blindly support the ministers even if some of them differ. Loyalty to the party makes a person a part of the party machine. Thus the party, by virtue of its majority, gets the powers which technically belong to the whole Parliament. A private member of the House is more or less an imposing cypher. If he is an independent member, his views however fine and true, cut no ice ; if he belongs to a party, he votes it whether he likes its policies or not.

2. Power of Dissolution : The second factor which has strengthened the Cabinet is its power to get the House of Commons dissolved before the expiry of its normal term. The Prime Minister can request the King for dissolution of the House. As a matter of convention, such a request is always acceded to by the King. The Cabinet can thus easily dampen the enthusiasm of the members who want to revolt against it by threatening them with the dissolution of the House of Commons. Dissolution means a new general election. The sitting members do not want it. They would like to enjoy the membership of the House for its full term. In case of an earlier dissolution, they will have to seek re-election which involves a lot of expenditure and botheration. Above all, one may not be certain of being re-elected. Threat of an earlier dissolution not only binds the majority party, but also it cools down the zeal of the opposition. Thus according to Keith, "apart from party loyalty, the Cabinet possesses over its followers and to some extent over the opposition, a powerful weapon in the possibility of securing a dissolution of Parliament."

3. Two-party System : Another factor which has contributed to the strength of the Cabinet is the two-party system which prevails in England. The parties dominating the political life of England at present are the Labour Party and the Conservative Party. These two parties are poles apart so far as their ideals and objectives are concerned. As a matter of principle, it is difficult for a member of the party-in-power to cross the floor and join the opposition even if he has certain differences with the Cabinet on a particular issue. After all, the Cabinet of his own party is nearer to him than the opposition. It is, therefore, rare that a government supporter may vote against it.

4. Heavy Work before the House of Commons : The House of Commons has to deal with very heavy work. Being hard

pressed for time, it has little opportunity or leisure to scrutinize every detail of administration. So it is forced to leave a good deal of work to the Cabinet, through delegated legislation and Orders-in-Council. It simply passes various Bills in broad outlines and leaves the rest to be filled in by the executive.

5. Committee System : Most of the controversial matters are thrashed out in the committees and very little scope is left for discussion in the House.

6. Control of the Cabinet over the Business of the House : The rules of procedure in the House of Commons especially favour the Cabinet. Some seven-eighth of the time of the House is given over to Government Bills. Under standing orders of the House, time allotted for the discussion of a private member's Bill can be given over to a government measure.

7. Enhanced Importance of the Electorate : The spread of general education and political consciousness among the people are factors which are also responsible for transfer of power from Parliament to the electorate. Before the beginning of 20th century, public opinion had very little opportunity for functioning. Now with the development of press and other rapid means of communication and publicity the public attention is at once focussed on any problem facing the country. A speech of member in the Parliament is read by millions. Political organizations and associations at once meet and pass resolution holding out a threat or reward. Under the constant gaze of the electorate, the members of Parliament have lost that freedom of action which they once enjoyed.

, 8. National Emergencies : A series of national emergencies in England have also been responsible for strengthening the hands of the government in order to enable them to meet the situation arid save the country. During the World War of 1914-18, huge powers were delegated to the then government. The period between the two wars (1918-39) was also characterised by various problems like industrial depression, labour unrest and the like. The National Government (1931-35) was given almost dictatorial powers. It could even impose duties without the consent of Parliament. During World War II again, the House had to concede a lot to the government in the interest of public safety and security and for the purpose of prosecuting war successfully. Thus we find that modern situation itself goes in favour of enhancing the powers of the executive. Parliamentary sovereignty is, therefore, passing through a crisis.

Conclusion : There is no doubt that the British Cabinet has. acquired vast powers and its powers are still on the increase. We cannot, however, accuse it of being dictatorial like Hitler or Mussolini. Although the Cabinet enjoys autocratic powers yet it is an autocracy with consent and is exercised under a constant fire of criticism of the Parliament, press and platform. The Cabinet is fully aware of the fact that it cannot go beyond certain limits because

British public opinion is higly assertive and enlightened. It can exercise vast powers only when it is able to maintain the support of a majority in the House of Commons, which is not a simple affair. The Cabinet knows that if it uses the threat of dissolution so very frequently, there may be a split in the ranks of the party. The discipline of a private member is not like the obedience of a soldier to the commander. The House of Commons influences Cabinet policies vitally. It is the miror of public opinion. No Cabinet can ignore it. It is the pulse of the people and cabinet learns of their reaction to its policies from discussions in the House. The Cabinet adjusts its policies accordingly. The House exerts influence through discussion, debate, questions, adjournment motions, resolutions and discussion on the budget. There is the opposition party in the House which is always ready to magnify every mistake of the Cabinet. It keeps the government always on its tenter-hooks. It has to explain its policies every time. Thus the Cabinet can become dictator only by bringing success and assuring the House and the electorate, outside that it is governing best under the circumstances. Its dictatorship is dictatorship by consent. It has to yield many a time to the House of Commons. At least it cannot be insensitive to public opinion outside. There are many examples of Cabinets which yielded when laced with unyielding public opinion.

POINTS TO REMEMBER

In Great Britain, Parliament was sovereign in theory as well as in practice. Ft had complete control over legislation. The Cabinet was responsible to it in practice and could be ousted by a vote of no-confidence. But in the twentieth century, the position has changed altogether. Now it is not Parliament which controls the executive; instead it is the executive which controls the Parliament. This phenomenon is known as the rise of Cabinet Dictatorship. Several reasons are attributed to the growth of this phenomenon, *(a)* Growth of rigid party discipline has been responsible to a very great extent for the subordination of the members of the House of Commons to the party. They are bound by discipline to the party machine and cannot act independently. (*b*) Power of earlier dissolution of the House of Commons is a potent weapon in the hands of the Cabinet which may be used at any time to cool down the recalcitrant House. (c) Existence of two-party system in England is also responsible for-the rise of Cabinet Dictatorship. *(d)* The Cabinet has acquired great powers by way of delegated legislation, *(e)* The rules of procedure of the House also favour the Cabinet. (f) Consciousness of the general masses too is responsible for the transfer of powers from the Parliament to the electorate, (g) National emergencies have placed unrestricted powers in the hands of the executive.

Q. 13. 'The Prime Minister is by far the most powerful man in the country and not without reason he is likened to a dictator.' Critically examine the statement with reference to the powers and position of the Prime Minister in the British Constitution. (*Agra 1940, 1947)*

'The Prime Minister is the keystone of the Cabinet arch.' Discuss.

Ans. Wherever there is a parliamentary form of government the general election has become the election of the Prime Minister. Laski has rightly said, "The key-stone of the cabinet arch is the

Prime Minister. He is central to its formation, central to its life, and central to its death. No cabinet can fail to take its complexion from what he is and does in its direction. The British Prime Minister as more than *rimus pinter pares,* but less than an autocrat".

Like so many other institutions and offices, the office of Prime Minister is also the result of a Convention. Till the passage of the Ministers of the Crown Act 1937, the position of the Prime Minister was not legally recognised. Only twice the office of Prime Minister was referred to in legal records before the passage of this Act. First of all, it appeared in the preamble to the Treaty of Berlin, 1878, when Beaconsfield was referred to as "First Lord of Her Majesty's Treasury and Prime Minister of England." Second time in 1905, the Office of Prime Minister was mentioned in the Order of Precedence' although he was given only the fifth position and was placed even below the Archbishop of York.

The Prime Minister of Great Britain enjoys a position of supreme importance in the British Constitution. He is often referred to as an autocrat so long as he enjoys the support of a stable majority in the House of Commons. He is even more powerful than the American President in certain respects. The following points clearly indicate the importance of his office :

I. Leadership of the Cabinet: If Cabinet is the engine of the ship of state, the Prime Minister is its driver. He is the moon round which the stars revolve. The Prime Minister forms the Ministry. He appoints and dismisses the ministers with the ceremonial approval of the King. In the selection of his colleagues, his choice is unrestrained except that he must include 5 or 6 top leaders of his party. Otherwise he has a free hand to choose his colleagues because he has to find a homogeneous body. Sometimes, a Prime Minister with dominating personality may keep even a prominent member of his party out of his Cabinet. For example, Mr. Chamberlain kept Mr. Churchill out of his Cabinet.

He is the Chairman of the Cabinet and presides over its meetings. He may force any member to resign if he does not see eye to eye with him. Ordinarily, decisions in the Cabinet are taken by a majority vote but a policy supported by the Prime Minister is more likely to be accepted. He can ask his colleagues to accept his views or resign. In case, the Cabinet does not yield to his wishes he may even threaten them with his own resignation which means the collapse of the whole Cabinet. This attitude was demonstrated by Ramsay Muir in 1931.

2. Leadership of the House of Commons: The Prime Minister is the leader of the Parliament which in practice means the House of Commons. All principal announcements regarding major issues of governmental policy are made by him in the House. In all political battles in the House, he represents the Cabinet. He is the

chief spokesman of the government and bears the burden of debates from the government benches.

But nowadays governmental work has become so unwieldy and unmanageable that it is not possible for a single person to cope with both executive and legislative functions. The Prime Minister has to attend to so much work in his office as also around the Cabinet table, that it has become humanly impossible for him to take full interest in the House. It has now become customary to delegate leadership of the House to some senior minister of the Cabinet. But still the Prime Minister speaks on all important government measures.

3. Source of Communication between the Cabinet and the Queen : The Prime Minister is a link between the Cabinet and the Queen. He is the chief advisor of the Crown not only in the Affairs of the United Kingdom but also in those of British Colonies and Commonwealth countries. Although every Cabinet minister has a direct right of access to the Queen, yet no loyal colleague would ever think of communicating any important matter to the Queen without the consultation of the Prime Minister. Mr. Baldwin exercised his freedom regarding advising the King even in personal matters. He advised King Edward VIII on his contemplated marriage with Mrs. Simpson. He consulted the Cabinet only at that stage when differences became irreconcilable.

4. Control over Foreign Affairs : Conduct of foreign relations is the direct concern of the Prime Minister even though he does not hold this portfolio. The Foreign Secretary always keeps a close contact with the Prime Minister and consults him on all important matters Of foreign policy. In fact all international agreements and treaties on behalf of the U.K. are made on his initiative. He may give a promise beforehand that such and such treaty will be signed and ratified. The Prime Minister may occasionally attend and participate in international conferences. Lord Beaconsfield attended Berlin Conference, Lloyd George took part in Paris Peace Conference, Mr. Chamberlain took part in Munich Conference, Churchill had some six meetings with President Roosevelt and two with Stalin during World War II. At these conferences the Prime Minister may even make secret commitments.

5. Control over Finances : Not only does the Prime Minister exercise control over the foreign affairs but also he has complete control over the national purse. The budget is prepared by the Chancellor of Exchequer but he keeps the Prime Minister regularly informed about the financial affairs.

6. Patronage : The Prime Minister enjoys vast patronage both in the government and the Church. He appoints a number of officials like ambassadors and other diplomatic representatives,... Governors-Genera I of Dominions, Governors of Colonies and a number of other officials. He distributes title and honours.

Chairman of Various Bodies : The Prime Minister is the *ex-officio* Chairman of the Committee of Defence, Imperial Conference and Commonwealth Conference.

His Position : The powers and functions of the Prime Minister justify the remark of Marriot that he is the political ruler of England. He is endowed with such a plentitude of powers as no other constitutional ruler in the world possesses, not even the President of America. For so long as his party commands a majority in the House of Commons, he can give a pledge beforehand that such and such treaty will be signed, such and such law will be passed and such and such amount of money will be sanctioned. Thus the formal powers of the Prime Minister compare very favourably to those of an autocrat. The prerogatives which the King has lost in the course of history have fallen in the hands of the Prime Minister in the position of his being the principal adviser of the King. The Prime Minister enjoying the support of a stable majority in the House, can make, amend and repeal the laws and Constitution of England, can impose any amount of taxation and can declare war and conclude peace. During national emergency, he becomes a virtual dictator of the country. The Cabinet is the real government of the country and he is the master of the Cabinet.

The powers of the Prime Minister as a matter of fact, depend upon the personality of the person holding this office. Men like Disraeli, Gladstone, Peel and Churchill proved to be successful Prime Ministers and added much to the prestige and dignity of this office. But a weak Prime Minister may lose much of the position and dignity of this office.

The position of the Prime Minister, in relation to other ministers was described during the 19th century as *primus inter pares, i.e.,* the first among equals. It is no more true today. He is the master of the Cabinet. In essentials the policy of the Cabinet is his policy. He is the moon among lesser stars. Another philosopher says that he is the sun round which the planets revolve. Of course, he cannot be a dictator. Though he exercises a general supervision, he cannot dictate arbitrarily to his colleagues who hold an equally important position in the party. He is under the constant criticism of the opposition. He is to pull his colleagues in the Cabinet and majority in the legislature with him. All this means that he cannot be called a dictator or an autocrat despite the fact that at times he may wield dictatorial powers.

The Prime Minister is not a Dictator : Those who say that the Prime Minister is fast becoming a dictator give these arguments.

(i) He can ask any minister to resign, fii) He can ask the queen to dissolve the House of Commons, (iii) He can resign himself, his resignation will mean the resignation of the Cabinet. When we read these points we generally get the impression that the Prime Minister is a dictator. But the fact of the matter is that he is not a dictator:-

(1) He can ask any minister to resign but in practice there are the following difficulties: (a) Resignation of a minister may cause rift in the party, cabinet and the parliament, (b) No party has unlimited talent to supply to the Prime Minister, (c) The people have no faith in the cabinet which changes every now and then.

(2) He can ask the Queen to dissolve the House of Commons, but he may not be able to do it due to the reasons given below.

(a) Fresh election means expense of millions of Pounds. No party is always ready with huge sum to spend.

(b) The country is not always favourably inclined towards, the party in power. The political, economic and international climate may not be in favour of the party in power.

(c) No Prime Minister can be 100% sure of the victory of his party at the polls. Election means many sleepless nights for the leadership and the workers. So no Prime Minister will invite elections. He will hold it when he has to.

(3) The Prime Minister can resign himself. It will lead to the resignation of the Cabinet, This is true in theory but not in practice.

(a) Mr Lloyd George has said, that there is no generosity at the top; there is always some one willing, even eager, to take his place.

(b) He can never say like Clement VII, "Now that we have got the Papacy let us enjoy it."

(c) The parliamentary system is conducted on the vital hypothesis that no man is indispensable ; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon his recognition of this truth, Says Laski.

The Prime Minister is not a dictator, he is a first among the equals or little more than this.

We will say in the end that wherever there is a parliamentary form of government the general election has become the election of the Prime Minister.

POINTS TO REMEMBER

The Prime Minister holds a key position in the governmental structure of Great Britain. He is central to formation, life and death of the Cabinet. The office of Prime Minister has come into existence as a result of a convention. The Prime Minister is the leader of the Cabinet. He presides over the meetings of the Cabinet-and conducts its proceedings. He is the leader of the House of Commons. All principal announcements are made by him on the floor of the House. He is the source of communication between the Cabinet and the Queen. He has the control over foreign affairs and finances of the country. He has a lot of patronage in his hands. He is the chairman of various committees. In spite of all his powers, he is only first among equals and cannot behave like a

Q. 14. Describe the position and functions of the Privy Council and the Judicial Committee of the Privy Council.

(P.U. 1938)

Ans. While the Government of the United Kingdom is carried on in the name of the King, the Privy Council is the constitutional machine through which the executive orders of the King are transacted, The Privy Council has its origin in the *Curia Regis* of the Norman period. The members of the *Curia Regis* were appointed by the King from amongst the feudal lords. This body was meant to advise the King when its advice was sought. Its powers increased during the reign of Norman Kings but at the same time the number of its members increased enormously and it became an unfit body for deliberations. Charles II, therefore, consulted some five close friends of his own, out of all the members of this body. Thus the famous Cabal Ministry came into existence, which is regarded as the mother of the present Cabinet. Although later developments placed all the executive functions in the hands of the Cabinet yet this body continued to be a medium to carry out the wishes of the Crown. It is no longer an advisory body since these functions are now performed by the Cabinet.

Its Composition : The Privy Council at present consists of more than 300 members. Its members are apppointed by the King or Queen who may appoint anybody as Privy Councillor on the advice of the Prime Minister. All ministers—present and past men of eminence in political life, distinguished scientists, litterateures and artists, Archbishop, retired judges and other persons who have held high administrative posts under British Government—are made Privy Councillors. A Privy Councillor is addressed as the Right Honourable. The Privy Councillors enjoy life-long tenure

Functions : The Privy Council is a defunct body and hardly performs any function today. It meets in full only on ceremonial occasions like the Coronation of the King or the Queen. But in order to transact formal business to issue Orders-in-Council, a quorum of three persons is considered to be sufficient. As a matter of rule, three Cabinet Ministers including the Lord President of the Council meet and act on behalf of the Privy Council. The meetings are generally held at Buckingham Palace in the presence of the King or the Queen but his or her presence is not essential. The work of the Council is done in the name of the King-in-Council. It may be noted that all executive orders passed by the Cabinet by way of delegated legislation and other orders relating to the colonies and dependencies and war time orders are embodied in the Orders-in-Council.

Judicial Committee of the Privy Council : Apart from the functions referred to above, the Privy Council has also inherited judicial functions of the *Curia Regis.* The Judicial Committee of the Privy Council created in 1833 is the Highest Court of Appeal for the colonies of the British Empire and ecclesiastical cases for U.K. It

consists of the Lord-Chancellor, the Lords of Appeal-in-Ordinary and such other Privy Councillors as have held high judicial posts.

Another important duty of the Privy Council Office is the supervision of various forms of research. It also deals with matters of economic co-ordination and policy questions relating to B.B.C.

PROBABLE QUESTIONS WITH HINTS

1. Trace the growth of the Cabinet system in Great Britain and discuss its salient features. [*Agra 1948; Allahabad 1943; P.U. 1948; 1949)*

[For answer refer to Qs. 9 and 11.]

2. "The English Cabinet has been dsecribed as the hyphen that joins, the buckle that fastens the executive and the legislature." Discuss.

[For answer refer to the powers and position of the Cabinet discussed in **Q. 10.]**

"Bureaucracy has become a far more potent and vital element in the British system of government than the text books realise. It has become indeed the effective and operative part of the British s y s t e m . — *R a m s a y Muir*

CHAPTER V

THE PERMANENT EXECUTIVE—THE CIVIL SERVICES

The services are the life-blood of administration. The moral tone of the administration depends to a very great extent on the efficiency, honesty and integrity of the services. It is one of the contradictions of the English Constitution that while the officials of various departments are expert administrators, the official heads, i.e, the ministers are generally amateurs. As Munro has pointed out, "the British War Office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister and the Board of Trade by a University Professor." Obviously the result is that the ministers have to depend largely on the bureaucracy. The fact is that every democratic government faces the problem of combining technical expertness with responsibility to the voters and their representatives.

Q. 15. Discuss the role and organisation of the Civil Services in England. (P. *U. 1951)*

Ans. Role of Civil Services. Civil Services constitute the administrative machinery of the state. It consists of permanent officials : administrative officers, executive officers and subordinate services. The Civil Services are organised in various departments like Home, Foreign Affairs, Treasury, etc. Each department is headed by a minister, its political chief. He controls, directs and supervises the department. Above them is the Cabinet that controls the government as a whole.

The Civil Services perform numerous and varied functions. They execute the laws passed by Parliament. They collect data and statistics. They hold invetigations and enquiries and submit reports. They place before the minister material on the basis of which he makes policy. They advise the ministers about practicability and difficulties of a policy. They also inform him and through him the Parliament about the reaction of the people to a law and their grievances and the shortcomings of such a law and thereby propose amendments. They establish departmental organisation for the execution of laws. They exercise powers of delegated legislation, *i.e.,* make rules and regulations under a law passed by the Parliament. They conduct research, develop public communication, and explain government policies to the people. They co-ordinate the work of government departments and thereby create harmony and organismic unity in administration.

In the view of these vital functions, the services need to be honest, impartial, hard-working and politically neutral. In demo-

cracies, Cabinets change leading to change in policies. The Conservative Party is replaced by the Labour Party. One believes in Capitalism and the ether in Socialism. The function of the civil services is to be *loyal* to every government, whatever be its political complexion. This has been very much true of British Civil Service. It has served under Conservative, Liberal and Labour governments and none has complained against it.

Organisation : The number of Civil Servants has immensely increased after the World War I with increasing activities of the State. The increase in the number of professional, technical and scientific staff has been enormous. The Civil Servants, today, are dispersed throughout the country. In 1955, there were 248 thousand civil servants in the Post Office and 328 thousand in other departments. Out of the latter, 134 thousand are in defence services. All services are unified under one central control of the Treasury. The Secretary of the Treasury is the head of the Civil Service. All high appointments in departments are approved by the Prime Minister on his advice. He has the right to overrule the advice of the Secretary of the Treasury. There are four categories of services : (1) Administrative, (2) Executive, (3) Lower Grade, (4) Professional and Technical Officers.

The administrative class is at the top. This class is divided into Permanent Secretaries, Deputy Secretaries and Assistant Secretaries. Principals and Assistant Principals, etc. It is recruited from the University graduates with best liberal education. It is only graduates with first-class or good second-class honours degree that have any real chances to qualify. They are recruited through open competition. Also a certain portion is recruited by promotion from the executive class, professional class and clerical class. The functions of this class are : formation of policy, co-ordination and improvement of government machinery, general control and administration of the departments of public service, issuing of instructions, and directions for the execution of policy to subordinate departments. They move from department to department. The administrative class is the key class of the whole Civil Service.

Below this is the executive class. This class is recruited partly by open competition from men and women between the ages of 18 and 19, calculated to secure recruits of a higher secondary school level, and partly by promotion from clerical level. The work of this class covers a wide field and requires in different degrees qualities, of judgment, initiative and resourcefulness. It is concerned with matters of internal control and organisation, with important departmental operations, with the execution of policies in accordance with instructions of the higher officials. It conducts examination of particular cases of lesser' importance, holds initial investigations and enquiries into matters of high importance and provides the immediate direction of small blocks of business.

The third is the clerical class. It constitutes the 'working class, of the administrative section of the service.' Its duties are : dealing with particular cases in accordance with well-defined regulations,, instructions on general practice, checking and rechecking of accounts, claims, returns, etc., simple drafting and precis work, collection of material and data, etc. It is recruited by open competitive, examination of intermediate secondary school standard from youngmen and women of 16 and 17 years of age, and partly by promotion from clerical assistant and shorthand-typist grades.

The class of clerical assistants is open only to women. It carries, out the routine work, *i.e,* machine operating, writing up of simple cards, custody of card index, hand copying and transcribing, etc.

Professional class consists of engineers, scientists, lawyers, professors, architects, etc. They are recruited on merit by interview.

The Civil Service Commission like the U.P.S.C. in India holds these competitions. The Treasury controls the whole body of civil service. It supplies the chief co-ordinating element through general, regulations, Orders-in-Council, instructions and financial control.

POINTS TO REMEMBER

The Civil Servile performs a vital role in a modern State. Its helps in formulation of policy, executes laws, collects statistics, advises the ministers, about practicability of service, establishes departments, makes rules and regulations, etc. There are four main categories : (1) Administrative class. It is the key class, makes policy and issues instructions for its execution. (2) Execution, class. It executes laws under instructions from the administrative class; takes decisions on spot, holds investigations, etc. (3) Clerical class. It performs routine work. (4) Professional class. It consists of engineers, professors, architects, lawyers, etc.

Q. 16. "The ministers in England are amateurs in the-art of government and real administration is carried on by the members of Permanent Civil Services." Amplify the statement and discuss the role of Permanent Civil Services in the administration of England.

(Agra 1950 ; Allahabad 1942 ; Nagpur 1944)

Ans. If Cabinet makes the political executive in Great Britain, then the civil services constitute the permanent executive. Both of them play a vital role in the administration of the country and are-complementary to each other. In theory the Cabinet is the incharge of national administration, but in practice it is assisted by a large body of civil servants who help them in performing the multifarious activities of the state. A minister is the political head of the department under his charge. He does not enjoy fixed term of office. On the other hand, civil servants stay permanently to run the administration. It is a body of 7,00,000 persons. The permanent head of the department is a civil servant with rank of permanent secretary. He is the chief advisor of the minister. The civil servants are the cream of nation selected through competitive examinations. Theyare expert in their departments, and remain indifferent to party politics

The ministers on the other hand have party-loyalties and are preoccupied with party work. It is through part work and by party that the minister gets a seat in the cabinet. The ministers rise and fall with their politcial parties. The ministry may assume office today and find itself overturned in a short time. It enjoys no fixed tenure.

There is a great difference between the ministers and civil servants who are responsible for running the administration. A minister is a political head. He comes in office by virtue of his party which holds majority in the House of Commons. He bears a party label. His political life depends upon the political future of his party. He remains in office as long as his party enjoys the confidence of the House of Commons and goes out of his office as soon as his party loses majority of the House. The civil servants are, on the other hand, permanent officials. They are non-party men and keep aloof from party politics. They cannot make speeches and canvass support for candidates in elections. They can cast their vote according to their own free will. Their offices are not affected by fluctuation in political parties and enjoy permanency. As Munro remarked, "Permanence of tenure on the part of administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility."

Another very significant difference is that ministers are amateurs regarding the work of department headed by them while the civil servants who work under them possess expert knowledge of the working of the department. They are essentially men of knowledge, skill and experience. A minister in charge of war department may be a man of literature. The ministers need not be expert of their department. There is a popular story that when Palmerston first took charge of the colonial office, he said to his permanent secretary "just come upstairs for half an hour and show me. where those confounded colonies are on the map." That is why it is remarked that government in Great Britain is by immatures. They cannot do without help of expert civil servants. Civil servants play an important role in framing policy that a minister adopts and places before the cabinet, by placing facts and statistics before him and interpreting them in their way. A minister generally accepts that interpretation as he is not an expert. In fact, every department develops a policy of its own, which the minister concerned accepts and presents to the Cabinet and the Parliament as his policy. Therefore everything is practically done by his subordinates while he generally signs on the dotted lines. Therefore, ministers become puppets in the hands of civil servants and cannot do without them. As once Joseph Chamberlain said, "I have a shrewd suspicion that you can do without us (ministers). But I have an absolute conviction that we could not do without you". Thus ministers are generally guided and led by their expert secretaries. It is their permanent secretaries who rule and not the ministers. Mr. Ramsay Muir calls it the "vice of departmentalism." A minister is in office for a few years and he is anxious not to make mistakes. He depends

upon the department and its suggestions, rather than make any innovations that may involve any risk. The civil servants very often are men of far greater ability than ministers themselves. Not only that ministers lack departmental knowledge, they have many extra-departmental duties to attend to, They have to devote a large part of their time to parliamentary and political work. Now the question arises: How do the ministers and their permanent subordinates work together ? Can a minister impose his personality over a department if he so wishes and can he become the master of civil servants in spite of the fact that he is immature and can get things done by them and his own policy executed by them. It entirely depends on the personality of the minister. It has been true of ministers like Churchill, Lloyd George, Attlee and Handerson etc. Ministers are not expected to be technically experts of their department, because it may narrow down their mistakes. It is not the business of a Cabinet Minister to work the department. His business is to see that it is properly worked. Consequently a minister with shrewd commonsense and broad outloolc can lay down the general outlines of the policy in the general interest of the people and then can rely on his permanent. secretaries to carry it out. Thus strong ministers lead their department while weak ministers are led by their subordinates.

In fact ministers may be divided into three categories : (1) Those who come to a department with a detailed picture of policy they want to pursue. (2) Those who come with no particular direction but desire to make a name as a minister. (3) Those who want to remain in office with little adventure.

The first type of ministers are rare. They change the very outlook of a department and introduce innovations and infuse new blood in their department. Most of the ministers are of the second category. They are interested in making a name. They want to do something but are not clear as to what they want to do. It is not surprising that the contours of their policy are shaped by the departmental heads. The third category of ministers largely or wholly play in the hands of the secretaries. Such ministers are in, the Cabinet because they are Prime Minister's men or because they are representatives of some intra-party group or have such a status in public life that a smaller office would be unacceptable to them. But they are also necessary. They keep the balance in the Cabinets. As Prof. Laski points out, "The most successful Cabinets in our history have always been those in which a" number of dynamic personalities have been balanced by secondary med of this kind."

In fact, the function of ministers is to tell the departments what the public won't stand. This function can be well performed even by ministers of less dominating personality. Public life, experience in Parliament and general education enable them to do so. As Earl Attlee says, 'It is the business of the ministers to bring in the commond touch'. It is done amply by the ministers.

The British Cabinet has well executed itself. There is no occasion to feel sorry about its working. The policy is made not by

individual ministers but by the Cabinet as a whole. Parties come prepared whith their policies and they put them into execution. Policies are not made by individual ministers. The Civil Service has well performed its function of telling the Cabinet about the practicability of those policies. If there is any weakness, it arises from the fact that the Cabinet may not be clear in its mind about its policy. If the Cabinet is clear, its policy shall be executed. Thus there is no danger of Civil Service ruling the country over and above the Cabinet. That has been the experience of all Cabinets. Of course, it will be wrong to say that the Civil Service has no role to play or should play none. Ministers are amateurs and Civil Servants are experts. Both should co-ordinate their activities if administration is to run efficiently. This is amply done if the Cabinet is clear in its mind as to what it desires to do.

POINTS TO REMEMBER

The civil services in England play a vital role in the administration of Great Britain. The civil servants are experts and have rich experience of the department which they run. The ministers are only amateurs in the art of administration. Some constitutionalists argue that a minister is not supposed to be an expert administrator. His job is not to work the department; his business is to see that it is worked properly. He is to formulate the policy of his department and it is for the civil servants to carry it out. But this is only one side of the picture. The bureaucrats exercise an extensive influence over the administration, legislation and finance.

The function of Parliament is not to govern but to criticise." *-Jennings.*

CHAPTER VI

THE HOUSE OF COMMONS

The King-in-Parliament is the law-making body in U.K. It consists of the King, the House of Lords, and the House of Commons. It is a sovereign body, possessing both legislative and constitutional powers. Its laws are final; these require neither ratification, nor are these subject to judicial review. No court of law can declare them *ultra vires.* It can amend the constitution according to the ordinary procedure of law-making. There is no distinction between an ordinary law or a constitutional law. It controls both the executive and the judiciary. There is no judicial decision which it cannot set aside, no usage which it cannot terminate and no rule of common law which it cannot overturn. Thus legally it is supreme.

However, in practice there are many limitations upon it. It cannot legislate against public opinion 2nd public morale. It can be dissolved by the King on the advice of the Prime Minister. It is controlled by the Cabinet. It has become merely a registry office to place legal stamp upon the policy-decisions of the Cabinet. It is due to this fact that Jennings says that the function of Parliament is not to govern but to criticise. It supervises the work of the Cabinet lest it should become a dictator.

Q. 17. Discuss the organisation, powers and functions of the House of Commons.

(Agra 1935 ; Nagpur 1941 ; P. U. 1932)

Ans. The House of Commons is the lower and popular chamber of the British Parliament. It is the most vital part of the British Parliament. When the Parliament is dissolved, it is only the House of Commons that is dissolved. When the Cabinet is said to be responsible to Parliament, it means responsibility to the House of Commons. When Parliament has made a law, it means the House has legislated upon it.

The present strength of the House of Commons is. 630 In the General Elections held in 1964. Labour Party secured 317, seats whereas its rivals—Conservative and Liberal—secured only 304 and 9 seats respectively. It is a wholly elected legislature. About 75.000 people get one representative. There are single-member territorial constituencies. The Labour Government in 1948 abolished the right of double voting and multiple constituencies. A person used to enjoy the right of vote in the constituency of his residence as also in the constituency where his business premises were located. The Universities had separate representation on the House through double member or multiple member constituencies. Now both have been abolished. A person enjoys the right of vote only in the constituency of his residence. The House of Commons is elected on the basis of adult franchise, secret ballot and direct voting. Every person of

21 years of age has the vote. Every person of 25 years of age can contest election. However, insane persons, criminals, aliens, undischarged insolvents, holders of office of profit under the State, etc. cannot stand for election. The peers and the clergy also cannot contest election.

Its Presiding Officer : The meetings of the House of Commons are presided over by "Mr. Speaker." He is elected by the House of Commons and his election is approved and confirmed by the King or Queen, which is only a formality. The moment the Speaker is elected, he ceases to have any party loyalties and becomes a strict "neutral".

N.B.—(Full question regarding the position and functions of the Speaker is discussed separately in this chapter.)

Its life : The normal life of the House of Commons is five years but it may be dissolved earlier by the King or Queen on the advice of the Prime Minister. It is an established convention that the King shall not refuse such demand and shall not dissolve the House of his own accord. The House can extend its own life by one year in one instance and like that to any number of years.

POWERS AND FUNCTIONS

Legislative Powers : The House of Commons is a very powerful legislative chamber. It can make, amend and repeal both ordinary and constitutional laws. There are very few checks over its legislative authority. The veto power of the king has fallen in, disuse. It has not been used since 1707. The House of Lords also plays an insignificant part in law-making. Its wings, were clipped by the Parliament Act of 1911, according to which it could delay non-Money Bills lor not more than two years and Money Bills for not more than one month. By another Amendment passed in 1949, the delaying power of the House of Lords with respect to non-Money Bills was further reduced to one year. If the House of Commons passes a bill twice with an interval of one year between the 2nd reading in the first session and 3rd reading in the 2nd session, the bill shall go to the King for his assent notwithstanding the opposition of the Lords. This shows that, to all intents and purposes, the House of Commons is.the real Parliament of the United Kingdom.

Control over the State Finance : The House of Commons exercises control over the State Finance. A Money Bill can originate only in the House of Commons. Every year in The month of February, the Chancellor of Exchequer places before the House of Commons, the budget containing estimates of income and expenditure of the government for the coming year. Money can be spent or taxes. can be raised only when approval of the Parliament is received. Oncea Money Bill is passed by the House of Commons, the Hour of Lords cam delay it only by one month after the lapse of which period the bill becomes ready for signatures of the King. It is thus the guardian of the Public Purse. The House also criticises the manner

in which funds are spent and sees that accounts are properly checked and audited.

Control over the Executive : Britain has parliamentary form of government. Such being the case, the Cabinet is responsible to the House of Commons. The House of Commons makes or unmakes Cabinets. The Cabinet continues in office so long as it enjoys the confidence of the majority of members in the House of Commons. The House of Commons can indicate its want of confidence by rejecting a Bill introduced by a minister or by refusing supply or by passing a Bill that is opposed by the Cabinet or by making a token cut in the salary of a minister of by passing a direct vote of no-confidence against the Cabinet. Either the Cabinet resigns or demands dissolution of the House. This power has made the Cabinet master of the House.

Ventilation of Grievances : Discussion, is the very life of democracy. An hour is fixed for asking questions, on each day the House meets. The 'question hour' offers opportunity for obtaining any information from the government regarding the policy pursued 'by it concerning any and every matter. The question may be followed by supplementary questions to clarify the reply given. In this way, the government is censured if it has neglected its duties in a particular matter. A 'question" may relate to any matter whatever. It may be regarding an unjust treatment of a post-office official or improper pressure of tax-collecting authorities or of the maltreatment of prisoners in some British jails or delay in payment of pension to certain persons or there may be vital questions touching the foreign or defence policies of the U.K. Thus the House acts as an agency through which the grievances of people are ventilated and public opinion is focussed on various points. Since the Cabinet government cannot afford to offend public opinion, these grievances are generally redressed. In this way, discussions in the House afford a considerable protection against negligent, inefficient, arbitrary, extravagant or oppressive administration.

General Remarks : Although theoretically, the House of Commons is a very powerful legislature yet in practice it is dominated by the Cabinet. The latter has become master of the House of Commons. The twentieth century has witnessed the rise of Cabinet Dictatorship. More than 85% of the Bills are moved by the ministers and these are passed as the Cabinet desires. No bill can be passed without the support of the Cabinet. Budget is prepared by the Chancellor of Exchequer and it is passed as it is. This means that the House of Commons has no control over legislation and State finance. It is now the Cabinet which legislates with the passive approval of the House. The control of the House over the executive is also now a fiction. No Cabinet has ever been ousted by a vote of no-confidence in the twentieth century. This power has fallen in disuse. No vote of no-confidence has been passed since 1895.
has been due to many factors. The Cabinet has the majority in the

House and hence the House can do only what the Cabinet allows. It has become a sort of registry office to put legal stamp on the decisions of the Cabinet. The Party discipline is very strict. The chief whip keeps the members together. No crossing of floor takes place in this House. The Cabinet can demand dissolution of the House in case there is conflict between the two. The members of the House submit to the wishes of the Cabinet rather than face dissolution. The two-party system has further helped in this process. However, the Cabinet dictatorship is dictatorship by consent. It cannot ignore the House outright. The House is the mirror of public opinion. All the points of view are expressed on every bill or policy of the government in debates in the House. The Cabinet learns about the temper of people from these discussions and changes its policy accordingly. The opposition always keeps the government on its tenter-hooks. It is ready to magnify the smallest mistake of the government. The Cabinet has to meet its challenge by proving the soundness and success of its policies. The Cabinet has to render explanations, give information, and satisfy the angry House of Commons The debates in the House may lead to change in the government composition. Lord Chamberlain lost his Prime Ministership in 1940. Mr. Hoare was dismissed from Foreign Ministership in 1935. The Cabinet has to carry its own party members with it. It can appeal to them, can persuade them, can cajole them but cannot threaten them. The discussions in the party meetings of the Government Parliamentary Party control the Cabinet to a very large extent.

Thus the House legislates only under the direction of the Cabinet or putting it otherwise, the Cabinet forms legislative policy and the House approves it. (The function of the House is, therefore, merely to form the Cabinet; keep a vigilance upon it, criticise its policies and keep it on the right path lest it becomes arbitrary. The House ventilates grievances, extracts information, gives direction by passing resolutions and selects leaders. The members of the House establish, in debates in the House, their claim to leadership. The ministers and the Prime Ministers serve a period of apprenticeship in the House before they reach those high officer Mr. Baldwin was member of the House for 18 years before be became the Prime Minister. So was Mac Donald. Churchill became Prime Minister in 1940 after membership of the House for more than 30 years.

POINTS TO REMEMBER

The House of Commons consists of 630 members at present. All the members are elected by the direct vote of people on the basis of universal adult franchise. The Speaker presides over its meetings and maintains, decorum and discipline. The House enjoys extensive legislative, financial and executive powers. It makes, amends and repeals both ordinary and constitutional laws. It passes the budget and thus sanctiops taxes and expenditure.
It controls the Cabinet which continues in office so long as it enjoys the confidence of the majority of its members. Besides, it acts as a ventilating Chamber. Although the House of Commons enjoys extensive authority yet in practice, it is not so. It is completely subordinated to the Cabinet.

Q. 18. Discuss the position and functions of the Speaken of the House of Commons.

(P.U. 1948; Cal. 1942; Agra 1948)

Ans. The origin of the office of speakership is obscure. Sir Thomas de Hungerford, in 1377, is said to be the first person to be appointed the Speaker. In the earlier times, the House of Commons was merely a petitioning body and the Speaker was their recognised spokesman. Whereas, the members of the House of Lords had direct access to the King, the Commoners could only send petitions through the Speaker. Since he was only a spokesman, he came to be known as a Speaker. Originally, the Speaker was selected by the King but now he is elected by the House of Commons on the first day of the first session soon after general elections. The election of the Speaker even now is to be confirmed by the King or Queen although it is just a formality.

His Position : The Speaker of the House of Commons enjoys a unique pbsition in the political system of Great Britain. There are various conventions which are attached to this office. The first is "Once a Speaker, always a Speaker". It implies that once a particular person is elected as the Speaker of the Commons, he should be allowed to continue so long as he is prepared to serve. After life of the House is over *or* the House is dissolved earlier, the Speaker of the outgoing House is not to be contested in his constituency. He is allowed to be returned unopposed to the House. Further, when the House meets for the first time to elect its Speaker, the same person is elected unanimously by the House. No political party puts, up a rival candidate against him.

Second important convention regarding the Speaker is the fact that the moment a person is elected the Speaker, he is supposed to. shun off all political affiliations or alignments. He must become a political neutral. He is not to express his political views in favour of or against any party. He is not supposed to issue any statement to the Press. He is not to deliver speeches on the platform. Even at the dinner table, he is expected to maintain his political neutrality and not to express any opinion regarding matters of public policy.

Inside the House, he is to be an impartial judge. He is not to take part in the debates of the House. He is to preside over the meetings, of the House and maintain decorum and discipline. Like an umpire, his job is to see that the game of politics is played according to rules and nobody plays foul. He has a casting vote which is to be used in case of a tie. But as a matter of convention, he is required to give his casting vote in such a way as to avoid making the decision final and to allow the House another opportunity to consider the matter once again.

The conventions with regard to the office of Speakership are really valuable but there have.been occasions when these conventions, were disregarded. The Labour Party, in 1935, contested the Speaker

in his constituency on the plea that the Speaker's constituency is virtually disenfranchised because the Speaker is to be an impartial figure in the House. The Liberals and the Conservatives, however, remained in favour of re-election of the Speaker. A suggestion was also made that the Speaker's constituency should be allowed to elect a supplementary member or a Speaker should be nominated to the House. But nothing has come out of this proposal.

His Emoluments : The Speaker of the House of Commons draws a salary of £5,000 a year, besides other allowances and privileges. He is entitled to the use of a residential bungalow free of Tent. After his retirement, he is given a handsome pension of £4,000 a year. Peerage is also granted to him as a mark of honour.

English and American Speakers Compared : The Speaker of the House of Representatives in the United Staters is the leader of the majority party in the House. He is elected on purely party lines. He is vigorously contested in his constituency. After being elected to the Chair, he does not break off political affiliations. He comes down from his chair and actively takes part in the debates of the House and openly favours his own party. He does not get any pension. In brief, he is not an impartial judge of the House. On the other hand, he is the leader of the House and enjoys an immense influence over the course of legislation.

English and Indian Speakers Compared : India is a new democracy and no set conventions have been evolved in the sphere of her political life. Yet legislatures with small or no powers existed even during the British rule. V.B. Patel, as the first Indian Speaker of the Central Assembly, wanted to follow the conventions of the English Constitution regarding the office of Speakership. Although he was elected on Congress ticket, yet he maintained strict neutrality in the House. He was re-elected to the Central Assembly, without any opposition. After his death, the office passed over to Shanmukham Chetty and he violated this convention by favouring the government with reason or without reason. The late Mr. Mavlankar, the Speaker of the Lok Sabha, never disaffiliated himself from the Congress Party although he tried to maintain an attitude of neutrality in the House.

As regards the Speakers of the Provincial or State legislatures, the British conventions have never been followed. Babu Purushottam Dass Tandon, as the Speaker of the U.P. Legislative Assembly, openly opposed the introduction of British conventions He himself continued to be an active member of the Congress Party. One or two conferences of the Speakers of Indian Legislatures have been convened to decide the issue but nothing has so far come out of them.

Functions : The Speaker of the House of Commons performs some important functions which may be summed up as follows :

1. He presides over the meetings of the House of Commons and conducts proceedings. He recognises the members, *i.e.,* he decides

as to who shall have the floor. All speeches and remarks are addressed to the Chair.

He decides various points-of-order raised by members of the House. His rulings in this connection are final.

3. He puts various questions to the votg of the House and announces the results thereof.

4. He interprets and applies the rules of procedure of the House. His rulings or interpretations are considered to be final and nobody can challenge them.

5. He certifies whether a particular Bill is a money Bill or not.

6. He is the spokesman of the House in its collective capacity. The Commoners have access to the King only through the Speaker. In the name of the Commoners, he conveys thanks or censure. He protects the dignity and grace of the House.

7. He can use his casting vote in case of a tie. But as a matter of practice, he would use his casting vote in such a manner as to avoid the decision being final.

8. He maintains discipline and decorum in the House. He can warn a member against unparliamentary behaviour and can order him to stop speaking He can expel visitors and press representatives from the premises of the House to maintain law and order. He may even ask a member to withdraw from the House. If he does nor go, the Speaker will 'name' the member This means expulsion of the member from the House. On the first occasion when the member is named he is expelled for five days, on the second repeated mistake for twenty days and if the mistake is repeated for the third time, he is ordered to remain outside for the rest of the session. In case a member refuses to get out of the House, he is escorted out by the Sergeant-at-Arms.

9. The Speaker is in charge of an administrative department called the Speaker's Department of the House of Commons. The clerk of the House, a Librarian, an Examiner of Petitions for Private Bills, Office of Vote Officers and other members of the staff belong *to* this office.

POINTS TO REMEMBER

The Speaker of the House of Commons enjoys a unique position in the political system of Great Britain. Once a Speaker, always a Speaker, is an important convention of the British Constitution. The Speaker becomes a political neutral after being elected to the Chair. Like an umpire, he maintains decorum and discipline and sees that the game of politics is played according to the rules of the game. The Speaker of the House of Representatives is a partisan in the discharge of his functions. He is elected on party-lines and openly favours his party both inside and outside the House. The conventions of the British Constitution regarding the Speaker have not been developed in India although V.B. Patel, the first Indian Speaker of the Central Assembly, wanted to establish those conventions. The Speaker performs a number of functions.

Q. 19.b How are the debates in the House of Commons regulated ?

Ans Modern legislatures are hard-pressed for time. They have to pass numerous laws in each session. Many a time, the individual members speak for a long time thus depriving others of an opportunity to express themselves and thereby kill the measure. Therefore, the legislatures are required to take certain steps in order to conserve their time and adopt methods to limit the debates. The following are the measures which the House of Commons has adopted for this purpose.

1. The Simple Closure : According to this method, a member moves the previous question at the time when another member is speaking. The idea is not actually to discuss the previous question but to end any more talk on the problem. With the permission of the Speaker, the motion is put to vote and if favourably decided, the debate comes to an end.

2. The Closure by Compartment : This method arose out of the Closure. When the whole House sits as a Committee to consider financial measures, it is found that the method of simple Closure is inconvenient. So the practice is adopted to apply the Closure to a group of clauses. This method is known as Closure by Compartment.

3. The Kangaroo : This method is used in the case of amendments. When numerous amendments are placed before the House, the "Speaker of the House selects the most important and representative amendments for debate. He is thus authorised to skip over the rest. This method is known as the Kangaroo Closure.

4. The Guillotine : Sometimes, a fixed time is allotted for the consideration of the different clauses of a Bill. At the expiry of the allotted time, the debate comes to an end automatically. It matters little whether all the clauses of the Bill have been discussed or not. This method of ending the debate is known as the Guillotine.

5. The Time-Table : A new method of limiting the debate is followed now-a-days in place of the Guillotine. The minister-in-charge of the Rill prepares a Time-Table and allots days or hours for the consideration of the Bill. The Time Table is approved by the House and the business is conducted accordingly.

POINTS TO REMEMBER

The House of Commons is hard-pressed for time. There is very little scope for lengthy debates and discussions. For the sake of expediting the work of the House, certain measures are adopted. These are the Simple Closure, "the Closure by Compartment, the Kangaroo, the Guillotine and the Time-JTable.

Q. 20. Write notes on *(a)* Delegated Legislation, and (b) Her Majesty's Opposition. *(P.U. 1953)*

Ans. *(a)* Delegated Legislation. Now-a-days the making of laws has become an enormous task. It requires a lot of time

Parliament to incorporate every possible detail. Expert knowledge is necessary to make them exhaustive so that they may meet all the possible cases. Parliament has neither the time nor the expert knowledge at its dispqgal. Consequently, it makes laws laving down their general principles and purposes. It leaves the details to he filled in by the executive. The executive fills in the details by issuing fules and regulations Thus, Parliament leaves a major work of law-making to the executive. These rules and regulations framed by the Executive are termed as Delegated Legislation. It is of three kinds which are given below :

(i) The Provisional Orders which are issued at the demand of the local bodies and which require confirmation by way of statutes

(ii) Those orders which are issued under the authority of the clauses of an Act and which are required to be placed on the table of the House. They become effective only when they are so laid.

(iii) Those orders which come into force immediately and are not required to be laid on the table of the House.

Its Growth: Since the year 1919, the volume of delegated legislation has increased enormously. Every year brings some new delegated legislation with it. The climax of delegated legislation was reached in the Rating and Valuation Act of 1925 which empowered the executive to pass an order which might even modify the Act itself. It was of course a remarkable delegation of powers which in a way delegated the sole function of legislation to the executive.

The growth of delegated legislation has increased the power of the bureaucracy. Though the Orders-in-Council are issued by the Cabinet yet the real authority behind the scene is the Permanent Civil Service. The Civil servants remain in touch with the masses and they understand their real needs. The minister is an amateur and ordinarily may not be able to override the opinion of his subordinate officials. Thus in a way all the Orders-in-Council are issued by the bureaucracy. This rise in the power of bureaucracy has alarmed many British thinkers. Ramsay Muir has condemned it in strong words and Lord Hewart has given it the name of 'New Despotism.'

But the growth of delegated legislation is not something to be considered strange or unfortunate. It was rather inevitable. England is a welfare state and a large number of laws have to be passed every year. It is, therefore, impossible for Parliament to pass laws in all possible details. Then, an expert knowledge for this purpose is required which the members of the legislature do not possess. Expert knowledge is the monopoly of the bureaucracy. Therefore, it is convenient to leave the introduction of technical details for the experts. But they should not be allowed to abuse their powers A vigilant guard should be placed over their heads. The system of

Advisory Committees, provides an efficient safeguard against this danger. No Order-in-Council can be issued by any department unless examined by an Advisory Committee and approved by it. This makes democracy efficient as well as secure.

(b) Her Majesty's Opposition : No democracy can succeed without an opposition. What makes Nazism of Fascism opposed to-democracy is the absence of the opposition. The opposition is thus, the essential requisite for the proper functioning off the British Parliamentary Government. It is regarded as an integral part of the British Constitution and the leader of the Opposition is paid an yearly salary of £2,000.

"The opposition occupies an important place in the British system. But it is not the enemy of the government. Rather it is considered to be a helper of the ruling party and loyal to her Majesty. Its function is not to obstruct the smooth working of the government. It never wishes to discredit it. Its true function is to criticise the government, and to bring to light various flaws and failings of its policies. It thus kee the government alive to its mistakes. The government in response to the criticism of the opposition tries to rectify those mistakes. Thus the role of the opposition leads to the efficiency of the government. In the absence of any opposition, the government is bound to become lethargic in its work and neglectful of its duties. It may even grow insensitive to public opinion. By criticising the policies of the government, the opposition appeals to the electorate. In this way it tries to muster the support of the public and win the next elections. Thus the struggle between the opposition and the majority is fought in the country at large because the former can never hope to defeat the latter on the floor of the House. [The majority tolerates the opposition because healthy criticism levelled by the latter gives the former a chance to correct its shortcomings.

The opposition works in a democracy by agreement. Minority agrees that so long as it is not able to capture the support of the masses, it shall allow the majority to rule. The majority also agrees that the minority may criticise and oppose. Leaders of the majority apd minority accommodate each other. They agree on matters to be debated. In foreign matters, the minority joins hands with the majority. Usually the minority leaders are invited to participate in the Defence Committee. Thus most of the parliamentary matters are disposed of by agreement between the opposition and the government.. That is why the opposition is, regarded as an integral part of the British Constitution.

POINTS TO REMEMBER

Delegated Legislation : England is a positive State and there is a great pressure of legislative work on Parliament which finds if impossible to include all possible details in various Bills. The Bills are, therefore, drafted and passed in broad outlines and details are left to be filled in by the executive. This is Delegated Legislation. Delegated Legislation is assuming enormous proportion in the twentieth century.

Her Majesty's Opposition : Opposition is an integral part of British Parliamentary Democracy. The opposition in Parliament is happily tolerated by the party-in-power. It criticises the policies of the government and brings to light its various flaws and failings. This role of the opposition leads to the efficiency of the government.

Q. 21. Discuss the various privileges enjoyed by members of the House of Commons.

Ans. Since the inception of the House of Commons, its members enjoy immunities and privileges which are regarded to be essential for the maintenance or dignity and prestige of the House.. These privileges are recognised as inviolable and they are formally claimed from the sovereign by the Speaker at the beginning of each Parliament. Some of the important privileges are given as follows :

1. Freedom of Speech in the House : No member of the House of Commons can be punished by any court of law in the country for anything said in the House during debates and discussions. The Speaker of the House, if he so desires, may take some disciplinary action against a member for unparliamentary behaviour.

2. Freedom from Arrest: The members of the House or Commons cannot be arrested 40 days before and after a session of Parliament except in cases of treason, felony or contempt of court.

3. Right of Access to the Sovereign through the Speaker : The members of the House can collectively approach the King, or the Queen through the Speaker. It is to be noted that the members of the House of Lords can individually approach the sovereign.

4. Right to Regulate the Proceedings : The House enjoys the privilege to determine the qualifications of its members, lay down rules regarding discipline in the House and decide disputed elections, Moreover, the House can regulate its own proceedings.

5. Right to Commit for Breach of its Privileges: The House has right to punish for breach of its privileges. In serious cases the House can send an offender to jail but it is possible only till the end of the session.

POINTS TO REMEMBER

The House of Commons has certain privileges which are as follows : (a) The members have the freedom of speech within the House. (b) No members of Parliament can be arrested 40 days before or after a session, (c) The members have collective approach to the sovereign. (d) The House can regulate its constitution and procedure.

Q. 22. Give a brief description of the 'Question Hour' in the House of Commons.

Ans. The daily sittings of the House of Commons are conducted according to a set programme. Daily an hour of the sitting is set apart for answering the questions put by various members ti- the ministers. This hour is known as the 'question hour.' It is time both for enlightenment and amusement. The answers to the questions throw a flood of light on the persistent problems of the

country and sometimes enable the House to enjoy itself at the expense of a minister. The ministers are put out of nerves during the 'question hour as all flaws and failings of their policies are exposed before the House.

A method is prescribed for asking questions. A question should be addressed to the minister concerned or to his represent tative if he is the member of the House of Lords. Each member of the House can ask four questions at a time. The questions should be set to elicit some information. They should not contain any argument or inference. Nor should they be couched in an expression Which is ironical or carries some imputation. The Speaker can reframe the questions or drop them altogether if he considers them improper. If a question refers to some confidential matter, the minister may refuse to answer it.

The 'question hour' in the House of Commons has a special significance. The answers enrich the knowledge of the members and also provide them with a source of enjoyment. The questions refer to various important matters and answers to them are given after careful preparation. Sometimes only a short dry sentence is spoken in reply. The questions at times are very embarrassing and supplementaries to these questions sometimes drag the ministers in deep waters. Then the House enjoys a hearty laughter at the expense of the ministers.

It is through these questions that members elicit information and get a peep into the inner working of government. departments. The 'question hour' brings to light the omissions and commissions of executive officers. The excesses or discriminations committed by them come to the public eye. This helps to keep the administration honest and impartial, efficient and speedy.

The members have no right to discuss the answers given by the ministers. It matters little if they are dissatisfied. Such a practice differs from that followed in France. There every question may be followed by a debate and a vote of censure if the members are dissatisfied.

The procedure of asking the questions is very costly. Munro remarks that every British tax-payer has to pay seven and a half dollars per question. Though the procedure is very expensive yet it is considered very valuable by members of the House, The procedure has a great moral value. This puts the ministers on their guard. They remain vigilant and alert. They answer the various questions carefully as they are aware of the fact that the answers would be given a wide publicity. The 'question hour' is thus an effective check over the arbitrary tendencies of the government.

POINTS TO REMEMBER

The 'question hour' in the House of Commons has a vital importance. On each day the House meets, an hour is set apart for answering various questions. Each member of the House can ask four questions at a time. The

questions may relate to any problem or matter. The 'question hour' is both a fource of information and amusement to the members. The ministers are put out of nerves during the "question hour" and all their flaws and failings are exposed before the House.

PROBABLE QUESTIONS WITH HINTS

1. "The function of Parliament is not to govern but to criticise" *(Jennings).* Discuss. *(P.U. 1953)*

[Refer to the powers and position of the House of Commons with special emphasis on the rise of Cabinet Dictatorship.]

2. "It is not the King-in-Parliament, but the House of Commons which exercises legislative supremacy." Examine the statement. *(P. U. 1953)*

[Refer to the powers of House of Commons in relation to the House of Lords and the Queen.]

''The House of Lords is a very irritating kind of nuisance."
—J.S. Mill

CHAPTER VII

THE HOUSE OF LORDS

The House of Lords is an important part of political and judicial system of England. It is a unique institution in several ways. In the first place, it is the oldest legislative organ in the world. In the second place, it is the only legislature in the world, the membership of which is based on heredity. In the third place, it is the only Second Chamber, which has been so vigorously opposed. According to J.S. Mill, it is a very irritating kind of nuisance. It is a misfit in a democratic country like England since it is essentially a conservative chamber. It performs the functions of an ideal Second Chamber when the Conservative Party has its majority in the House of Commons. It turns into a brake to the wheels of democracy when the Labour Party controls a majority in the Lower House.

m **Q. 23. Discuss the composition, functions, and powers of the House of Lords.**

Or

'The House of Lords is the weakest chamber in the world.'' Discuss. **(*P.U. 1948*; *Allahabad 1949, 1944*)**

Ans. The House of Lords is the Upper House of the British. Parliament. It is not a popular House. Its members are mostly recruited on the principle of heredity. It has at present about 850 members. This number varies because of death of old peers, and creation of new peers. The members of the Lords may be divided: into the following categories :—

1. Hereditary Peers : About 9/10th of the members of the House are hereditary peers. Peerage is granted by the Crown and descends down to the oldest male members of the family. Peerage cannot be transferred or surrendered to the Crown. There is no-limit to the number of peers that may be created by the Crown and the government of the day is, therefore, able to create a favourable majority in the House of Lords by advising the Queen to create new-peers. The Reform Act of 1832 and the Parliament Act of 1911 were passed by similar threats.

2. Representative Peers of Scotland : When Scotland was united with England by the Act of Union 1707, there was in existence a body of Scottish peers numbering 154. All of them could not be-sent to the House of Lords. They were given the right of electing 16 out of them to represent them in "the House of Lords for the duration of each Parliament.

3. Representative Peers of Ireland : Similarly, when Ireland was united with England by the Act of Union 1801, there

was in existence a separate body of Irish peers numbering about 234. This body was given the right to elect 28 persons from amongst them to represent them for life. After the establishment of the Irish Free State, no change was made in the position of these Irish peers. But no vacancy has been re-filled since 1922, after the death of some Irish peers. The actual number of Irish peers fell to 15 by 1936 and 5 by 1952 and will soon reach the vanishing point.

4. The Law Lords : They are 7 in number. They are chosen from amongst distinguished jurists and unlike other members of the House, they are paid an annual salary. The reason for introducing this element was to enable the House to perform its judicial functions. The law lords do not take part in the political debates of the House. On the other hand, when the House is to sit as a Court of Appeal, only these seven peers occupy the judicial bench and other members of the House are not to participate.

5. Spiritual Peers : They are 26 in number. There are 2 archbishop and 24 bishops of the Anglican Church. They continue to be the members of the House of Lords so long as they retain their office in Church.

6. Princes of the Royal Blood : Princes of the family are also members of the House of Lords but as a matter of convention they do not take part in the work of the House.

Disqualifications : Persons under 21 years of age, aliens, undischarged insolvents, persons under sentence for a serious crime and women are debarred from membership of the House.

Presiding Officer of the House: Lord Chancellor is the presiding officer of the House. But he does not enjoy the authority that is enjoyed by the Speaker of the House of Commons. His powers as presiding officer of the House are insignificant as compared with those of the Speaker of the House of Commons.) The House decides points of dispute itself. Members of the House of Lords enjoy unrestricted freedom of speech. The speeches are addressed not to the Chair but to the House and begin with "My Lords." The Lord Chancellor is not supposed to be a political neutral. He may come down the Chair and take part in debates. Ths office of the Lord Chancellor is a unique one. He combines in him all the three functions—legislative, executive and judicial. In the capacity of the Chairman of the House of Lords, he takes part in legislation. In the capacity of a Cabinet minister, he takes part in executive affairs. When the House of Lords sits as the highest Court of appeal, he presides over it.

Quorum : Three members constitute the quorum of the House but when a legislative measure is to be passed, attendance of at least 30 members is essential. The average attendance of the House is not more than 35.

Nature of the House: It is a conservative chamber. It has been described as 'fortress of wealth' and 'directory of directors:

About 200 members enjoy among themselves directorship of more than 120 companies. About 500 members own more than 2/3rd cultivable land in the country. It is a leisurely chamber. Its normal attendance is 60, and average 35. About 100 members on an average do not take the trouble even of taking the oath of allegiance to the House.

Powers and Functions : The powers and functions of the House of Lords may be discussed under the following heads:

Legislative : Prior to 1911, the House of Lords enjoyed equal powers with the House of Commons with the exception of Money Bills which always originated in the House of Commons. It could initiate ordinary Bills, and could amend or reject any Bill that was passed by the House of Commons. In theory. Money Bills could also be amended or rejected but this power was rarely used.

The Act of 1911 as amended by the 1949 Act has drastically curtailed the powers of the House. In money matters, it has only suspensory veto of one month. Money bills can originate only in the House of Commons. Once a money bill is passed by the Commons, it, goes to the Lords. The latter cannot make any amendment or phange without the consent of the Commons. In case of conflict between the two houses, the bill goes to the King for signature after the lapse of one month from the date of receipt of the bill by the House of Lords, notwithstanding its opposition.

In matters of ordinary legislation it has co-equal powers with the Commons. ' An ordinary bill can originate in either House and must be passed in the same form by both before it goes to the King for signatures. However, the House of Commons has over-riding authority. In case the House of Lords refuses to pass a bill passed by the Commons, the latter can repass it and send it to the King for signatures in spite of "the Lords' opposition. If the House of Commons passes a bill second time with an interval of one year between the 2nd reading in the first session and 3rd reading in the 2nd session, the bill is ready for King's signatures notwithstanding the opposition of the House of Lords.

Executive Powers : It has no control over the executive. The Prime Minister belongs to the House of Commons and the Cabinet is. collectively responsible to that House.

Judicial Powers : It enjoys huge powers in the legislative sphere. It is the Highest Court of Appeal in the U.K. It is the court of impeachment for the trial of important officials of the Crown, although this function is now out of use. Its judicial functions are performed by the 7 Law Lords presided over by the Lord Chancellope They may be assisted in the discharge of their functions by other noble lords who have held high judicial posts. As a matter of convention, other lay peers do not take part when the House sits as a Courts

Deliberative Functions : The bouse of Lords influences the government and the people by its debates in which it is quite free to indulge. In matters of debates, the lords enjoy more freedom than members of the House of Commons in many respects. They are not afraid of the electorate and consequently the debates in the House of Lords are more outspoken and often reach a higher level than those in the House of Commons.

General Estimate : The House of Lords has been rightly called the weakest second chamber. As compared to this, the American Senate enjoys co-equal powers with the House of Representatives both in ordinary and financial matters. Besides, it exercises powers in the executive sphere with the President. It approves all the appointments and ratifies all the treaties made by the President

However, the House of Lords becomes very active and even obstructive when Liberal or Labour Party comes to power in the House of Commons. It is the reserve centre of the Conservative Party, which it can use against such a government. It can waste two out of 5 years of such a government. Naturally, it results in compromise which means concessions to the conservative interests in the country. It successfully obstructed the Liberal Government in 1909 and 1910 and forced two general elections upon it in 1910. Similarly it obstructed successfully the nationalisation of steel during 1945-50 when the Labour Party was in power.

Thus the House is weak when Conservative Party is in power but becomes very strong with any other government

POINTS TO REMEMBER

The House of Lords is the Upper Chamber of the British Parliament. It has at present a strength of some 850 members out of which 90% are hereditary peers. Some represent Scotland and Ireland. Besides, there are 7 Law Lords and 26 Bishops. Lord Chancellor presides over its "meetings. It had equal legislative authority with the House of Commons before the passage of the Act of 1911. According to this Act, it had only a delaying power of two years regarding ordinary Bills and one month for Money Bills. It is the Highest Court of Appeal in England. Only Law Lords listen to these appeals. It has some deliberative utility as well.

Q. 24. Make out a case for and against the House of Lords Describe some of the proposals put forward to reform its composition and character.

Ans. The existence of the House of Lords has been a subject of heated controversy. This controversy has, however, assumed serious proportions since the emergence of the Labour Party as a major political party in England. There are arguments both in favour and against the House of Lords, some of which may be mentioned as follows.

Arguments in favour of it. I. Revisory Function : The U.K. is a welfare state. Various schemes of social security are being undertaken. The House of Commons is hard-pressed for time. The

Bills are passed hurriedly by the House of Commons and some technical flaws may remain in them. The House of Lords revises all those Bills and technical flaws are thus removed.

2. Non-controversial Legislation : It can undertake legislative work regarding non-controversial matters and thus lend a helping hand to the Lower House.

V3. Delaying Power : The delaying power of the House of Lords can afford an opportunity to the people to have a cool and dispassionate view of the matter. This delay is especially useful in the case of Bills which affect the fundamentals of the Constitution and issues whereon the opinion of the country is equally divided.

4. Ventilating Chamber : It Is a Ventilating Chamber. It provides a forum for discussion of larger questions of public policy. Its discussions are free and outspoken and reach a higher level than those of the House of Commons because members of the House of Lords have no voters to satisfy and no elections to fight.

5. Check against Hasty and Rash Legislation : The House of Lords acts as a check against hasty, ill-considered and rash legislation passed by the House of Commons. The House of Commons is elected by the direct vote of the people and is liable to be swayed by popular passions. The House of Lords in such a case will exercise controlling, modifying, retarding and steadying influence on legislation.

6. Consideration of Private Bills : The Private Bills can be referred to the House of Lords in the first instance. Such Bills undergo a 'quasi-judicial' process which may take much time when they are opposed. If the House of Lords were to be abolished, this burden will also fall on the House of Commons which is already hard-pressed for time.

In the words of Munro, "the House of Lords is a useful body because it examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such Bills before they become part of the law of the land. It compels sober second thought and gives opportunity for passions to subside."

Arguments against it : The continuance of the House of Lords is opposed on the following grounds :

1. Hereditary Character : It is predominantly a hereditary body and as such it is an anachronism in a democratic State. It symbolizes privileges not justifiable on any rational basis. "The idea of a hereditary legislator is," it is said, "absurd, as the idea of a hereditary poet laureate or hereditary mathematician."

And then members of the House of Lords represent none excepting themselves while the House of Commons is a fully representative body duly elected by the people.

Fortress of Vested Interests : It is a fortress of vested interests. There is no national industry leadership of which is not represented on it. Thus capitalists of England dominate the House.

3. Conservative Character : It is not an impartial Second Chamber as an ideal Second Chamber should be. It has and, always had conservative leanings. It has always opposed the Labour Party and its progressive legislation. That is why Prof. Laski argues that the House of Lords is a good Second Chamber when the Conservative Party is in office. It turns into brake when the Labour Party assumes power.

4. Indifference : Its prestige has been largely undermined by the fact that a very large proportion of its members do not take any interest in the proceedings of the House. Most of them are generally absent and its normal attendance is only about 35.

5. Delaying Power Misused : Its delaying power is a great impediment in the path of the Lower Popular House. Vital and controversial measures cannot be enacted even at the time of a crisis. The British Parliament is already very slow. The need is of expediting the business and not of checks. The first Reform Act was passed in 1832 and the entire process of enfranchisement was completed in It took about 50 years to introduce compulsory primary education.

6. Revisory Function Useless : It is maintained that there is no need of any revisory Second Chamber in England because the House of Commons has itself become a Second Chamber for purposes of legislation as the Bills are drafted by experts in the civil services under the guidance of the Cabinet.

Proposals for Reform : The resentment against the House of Lords has led to various proposals for the organisation of the House on more democratic and progressive lines. The Lansdowne Plan of 1909 proposed a House of Lords consisting of 330 members out of which 100 peers were to be elected by the whole body of peers 100 persons to be nominated by the Crown, 120 persons to be elected by the House of Commons, 5 bishops to be elected by the whole body of bishops. Law Lords and princes of royal blood were also to be members of the House. The scheme was, however, rejected.

After that a Parliamentary Committee of 30 members with equal membership from each House was constituted under the Chairmanship of Lord Bryce. The Committee submitted its proposals in 1918, which run as follows :

The House should consist of 327 members. Three-fourths of the total should be elected by members of the House of Commons on the basis of proportional representation. The rest were to be selected from amongst the existing peers by a joint standing committee equally represented by both the Houses. The scheme was to

be put into operation by stages. Ultimately, 'members of the House of Lords were to be elected for a term of 12 years, $^1/_3$ retiring after every four years. The Bryce Plan also could not find general acceptance. All these proposals aim at a reduction in the number of hereditary peers and the addition of elected element so as to make it a partially representative body. No scheme has received the agreement of all shades of political opinion in England. It is apprehended that a representative Second Chamber may demand greater powers and come into conflict with the House of Commons.

It is now proposed to reform the House on the following lines ;

(1) The women peeresses be admitted to it.

(2) Peers be created Only for life in future.

The number of hereditary peers at present in the House be reduced at least by half.

But the difficulty is that possibilities of deadlocks will arise between the two Houses as both will be representing public opinion partially or totally. The Commons do not like checks and balances of the American type as it would lessen their importance. The present House of Lords is no longer a menace to democracy. At the most, it can only delay ordinary legislation for one year. The popular passion against the House of Lords is now cooling down The Labour Party has also abandoned its policy regarding the abolition of the House of Lords. Thus the strength of the House of Lords lies in its weakness.

POINTS TO REMEMBER

The existence of the House of Lords has been a subject of great controversy. There are both arguments in favour of and against it. Arguments for it: It can act as a revisory Chamber. It can undertake non-controversial legislation. The delaying power of the House affords an opportunity to the people to take a cool and dispassionate view of matters. It is a ventilating Chamber, Arguments against it : Its hereditary character is an anachronism in a democratic State. It is a fortress of vested interests. It is professedly a Conservative House. Peerage is often granted for cash. The members do not take any interest in its proceedings. Its revisory function is useless. Various reforms have been suggested to re-organise the bouse on democratic lines but nothing has come out of them.

Q. 25. What are the various privileges of members of the House of Lords ?

Ans. The privileges of members of the House of Lords are similar to those of members of the House of Commons although certain privileges are enjoyed by the Lords alone.

Like members of the House of Commons, the Lords enjoy freedom of speech in the House and they cannot be arrested for anything said in the House. Apart from this, the Lords possess certain special privileges which are given below :

1. Whereas, the House of Commons can only approach the Queen or the King collectively through its Speaker, the Lords can individually approach the sovereign.

2. Whereas, Commoners are to be tried by the ordinary courts of law in all cases of treason and felony, the Lords may be tried in such cases by the House itself.

3. The House of Lords has the freedom to record a note of protest against the decision of the majority in the House of Commons in the *Journal* of the House.

4. The House tries cases of impeachment preferred by the House of Commons.

5. The House is the highest Court of Appeal in the U.K.

6. The House can punish a person for violation or contempt of its privileges. But unlike the House of Commons, the right to commit a person extends even after the close of the session.

7. In earlier times, a member of the House of Lords could vote by proxy but this privilege was abolished by a Standing Order in 1868.

POINTS TO REMEMBER

The Lords enjoy certain privileges which are denied to the Commoners. They have a direct access to the sovereign. They can be tried against treason by the peers themselves. The House is the Highest Court of impeachment. They may record a protest note against the decision of the majority in the House of Commons.

Q. 26. Discuss the powers and position of the Lord Chancellor in England. (P. *U. 1951)*

Ans. The Lord Chancellor holds a unique position in the British political system. The origin of this office can be traced back to the reign of Edward the Confessor.

The Lord Chancellor combines in him legislative, executive and judicial functions. He is invariably a member of the Cabinet and the Privy Council. He is the President of the Judicial Committee of the House of Lords. His powers and functions may be summed up as follows:

Political Functions : (*a*) He is the Chairman of the House of Lords. In this capacity, he conducts the proceedings of the House and maintains decorum and discipline. The seat which the Lord Chancellor occupies while presiding at the meeting of the House is called the Woolsack. Unlike the Speaker of the House of Commons, he has little control over the procedure and debates of the House as members of the House of Lords have unrestricted freedom of speech.

(b) **He is the principal legal adviser to the Crown.**

(c) He is the custodian of the great seal of the realm.' This seal is affixed on all treaties, agreements, royal proclamations and writs issued by the Crown.

(d) The government measures are often entrusted to him for passage in the House of Lords.

(e) **He reads out the King's or the Queen's speech at the opening of a parliamentary session in the absence of the sovereign.**

Executive Functions : He is invariably a member of the Cabinet though he does not hold any executive portfolio.

Judicial Functions : (a) He is the head of the British Judiciary and as such responsible for the appointment of the High Court judges.

(b) He is the Chairman of the Judiciary Committee of the Lords and a member of the Judicial Committee of the Privy Council.

(c) Under the provisions of the Judicature Act of 1925, he controls the organisation of Judiciary in the U. K.

Miscellaneous Functions : He visits hospitals, orphanages, lunatic asylums patronised by the royal family.

His Functions : He draws a handsome salary of £10,000 a year and retires on a pension of £ 5,000 per year. His salary is almost equal to that of the Prime Minister.

POINTS TO REMEMBER

The Lord Chancellor holds a unique position in [the constitutional set-up **of** England. He is the Speaker of the House of Lords. He is a member, of the Cabinet. He presides over the meetings of the House of Lords when it sits as. **a** Court of appeal. He controls the judicial organisation of Great Britain. He draws a handsome salary.

PROBABLE QUESTIONS WITH HINTS

1. "The House of Lords should be ended or mended." In the light of this statement, make out a case for and against the House of Lords.

Or

"The strength of the House of Lords lies in its weakness." Discuss.

[For answer, refer to the question dealing with the arguments for and against the House of Lords.]

2. "The House of Lords is not only **a** Second but **a** Secondary [Chamber." Discuss.

[For answer, refer tothe powers and position of the) House of Lords.]

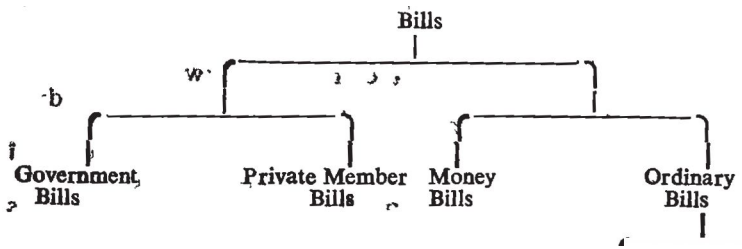
"All means! of formulating laws tend to be swallowed up in the one great, deep and broadening sense, legislation."

— Woodrow Wilson

CHAPTER VIII

LEGISLATIVE PROCEDURE AND COMMITTEE SYSTEM

(1) Money Bills. (2) Ordinary Bills. Money Bills deal with, generally Speaking, raising of revenue and expenditure' of money, i.e., financial matters. Bills other than money bills are known as ordinary Bills. There are two kinds of ordinary Bills : Public Bills and Private Bills. Ordinary Public Bills deal with general interests of community while private bills deal with the interests of a particular locality or individual. These Bills are further categorised as Government Bills, if they are initiated by a minister and private-member Bills if initiated by member of Parliament other than a minister.



Public Bills — Private Bills

1. Private Bills : A private bill deals with one locality, or individual of »n institution. It does not concern the general interests of the community. These bills, in the main, concern Local Bodies in Britain. Thus a Bill giving powers to a corporation for constructing a bridge is a Private Bill. A bill granting pension or some other privilege to a person is also a private bill. These Bills always have some outside interest and originate as petitions from private individuals or local authorities. These Bills can originate in either House of Parliament. The procedure for passing the Private Bills differs considerably from that employed for passing the Public Bills.

2. Public Bills: The Public Bills affect the general interests of the country as a whole or a large part of the community. As for instance, a measure to set up a national health service or to nationalize the coal industry is a Public Bill. Bills dealing with estate duties, income tax and excise duty on cloth are other examples of public bills. Such Bills can be introduced both by ministers and private members of Parliament. These can be initiated in either House.

3. Money Bills : Money Bills deal with financial matters. These Bills, in the main, concern with raising or spending of money by the State. For example, the expenditure proposed by **a** department in the next year shall be **a** Money Bill. Similarly when the government imposes a new tax, the bill imposing that tax shall also be a Money Bill. The Parliament Act of 1911 provides that the certificate of **the** Speaker of **the** House of Commons is enough to

declare a Bill to be a Money Bill. Money Bills are invariably moved by the government and not by private members. They can originate only in the House of Commons.

4. Government Bills : These are Bills brought before Parliament by a minister. They are brought before the House when approved by the Cabinet. They are framed by the experts in the Permanent Civil Service. They can be originated in either House but as a matter of practice nearly all important Bills, are introduced first in the House of Commons except the Judicial Bills which, are introduced in the House of Lords. The Life of the Cabinet hangs on the Government Bills introduced by its member. If Parliament refuses to pass any Bill which is declared by the Cabinet as a vital bill, it would be tantamount to a. vote of no-confidence and the Cabinet consequently resigns.

5. Private Member's Bills : A Private Member's Bill is one that is introduced by members of Parliament other than ministers. Such a Bill has little-chance of being placed on the statute book without the backing of the government and the government does so only in rare cases. The time devoted to these Bills is practically a waste. The procedure for the passage of a Private Member's. Bill is the same as for Government Bills.

Q. 27. How are Public Bills, other than Money Bills, passed in the British Parliament ?

Ans. There are two stages in the process of Jaw making. The first is the drafting of a Bill and the second starts after its introduction in Parliament. The drafting of Private Member's Bill is done by the member himself. The process of drafting a Government Bill is different. The minister concerned, first prepares a rough draft. This is examined by the Cabinet. The Cabinet may make changes in the outlines of the Bill in the light of discussion held with the Local Bodies, the Civil Service and other interested parties affected by the Bill. After this it gees to the Draftsman, and it is he who gives it shape of a regular Bill. Then it goes back to the Cabinet where it is again discussed and approved before it is introduced in Parliament.

The second stage starts after the introduction of the Bill in Parliament. A member who wants to introduce the Bill in the House gives an earlier notice of his intention of moving a Bill. On the day and time fixed on the agenda the Speaker calls upon him to introduce his Bill. He hands over a copy of it to the clerk of the House who reads out the title of the Bill, its nature and purpose. This is the First Reading of the bill.

There is another method of introducing a Bill as well. It is. known as Ten Minutes Rule. Under the Rule, the sponsor of the Bill is given an opportunity to explain and defend the Bill's contents. It gives an opportunity to the leader of the opposition to oppose it, if he so desires. This method too is taken as the First Reading of toe-Bill.

The Bills are never rejected by the House in the First Reading. Thus. this stage is just ceremonial. The Bill is printed and date and time are fixed for its Second Reading by the Speaker.

Then comes the Second Reading of the Bill. At this stage the general principles of the Bill are debated upon. The purpose of the Second Reading of the Bill is to decide whether the House wants this type of legislation or not. The supporters of the Bill explain, elaborate, elucidate and defend the Bill, while the opponents criticise and attack it. At this stage only principles involved in the Bill are discussed and there is no detailed examination of individual clauses. The opponents generally adopt either of the following two methods to deal with the Bill :

1. They move an amendment or an amending resolution which nearly seeks to kill the purpose of the Bill if not the Bill itself.

2. The opposition moves that "The Bill be read this day six months hence."

Both these methods seek to defeat the Bill. If the opponents, of the Bill are successful in getting either of the above proposals passed by majority, the Bill is killed. If the Bill is approved at the Second Reading, it is referred to an appropriate Committee. It must be remembered that the defeat of a Government Bill amounts to the defeat of Ministry and then it must resign or appeal to the electorate.

After the Second Reading, the Committee Stage begins. In the Committee, the Bill is discussed, clause by clause. The opposition members table amendments and try to change or soften the measure. A private member also has an opportunity to show his talents at this stage. After discussion, the recommendations of the Committee are drafted in the form of a report and it is submitted to the House.

Then the Bill enters the Report Stage. After the Chairman has presented the report of the Committee, there is general discussion on the Bill. The Bill is discussed clause by clause as amended by the Committee. Fresh amendments, of course, can be tabled and adopted. Every clause is voted upon and adopted. After all the clauses are individually adopted, there is a voting on the Bill as a whole. When the Bill has successfully passed through this stage, date and time for its Third Reading are fixed.

This stage is also formal. No Reading takes place. Only verbal amendments are allowed. A general discussion on the principles of the Bill takes place. The debate does not occupy much time. After the Third Reading, the Bill is sent to the other House where also it passes through all the above noted stages. If there also it is passed in the same form in which it was passed by the originating House, the Bill is presented to the King or Queen for assent after receiving which it becomes law and is put on the statute book. Such assent is signified or is supposed to have been given when the *Lord* Privy Seal puts the King's or Queen's signatures seal to a Bill.

The Act is then printed in the Official Gazette, and after that it becomes part of the law of the land.

In case the House of Lords refuses to pass A bill passed by the House of Commons, op amends it substantially, and the House of Commons refuses to accept those amendments, the latter can override the opposition of the House of Lords. If a bill, in such case, is passed by the House of Commons again in the next session with an interval of one year in the 2nd reading in the first session and 3rd reading in the 2nd session, the bill shall be deemed to have been passed by both the Houses notwithstanding the opposition of the House of Lords and shall be submitted to the Crown for assent. The Crown signs the bill. Its veto has fallen in disuse. Since 1707, no bill has been vetoed.

POINTS TO REMEMBER

The Bill has to pass through various stages before it becomes a law. In the First Reading of the Bill, only title of the Bill is readout. In the Second Reading stage, its principles are discussed. The Committees scrutinize the Bills in every detail. In the Report Stage, its clauses are discussed. In the Third Reading stage, its principles are once again discussed. After it has gone through all these stages, it is referred to the other House and then follows the royal assent.

Q. 28. How are Private Bills passed in the British Parliament? *(P.U. 1951)*

Ans. A Private Bill is one which deals with the affairs of some private company, corporation, municipality or a concern. The procedure for passing a Private Bill is different from that for a Public Bill. Certain conditions have to be fulfilled before a Private Bill is introduced. Before the commencement of the session, a petition attached with the Bill is presented to the 'Private Bills Office' of the House. The notice of the Bill is given in the Gazette, to the Treasury and other interested government departments. The petitioners estimate the cost and deposit a certain amount as a security. A paid officer of the House called the Examiner of Petitions for Private Bills, examines the Petition. If he reports that the rules have been followed, the Bill is introduced in the House.

The First Reading is formal. In the Second Reading the general principles of the Bills are debated upon and voting takes place. If the Bill successfully passes through this stage without any opposition, it is referred to a Committee known as Committee for Unopposed Bills. The Committee examines that Bill in details and then reports the Bill to the House originating it with or without amendment. The lest of the procedure is similar to that of a Public Bill.

If the Bill, in its Second Reading, is opposed by members or other interested bodies outside the House, it is referred to the Private Bills Committee. The procedure here becomes quasi-judicial. The barristers, belonging to the parliamentary bar, i argue the case for or against the petitioners. They examine and cross-examine witnesses. .The preamble of the Bill is examined. If the Committee finds that the sponsors of the Bill have failed to justify the desirability of

the Bill it reports against the Bill and it is thus kilted. In ease the Committee is satisfied, it studies the Bill clause by clause. Evidences of all interested parties are recorded and the Bill is reported with or without amendments to the House to which it belongs. The rest of the procedure is the same as for Public Bills.

Critical Analysis : The system of Private Bill Legislation has certain distinct advantages. In the first place, it saves the time of Parliament as the Bills are thoroughly discussed and examined in the Committees and Parliament has not to waste much of its time. In the second place, as Munro points out, 'it ensures careful non-partisan consideration of measures.' These are not influenced by party politics and vested interests. Such Bills in the United States are passed under the influence of the vested interests exercised through Lobbying, Pork-Barrel and Log-Roiling. The members of the Congress are bribed and influenced through every possible means. The Public and Private Bills are treated alike. But nothing of this nature is possible in England. The system of Private Bill Legislation has some disadvantages also. It entails huge expenditure. Barristers and solicitors are engaged and paid. Fees are paid at" various stages of the Bill, A lot of money is spent on the witnesses also who have to be brought to London for this purpose. Moreover, in Private Bills, public interest is not sufficiently safeguarded.

The defect of Private Bill Legislation has led to evolution of a new device for dealing with such Bills. This is known as the System of the "Provisional Orders". Parliament authorises various administrative departments to grant special powers to Local Bodies or private concerns. The persons desiring to get such orders send an application to the department concerned. The department holds an enquiry into the merits of the application and hears arguments of the applicants and the opponents. If the Ministry is satisfied it issues an order. A number of orders, then, are grouped into what is known as Confirmation Bill. It is introduced by the minister like a Public Bill, but it is treated as a Private Bill. After Second Reading it goes to the appropriate Committee on Private Bills where it is favourably or unfavourably argued by barristers, witnesses and experts. Finally, the Bill goes through the regular stages in the House.

POINTS TO REMEMBER

There is a special procedure for the passage of a Private Bill. Certain conditions have to be fulfilled before it is introduced in Parliament. A petition has to be sent to the 'Private Bills Office'. Some security is deposited. The Examiner of petition examines it. The Bill is then introduced in the House. The First Reading is formal. In the Second Reading principles of the Bill are discussed. If it is not opposed by the House, it is sent to the Committee for •Unopposed Bills. In case it is opposed, it is sent to the Committee on Private Bills The Private Bill Legislation has the advantage of saving the time of the House. The Private Bills are passed without any evil influence of vested interests. In America, no distinction is made between a Public Bill and a Private Bill and the result is that Private Bills are passed under the influence of vested interests. The Private Bill Legislation is too expensive. This defect has led to the evolution of a system known as 'Provisional Orders*.

Q. 29. *(a)* Discuss the procedure for the passage of Money Bills in the House of Commons.

(P U. 1936, 38, 40, 50 : Agra 1938; Patna 1940 ; Calcutta 1934)

(b) To what extent is the National Finance in U.K. controlled by Parliament ?

Ans. *(a)* A Money Bill is a Public Bill which deals with question of expenditure of Public Money or imposition, repeal or changes of taxes and such other revenues.

All Money Bills are introduced in the House of Commons which is the popular branch of the British Parliament. It is to be noted that other Public Bills may be introduced in either House of Parliament. All money bills must get previous consent of the queen. However, it is only a matter of procedure. The effect of this is that all Money Bills are introduced as Government measures. The Chancellor of Exchequer, an important member of the Cabinet generally moves them. The members of the House of Commons can criticise any item in a Money Bill but they do not have the right to propose increase in taxation. The members of the House can only accept, decrease or reject a proposal for taxation. The House of Commons has full control over financial legislation since the powers of the House of Lords have been drastically curtailed under the provisions of the Parliament Act of 1911 as amended in 1949. The House of Lords now simply enjoys a delaying power of one month in connection with Money Bills. This means that a Money Bill passed by the House of Commons is referred to the House of Lords but the latter can simply interpose a delay of one month, after the expiry of which period, the Bill is referred to the Queen or King for signatures notwithstanding the opposition of the House of Lords.

Procedure for Financial Legislation: Every year, a Budget containing estimates of income and expenditure of the government for the ensuing year, is placed before the House of Commons by the Chancellor of Exchequer. The first step in the preparation of Budget is the collection of estimates of expenditure for every department of the government. In the beginning of the month of October, every year, the Treasury issues a circular asking each department to furnish an estimate of its expenditure on a form prescribed by the Treasury. When all the estimates are collected, a conference is held among the Treasury Officers and the heads of the various departments. All possible adjustments are made in this conference. When all estimates are ready, the report is submitted to the Financial Secretary who examines the expenditure in the light of probable revenues accruing next year. After that the Chancellor of Exchequer examines the whole thing and lays his final plan before the Cabinet.

The estimates of expenditure are divisible into two parts. In the first place, there are estimates of expenditure for

Services, ie., the various departments of the government including armed forces. In the second place, there is expenditure on items like the Queen's Civil List, salaries of the judges and some special officers, pensions and annuities, the National Debt charges for the *Consolidated Fund Services.* The expenditure on this part is prepared and presented before the House separately as it does not require annual sanction of Parliament.

All the estimated expenditure is presented before the House in the Budget Session which begins in January or February. After the opening speech of the Queen, the House resolves into the Committee of Supply which is the Committee of the whole House. It is presided over by the Chairman of the Committee of Supply instead of the Speaker. Rules of procedure of the House are relaxed. First of all estimates for three wings of the armed forces are discussed and voted upon. Then expenses on civil administration are submitted. Usually, no amendments or modifications are carried unless these are accepted by the Cabinet. Generally, a period of some 20 days or so is allotted for *Supplies.* When the allotted time is over, the rest of the items are passed without any debates.

When this stage is over, the House resolves into the Committee of Ways and Means, which is also a Committee of the whole House. The Chancellor of Exchequer delivers his Budget Speech in which he reviews the financial policy of the government. The Committee then passes resolution authorising the issue of money from the consolidated fund to provide for the estimates passed by Committee of Supply. The resolutions of both the Committees are then reported to the House when it meets with the Speaker in the Chair. The resolutions of the Committee of Supply are embodied in the Appropriation Bill. Similarly the revenue items are discussed first by the Committee of the whole House and then reported back in the form of the finance bill. The first deals with all expenditure and the second deals with new taxes aud changes in old ones. These Bills then pass through all the five stages in the House of Commons. After having been passed in the House of Commons, these are referred to the House of Lords which can simply delay them for one month at the most: Towards the close of the month of August, the Bills receive the royal assent, and the government obtains the legal authority to spend money and raise taxes.

The last year's grants expire on the 31st of March. The government requires money till the new grants are sanctioned. So for this period, Parliament grants provisional authority to the Treasury to spend money subject to the subsequent approval of Parliament.

(b) Control of Parliament over Money : Theoretically, Parliamant especially the House of Commons has full control over the Public Money. A single penny cannot be spent and a farthing cannot be raised by way of taxation without its approval. The standing order No. 66 clearly disallows a private member of the

House' to propose any tax. Private members cannot increase any demand for grant or amount of tax proposed. They can simply accept or reduce or reject a demand or proposal for taxation) But the legislative history of England shows that never a demand for grant or proposal for taxation has been rejected by the House of Commons during the last 25 years. The Cabinet gets the Budget passed in the House with the support of a loyal and subservient majority in the House. In the words of Munro, 'if the British Budget were put directly into effect as soon as it has been approved by the Cabinet without going to the House at all, its final figures would not be appreciably different.

The rise of Cabinet Dictatorship has led to the utter subordination of the House. A private member of the House is an imposing cypher. The members of the majority party are bound by discipline to support the Cabinet. They blindly support all that the ministers want them to do. This shows that it is not Parliament which controls the Public Purse but it is the Cabinet which has assumed the position of real Comptroller of the National Purse.

POINTS TO REMEMBER

A Money Bill is a Public Bill which contemplates proposals for expenditure or taxation. It is always introduced in the House of Commons and the House of Lords has insignificant powers in this respects The members of the Souse cannot propose increase in taxation. The estimates of expenditure for every department of the government are prepared by heads of departments concerned under the orders of the Treasury. The estimates are collected and are adjusted in a conference of Treasury Officers and heads of various departments. Finally, the Chancellor of Exchequer reviews the whole matter. When all is dose, the estimates are submitted before the House of Commons which resolves into the Committee of Supply. When this stage is over, the House turns into the Committee of Ways and Means which authorises the issue of money from the Consolidated Fund to provide for the estimates passed by the Committee of Supply. The resolutions of both the Committees are then embodied in two Bills namely, the Appropriation Bill and the Finance Bill. These Bills then pass through all the stages in House. After the assent of the House of Lords, these are sent for royal assent. Parliament of England has little control over Public Purse due to the rise of Cabinet Dictatorship.

Q. 30. Describe the Committee System of the British House of Commons and compare it with that of the American Mouse of Representatives. *(P.U. 1930 ; Dacca 1944 i Agra 1942)*

Ans. The Committee System is employed by all the legislatures of the world. It has become an essential feature of legislate procedure on account of the following reasons

(a) Modern Legislatures are huge bodies and are unfit for effective deliberations. The true purpose of the measures introduced in the House cannot be properly understood and healthy discussions fan their implications and consequences cannot be held. To remove this defect, the legislatures all over the world assign preliminary work to certain Committees.

(b) Modern States are positive States. There is a great pressure

of legislative work which cannot be finished without help from small Committees.

(c) Modern legislation is highly technical. It can only be dealt with by Committees consisting of experts.

The Committees ensure a more careful and thorough examination, of the various provisions of a Bill than is possible in a large assembly hard-pressed for time. The House lacks time and technical knowledge. The Committees are, therefore, a device to have-speedy and better legislation by providing expert knowledge to the" House and by saving its time. The House of Commons long resisted the adoption of Committee System. After repeated attempts to indue the House to accept the Committee System it was in the latter part of the 19th century that two Committees were formed on the style of French Chamber. In the first decade of the twentieth century, their number rose to four. Later on in 1919, in all, six Committees were formed, but in 1926 the number of Committees was reduced to five. At present there are five Committees of different?

Before describing the five categories of the Committees, it is advisable to note as to how they are selected. All the Committees, excluding the Committees of the Whole House, are selected by the "Committee of Selection" The members of the Committee are chosen at a conference between the government and opposition party leaders. The majority of the membership goes to the supporters of the government. The Committee of Selection nominates members to the various Committees generally in proportion to the strength off various parties in the House. It consists of eleven members. The composition, nature and functions of the various Committees of the House of Commons are discussed as follows :

1. The Sessional Committees : The Committees are chosen by the House for the entire session. Each Committee is meant for some specific work. For example, there is a Committee of Selection whose main function is to select members to the Standing Committees and Private Bills Committees. The Committee on Standing Orders and Committee on Public Accounts are also Sessional Committees. These Sessional Committees consist of 3 to 17 members. They deal with minor matters.

2. The Standing Committee : These are 6 in number. One Scottish Affairs Committee and the other 5 are known alphabatically. Each Committee consists of 20 permanent members and 15 to 30 additional members. Thus a Committee consists of 50 members. maximum. The Scottish Committee consists of all members from Scotland and additional members to bring the government and opposition members in proportion that the two have in the House. In all Committees the government and opposition have proportionate representation. The members are nominated by the Committee of Selection. The Chairman of a Standing Committee is appointed

of a panel of Chairmen consisting of 8 to 12 members. These Chairmen are naturally the members of the majority party. These are appointed at the beginning of session and continue till Parliament is prorogued. The Committees are not meant for any specific or definite purpose but may consider any Public Bill referred to them by the Speaker.

The Bills after having gone through the Second Reading are referred to a certain Standing Committee. The Bills are thoroughly scrutinized and polished by these Committees. Every Bill referred to a Standing Committee must be reported back to the House.

The Standing Committees have stood the test of time; yet from time to time, certain suggestions are made to reform them. Sometimes, it is proposed that their number should be reduced in order to make them more effective. The maximum and minimum strength should not be more than 30 and 10 respectively. The members should be thoroughly conversant with the subject they have to deal with. The Committees should adopt quicker means for obtaining information from the civil servants and departments of government.

3. The Select Committees : As a rule, a Select Committee consists of 15 members. Such Committees are appointed for some special subject and come to an end when their purpose is fulfilled. These Committees are also selected by the Committee of Selection. A Select Committee elects its own Chairman. The Committee has the power to send for persons, papers and records. The Select Committees are appointed in case of an important bill when a detailed examination or investigation is desired.

4. The Committee of the Whole House : The Whole House sits as a Committee in order to discuss the Budget. The Speaker leaves the Chair and mace is put under the table to indicate that regular House is not in session. The Chairman of the Committee chosen in the beginning of each Parliament, presides over its meetings. The rules of procedure are relaxed and a member can speak as many times as he likes. No closure motion can be moved. When this Committee is considering revenue measure, it is known as the Committee of Ways and Means. When it is discussing expenditure, it is known as the Committee of Supply. When the work of the Committee is finished, the Committee rises. The Chairman leaves the Chair and the Speaker resumes his duty. The Chairman of the Committee then reports to the House, the various conclusions arrived fit.

5. The Private Bill Committees : These small Committees consisting of some 4 or 5 members are nominated by the Committee of Selection from amongst the list prepared by the party whips. These Committees are quasi-judicial in character. They consider report on Private Bills. Barristers can appear before these

Committees. They listen to all the persons and parties interested in the Bills.

None can deny that the Committees play a vital role in legislation. They save the time of Parliament. The other advantage of "Committee work has been technically better legislation coupled with a moderation of the crudeness of party political judgments, especially as expressed before the electorate. But it is also certain that they can usually make no modifications in the principles or broad outlines of the government measures. They may be successful in modifying some clauses of a measure, but on vital matters they cannot make the government budge even an inch.

The Committee System of England and America Compared : Both the British House of Commons and the American House of Representatives make an extensive use of Committees but with a vital difference.

First, the House of Commons has not delegated its legislative powers to the Committees. The function of the Committees is to revise the Bills and offer technical advice. In the U.S.A., the Standing Committees are real legislative bodies. President Woodrow Wilson called them 'miniature legislatures'. Bills are given a proper shape in the Committees and the debates over a Bill in the House are formal.

In the *second* place, Chairmen of the Committees of the House of Commons are generally neutral and impartial though they belong to the majority party, but the Chairmen of the Committees of the House of Representatives are thoroughly partisan.

In the *third* place, the Committees in England work under the leadership of the Cabinet. In America due to the absence of the executive in the House, this leadership is enjoyed by the Chairmen of the Committees.

In the *fourth* place, in England, the Committees must report back all the Bills referred to them without exception but in America the Committees may not report unless asked by the majority of the House. In this way, a number of Bills may be killed by the Committees themselves.

In the *fifth* place, in England, Bills are sent to Committees after their principles have been approved by the House, but in America Bills are referred to the Committees before the general principles are approved by the House. This results in the wastage of time and labour if the House later on rejects a certain Bill.

In the *sixth* place, in England the Committees are free from the influence of vested interests. In America, various Bills are shaped -during Committee Stage by special interests through lobbying.

POINTS TO REMEMBER

The Committee System is an essential feature of legislative procedure everywhere. The House of Commons has five different kinds of Committees besides the Committee of Selection. The members of all the Committees are appointed by the Committee of Selection. The Sessional Committees are -appointed for some specific work. The Standing Committees are six in number, one of which is on Scottish Affairs. These Committees consist of experts and Public Bills are referred to them. The Select Committees are formed for some special subjects and go out of existence when their purpose is fulfilled. The House is converted into a Committee of Whole House when Budget is to be discussed. The Committee on Private Bills deals with Private Bills. There is a lot of difference between the British and American Committees. The House of Commons has not delegated its legislative functions to the Committees but in the United States, the Committees do the real legislative work. The Bills, are given a proper shape by the Committees These may even be killed. The Bills in America are referred to the Committees before their principles are properly approved by the House. This practice results in the wastage of time and energy.

"When your dog does anything you want to break him off: you wait till he does it, and then beat him for it. This is the way you make laws for dog ; and this is 'the way the judges make laws for you and me." —*Bentham*

CHAPTER IX

THE LAW AND THE COURTS OF GREAT BRITAIN

The relation of law and liberty is so traditional in England that Rule of Law is looked upon as the very essence of free government. According to this concept, every individual in England has certain rights which cannot be infringed. No person can be deprived of his rights and liberties without a proper and fair trial in a court of law. The Rule of Law also implies that the powers of the government can be extended and changed only through regular and accepted processes which are known as legislation.

There are different kinds of laws in England, *eg,* Common Law, Equity and Statute Law. England has a very sound legal system and her courts justly interpret laws of the land and rightly apply them. The British judicial system is famous for its excellence and impartiality. It is prompt in its actions and independent in its administration. The object of this chapter is to give an account of this reputed judicial system of Great Britain.

Q. 31. What are the different kinds of laws which regulate the community life of England ?

Ans. The legal system of England is made up of three separate strands, *i.e.,* Common Law, Equity and Statute Law A judge may draw on all the three in giving his decision in a particular case.

The Common Law : The Common Law was developed in England after the Norman conquest. Before the Norman conquest of England, there were Local Courts administering the local customs. In the twelfth century, in order to centralise the judicial system, the King sent out travelling judges who listened to cases in the Local Courts and applied customs which they found at different places. They developed a law which became common to the whole realm. Thus the Common Law of England is nothing but a collection of the usages and customs as interpreted by the judges. It is neither made by the King nor enacted by Parliament. It is not written and there is no text in which it is set forth in a comprehensive and authoritative manner. It is found in the decisions of the judges. It has been expounded by various commentators from time to time.

The formative period of Common Law ended about the middle of the thirteenth century. Then it became sufficiently inflexible as to give rise to serious complaints. Despite its completeness, there were, in fact, gaps in it. There were cases for which Common La could provide no remedy. Sometimes, there were clear cases of injus-

tice. To provide remedies for deficiencies in Common Law, laws based on Equity came into existence.

Equity : The basis of Equity was not custom but conscience. It was based on the belief that the law should follow the moral principles of the community. When, in olden days, people could not get justice at the hands of the judges, they petitioned to the King for redress of grievances. In these cases, peop'e appealed to the conscience of the King. Such appeals were referred to the Chancellor "the keeper of King's conscience". Just as Common Law grew out of the decisions of the King's judges, in a similar manner, the judges of the Court of Chancery *(i.e.,* the Court of the Chancellor) built up the Law of Equity bv means of precedents, traditions and maxims. Equity was intended to remedy the defects of the Common Law. It provided remedies where the Common Law could impose only penalty. It has no relation to criminal procedure but is solely confined to certain types of civil disputes. Previously, the courts deciding the cases on the basis of the Principle of Equity were different from those administering the Common Law. But there exists no such distinction nowadays.

Statute Law The third type of English law is Statute Law, *i.e.,* the law either made by the King or enacted by Parliament. It comes into existence by enactment, whereas Common Law and Equity are naturally evolved. In the beginning, it was enacted by the ruling Monarchs, first in their Great Councils and later on in Parliaments. As the power of Parliament grew, that of the Kings diminished. Now the power of the Kings is merely confined to the giving of assent.

Like Equity. Statute Law also mitigates or makes up the deficiency in the Common Law. It can alter any rule of the Common Law. It may enlarge Common Law and even c dify it. Whenever Common Law comes into conflict with Statute Law, the latter prevails. Though Statute Law is growing more important yet the Fundamental Law in England is the Common Law Most of the Statutes presuppose the existence of Common Law and would have no meaning if the latter did not exist.

POINTS TO REMEMBER

There are three kinds of laws in England. In the first place, there is Common Law which is based on ancient customs and traditions In the second place, there is Law of Equity which is the result of judicial decisions. In the third place, there is Statute Law which is either made by a King or Parliament.

Q. 32. Describe the organisation of courts in England.

Ans The central institutions of the British judicial system are known as the courts. There are civil and criminal courts in England. The civil courts deal with private law or disputes between one private citizen and another. A criminal court deals with breaches of public law. In criminal cases, the proceedings start in the name of the Crown.

Nearly a century ago, the English judicial system was a bewildering collection of separate courts. Separate sets of courts administered Common Law and Law of Equity. The result was that there was constant struggle and conflict between the two systems. The conflicts of jurisdiction were frequent and the litigants who made a (mistake about the court in which to start proceedings, suffered heavily. These problems were tackled and a uniformity was brought about in the judicial system through a number of Judicature Acts passed between 1673 and 1876. With the help of these Acts, uniformity was brought about in the courts and the legal procedure was also simplified to a great extent.

Now the courts in England are divisible into civil and criminal ones. The separation is most rigidly maintained at the lower level. But the House of Lords which is the highest Court of Appeal combines both civil and criminal powers.

The Civil Courts : At the bottom of the organisation of the civil courts lie the County Courts. They were established in 1848 for the purpose of making justice more easily available in local areas. The whole of England is divided into some 500 Districts or Counties, each has a court competent to try cases involving claims of not more than £200. The Counties are grouped in about 70 Circuits. The size of the Circuits is determined by the amount of work to be done. Generally, one judge is assigned to each Circuit.

The High Court of Justice : Cases which are too serious to be handled by the County Courts or the cases in which the litigant prefers to take his case directly to a Central Court in London, are dealt with by one of the three branches of the High Court of Justice. The High Court of Justice which is also known as the Supreme Court of Judicature, never sits as a court and is mainly a symbol of unity. Its three divisions are (i) Queen's Bench Division, *(ii)* Chancery Division, and (iii) Probate, Divorce and Admiralty Division. Each Division of the High Court has both original and appellate jurisdiction. The first Division hears ordinary civil cases, the second one concentrates on matters formerly in the field of Equity and the last one deals with the cases of wills, marriages and ships.

In theory, the judges of the High Court may allocate cases to any Division they wish and they may sit in any Division, but in practice, the work is specialized and rigid separation of work and personnel is followed.

The Court of Appeal : The appeals from the County Courts and the three Divisions of the High Court of Justice lie with the Court of Appeal. In England, the courts are restricted in permitting appeals. They are generally restricted to cases where the interpretation of law by the Lower Courts is challenged. The Court of Appeal consists of 5 Lords Justices of Appeal and 3 Presidents of the three Divisions of the High Courts and some other judges. The Lord Chancellor is its President.

The House of Lords : At the apex of the whole system lies the House of Lords which is the Highest Court of Appeal in U.K. It is not the House of Lords as a whole which acts as a court but a very select group of its members perform the judicial functions. It consists of seven law lords and such peers as have held high judicial posts. The House of Lords does not sit as a Court of Appeal so very frequently. It does not deal with more than fifty cases a year. It hears appeals from the Court of Appeal and the Court of Criminal Appeal, only if the Attorney-General certifies that a point of law of public importance is involved.

The Criminal Courts : The local justice in criminal cases is. provided by the justices of peace and stipendiary magistrates. The justices of peace try petty offences. They are appointed by the Lord Chancellor and serve in an honorary capacity. They can be removed from their post only when they prove unfit for carrying on their duties. They cannot impose more than 14 days' imprisonment or a fine exceeding 20 shillings. In large cities, this work is done by stipendiary magistrates.

Court of Petty Sessions : The next higher Court is the Court of Petty Sessions. It has two main functions. Firstly, it is to conduct the trial of cases in which no jury is used and secondly, it is. to investigate the cases to be referred to a Higher Court for jury trial. The Petty Sessions try minor offences like cruelty to animals, offences like stealing or breach of traffic rules. This court can impose a maximum penalty of six months' imprisonment or a maximum, fine of £50.

Court of Quarter Sessions : When justices of Petty Sessions are convinced of the fact that the cases should be tried by superior court, they send the case either to Assizes or to the Court of the Quarter Sessions. The Court of Quarter Sessions does not try cases, involving death sentence nor does it try cases which are highly complicated. This court is composed of all the Justices of Peace in a County. It is not necessary for all the justices to participate in a session of this court but only two are sufficient to constitute the quorum.

Assizes : Like the Courts of Quarter Sessions, Assizes are also the local courts which try criminal cases. These courts are presided over by judges of the High Court who travel two or three times a year to the designated towns in each County. The cases at Assizes are heard by a single judge and a jury. These courts try serious, offences. Their sessions are held thrice a year in each County and four times in certain cities.

Court of Criminal Appeal: Appeals from Quarter Sessions, or Assizes lie with the Court of Criminal Appeal. This court consist of the Lord Chief Justice and the Judges of the King's Bench. Cases are customarily heard before three judges. Appeals must be instituted by the defendants and never by the prosecution.

Though the House of Lords 'technically is the final Court of Appeal, such appeals in criminal cases are rarely sent to it. These are only sent if it seems clearly to be in the public interest.

The Judicial Committee of the Privy Council: The Committee does not belong to the English judicial hierarchy because it reviews cases sent by the various parts of the British Empire outside Great Britain itself. Technically, Judicial Committee is not a court which administers justice but it is a body which gives advice to the King on the case referred to it. In its personnel, it is not much different from the House of Lords. It consists of the Lord Chancellor, the former Lord Chancellor Law Lords, Lord President of the Privy Council and the judges appointed from the High Courts in the dominions.

POINTS TO REMEMBER

The judicial system of England is highly complicated. The British judiciary is divided into 2 parts-one deals with the civil cases and the other with criminal cases. The civil courts consist of County Courts, Circuit Courts the High Court of Justice, the Appeal and the House of Lords. The criminal courts consist of the Justices of Peace, the Stipendiary Magistrates, the Courts of Petty Sessions, the Courts of Quarter Sessions, the Assizes, the Court of Criminal Appeal and the Judicial Committee of the Privy Council.

Q. 33. Write an explanatory note on the officials who carry on the administration of justice in England.

Ans. There are three types of officials who carry on the administration of justice in England. They are (1) Judges, (2) Justices of Peace, and (3) Juries.

The Judges : The Judges are the high judicial officers, who sit in courts and consider and pass judgment in particular cases which have been referred to them. The position of the judges in the legal system of England is very important. They are an essential agency for the development of law and are looked upon as the protectors of individual liberty. They are considered to be men of integrity and their personality is widely revered.

The judges have fought a great struggle for individual liberty and the independence of judiciary. Some time ago. they were appointed by the King and held office during his pleasure. Thus the King could bend the administration of justice to his purposes. But the judges of the 17th century resisted royal efforts to make their decisions serve royal purposes. The Act of Settlement of 1701 ultimately put the judiciary beyond the royal control. Thus the English judges though appointed by the government came to hold office for life during good behaviour.

Apart from independence of judiciary in England, emphasis is also laid on specialized legal knowledge and experience. Almost all the judges are drawn from legal profession with the result that the English judges combine great ability with standard of

personal integrity. Corruption has not touched even the lower levell of judiciary

The practice of appointing judges from among the leading members of the Bar has its evil effects also. It is said that the judges are drawn from the wealthy classes of society only. Moreover, only those barristers accept the bench who have grown old and are not in a position to earn money otherwise. Thus according to Harold J. Laski, the judges are frequently old men who have lost touch with ideas of new generation.

The Justices of Peace : The Justices of Peace are judicial officials who administer criminal law in the local courts. They are selected from among the local inhabitants of the district. They are appointed without reference to any previous experience or training. They are not paid for their work. Previously, the Justices of Peace were the King's agents who maintained peace and order in the Counties. Now-a-days they are responsible for trying minor criminal cases only. They may be compared to honorary magistrates ia India.

The system has its advantages. Justices of Peace are not paid. This keeps the costs of criminal justice low. They are mainly concerned with small local cases, which require the knowledge of the locality more than that of law. Thus the Justices of Peace are properly fitted to administer justice in small cases. This system has some disadvantages as well, some of which are as follows :

(1) The justices of peace are often elderly persons having conservative views. They have no sympathy for modern social trends.

(2) They lack judicial training and this compels them to depend much upon testimony of the police and the court clerk.

The Jury : The Jury is a group of laymen who are appointed to assist the judges in administration of justice. A Jury may be used in civil or criminal cases but in all serious criminal cases a jury must invariably be used.

There are two kinds of Jury in England, one is Grand Jury and the other Petty Jury. The Grand Jury delivers the verdict. The Grand Jury is used in a criminal case when an accused person is about to be put on trial before a Petty Jury. All the facts of the case are presented before the Grand Jury and it decides by the majority vote whether there is sufficient evidence to proceed with the trial. If it is so. the case is sent to the Petty Jury. Otherwise the accused is set at liberty.

The duty of the Petty Jury is to determine the facts on the basic of evidence and then to reach the unanimous verdict of guilty or not guilty. The judges help the Jury in arriving at a decision. The judge explains to them the obscure points and instructs them regarding the law governing particular points. He sums up the evidence

for their benefit. The Jury is supposed to reach its own independent conclusion.

The Jury system is on its decline now in England. The Grand. Jury was abolished by a statute in 1933. The use of Petty Jury is being limited to certain types of criminal cases only. The Juries consist of laymen ignorant of the technicalities and intricacies of law. They can be of some use only in certain cases in which questions of public morality are involved. They are unable to assist much in a case requiring expert testimony such as the valuation of property. Secondly, the Jury system is quite expensive. So the litigant hesitates to prefer trial by Jury. Moreover, the Juries are drawn from those who own property and pay rents. This factor has also reduced the popularity of the Juries to a considerable extent.

POINTS TO REMEMBER

The British judicial system is considered to be the most excellent and efficient system in the world. The judges are guardians of individual liberty. Mostly the judges are drawn from the legal profession. They have rich experience and deep knowledge of law. The Justices of Peace administer justice in the criminal cases in local area. They work honorarily. They are lavmen and not have any knowledge of law. Some time ago. Jury system was mostly employed in the administration of justice. A Jury is also a group of laymen who help the judges. The Jury system is now on its decline and is rarely employed.

Q. 34. "Every official, from the Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." —*A. • . Dicey,*

Discuss the above statement. Is it correct to say that there is no administrative law in England ?

Ans . In England prevails the Rule of Law. Both government officials and citizens are subject to the same law and same courts. The act of the government officials are judged by the same rules of law and the disputes arising between the government officials and the ordinary citizens are decided by the ordinary law courts. In this respect, the English practice differs from the Continental practice. In the Continent there is a separate system of law known as administrative law covering the relations between government officials and private individuals and there is a separate system of administrative courts for such cases. The absence of any distinction between the ordinary law and administrative law, according to Dicey, is the chief characteristic of English judicial system. In his book "The Law or the Constitution" he has pointed out that "every man whatever his rank or condition is subject to the ordinary law of the realm, and is amenable to the jurisdiction of the ordinary tribunals. Every official from Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." Thus an official is no more above

the law than any one else and he is responsible for justifying his actions before a court like an ordinary citizen.

But the above view expressed by Dicey is not acceptable today. There have been certain modifications in it. In England, there have developed a number of administrative tribunals, separate from the ordinary courts of law which deal with certain type of complaints against official actions. Moreover, the rule that government officials are personally liable for acts done without legal authority has also been modified. These changes have been found necessary for bringing efficiency in the governmental machinery and for giving effective compensation to the individuals wronged by the action of State officials. Let us first take up the question of personal liability of government officials.

The question of the individual liability of government officials is a complicated one because it is linked up with another conception of English Law known as "the King can do no wrong". This well known maxim of English Law means that the government cannot be sued without its consent. With the result that as long as the government refuses to accept responsibility for the action of one of its agents, the aggrieved individual has no other option but to sue the official personally. Such a situation in turn creates two problems. The one is that a government official will be afraid to do his duty according to his best judgment lest he should be subject to a personal suit for damages as a result of the decision taken by him. Secondly, the injured citizen may be unable to collect adequate compensation from the official involved. Moreover, it may just be possible that the action of the government official, who has injured a citizen, falls within the discretionary powers given to him by the law then also the individual shall not be able to get any compensation so long as the State refuses to assume responsibility. Because of these points the courts and the government have modified their stand. The courts do not make the official responsible so long as the negligence is not proved against him. The government is also steadily facilitating the process of allowing suit against it.

Generally, a distinction is made between acts done by the government in its sovereign capacity, and those in its proprietary or business capacity. The former covers most of the older functions of government, such as maintenance of order, conduct of foreign affairs etc. and no suit can be brought against government for any act done in this capacity. The business capacity covers the newer functions of government involved in maintaining standards of education and labour, providing services like highways, playgrounds and conducting nationalized enterprises. In regard to these functions the government may be sued if any damage occurs. A major advance in this regard was made with the passage of the Crown Proceedings Act of 1947. The Act enables ordinary citizens for the first time to bring suit against the government in the same way as if the Crown were a fellow citizen.

Nowa-days the view that the Common Law Court should decide the dispute between a government official and the ordinary citizen according to the Common Law of the land is losing ground; The convenience of the public as well as the maintenance of administrative efficiency have made certain necessary modifications. Consequently in Great Britain many administrative tribunals have come into existence which are composed of administrators and not judges and which decide the disputes between the government officials and the ordinary citizens according to the administrative regulations and not according to the law of the land. There are now special tribunals which decide labour disputes. Several British Ministries have special bodies to deal with appeals in matters under their particular concern, the most valuable among which are the Local Appeals Tribunals on social insurance legislation.

This new development has been justified in various ways. It is argued that the procedure in these tribunals is direct and simple. It does not cost much and the case is decided by those tribunals far more quickly than the ordinary law courts. Moreover, the tribunals are staffed by experts who deal with subjects which require technical knowledge.

But it should be clearly borne in mind that the administrative tribunals are not free from the control of the law courts. There are two ways in which this control is exercised—through appeal and through review. Appeal is possible in case the legislation establishing particular tribunal has provided for it. But there is a general right of review by Higher Court over the decisions of the administrative tribunals. The tendency of English mind that the final interpretation of law should rest with the law courts and judges has been responsible for such a judicial review being provided.

POINTS TO REMEMBER

In England, acts of the government officials are judged by the same rules of law and the disputes arising between the government officials and the ordinary citizens are decided by the ordinary law courts. This practice is in sharp contrast whith the Continental system which makes distinction between private citizens and government officials, The administrative law governs the conduct of the government officials and ordinary law deals with private citizens. Likewise, there is a double set of courts. The administrative courts decide disputes between the government officials and private citizens and ordinary courts decide disputes between citizens themselves. In spite of the fact that English law does not make any distinction in this connection, a number of administrative tribunals, separate from ordinary courts of law, have come into existence. This development is being justified on the ground that the administrative tribunals deal with cases more quickly than ordinary courts. Moreover, these tribunals are staffed by experts who deal with subjects which require technical knowledge.

PROBABLE QUESTIONS WITH HINTS

1. "The Rule of Law secures greater individual freedom than Droit Administration." Discuss.

[For answer refer to Q. 34.]

2. The British judicial system is regarded to be the most efficient excellent system. Justify the truth of the statement.

(For answer refer to Q.32 and 33.]

"The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon, ancestors, her sons have learned at their own gates the duties, and responsibilities of citizens." —*Blackstone-*

CHAPTER X

BRITISH LOCAL SELF-GOVERNMENT

The proper working of democracy depends upon the nature of local* government. The healthiest democracy is one in which all or nearly all citizens, take an active part. Not only do the citizens discuss matters of public import-ance but also they manage them. It is the Local Self-Government which can equip the citizens for shouldering such a great responsibility. Local Government is an important aid to education in democracy. It also mitigates the danger to democracy involved in overcentralisation by decentralisation of government powers. Now-a-days, the government activities are constantly increasing and it would be an almost intolerable burden for an already overworked national government to deal with local problems as well. Moreover, the national govern-ment cannot efficiently cope with the local needs of the people.

Important features of Local Government in Great Britain are three in number. Firstly, the system in its fundamentals is deeply rooted in the past. As Munro puts it, "the English system of local government is the result of a long historical evolution, the most part unguided and unplanned." Secondly, the local government in England has progressively advanced to adjust itself to the changing conditions from century to century and has undergone significant changes. Finally, the local bodies are autonomous in their respective areas. The British people still have heritage to civic life. All the same the powers and functions of these bodies are regulated by the British Parliament. It is a sovereign body.

Q 35. Describe the various units of the Local Self-Government in England and show how they are administered.

Ans. Local autonomy existed in England long before the-Norman conquest. During the Saxon and Norman periods, England was a land of local institutions. But the present organisation of Local Self-Government in England is the result of series of Reform Acts passed during the last hundred years. The Acts of 1835, 1888,. 1894, 1929 and 1933 completely reconstructed the system from its pre-reform days, and brought order out of chaos.

Local Government units are the geographical areas within which? services are organised and for which locally elected Councils are responsible. Accordingly, there are six different types of units into which England is divided, the basis for distinction being the density of population within the areas. The chief units are administrative counties and county boroughs. The administrative county shares the powers and functions of Local Government with its sub division which are the municipal districts or non-county boroughs, the urban districts, the rural districts and parishes.

The Parish : The parish is the smallest unit of Local Government of rural areas. There are different kinds of parishes—civil, ecclesiastical and land tax. For our purpose we are only concerned with the civil parish. Civil parishes are further divided into urban and rural ones. The parishes vary in their size and population. The affairs of a parish with a population of 300 or less are managed by the parish meeting. All the rate payers are invited to the meeting. If the population of a parish is three hundred or more, its affairs are managed by a Council. The Council has from five to fifteen members The functions of both the parish meeting and the Council are quite ordinary. They look after parish hall and library. They protect the local rights of the people and are also sometimes entrusted with the care of water supply and the repairing of foot-paths.

The Rural District : For more efficient administration, a county may organise a number of parishes into a group which is known as rural district. A District Council manages its affairs. The Council consists of representatives of the parishes. Each parish of 300 citizens sends one Councillor. The members of the Council are elected for a term of three years. One third of its strength retires every year. The Council meets at least once a month. Most of the work of the Council is done by the committees. In every rural district, there is a medical officer, an inspector of nuisance, surveyor, a clerk, a treasurer and a collector. The functions of the District Council vary but generally they are entrusted with the work of sanitation, water supply, public health, management of minor roads and the like. The Central Government use District Councils as their agents for purposes of the Housing Act. The local authority of the Rural District Councils has considerably decreased, because of the industrialization of the country.

Urban Districts : When any area of a county becomes thickly populated because of the development of industries, the county organises that part into an urban district. It has also a District Council to manage its affairs. The items entrusted to the care of the Council are water supply, sanitation, public health and other patters like gas, electricity or tramways. If the population of an urban area exceeds 20,000, its Council is given the power to control its elementary schools. A stipendiary magistrate is appointed in case the population exceeds 25,000.

The Administrative County : The county is the largest and most important area of Local Self-Government. There are two kinds of counties—administrative counties and historic counties. The historic counties serve as areas of judicial administration and form constituencies for the election of members to the House of Commons. They have no relation with the local administration though each of them has a lord lieutenant and a sheriff.

The administrative county is an incorporated territory like the borough. The Local Government Act of 1881 created 62 adminis-

trative counties and also created many county boroughs, *i.e.*, the boroughs which are to be given the status of counties for administrative purposes.

The administration of the counties is run by an elected Council consisting of a Chairman, Aldermen and Councillors. The whole of the county is divided into a number of areas—each area sends one representative to the County Council. The number of Councillors depends upon the population of the county.

The Councillors are elected for three years. These Councillors in turn elect Aldermen from among themselves and the term of their tenure is six years. Half of the Aldermen retire every three years. The Aldermen may be elected from outside also. The institution of Aldermen is useful because it enables some members to acquire greater experience of Council work and permits the county to secure the services of persons possessing special knowledge but unwilling to stand the strain of an election campaign. The Councillors and Aldermen sitting jointly elect a Chairman generally from themselves. The Chairman may be a paid one. Elections to the Council are held every three years. Every voter is qualified for election. Municipal franchise in Great Britain is linked up with ownership or occupancy of premises or payment of certain amount of taxes. Thus there is no universal franchise in Municipal Elections in England as there is for parliamentary elections. A person may be a voter for parliamentary elections but not for municipal elections.

The County Council has wide administrative functions. It supervises the work of the rural districts within its jurisdiction. It is responsible for the maintenance of main roads and bridges, asylums, reformatories, industrial schools etc. It co-ordinates and supplements the library services of the parishes and is responsible for organising elementary education in the rural districts. It also regulates matters regarding old age pensions. It is entrusted with some duties with regard to county police. It has the authority to levy taxes also. While the districts and boroughs within it do most of the work under the Housing Act, the County Council supervises their work. It pays attention to agricultural development of the county as well.

The Council is concerned only with questions of general policy. The routine work of administration is performed by a permanent staff. This staff is free from political bias and includes a county clerk, treasurer, health officer, surveyor and various other functionaries. They are appointed by the County Council and are not governed by the civil service rules. The local administration in England is very efficient and it is mainly due to the fact that the permanent staff is chosen on the basis of competence and is not required to play politics in order to maintain itself in office.

The Boroughs : A borough is an urban area to which a municipal charter has been granted. It is governed and organised under the provisions of the Municipal Corporations Consolidation Act of 1882 as amended from time to time. If an area wants to acquire a charter, it has to send a petition to the King. The petition goes to the Privy Council. It institutes an inquiry. If the findings are favourable and no objections are raised either by a local authority or by a number of qualified voters of the area, an Order-in-Council is issued granting the charter and fixing the boundaries of the new boroughs.

The administration of the borough is carried on by a Borough Council. The Borough Council consists of a Mayor, Councillors and Aldermen. The charter fixes the size of the Council and it is done on the basis of the population. The lowest number of Councillors is 6 and the highest number is *42.* The Councillors are elected for a period of three years. One-third of the Councillors retire every year. The Aldermen are elected by the Councillors from among themselves or from outside. The Aldermen hold office for a period of six years and half of them retire every three years. The Aldermen enjoy greater respect than the Councillors because of their longer term of office and greater experience.

The Councillors and Aldermen choose Mayor from among themselves or from outside. The Mayor's office commands great respect and dignity. He is considered to be the first citizen of the borough and represents it on all important ceremonies. His tenure of office is one year but he is eligible for re-election. He presides over the Council meetings and can participate in voting on all questions. He has, however, no executive authority.

The functions of the Borough Council are both executive and legislative. It appoints all officials and supervises the work of various departments. It looks after water supply, sanitation, health, education, streets and roads in the borough. Much of the work is done through committees. The main committees are on finance, education, poor relief, old age pensions, fire protection etc: There is also a watch committee dealing with police as well. The legislative functions of the Council are to pass by-laws relating to all sorts of matters. The Council is also responsible for the preparation of its budget. It levies rates and taxes to meet the expenditure and can borrow money. Permanently paid officials of the Council are the clerks, the treasurer, the engineer, the public analyst, the chief constable and the medical officer. They carry on the work of borough government with the help of subordinate staff. All appointments are made by the Council on merit. No competitive tests are held but great care is taken to see that only fit and suitable candidates are taken.

POINTS TO REMEMBER

The history of local self-government in England can be traced to a remote past. The present organisation of local bodies in England depends on a services

of Reform Acts passed in 1835, 1885, 1894, 1929 and 1933. The main units of local self-government are administrative counties and county boroughs. These have got numerous sub-divisions which are known as municipal districts or non-county boroughs, urban districts, rural districts and parishes. The parish is the smallest unit of local government in rural areas. It has got some ordinary functions to perform. The rural district is formed by grouping a number of parishes. It is entrusted with the work of sanitation, water supply, public health etc. The administrative county is the largest and most important area of local self-govirnment. There are historic counties as well. The administrative county is responsible for the maintenance of bridges, asylums, reformatories, industrial schools etc. The borough is urban area to which a municipal charter is granted. It looks after water supply, sanitation, health, education, poor relief etc.

Q. 36. Discuss the relation of National Government of England with Local Self-Government.

Ans. Local self-government in England enjoys considerable independence. But there has always been some sort of control of Central Government over the Local Self-Government institutions. This control has especially increased after the pre-reform days. The result is that we cannot speak of a separate sphere of local action clearly set off from National Government. Certain services which were considered to be purely local have today assumed national significance. The schools managed by the Local Bodies constitute a part of national educational system. Even gas and electricity which used to be tackled by the Local Bodies have been nationalised.

England is a unitary State with a highly centralised authority. The municipal institutions of England are the creation of the Central Government which can deal with them in any way it likes.

The Central Government exercises control over Local Bodies in various ways. Parliament of England can pass laws for creation of new areas of Local Government and abolition of the old ones. The laws passed by Parliament prescribe rules for the guidance of local authorities. The Central Government exercises its control over the Local Bodies as it gives them grants-in-aid. Since the Central Government gives financial aid to the Local Bodies for the performance of their various functions, it claims the right to inspect whether the money granted to the local authorities has been properly spent. The government inspectors supervise and inspect the work of local authorities. If they find that the work of the local authorities is below the mark, they may report the matter to the National Government. The Central Government then takes action upon the basis of their report and asks the Local Government to rectify its defects. If the local authorities persistently fail to perform their duties, the Health Ministry of the Central Government can take over the powers of local authorities and may delegate their functions to the Commissions appointed for the purpose.

The Central control over the local bodies is both administrative and legislative. Parliament passes laws defining the areas over which

a local body may exercise its control. It also passes laws prescribing the powers and functions of the Local Bodies. It is to this extent that Parliament exercises control over the institutions of Local Self-Government. The central control is administrative in the sense that the British Parliament authorises some department of Central Government to inspect and direct the activities of the Local Bodies.

These departments are the Ministry of Health, the Home Office, the Board of Education, the Ministry of Transport, the Board of Trade and the Ministry of Agriculture. But these departments of Central Government, however, cannot undertake to perform any work falling within the scope of local authorities. They only see that the latter perform their functions properly.

The central control over Local Bodies is not objectionable because it has brought about the much needed uniformity and order in the affairs of Local Government. Moreover, central control is not rigid and allows considerable autonomy to the local authorities to cope with their local problems. But there are critics who apprehend that the central control may wipe out Local Self-Government in due course of time. The fact of the matter is that the Britishers have an inborn love for local autonomy and hence such consequences are not likely to follow.

POINTS TO REMEMBER

Local Self-government in England enjoys considerable independence in matters of local importance but the Central Government is also assuming an over-all control over these bodies. Parliament can pass laws prescribing areas for various local bodies and also defines their powers and functions. The Central Government exercises control over local bodies because it sanctions grants-in-aid to these bodies.

Q. 37. Write an explanatory note on the Government of London.

Ans. The system of Local Government which prevails in London differs from that prevailing in other English municipal cities and boroughs. For the purposes of local government, London has been divided into three distinct areas, each of which has its own governmental mechanism. They are : (i) The City of London, *(ii)* The County of London, and *(iii)* The London Metropolitan District.

1. The City of London. It is a very small part of the modern capital and has an area of about one square mile. It has ceased to be residential and has become the business and financial centre of the metropolis. It is governed by a Lord Mayor and three Councils, the Court of Aldermen, the Court of Common Council and the Court of Commons Hall. The Court of Aldermen consists of Lord Mayor and 26 Aldermen elected for life. The Court of Commons Hall consists of members of the Court of Aldermen and Liverymen of the city companies. The Court elects the Sheriff, and two Aldermen from whom the Court of Aldermen will finally choose the Lord Mayor. The real governing authority of the city is the Court of the

Common Council. It consists of 200 annually elected Councillors and 26 Aldermen of the Court of Aldermen. It makes bye-laws for the city. It looks after the bridges and highways in the city. It owns and manages property. It has its own police force, civil courts and criminal courts of summary jurisdiction.

2. The County of London. It is an administrative county. The London County Council is its governing authority. It consists of 124 elected Councillors and 20 Aldermen chosen by the Councillors from among themselves or from outside. The Councillors are elected for three years and the Aldermen are chosen for six years. Half of the Aldermen retire every three years. The Councillors and the Aldermen together elect a chairman. The powers of the London County Council are more or less the same as those of County Council elsewhere. The Council has 18 standing committees and one executive committee consisting of the Chairmen of the 18 standing committees. The Council administers an area of 117 sq. miles with a population of about 40 lakhs. It is the main authority in respect of sewerage. Roads of the metropolitan, tunnels, ferries, bridges, fire protection, sanitation, public health, housing, education, recreation grounds, public fairs, tramways are under its charge.

In 1898, 28 Metropolitan Boroughs having subordinate powers were created within the County of London. The powers of these Councils are narrower than those of other Borough Councils. They construct main highways, look after street buildings, sanitation and also enforce the Public Health Act. In several respects they supplement the work of London County Council.

3. The Metropolitan London. It is a district covering 700 square miles for police purposes only. It has no Municipal Council and no other municipal duties.

POINTS TO REMEMBER

For the purpose of local government, London has been divided into three distinct areas each of which has its own governmental mechanism. The city of London is a very small part of the modern capital. It is governed by a Lord Mayor and three councils—the Court of Aldermen, the Court of Common Council and the Court of Commons Hall. The county of London is an administrative county governed by the Loudon County Council. It performs municipal functions. The Metropolitan London controls the police forces.

Q. 38. Compare and contrast the British and Indian systems of Local Self-Government.

Ans. The Local Bodies in India are modelled on the British pattern. In their composition and functions, they show many similarities to the County and Borough Councils in England. Like the English Local Bodies, they are popularly elected. They are expected to render the same type of services to the persons residing within their jurisdiction as the British Local Bodies do. But still the Local Bodies in India have not reached the same standard of efficiency as

has been attained in Great Britain. Our municipal and district boards fall short of the standard maintained by the English County and Borough Councils in their social work. For example, the health services organised by the local authorities in England are far superior to those existing in our country. Our Local Bodies are far behind their British counterparts in providing maternity and child welfare services.

Elementary education is free and compulsory in Great Britain. Local Bodies compulsorily provide education for children from five to fourteen years of age. Special schools exist for physically and mentally defective children. In India such schools and compulsory education exist only at few places.

The British Local Bodies also pay special attention to housing problem. Persons are not allowed to live in unhealthy dwellings, The Medical Officer of Health pays special attention to slums. New houses are built for those who are made to vacate unhealthy surroundings. The Indian municipal boards pay very little attention to this aspect of the problem.

Another important difference between "the functions of Local Bodies in the two countries is to be found in the fact that in England the Local Bodies are entrusted with the duty of policing the district, but in India the Local Bodies do not perform these functions, More Over, the control of the State Government is much greater than that in England and is exercised in a more direct manner.

POINTS TO 'REMEMBER "

Although the Local Bodies in India are modelled on the British pattern yet there is a vital difference? between the two systems. The British municipal bodies pay greater attention in matters of public health, sanitation, medical relief, education and housing. Moreover, the British Local Bodies' control the police force in their respective areas, but in India, these are under the control of State Governments and not the Local Bodies

"Without the party system, the State has no elasticity, no true self-determination." —*Maclver.*

CHAPTER XI

POLITICAL PARTIES

Political parties occupy a very important place in **the modern** democratic system. The political parties constitute an integral part of the British political system^ The fact of the matter is that various elements of the British Constitution like the authoritv of Prime Minister, the dictatorship of Cabinet and relation of Cabinet with the Parliament have come into existence on account of political parties. Various features of parliamentary democracy as they obtain in England today could not have developed if Parliament had pot been divided into Whigs and Tories at one time.

The British political parties, as elsewhere, have not developed abruptly "Their growth extends over a long period in the history pf England.

Q. 39. Describe briefly the growth and organisation of political parties in England,

Ans. England is the traditional home of political parties. The political parties come into existence because of the parliamentary system of government. They play a leading role in the working of British Democracy. A political party in England is a group of persons who organise themselves on some agreed political programme and work together to capture power in order to put their programme into action. In England three parties, namely the Conservative Tarty, Labour Party and Liberal Party dominate the political Science. The last one. however, is fast losing its hold over the masses. It secured only 9 seats out of 630 (which is the total membership of the House of Commons), whereas Labour Party secured 317 (and formed the government) in strong opposition to Conservative Party which secured only 304 seats in 1964.

Growth of Political Parties : The earliest attempts at organising a political party in England can be traced back to the reign of Queen Elizabeth. The Puritans, who were opposed to the tolerant policy of Queen tried to capture seats in the Parliament in order to put up an organised resistance to the policy of the Crown. Clear distinction, however, arose in the succeeding period. During the reign of Charles I, parties were organised on sounder principles. The supporters of the King and his arbitrary rule formed one bloc and were called the Cavaliers. Those, who opposed the arbitrary rule and favoured a government limited by the Parliament came to be known as the Round Heads. The Civil War which ended in the tragic execution of Charles I was precipitated by these parties. During the reign of Charles II, the parties were renamed as the Tories and

the Whigs. The Tories sup ported the King and the Whigs were supporters of limited monarchy.

The Glorious Revolution of 1688 and the Hanoverian Succession of 1701 completed the triumph of Parliament. Later, the Whigs advocated reforms in the electoral System and franchise and were renamed as the Liberals. The Tories were opposed to the proposed reforms and, therefore, the Tory Party came to be known as the Conservative Party.

In the twentieth century, the Labour Party with a vigorous support of the working classes, has come into existence. The Party was organised in 1899 when the Trade Union Congress invited all the labour organisations to a conference for considering the possibilities of sending more labour members to a Parliament. The conference was a success and an organisation known as Labour Representative Committee came into existence. Later on, it was renamed as the Labour Party. In the early twenties of the present century, the Labour Party supported the Liberal Party and wrested from it important concessions for the working people. But gradually it has superseded the later and now dominates British politics.

Organisation of Political Parties : The parliamentary type of government recommends strong party organisation. Each party maintains a strong organisation both at the national and local level. Power rest? with central organs of the party. The central party organisations do not share their authority too much with the local units. Each party has a local committee in each Parliamentary Constituency. This local committee works under 'the control and direction of the Central Office and in co-operation with the members of Parliament elected from that Constituency.

Each party has a parliamentary party consisting of all the members of Parliament belonging to that party. This parliamentary party formulates the policy of the party to be followed in Parliament. In Parliament, the party works with the help of whips whose duty is to keep the members together and exercise discipline among them and secure their votes in the House.

Each party maintains a national organisation of its own. The Liberal Party has the National Liberal Federation. The Conservative Party is known as National Union of Conservatives and Unionist Associations and the Labour Party is known as Annual Conference of the Labour Party. These organisations meet annually and elect some party Officials from among themselves. The party programmes are decided arid ways and means are devised for making the party stronger. These organisations control the local committees. In these annual conferences, candidates for contesting the elections are not nominated nor do they elect the party leader. Both these tasks are performed by the parliamentary group of the party.

Various Organisations in England support the parties of their own choice and liking. As for example, the Primrose League and the Carlton Club in London support the Conservative Party. The National Reform Union and National League of Young Liberals work for the Liberal Party. The Fabian Society and the Trade Union Congress belong to the Labour Party.

Each party follows a political programme of its own. The political programmes of different political parties of Great Britain run as follows :

The Conservative Party : The Conservative Party believes in the existing established order and works for its preservation. It believes that the established social order is a sound one and its defects, should be remedied without endangering the safety of the society. It thus wants to preserve and conserve all institutions, practices and traditions. This party is the champion of Capitalism and British Imperialism and does not favour the rise of independent self-governments in the British Colonies. In the sphere of religion, it gives support to the established Church and in the matter of trade it is. protectionist. The Party, therefore, finds support in the Church, Aristocrats and the Capitalists. Recently, the Conservative Party has changed its policy and programme in order to compete successfully With the Labour Party. Industrial Charter issued by the Party in 1947, emphasised the need of central planning in industries. In 1949, it stressed the need of full employment and endorsed the importance and utility of social services. In 1931, it emphasised the need of housing.

The Labour Party : The Labour Party believes in Socialism, and, defends the common ownership of land and capital. It advocates nationalization of public utility services and of all the key industries. In the sphere of trade it does not favour free trade and follows, an anti-protectionist policy. It believes in high taxation of the rich and in the spending of that money in the service of the poor. It has no faith in resolution and believes in evolving Socialism through democratic means. In the international sphere it is the ardent supporter of, U. N. Q. and follows a pacific policy. The Labour Party favours the policy of extending self-government to colonies of the British Empire. It draws its strength from the working classes and middle class intellectuals.

The Liberal Party: The Liberal Party is the ardent supporter of free trader. In the sphere of agriculture, the Party favours, small, holdings find allotments'. In the matter of industry the Party (Wants State regulation rather than nationalization of the key industries. The Liberal Party, thus in a way, favours a middle course between Capitalism of the Conservatives and Socialism of the Labourites.

In the nineteenth century, political life in England was dominated by the Conservative Party and the Liberal Party. The Conservatives represented the Capitalists and the Liberals represented the

middle class of England. But the middle class since the close of nineteenth century, has been passing through a process of liquidation consequent on the concentration of wealth accompanied by polarisation of classes. With the rise of this phenomenon, the Liberal Party is, losing its support and its importance is progressively decreasing. Its place has now been taken by the Labour Party which represents the general interests of the working classes. Thus England continues to be the traditional home of bi-party system.

POINTS TO REMEMBER

England is the traditional home of political parties. They play a significant role in the working of British Democracy. A political party was organised first in the reign of Queen Elizabeth but political parties were established on clear principles during the reign of Charles I. The Glorious Revolution of pl688, unmistakably established political parties in England. Every political party in England has a sound organisation of its own. The Conservative Party is pro-capitalist party with a pronounced imperialist trend. It wants to conserve and preserve all old institutions, practices and traditions. The "Labour Party believes in a semi-socialist programme with emphasis on the progressive nationalisation of social utility services and key industries. The Liberal Party strikes a via-media between the two.

Q. 40. Examine critically the relative merits and demerits of the bi-party system and the multiple-party system.

Ans. If a State has only two major political parties in the political field, it is said to have the bi-party system or the dual party system. The system is prevalent in Britain and the United States where only two major political parties exist. Other small political groups are there but these have no importance in political life England has been a traditional home of the bi-party system. Formerly, the Conservative Party and the Liberal Party were dominant in political life. Now the place of the Liberal Party has been taken over by the Labour Party and thus again its bi-party system continues. Likewise, the U.S.A. always has had the two-party system. The Democrats and the Republicans n6w 'dominate the political scene.

If a State has a number of political groups, the system is known as the multiple-party system. Such a system prevails in France where more than 15 political parties exist.

Merits of the bi-party system and demerits of the multiple-party system :

1. Dual party system is the *sine qua non* of successful parliamentary democracy. It is so because parliamentary democracy necessitates the existence of two well-organised political parties—one gaining absolute majority in the legislature will form the government and the other remaining in minority will form the opposition. The bi-party system ensures a strong and stable government which can follow its .programme to the extreme end. In the words of Prof Laski, "the two party system enables the government to drive its policy to the statute book."

The multiple party system, on the other hand, is responsible for the establishment of coalition governments which is the result of combination and Compromise among different groups having non-identical programmes and policies. Such a government cannot pursue its policy with strength and unity of purpose. It is always weak- It is like a chain having many links whereas a government of a single party is liken a solid rock.

2. A government formed by a single party under the dual-party system is very stable and is strong enough to face the criticism, and onslaughts of the opposition confidently. The Cabinet or the Ministry works like a single team because all its members are wedded to the programme and policy of a single party. The principle of collective responsibility which is the bed-rock of parliamentary democracy can be successfully followed. Moreover, such a stable government enjoying the support of a safe majority can easily continue in office for the full term of the legislature and there are little chances of its dissolution. Thus it can follow a consistent policy.

The government under the multiple-party system, however, is. very unstable. A coalition government under the multiple party system is a heterogeneous combination of diverse elements. It may be dissolved at any moment. Governments, therefore, go on constantly changing. France, which is having the multiple-party system, is notorious for constant reshuffling of governments. Average life of French Cabinet is not more than 8 months. Between 1871 and 1928 alone French had 38 Cabinets out of which as many as '38 lasted only for a term of one year. It is but natural that administration under these circumstances is bound to be weak and inefficient. It leads to political corruption, spoils nepotism and bureaucracy rule.

3. The opposition under the dual-party system is more responsible and dignified than that under the multiple-party system. The criticism levelled by the opposition at the government is constructive and positive because the opposition as an organised party has fair prospects of coming into power. An organised Opposition is also heeded to by the government party.

The reverse is the base under the multiple-party system where the opposition consists of various groups having different principles. Such an unorganised opposition is not generally heeded to by the government party. The opposition performs mainly a negative role, that of filling the government. They may join hands to kill a government but may not be able to join together to form a government.

4. The bi-party system offers clear cut alternatives to the voters as they have to choose one out of the two parties and they are not lost in the welter of ideas. Under the multiple-party system, on the contrary, people are confused. Moreover, the voters

nothing as to which party shall form the government, because Ministry is formed later on by the combination of various groups, As a result, the CabiaetS are hot even an indirect choice of the people., The people shall not know who rules them.

5. Formation of government is simple and easy under the dual party system. The defeat of one party means the rise of the other in the legislature. The constitutional crises are easily avoided. Under the multiple-party system constitutional crises are very common because at times, a decisive majority in the legislature may not be possible.

6. Under the bi-party system, it is easy to fix responsibility for failures of national policy. Since the Cabinet under the multiple-party system is composed of various groups, it is difficult to blame any particular group for failures and failings of the government.

Prof. Laski has beautifully summed up the merits of the bi-party system in the following words :

"It enables the government to drive its policy to the statute book. It makes known and intelligible the result of its failures. It brings an alternative government into immediate being. The group system always means that no government can be formed until after the people have chosen the legislative assembly."

Demerits of the bi-party system and merits of the multiple-party system :

1. The bi-party system splits the nation into irreconcilable camps. In the words of Prof. Smith, the two party system presume a bisection of human nature which is not true. It is based on the principle that people have only two opinions. But modern society has various conflicting interests. All these interests do not get adequate representation under this system.

The multiple-party system is superior to the bi-party one inasmuch as it can give representation to all shades of public opinion.

2. The bi-party system, according to Ramsay Muir, "undermines the prestige of the legislature and results in Cabinet Dictatorship." Under multiple-party system, however, such a phenomenon is not possible because legislature by grouping and regrouping can oust a Cabinet at once out of office.

3. The bi-party system leads to despotism of the majority which rides roughshod over the wishes of the minorities. This is not possible under the multiple-party system where the coalition government is terribly afraid of the legislature.

POINTS TO REMEMBER

Existence of two major political parties means bi-party system and existence of a number of political parties means multiple-party system.

Merits **of the bi-party .system and** Demerits **of the** multiple-party **system.** **(1)** Dual-party system **is** the ***sine qua non*** **of** successful parliamentary democracy. Multiple-party system, on the other hand, is responsible for failure of parliamentary government. (2) A government formed by a single party, under the dual-party system, **is very** stable and **is** strong enough to face the criticism and onlaughts of the opposition confidently. The coalition government formed Under multiple-party system easily succumbs to the onslaughts of the opposition. (3) The opposition is responsible under the dual-party system and is irresponsible under the multiple-party system. (4) The two-party System offers clear alternative to the people whereas the multiple-party system confuses the electorate. (5) Formation of governments is easy and simple Under the two-party system. It is equally difficult under the multiple-party system. (6) It is easy to fix responsibility under the bi-party system regarding the failure of national policy. It is not easily possible under the multiple-party system.

Demerits of the bi-party system and merits of the multiple-party System. (1) The bi-party system splits the nation into irreconcilable camps. The situation is saved under the multiple-party system. (2) The bi-party system undermines the prestige of the legislature and results in cabinet dictatorship. This cannot happen under multiple-party system. (3) The bi-party system leads to despotism of the majority, it is not possible if there are a number of political parties.

THE CONSTITUTION OF THE UNION OF SOVIET SOCIALIST REPUBLICS

Political authority is never an expression of social solidarity; where there is solidarity, the authority is not needed. The state is always the organization of a class, controlled by the most intelligent, energetic, and class-conscious minority within the class. The Communist state, its spokesmen contend, is, however unique in that it represents the largest class within the community and is a definite preparation for a future classless and stateless society. Meanwhile, it governs frankly in the interest of one class and against that another. In this policy-it is always raising up a hitherto submerged group and bringing down a privileged group. The Communist policy, therefore, in contradistinction to the policy of capitalism, progressively diminishes rather than accentuates the differences between the two classes and thereby gradually merges them into a single community. Indeed, the Communist program is intended to destroy eventually every group that insists on remaining a class. Thus proletarian class-rule is an intermediate, transitional stage of society between capitalist class-rule and the classless commonwealth of the future. And when classes disappear, coercive-social rule disappears. The Communists, following Marx, again, hold that under socialism the state "withers away." For them, as for most other schools of political doctrine, freedom is the ultimate goal. "State power, which is the embodiment of class rule, vanishes in proportion to the vanishing of class."

"The Soviet System is not only the product of revolution but is also an instrument for the continuing revolution."

—Samuel Hamper-

CHAPTER I

INTRODUCTORY

The U.S.S.R. is a land of mystery. It conveys conflicting feelings, to different minds. Some regard it as a paradise where democracy of the highest order has been achieved and where unemployment, poverty, misery, starvation and humiliation have been banished for good. Others regard Soviet Union to be a dictatorship of the worst kind under which people have been denied even fundamental civil liberties. They hold the view that a reign of terror prevails there and that minds of the Russian people are indoctrinated with the perverted philosophy of Karl Marx.

A rational study of the Soviet political and economic system alone can remove this ignorance and clarify the most controversial issues regarding this country The study of the Soviet Constitution has great importance because Soviet Union has emerged as the first-rate power in the world. It is indeed the only power which can challenge the industrial might of the U.S.A. It is the leader of a powerful bloc in the world politics and peace and war depend upon, its attitude. The study of Soviet system has a special importance for an Indian student of politics because the social, political and economic problems, facing our country resemble closely those of pre-Revolution Russia. Both India and Russia have vast extent of territories and great size of populations. Both are multi-lingual and multi-national countries. Like India. Russia before the Revolution of 1917, was predominantly an agricultural country and highly-backward in industries. More than 80% of its population depended upon agri-culture which was conducted by means of unscientific and crude agricultural implements. More than 70% of its land was appropriated by the feudal lords, church fathers and *kuluks.* Majority **o f** the people were under-fed, under-clothed and ill-housed. All these conditions depict faithfully the picture of the present-day India..

India is now free and is carving out her destiny. A student of politics! can derive inspiration from the success of various experiments performed in that Soviet Land for the solution of these problems.

Constitutional Background. The revolutionary movement in the history of Russia begins with the defeat of Russia in 1905 at the hands of Japan. As a result of this defeat, the autocratic government; of Nicholas II lost its prestige. The popular tempo demanded representative government and guarantee for the rights of the people. The Czar though reluctant was finally compelled to grant certain rights to the people and also an elected Duma (Parliament). The first Duma which met in 1906 demanded direct universal suffrage full parliamentary government, abolition of landlordism etc. It was, therefore, dissolved the same year. The second Duma met in 1967 but it also met the same fate. After the dissolution of the second Duma, electoral system was radically revised so as to include the

Tepresentatives of landlords and capitalists. On the basis of revised franchise, elections to the third Duma were held. This time, the landlords and capitalists were returned in an overwhelming majority. It was, therefore, allowed to continue for full five years. In 1912, the fourth Duma was elected, which continued to exist till 1917.

In 1914, the World War I broke out. Russia fought on the side of the Allies. The Tsarist armies suffered defeat after defeat. The forces were ill equipped. Sometimes three soldiers had to share one rifle. The capitalists and landlords were making fortunes out of the war. But the workers and peasants were suffering increasing hardships and privation. The war was undermining the economic life of Russia. Some 14 million men were recruited to the army. Mills and factories were coming to a standstill. The crop area had diminished owing to shortage of labour The soldiers went hungry, barefooted and naked to the war fronts. The war was eating up the resources of the country.

All this roused hatred and anger against the Tsarist Government among the workers, peasants, soldiers and intellectuals. Even the capitalists were dissatisfied with the Tsarist regime They grew more and more Convinced that the Tsarist Government was incapable of waging war successfully. They decided, therefore, to engineer a palace *coup* with the object of deposing Tsar Nichblas II and replacing him by his brother Romanov. The capitalists thought of solving the crisis by a palace revolution but the people solved it in their own way. On January 9, 1917, the workers observed a general strike. This was followed by a series of strikes. On February 27, the troops in Petrograd refused to open fire on the workers and began to line up with the people in revolt. The tempo of revolt spread throughout the length and breadth of the country. The workers. and soldiers deposed the Tsarist officials everywhere. The revolution was successful ; the workers and soldiers who rose in revolt created Soviets of Workers and Soldiers. But it was a mixed revolution. The Menshevik and Socialist Revolutionaries dominated most of the Soviets. The leaders of the Bolshevik Party were either in prisons or in exile. A Provisional Government at the Centre was formed by the Mensheviks, Socialist Revolutionaries and other reactionaries. The; Bolshevik Party started a propaganda campaign against the Provisional Government. Lenin jumped into the political arena in April, 1917. A desperate attempt was made in October, 1917 by the Bolshevik Party to capture power. It was successful. The October Revolution smashed capitalism and deprived the capitalists of their property. All means of production were placed under the collective ownership of the people.

After the Revolution of 1917, the Communist Party (Bolsheviks) which came to power under the leadership of Lenin, set up the First Soviet Governments. The government was carried on by the Council of People's Commissars. A Constituent Assembly was convened, but it was soon dissolved as the Bolsheviks were not returned in a majority,

and the policies of the government were rejected by the Assembly. The Central Committee of the Communist Party thereupon appointed a Committee to draft a Constitution for the country. This Constitution was brought into force in 1918. But this was a Constitution for the areas now known as the Russian Soviet Federated Socialist. Republic only. The Soviet Union of today was yet to come into existence.

Following the civil war and confusion of the Revolution, many independent States had come into being out of the areas which were formerly united under the Russian Empire. In 1922, three of these territories namely Ukraine, White Russia and Transcaucasia, joined the RSFSR in a federal union, thereby bringing into being the U.S.S.R. for the first time. These States were already organised on Soviet lines based on Communist ideology. So the Federal Union was an easy affair.

In July 1923, the Central Executive Committee of the newly formed federation drafted a new constitution which was enforced in 1924. This was the first constitution for the U.S.S.R Under this constitution certain subjects of administration were reseved for the Central Government while there was concurrent jurisdiction of the Centre and the Units over a number of subjects. It provided for an All-Union Congress of Soviets. This constitution remained in force for 12 years till 1936. During this period the economic life of the country had been transformed beyond recognition. The socialist structure of the State had been eastablished. Landlordism and Capitalism had been liquidated ; disruptive forces had been exterminated. In view of this, it was decided to amend the constitution- A Drafting Committee was set up by the Central Executive Committee, with Stalin as its Chairman in 1935. This Committee submitted its draft in 1936. This constitution was enforced on December 5, 1936 after having been ratified by the Eighth Congress of the Soviet of the U.S.S.R. This constitution, as amended from time to time; is the present constitution of the U.S.S.R. This is also commonly called the Stalin Constitution.

Physiography: The U.S.S.R. is a vast territory comprising, eight and a half million square miles of area which is a little more than double the area of United States. The area of U.S.S.R. covers-about one-sixth of the earth's land surface. On account of its vast territory, it has a variety of climate. Eighty per cent of the country is in the temperate zone, sixteen per cent in the Arctic, and four per cent in the sub tropical. The terrain of the country is" almost uniform. Like China it is one solid block of land. There are no serious natural barriers, separating different parts of the country.

The natural resources of the Soviet Union are extremely rich and diversified. It occupies the first place in the world in reserves of iron, oil, manganese, water power and timber and the second place in coal, lead, nickle and zinc. Thus in contrast to United Kingdom

the Soviet Union's great problem is not to obtain raw materials but to develop the resources it already possesses. Although two-thirds of its boundaries are formed by sea, yet many of its ports are ice-bound all the year. In spite of the fact that there are no outstanding physical barriers in the Soviet Union, physically it is divisible into four regions : the frozen Tundra of the North, the forest area immediately to the South, the great Steppes and semi-desert regions of the South. The Soviet Union is not separated by any lofty mountains from countries in the West. This fact has been responsible for frequent attacks on the Russian mainland by various European powers. Russia could only apply the strategy of 'distant' against the invaders. Napoleon and Hitler failed an the Russian soil.

Population : The U.S.S.R. according to the latest census has a pqpulation of 201, 500,000 individuals (approximately 900 million). Such a huge bulk of population cannot be a homogeneous lot It comprises nearly 190 different nations, nationalities and tribes. Three-fifths of them are Russians, one-fifth Ukrainians and the remaining one-fifth include other nationalities and tribes from Eskimos in Siberia to Muslims in the Turkish-Tartar regions. In cultural level, they range from most primitive to the highly civilized people. Whereas some have contributed a lot to the fund of human knowledge in the field of Science and Literature, others did not have even a written language.

Religion : Before the Communist Revolution, an overwhelming majority of Russian people belonged to the Orthodox Church. People in Central Asia professed Islam and in different parts of the empire there were Jews and members of some dissenting sects. The Tsars themselves controlled the Church and would use the same as an instrument of their powers and policies. All possible efforts were made by them to intimidate the people professing other faiths and creeds.

After the Revolution, religion in Soviet Union was thrown into the background. A thordugh-going materialistic philosophy of Marxism on which the new Soviet State was sought to be built could not leave any room for the protection and growth of religion. According to Marx, religion is the opium of masses. It diverts the attention of the oppressed humanity from fighting against social and economic injustice by promising a heavenly reward. Moreover, Church was condemned to be an ally of the absolute monarchs of Russia. The Russian Compunists further opposed religion as a drag upon progress, a source of superstition and an obstacle to the scientific spirit which was the foundation of the efforts to revolutionise the country's economy. The Church according to them was a supporter and pensioner of tyrannical Tsars and was linked with the Capital its and the Landlords. It had to be, therefore liquidated along with Capitalism and the Landlordism. Although in the beginning, staunch followers of religion, and clergymen were persecuted, the Churches were dispossessed of their estates and clergymen were deprived of

their fundamental human rights, yet later, this policy was changed. Efforts were then made to discredit religion on logical grounds. Scientific explanations of various phenomena were given to the people. Thus through teaching,' persuasion and dissemination of knowledge, the hold of religion was weakened. The Stalin Constitution of 1936, however, gives the rights of conscience or worship, and also the right of anti-religious propaganda, The churches and the mosques have been allowed to exist.

Philosophy of the Soviet State : The organisation of the Soviet Union is based on the philosophy of Karl Marx and Engels as-developed and interpreted by Lenin and Stalin. The study of the Soviet Constitution is bound, therefore, to be imperfect without having some knowledge and understanding of the philosophy of Marxism, Leninism and Stalinism which may briefly be brought out as follows :

(a) Historical Materialism: Marxism starts with the assumption that matter is the ultimate reality. The mode of production in material life determines the social, political and intellectual processes of life. It is not the consciousness of men that determines their existence, but on the contrary, their social existence determines consciousness. All changes in the social, political and legal life of the people are determined by the change in the material life of the people. Material life of the people lies in the mode of production, and production relations. Thus with the change in the economic order of society, innumerable changes take place in other aspects of human activity. Entire ideological super-structure is thus based on economic structure of the society. In simple terms, Historical Materialism implies that structure of a society, *i.e.*, the way in which men produce and distribute wealth, is the determining factor. Political and religious ideas, concepts of justice and morality, forms of government, the customs of society, even art and philosophy are generally determined by the mode of production and property relations. Even the idea of God is an illusion caused by certain material factors.

(b) Economic Interpretation of History: History according to Karl, Marx is dynamic and not static. It is not merely a record of wars between nations or exploits of individual monarchs, generals and statesmen. History in his opinion is a movement from a lower stage of social development to a higher one. It is moving onward according to set laws of social evolution. Just as Darwin discovered the laws of evolution in organic nature. Marx discovered the laws of social evolution.

The motive force behind the evolution of society lies in the process of production, exchange and distribution of goods. The forces of production are the gifts of nature but production, relations are the creation of man. The fortes of production are dynamic but production relations tend to be static. Any expansion or improvement in the productive forces makes old property relations, laws

and institutions unsuitable for the new ones. A stage comes, when society cannot move forward without charging production relations. The result is that struggle for a new adjustment in the social order begins. A violent revolution takes place. The old production relations are broken. A new society is built on the ruins of the old social order. According to Marx, society, since its birth, has moved through many socio-economic formations like Primitive Communism. Slave System, Feudalism and Capitalism. In modern age, Capitalism has outlived its utility. It is now passing through a process of decay and destruction. The working classes are striving hard for readjustment in the social order. Inevitably, Capitalism is going to be destroyed and replaced by Socialism. This trend in history is. irresistible. One cannot divert the current of history. Great men are not the makers of history, rather a particular movement in history makes a man great. In other words, history precipitates itself in a great man. As for example, Cromwell, the hero of the Protestant Revolution of 1949 in England was important not because of his. outlook and individual action but because he played an important, part in the struggle of the rising industrial classes against Feudalism. He and his movement broke down the barriers of Feudalism and opened the way for the development of Capitalism in England.

(c) The Theory of Surplus Value: The theory of surplus, value is the central point Of Marx's thesis. It is based on the *labour theory of value*, popular in the early 19th century. According to this theory, labour is the source of the value of a commodity. In other words, the value of a commodity is determined by the amount of labour spent on it. Things which are difficult to procure or manufacture are expensive and things which can be acquired without work are cheap or valueless. Marx admits that for a short time, value of a commodity may be influenced by the forces of demand and supply, but ultimately it is determined by the socially necessary labour time embodied in it. Marx defines commodity as congealed labour and value as crystallised labour.

Though the workers produce value, they do not get the entire value produced by them. The wages which are paid to the worker bear no proportion to the value which the commodity commands in the market. In a Capitalist Society, all the means of production are owned by few Capitalists. The propertyless workers have neither farms nor factories of their own and unless they are given employment they must starve. Moreover, labour is a perishable commodity and the worker is forced to sell it to the Capitalist who applies the same to the machine and the raw material and produces a particular commodity. The difference between the Value of the commodity and the wages paid to the worker constitutes the surplus value or profit of the Capitalist. The surplus value is appropriated by the Capitalism which according to Marx ought to have gone to the workers. The appropriation of surplus value leads to concentration of wealth in a few hands and consequent reduction in the purchasing power of common masses. This tendency results in goods being produced in

excess of the purchasing power of the market. Such developments, according to Marx,lead inevitably to a series of disastrous crises. Since the workers with their ridiculously low wages cannot buy the products which they themselves produce, there are epidemics of over-production. These crises are marked by sharp slumps, large scale unemployment lowering of wages and stoppage of production. This inherent tendency in Capitalism further leads to a mad search for foreign markets for the sale of surplus goods. At this stage, Capitalism enters its imperialist stage. Highly industrialised countries try to capture less advanced countries through economic or military force. This results in deadly wars for division and redivision of colonies. These wars are inevitably responsible for the downfall of Capitalism and rise of the forces of Socialism aiming at the readjustment of social order with equitable distribution of wealth.

The Theory of Class War : All history, according to Marx, is the history of warfare between hostile economic classes. It is the class struggle which is the bearer of change or revolution. At every stage of history, mankind is divided into two classes—the exploiters and the exploited, the haves and have-nots. These classes represent contradictory interests. The conflict of classes is the main force which is responsible for the evolution of the society. The owners of the means of production exploit the labour of the workers. For some period, the relationship between the exploiters and the exploited remains stationary but very soon the means of production undergo revolutionary change. New inventions are made, improved technology is introduced and the existing production relations are rendered unsuitable and outmoded. The exploited class is hard-pressed. The class struggle is intensified. The conflict ultimately leads to the overthrow of the exploiting class by the exploited. The revolution takes place, and a new social order with more equitable production relations among the people is established. In 17th and 18th centuries, Feudalism was replaced by Capitalism in most of the countries in the world. The French Revolution of 1789 destroyed Feudalism in France and opened the way for the development of Capitalism. Similar revolutions took place in other countries under different labels and banners. In the modern period, a sharp struggle between Capitalism and Socialism is going on. In some countries, Socialist democracies have already been established and in others struggle is still going on.

Marxist Criticism of Capitalism: According to Karl Marx, Capitalism has seeds of its own destruction hidden in it. It will die an automatic death on account of the following reasons :

1. There ra a constant tendency under Capitalism towards a progressive increase in the numerical strength of the working classes and a corresponding decrease in the numerical strength of the Capitalists. Capitalistic economy is based on free economic competition between man and man. A large-scale producer tends to destroy a small-scale producer. The means of production progressively go into the hands of fewer and fewer Capitalists. The concentration

of capital in a few hands and dispossession of vast majority of people are some of the factors which lead Capitalism towards destruction.

2. Under Capitalism, there is a constant tendency towards, localisation of industries at particular places. It brings about centralisation of the working classes and offers them an opportunity to develop class consciousness and to organise a strong trade union movement.

3. Large-scale production requires extension in markets. The development of markets is possible only when the means of communication and transport are fully developed. This breaks barriers between different countries and facilitates intercourse among the workers spread over the whole industrial world. This tends to strengthen the common cause of the workers and a common movement for the realisation of their objectives.

4. The Capitalists always try to resort to labour-saving devices. New machines which minimise the need of human labour are invented. This tendency towards rationalisation of industries results in large-scale unemployment which causes untold hardships to several sections of the people.

5. Last but not least, is the tendency of Capitalism towards periodic crises of over-production. Such crises have become very frequent in the 20th century. These crises shake the very foundation of Capitalism. A time comes when the crash comes with such a catastrophic intensity that the entire system breaks down beyond recovery.

All these factors have a cumulative effect and eventually result in dislocation of Capitalistic organisation. The climax is reached when the proletariat class rises in revolt and brings about complete overthrow of the Capitalistic system.

Marxian Conception of State : State, according to Marx,, is a class State. It is an instrument of class coercion. It is a machinery in the hands of the economically dominant class to exploit and suppress the poor and weaker classes. In the context of Capitalist society, State is indiscriminately used to exploit and suppress the working classes. Laws of a Capitalist State represent the interests of the Capitalists although Capitalist politics seeks to conceal the class basis of the State. Such being the character of the State, it must be used by the proletariate after the successful overthrow of Capitalism to pursue their own ends. The proletariat must establish their dictatorship. The Capitalists must be forcibly disowned of their property. "The dictatorship of proletariate," according to Lenin, "will produce a series of restrictions of liberty in the case of oppressors, exploiters and capitalists. They must be crushed in order to free humanity from wage slavery. The proletariat needs the State, the centralised organisation of force and violence, both for the purpose of crushing the resistance of the exploiters and for the purpose of guiding the proletariat in the work of Socialist reconstruction," The dictatorship of the proletariat is to continue during

the transitional period, i.e., the period intervening between the death, of Capitalism and the evolution of a Socialist society. During this, period all means of production are to be placed under the ownership of the community as a whole. Each one is to work according to one's capacity and is to be paid according to quantity and quality of work put in. As these purposes are achieved, the necessity of the State will go on decreasing and it will ultimately wither away. A stage will come when a stateless and classless society will come into existence. It will be the communistic stage in the social evolution. This stage will follow when economic classes disappear, entire productive property has been socialised and when Socialism is firmly established. As this stage advances it will be accompanied by so great a prosperity that it will no longer be necessary to calculate consumption and to reward each person in proportion to his work. Each person will work according to his capacity and will get according to his needs.

Criticism of Marxism : Although Marxism has assumed the position of a living creed of the teeming millions oppressed under the decaying Capitalism, yet some sociologists, economists and political scientists do not hold it to be wholly true.

Modern sociologists like Giddings, Hobhouse and others condemn the economic interpretation of history. The course of history according to them is not determined by the economic factor alone. There are a number of factors like geographical, political, religious, psychological and others which guide social evolution. Too much emphasis on economic factor is to over-simplify the complex social phenomena.

Marxist criticism of Capitalism is condemned as illogical and unscientific. In certain Capitalist countries, there has been very little accumulation of wealth in a few hands. The condition of the working classes has shown progressive improvement. Moreover, Marxist analysis of Capitalism suggests that highly industrialised countries will face Socialist revolution earlier than the less advanced countries. In actual practice, the case has been the reverse. Russia and China had revolutions whereas highly industrialised countries like England, America, France and, others had to face no such eventuality.

"The Stalin Constitution concisely sets forth the fundamentals of the new socialist system of society and of the new soviet structure of our multi-national State."

—V. Karpinsky.

CHAPTER II

GENERAL FEATURES

The present Constitution of the Union of Soviet Socialist Republics was drafted in 1936 by a Committee with Stalin as its Chairman. It was ratified by 1he Eighth Congress of the Soviets of the U.S.S.R. on December 5, 1936 It is popularly known as the Stalm Constitution after its author, Comrade Stalin. It is the constitution of the first socialist State in the world and is, therefore, characterised by certain features which distinguish it from the constitutions of the Capitalistic States. The Stalin Constitution declares the U. S. S R, to bea federal State offully autonomous units. It is a voluntary union of 15 Soviet Socialist Republics. The federating units have their own constitutions and are autonomousin the subjects not given to the federal centre. The constitution only specifies the powers of the Centre and leaves the residuary subjects with the federating units, commonly called the Union Republics. One of the unique features of the constitution is that it gives to the Union Republics the right of secession from the federation. They can also have direct foreign relations and maintain armed forces subject to the guidance of the Central Government. Another conspicuous feature of the Stalin Constitution is that it embodies a challenging bill of rights It is the first constitution of the world which guaranteesinvaluable rights like the right to work, the right to free education, the right to rest and leisure and the right to material security in the old age, sickness and disability. The constitution also lays down ways and means by which these rights are to be enforced. These rights speak volume about the achievements of socialismin the Soviet Union. Another novelty of the Stalin Constitution is to be seen in the fact that it enumerates the duties of citizens as well. Rights and duties are recognized as inseparable by the constitution. Above ah, the constitution registers and gives legislative embodiment to the socialist regime in the U.S S.R.

Q. I. Discuss the salient features of the Constitution of the U S S R.

Ans. The Constitution of the Union of Soviet Socialist Republics (U S.S.R.) has been characterised as 'a challenging document' in view of the fact that it is a novel experiment in the history of political and economic institutions of mankind. Its salient features may be discussed as follows :

1. Written Document: The Constitution of the U.S.S.R. is essentially a written constitution taking into its range all possible details of administration. It contains 13 Chapters and 146 Articles. The present constitution was drafted in 1936 by a Committee with Stalin as its Chairman, and adopted at the Eighth Congress of Soviets of the U.S.S.R. on December 5, 1936. Many amendments have been added since then. In fact almost at every session of the Supreme Soviet new amendments are added.

2. Rigidity of the Constitution : Like most of the federal constitutions, the Russian Constitution is also rigid. The procedure required for amending it is, however, simpler than that of the U. S. Constitution. The Constitution can be amended by two-thirds, majority of the Supreme Soviet in each of its chambers. But in practice the amendment has been very easy because the communist party controls both the government and the Supreme Soviet.

3. Proletariat Dictatorship: The constitution protects the dictatorship of proletariat. It says that the power of State vests in workers, peasants and intellectuals. The economy is socialist. The means of production are owned by the community. There is no private ownership, no private human exploitation. Land has been collectivised except small pieces which individual farmers may own and cultivate personally without employing any labour. The economy is based on the principle, 'from each according to his capacity, to each according to his needs'. It is a classless society since there are no exploiters and employers on one hand and no exploited and employees on the other. The production is organised on 'social need" and not on 'profit motive'.

4. Right to Private Property : Article 9 of the Stalin Constitution allows the right of having private property of non-productive nature. Individual peasants and handicraftsmen can have small private establishments of their own provided they are operated by their own labour and are not pursued to exploit the labour of others. Article 10 allows the right to have personal property in the form of savings from income, house-hold furniture, utensils, articles of personal use and convenience, etc. It is interesting to note that inequality of income exists in Soviet Unions although not on the scale in which it exists in a Capitalistic State. Scientists, engineers, authors, professors and high government officials: draw handsome salaries, sometimes quite out of proportion to the wages of an average worker. The constitution also guarantees, the right of inheritance of such property.

5. Federal Type : The U.S.S.R. is a federation of 15 constituent units. The units are known as Union Republics. Below them are autonomous Republics and autonomous regions, and national areas. This federation has unique features. Some make for a very weak federation and others for a very strong and centralised federation. Those features that make it a weak or true federation are : (1) Every unit has its own constitution, though it must conform to that of the U.S.S.R. (2) The federal government has delegated and limited powers. Residuary powers lie with the Union Republics. (3) Every Union Republic, can establish diplomatic relations with foreign States and also can conclude treaties. (4) It can have its own military formations besides the armed forces of the U. S. S. R. (5) The border Union Republics can secede from the U.S.S.R. The last mentioned three rights are not granted by any other federation to its units. The Cantons of Switzerland, however, possess the

fight of making treaties on minor matters with foreign States and can have armed forces of 300 soldiers each. (6) The Presidium of the U.S.S.R. has representatives of Union Republics as its Vice-Chairmen.

The points that make it a strong and highly centralized federation are : (1) The powers of the federal government are very wide. Even general principles of marriage laws and labour laws are units. The latter cannot propose an amendment. (2) These are laid down by the federal government. (3) The Constitution can be amended by the Federal Parliament without any ratification by one budget for the whole country. The units make their budgets only after allocation is made to them in the central budget. (4) The Presidium of the U.S.S.R. can suspend the decisions and orders of the Council of Ministers of Union Republics. (5) The Five-Year Plans which lay down the entire economic and social activities of the State are framed, executed and controlled by the U.S.S.R. government. (6) The armed forces of the Union Republics are organised under the supervision of the federal government. (7) The Communist Party controls both the central and unit governments and in fact lays down policy at both the levels.

6. Fundamental Rights : The constitution embodies a unique list of fundamental rights. It is for the first time in the history of the world that the Stalin Constitution proudly declares the right to remunerative employment for the Soviet people. It is the high water-mark of the success of socialism in the Soviet land. The problem of unemployment has been solved once for all under socialism in Soviet Russia. No constitution of capitalist States grants right to work. Apart from this right, the Soviet people have been given the right to rest and leisure, the right to material security in old age, sickness and disability, the right to free education etc. All these rights are marvellous and unprecedented. It is to be noted that these rights, which have actually been achieved in Soviet Russia, form only a part of the Directive Principles in our Constitution.

7. Duties of Citizens : Besides enumerating the fundamental rights, the Stalin Constitution also prescribes the duties of the Soviet citizens. Every citizen is enjoined upon to abide by the constitution, observe the State laws, respect the socialist way of life, maintain labour discipline and safeguard the public, socialist property. Military service is an honoured duty of a Soviet citizen. There are no rights in the U.S.S.R. without duties and the duties of Soviet citizens correspond to the rights they possess.

8. Responsible Executive : The Soviet Executive is parliamentary in character. The Council of Ministers is held 'responsible and accountable' to the Supreme Soviet and in its absence to the Presidium. The Ministers are elected by the Supreme Soviet and can be removed by it. They are individually and severally responsible to it.

9. The Presidium : It is a strange innovation of the Soviet Constitution. It consists of 32 members—1 chairman, 15 vice-chairmen, 1 secretary and 15 ordinary members. Like the Federal Council of Switzerland it is the collegiate President of U.S.S.R. This august body is vested with extensive powers. It is the second highest and day-to-day working organ of the State. It supervises, controls and directs the other organs of State. It represents the Supreme Soviet during its recess. Its decrees are subject to ratification by the Supreme Soviet. It can suspend the orders and decisions of Ministers of the federal government and of the Union Republics. It interprets the laws of the Supreme Soviet.

10. Subordinate Position of the Judiciary : Like the Swiss Federal Tribunal and unlike the American and Indian Supreme Courts, the Supreme Court of the U.S.S R. is a subordinate agency of the federal government. It cannot sit in judgment over the 1aws passed by the Supreme Soviet. It has no judicial review, The constitution is interpreted by the Supreme Soviet. Its judges are elected by the Supreme Soviet for a fixed period of 5 years. They are responsible to the Supreme Soviet. The main function of the Federal Judiciary of the U. S. S. R. is to fight the enemies of socialism and to consolidate the new Soviet system based on Socialism.

11. Solution of the Problem of Nationalities : The U.S.S.R. like India is a multi-national country with a great diversity of race, language and religion. This problem has been solved by the constitution of 1936 with unique success. Full right of self-determination has been extended to all the socio-ethnic groups existing in the Soviet Union. Thus real unity has been achieved by recognising the separate identity of every nationality and minority. The Soviet Union is now a fraternal family of Soviet nations united voluntarily on the basis of equality. The units of the U.S.S.R. are organised on nationality basis. The upper house of the Supreme Soviet represents nationalities and has coequal powers with the lower house. The State helps by giving financial aid to the development of culture of various nationalities. The Constitution recognises 18 national languages.

12. The Soviet System : The administration of the U.S.S.R. is broadly based on the Soviets at all levels. These are representative bodies elected by the people on the basis of adult franchise. The entire administration is carried on by different Soviets from the rural Soviet to the Supreme Soviet. However, the Soviets are a spontaneous growth and not the result of constitutional enactment They existed even before the Socialist Revolution of 1917.

13. One Party Rule : The constitution of 1936 keeps unaltered the position of the Communist Party of the U.S.S.R. This Party has been allowed the monopoly of powers. This constitution, however, allows the growth of cultural organisations, youth organisations and trade unions, but not other political parties, and all these

organisations are dominated by the Communist Party. Critics condemn the monopolistic position of the party as a negation of democracy. It is pointed out that the constitution is merely a paper document. In practice it is the dictatorship of the Communist Party pure and simple. The Marxists defend the existence of only one political party on the ground that Russia is now a classless society and people do not have any conflicting interests as is seen in a class-divided society under capitalism. Since people have identical economic interests, only one political party is sufficient to represent their interests.

POINTS TO REMEMBER

The Soviet Constitution is unique in many respects. It is a written and rigid constitution. It gives constitutional recognition to socialism in practice. It is a federation with a highly powerful central government. It enumerates, unique fundamental rights. It prescribes duties of the Soviet citizens. The executive is responsible and plural. It creates a collegiate President in the form of the Presidium. The Judiciary is a subordinate agency of the government. It offers a successful solution of the nationality problem. The administration is organised on the basis of Soviets. The Communist Party has a monopoly of power.

"In spite of the forms of federation, centralisation of authority in the U.S.S.R. is possibly equalled but hardly exceeded anywhery else in the world." **—Ogg**

CHAPTER III

SOVIET FEDERALISM

Article 13 of the Stalin Constitution states that U.S.S.R. is a Federal State,, formed on the basis of a voluntary union of equal Soviet Socialist Republics. At present there are 15 Union Republics in all, names of which are given, below:

1. The Russian Soviet Federative Socialist Republic.
2. The Ukrainian Soviet Socialist Republic.
3. The Byelorussian Soviet Socialist Republic.
4. The Uzbek Soviet Socialist Republic.
5. The Kazakh Soviet Socialist Republic.
6. The Georgian Soviet Socialist Republic.
7. The Azerbaijan Soviet Socialist Republic.
8. The Lithuanian Soviet Socialist Republic.
9. The Moldavian Soviet Socialist Republic.
10. The Latvian Soviet Socialist Republic.
11. The Kirghiz Soviet Socialist Republic.
12. The Tajik Soviet Socialist Republic.
13. The Armenian Soviet Socialist Republic.
14. The Turkmen Soviet Socialist Republic.
15. The Estonian Soviet Socialist Republic.

A Union Republic is a national Soviet Socialist State which is voluntarily-affiliated to the Union of Soviet Socialist Republics on the basis of equal rights with all other Union Republics. All the Union Republics enjoy autonomy and independence in all matters except those subjects which have been vested by constitution in the All-Union Government. The Union Republic of the U.S.S.R. enjoys greater autonomy than that enjoyed by the constituent units of any other Federation in the world. They reserve the right to seceds from the Union. This rightly emphasises the voluntary character of the Soviet Federation. Each Union Republic has its own Constitution framed by its own-legislature duly elected by the people in the Republic. The only condition is. that the Constitution of each Union Republic must conform to the Constitution of the U.S.S.R. The territory of a Union Republic cannot be altered without its consent. Besides, each Union Republic has the right to maintain its separate armed forces and to enter into direct diplomatic relations with foreign States. They have their separate flags, national emblems and anthems. All these facts indicate that a Union Republic in the U.S.S.R. enjovs the full right of self-determination and is thus more autonomous than a State of the Indian Union or of the U.S.A.

A Union Republic is in itself a federation of various Autonomous. Republics, Autonomous Regions and National Areas.

An Autonomous Republic is a Soviet Socialist National State of people having distinct language, culture and genius of its own. It is organised Voluntarily by the nationality concerned within the confines of a Union Republic. It is named after the nationality founding it. An Autonomous Republic enjoys the right of self-government within its territory with regard to all questions concerning its domestic affairs. Each Autonomous Republic has its own constitution which pays due regard to its special features. The constitution should, however, conform to the Constitution of the U.S.S.R. and should also be ratified by the Supreme Soviet of the Union Republic of which the Autonomous Republic in question forms a part. Each Autonomous Republic has its own territory which cannot be changed without its consent. It can make its own laws which are binding within its territory. All-Union laws and the laws of the corresponding Union Republic are equally binding within the territory of the Autonomous Republic. A citizen of an Autonomous Republic also enjoys the citizenship of the Union Republic and of the U.S.S.R. All official business is conducted in the language of the Autonomous Republic. The arms and the flag of an Autonomous Republic are the same as those of the Union Republic of which it forms a part with the addition of the name of the Autonomous Republic.

The Autonomous Regions are organised by numerically smaller nationalities living within the bounds of a Union Republic. These are named after the people constituting the Regions. These Regions enjoy the right of self-government with regard to their domestic affairs. All official business is transacted in the regional language.

The National Areas are founded by very small national minorities. They have practically the same powers and status as possessed by the Autonomous Regions.

Rights of all the political units are safeguarded by the Soviet of Nationalities, the upper chamber of the Supreme Soviet of the U.S.S.R. Each Union Republic elects 25 members to the Soviet of Nationalities, 11 members each are elected by the Autonomous Republics, 5 each by Autonomous Regions and 1 each by the National Areas.

The political division of the U.S.S.R. has helped a good deal in cementing strong bonds of unity among the various nationalities and national minorities inhabiting this country. Real unity has thus been evolved out of diversity of race, language and culture on the basis of equality and freedom granted to their peoples.

Q. 2. 'In theory the U.S.S.R. is a federation of federations based on democratic principles. In practice, it is a unitary dictatorship.' Elucidate

The U.S.S.R. is a federation with a highly centralised administration.' Discuss.

'The Constitution of the U.S.S.R. presents a mixture of extreme cultural autonomy and extreme political centralization.' Comment.

Ans. The Constitution of the U. S. S. R. establishes a federal polity comprising 15 constituent Union Republics. It has certain marks of federalism which may be brought out as follows :

Firstly, it has a *written* **Constitution. Secondly, the Constitution is** *rigid* **since it can be amended only by a special majority of the Supreme Soviet,** *i. e.,* **two-thirds majority of the Supreme Soviet in each of its chambers. Thirdly, the Constitution makes a clear**

division of powers between the centre and the units. The distribution of powers has been done according to the American system. The powers of the All-Union Government have been enumerated in the constitution and unspecified residuary powers have been vested in the units. Article 14 of the constitution enumerates the powers of the All-Union Government and Article 15 states that the Union Republics are *sovereign* in all those matters which have not been given to the Central Government. Residuary powers lie with the units. Fourthly, the All-Union legislature is *bicameral.* The Lower House, *i.e.,* the Soviet of Union represents the general interests of the people whereas the Soviet of Nationalities represents the interests of Nationalities and ethnic groups. Fifthly, every unit has its own constitution, emblem, anthem and flag different from those of the US.S.R.

Besides these features, there are certain unique and unprecedented features which tend to make the Soviet Union an ultra-federation.

The border Union Republics have the *right to secede* from the Union. The reservation of this right shows with crystal clearness that the Republics constituting the Union have united on a truly voluntary basis. No other federation of the World has given this light to its units.

Moreover, all federating units possess the right to have their *separate military formations.* Each Union Republic has the right to enter into direct diplomatic relations with foreign states and to exchange diplomatic and consular representatives with them and to enter into treaties and agreements with other States. The laws authorising the Union Republics to have their own military formations and establish direct relations with foreign countries were passed by the Supreme Soviet on February 1, 1944. It was according to this right that the Ukraine and Byelorussia took part in the deliberations of the Paris Peace Conference and got separate representation on the U.N.O.

The Presidium, which is the day-to-day controlling organ of the U. S. S. R., has representatives of the Union Republics as its chairman. By convention, the President of the Presidium of a Union Republic (head of the Republic) represents it and sits as vice-chairman of the Presidium of the U.S.S.R. Thus the units take part in the exercise of powers of the Federal government.

The foregoing account leads to the conclusion that the Soviet Union is the best specimen of a federation with an essential voluntary character.

On the other hand, the Constitution manifests certain features that establish a highly centralized administration. The Government of the U.S.S.R, has a highly centralized character. The Central Government is unduly powerful. The following facts clearly prove

the enormous strength of the Centre and indicate a clear unitary basis of the Constitution :

1. The powers conferred upon the Government of the Union by the Constitution of 1936 are so numerous and vital that relatively very few important matters are left to the constituent Republics. Article 14 of the Constitution enumerates the powers bestowed upon the Union. They are remarkably broad, much broader than those granted to the Central Government in any other Federal Constitution in the world.

2. The Federal Judiciary acts as the guardian and final interpreter of the Constitution but the Federal Judiciary of the U.S.S.R. is only a subordinate agency of the All-Union Government and the Supreme Soviet, the Parliament, is entrusted with the function of interpreting the Constitution.

3. The Supreme Soviet of the U.S.S.R. possesses the power to alter the distribution of powers any way it likes and to confer additional powers on the Union Government with the consent of the Republics.

In other Federations there is no provision for such a unilateral alteration of the distribution of powers.

4. Whenever there is a conflict between an All-Union Law and a Union Republican Law, it is the former which prevails.

5. The All-Union Presidium possesses the right to suspend the executive actions taken by the Union Republics.

6. The power of constitutional amendments lies exclusively with the Supreme Soviet of the U.S.S.R. The Federating Republics are not at all to be consulted. In India important amendments to the constitution would require ratification by at least half the States belonging to Parts A and B of the First Schedule. In U.S.A. all constitutional amendments require ratification by three-fourths of the States.

7. The Presidium of the U.S.S.R. can suspend the decisions of the Council of Ministers of the Union Republics.

8. Economic planning is an All-Union subject. Economic plans in the U.S.S.R. cover every aspect of the country's life. They offer unlimited opportunities to the All-Union Government for interference in the day-to-day administration of federating units.

9. Last but not least is the powerful role of the Communist Party of the U.S.S.R. The Communist Party is the motive force behind all the state activities. The terms like 'Federation' and 'Democracy' mean differently in the U.S.S.R. from what they are understood elsewhere. It is not the party that abides by the constitution but it is the constitution which is submitted to the dictate of the party. Party gives lead in all Government affairs in the centre and the units. All vital decisions are first taken by the Communist

Party and then formally adopted by the Government. The centralised nature of the control exercised by the Communist Party makes the administration of the U.S.S.R, all the more centralised.

All the facts mentioned above indicate the highly centralised nature of administration in the U.S.S.R. The units enjoy very little authority. The Centre completely dominates. Even the right to secede from the Centre becomes more theoretical than real in the presence of one party control. The All-Union Government is to lay down general principles governing the conduct of foreign relations and maintenance of armed forces. The provision negates the rights of the Union Republics regarding freedom of foreign relations and maintenance of separate armed forces. Thus as Ogg has said, "In point of fact the system is not federal in any ultimate sense at all." The advocates of the Soviet system, however, contend that the Soviet Union is the first federation of the world which allows complete cultural autonomy to the federating units, so much so that a unit can secede from the Centre if it so desires. Extreme political centralisation exists because of the essentially centralised planned economy on which its economic structure is based. One may, therefore, conclude that the U.S.S.R. combines extreme cultural autonomy with extreme economic and political centralisation.

POINTS TO REMEMBER

The constitution of the U.S.S.R. has certain marks of federation. It has a written and rigid constitution. The powers have been divided between the Centre and the Units. The Soviet of Nationalities provides representation to the constituent Republics. Besides, the constitution allows the Union Republics the right to secede from the Federation. They may have direct diplomatic relations with foreign states and separate Armed Forces But the essence of a good Federation lies in a weak central government. The All-Union Government of the U.S.S.R. is unduly powerful. It has jurisdiction over all subjects of vital importance. The Federal judiciary has a subordinate position. The All-Union Laws prevail in case of conflict with a Union Republican Law. The Central executive can annul the actions of the Union Republican executive. The economic plans offer unlimited opportunities to the Centre to interfere in the day-to day activities of the Units. The centralised control of the Communist Party makes the administration all the more centralised. In fact, there is a combination of extreme cultural autonomy and extreme political centralisation in the U.S.S.R.

Q. 3. What do you understand by the problem of Nationalities in the U.S S.R. ? How has this problem been -tackled by the Stalin Constitution ?

'The question of Nationalities was the most ticklish and -intricate problem in Russia.' How has it been solved by the Communist leadership in the U.S.S.R. ?

Ans. The U.S.S.R. has a vast territory covering an area of $1^1/_2$ million square miles which is about l/<5 of the total land surface of the earth and is a little more than double the area of the United States. It is the largest country in the world so far as its territory is concerned. It has a huge size of population which is about 200 million, a little short of l/12th of the human race. The people

inhabiting the great expanse of land from the Baltic Sea in the west to the Pacific Ocean in the east and from the Arctic Ocean in the north to the borders of China and Pakistan in the south are not a homogeneous lot. They belong to various racial stocks and speak different languages. Three-fifths of them are Russians, one-fifth Ukrainians and the remaining include other nationalities and tribes. from Eskimos in Siberia to Muslims in the Turkish Tartar regions. In cultural development, they range from the most primitive to the highly civilized people. Whereas some have contributed a lot to the fund of human knowledge in the field of science and literature, others did not have even a written language. It is estimated that no less than 185 nationalities and 147 different languages and dialects, exist in the Soviet Union. The problem of these nationalities that confronted the Communist regime after the Revolution has been best described by Stalin in his speech before the 10th Congress of the Communist Party held in 1921. The crux of the national problem, he said, "lies in the obligation to put an end to that backwardness (economic, political and cultural) of the nationalities which we have inherited from the past and to afford the backward peoples the opportunity to catching up with Central Russia politically, culturally and economically. Under the old regime the Tsarist Government did not strive and could not strive to develop the political life of the distinct nationalities and national minorities." The Tsars of Russia followed the policy of ruthless suppression of the non-Russian minorities. Unity was sought to be imposed on the heterogeneous people in Russian empire by methods of brutal aggression and cynical disregard of their national rights. The Tsarist Russia was turned into a prison-house of peoples. The non-Russian nationalities were thought to be unfit for self-government and cultural development. The Tsars demarcated and redemarcated the country as best suited their own interests and convenience in governing and oppressing the peoples of Russia. The national and linguistic unity of an administrative unit was never taken into consideration.

This was a problem of enormous proportions and had been engaging the attention of the Party even before the Revolution. These backward people were always in a revolt against the Tsars, who even tried to impose the Russian language upon these different nationalities. Insurrections against the Tsarist authority were very frequent, and very often they were suppressed ruthlessly. It is estimated that in the Polish insurrection of 1863 some 30,000 persons, were killed in battle and 1,500 were executed by the Tsar Government.

A few days after the Revolution all national privileges were revoked and a statement signed by Lenin and Stalin declared the principle of free development of national minorities and ethnographic groups inhabiting the Russian territory. Thus from the beginning, the policy of the Communist Government was in sharp contrast with the Tsarist policy of Russification. From 1917 to 1923, Stalin was people's Commissar for the affairs of the nationalities. He personally

directed and supervised the fight of the minorities to end the exploitation by the capitalists and to set up independent governments on socialist lines. The first constitution of the R.S.F.S R. which was framed in 1918, granted autonomy to the national minorities inside the Republic. These minorities were organised in autonomous republics and autonomous regions inside the R.S.F.S.R. The constitution of 1924, which was the first for the U. S. S. R., also followed this broad principle.

Solution offered by the Stalin Constitution : As early as. 1913, Stalin declared that the only real solution of the national problem was "Regional Autonomy." This autonomy, he said, must also be coupled with "national equality in all forms." These twin principles were predominant in the constitution which was drafted by the Committee presided over by Stalin. This is conspicuously reflected in the very basis of Soviet Federalism. The constituent units of U.S.S.R. are based on national and linguistic considerations. Entire map of Russia has been re-demarcated on the basis of unity of language and culture. Old divisions into administrative units as done by Tsars have been abolished. Separate nationalities have been abolished. Separate nationalities have been organised into Union Republics, Autonomous Republics, Autonomous Regions and, National Areas on the basis of their numerical strength. All nationalities and national minorities have been given full cultural freedom. Each national group is allowed to use its own language in legislatures, courts and as medium of instruction in schools and colleges. They are encouraged to develop their own literature. The rights and interests of the different nationalities are safe-guarded in the Soviet of Nationalities, the Upper House of the Supreme Soviet of the U.S.S.R.

The Union Republics, the constituent units of the Soviet Federation, have been given maximum possible autonomy under the Stalin Constitution as amended in 1944. The border Union Republics, have been given the right to secede from the centre. The reservation of this right by the Union Republics, as Karpinsky points out, shows with crystal clearness that Republics constituting the Union have united on a truly voluntary basis. They have the right to maintain their separate armed forces subject to the general directions of the Ail-Union Government. They can enter into direct diplomatic relations with foreign states. They can have their separate flags, national emblems and anthems. Each Union Republic retains its republican citizenship. At the same time every citizen of a Union Republic is a citizen of the Soviet Union.

All these facts illustrate that each Soviet nation that has formed a Union Republic feels itself absolute master of its native land. At. the same time they are the members of the U. S. S. R., the powerful federal state and derive strength from it.

Though the U.S.S.R. is a multi-national state, the Constitution

has made it possible to have Voluntary co-operation and mutual friendly relations among the various nations and nationalities. There is thus a great truth in the remark of Karpinsky that 'the U.S.S.R. is a fraternal family of Soviet nations united voluntarily on the basis of equality by bonds of amity and close co-operation in a single federal state.'

The problem of nationalities in U.S.S.R. has been solved with a remarkable success. The diverse elements in the Russian population have been welded into a single whole. It will be interesting to note that U.S.S.R. was the first to allow a separate homeland to the Jews in its territory. There are four Muslim Republics in the U.S.S.R. but they have never tried to get out of this Godless state. This is a high watermark of the success of this experiment.

POINTS TO REMEMBER

The U. S. S. R. has a vast territory covering $8^1/_2$ million square miles. Its population is no less than 200 million people. Such a vast country cannot have a homogeneous population. There are some 185 nationalities and 147 languages and dialects. The Tsars of Russia followed the policy of ruthless suppression of the non-Russian minorities. Russia under the Tsarist regime was turned into a 'prison-house of peoples'. The non-Russian nationalities were thought to be unfit for self-government and cultural development. The Tsars demarcated and re-demarcated the country as suited their own interests. The Stalin Constitution solved this problem once for all. Entire map of Russia has been re-demarcated on the basis of unity of language and culture. Old divisions into administrative units as made by Tsars have been abolished. The various nationalities have been organised into Union Republic, Autonomous Republics, Autonomous Regions and National Areas. Each national group has been given maximum possible cultural freedom. The Union Republics have been given even the rights to secede from the federation, maintain separate armed forces and have direct diplomatic relations.

PROBABLE QUESTIONS WITH HINTS

1. 'One is likely to obtain a wholly misleading impression of Russian Government by merely reading the constitution*.—(*Munro)* How far is this true of the federal character of Russian Government ? (*Punjab, 1953)*

[For answer refer to Q. 3.]

2. How has £the problem of different nationalities been solved in the *U.S.S.R. ? (*Lucknow; 1949)*

[For answer refer to Q. 3]

"The dynamic, constantly moving character of the Revolution has been reflected in its institutions."

—Samuel Harper on Soviet System.

CHAPTER IV

THE SOVIETS

A study of the Soviet constitutional system would be incomplete without understanding the system of the Soviets. The supreme power of the U.S.S.R. vests in the Supreme Soviet of the U.S.S.R., which is at the top of hierarchy of Soviet set-up in the Union Republics, Autonomous Republics and other areas. The word 'Soviet' means in the Russian language a 'Council.' The entire Soviet constitutional system is based on a pyramidal structure of these councils.

The Soviets first emerged during the revolutionary upsurge of 1905 when strike waves were sweeping the whole of Russia. First of all, a strike committee was formed in the town of Ivanov of Voznesensk. Its membership was. drawn from representatives of several factories. Similar strike committees were formed in St. Petersburg and came to be known as "Soviets of Workers' Deputies." Although these Soviets were merely organs for conducting strikes, yet subsequently they developed into powerful organs of revolution. The Tsarist Government, however, suppressed all these Soviets in a few months. But these spontaneously reappeared at the time of the Revolution of February 1917 and played a vital role in final seizure of power. Lenin transformed these Soviets from organs of revolution to organs of State power. He raised the slogan of "All power to the Soviets which was unanimously accepted by the Communist Party (Bolsheviks). The Soviets represented not only the industrial workers but also regiments of army. The first All-Russian Congress of Soviets met in June, 1917 and the second Congress met on November 7, 1917. It was the second Congress which elected Comrade Lenin as Premier and passed a number of revolutionary decrees. When the Soviet Union came into existence in 1922, the name of All Russian Congress of Soviets was changed into All-Union Congress of Soviets. Under the Stalin Constitution of 1936, the highest organ of State power is the Supreme Soviet of the U.S.S.R.

Q. 4 Explain the working of the system of Soviets in the U S.S R.

Ans. The most fundamental system of the constitutional machinery of the U.S.S.R. is the organisation of the 'Soviets'. The term is a Russian word meaning 'council'. The political set-up of the country can be described as a pyramidal structure of various categories of Soviets. All the Republics forming the U.S.S R. are Soviet Republics. The U.S.S.R. is a Union of these Soviet Socialist Republics. Article 94 of the constitution clearly says that "Tte organs of State power in Territories, Regions, Areas, Districts, Cities, and Rural localities—are the Soviets of working people's Deputies." This means that the entire administration in the

U.S.S.R. is conducted by the Soviets at different levels. The Soviets are genuine popular governments. A Soviet is a council of delegates or deputies chosen by the workers employed in a factory, or soldiers in a regiment, or by the peasants in a village, or by any combination of such groups. These Soviets are not a creation of the Stalin Constitution. They existed long before the Revolution. After the Revolution, Lenin gave the slogan : "All power to the Soviets". According to Buell, Lenin recognised in them new organs of people's power. A Russian writer has described the Soviet as the highest form of proletarian democracy.

The local Soviets are altogether different from local self-government bodies like Village Panchayats, Municipalities and District Boards as they exist in India or elsewhere. These bodies are not vested with any powers of state administration because powers of the government are exercised by the local officials appointed by the government. The local Soviets down from the village Soviet to the Supreme Soviet of the U.S.S.R. are organs of State power. These Soviets, unlike the local self-governing institutions, not only deal with petty local problems of sanitation, health, education etc. but also enjoy full governmental authority. The local Soviets direct the economic, cultural and political development in their respective areas. They maintain law and order in the territory. They elect their executive committees, which are responsible to them for all their activities. They set up departments each of which is to deal with some particular branch of administration such as education, health, local industries, trade, law and order etc. The local Soviets thus constitute the political foundation of the U.S.S.R.

Soviet Structure : The primary unit of the Soviet system is the village or factory Soviet. This is also the lowest unit of the entire Soviet administration. Prior to the promulgation of 1936 Constitution, the Soviets in the towns and villages were elected directly while the higher ones were elected indirectly. At the top of the pyramid was the All-Union Soviet or the All-Union Congress. The Stalin Constitution provides for direct elections to all Soviets. At the top of the hierarchy now is the Supreme Soviet of the U.S.S R., instead of the former All-Union Congress. At present a Soviet is elected for two years. It is elected by the people of the area on the basis of universal, equal and direct suffrage by secret ballot. Every Soviet in turn elects its own executive committee consisting of a chairman, a vice-chairman and a secretary. The higher Soviets have additional members also on the executive committee. Some Soviets elect permanent committees to act on their behalf when they are not in session. There are over 70,000 primary Soviets throughout the U.S.S.R.

These Soviets are the very basis of all administration. According to Webb, "Within the village itself, there is practically nothing that the Soviet may not organise, regulate, or provide at public

expense, from roads to water supplies, from club-houses and dance-floors up to schools, theatres and hospitals." Besides, the Soviets may not rest content with dealing only with local questions. They may even discuss questions of All-Union importance. The urban Soviets are usually larger than those of rural areas. They even appoint standing committees. The urban Soviets number about 1,000. In the 1950 elections approximately million Deputies to the local Soviets were elected, out of which some one-third were women, 57% of the total were non-party people and rest of 43% were Communists.

The Soviet Government attaches special importance to the local Soviets because according to Lenin success of the Socialist revolution in Russia depends upon them. That is quite understandable because it is the local Soviet which puts into effect laws and decisions of the central authorities and it is by their work that the people judge the efficiency of the Soviet rule. The Stalin Constitution of 1936 granted extensive powers to the local Soviets in matters of administration and in the direction of local economic and cultural affairs. The local Soviets can take decision and issue orders within the limits of the powers vested in them by the laws of the U.S.S.R. and of the Union and Autonomous Republics. The organisation of Soviets in the U.S.S.R. proves beyond any shadow of doubt the broad base of socialist democracy. Millions of people inhabiting the U.S.S.R. are closely associated with their administration and the ftask of the socialist revolution.

The work of the Soviets at different levels is supplemented by Labour Unions and Co-operative Organisations. Labour Unions are organised in every factory, workhouse or establishment These Labour Unions are characterised as 'bulwarks of proletariat dictatorship'. They are training schools for Communism. Labour Unions in Russia are not supposed to fight out their employers. On the other hand, they are meant to take part in the administration of various industries along with the factory managers and party members. They can also have a collective bargain for wages on nation-wide basis. They promote social and cultural activities among the workers. They try to reach the targets of production as prescribed by five-year plans. Competitions are organised between one factory and another in production. Thus the Labour Unions in Soviet Russia are the best means whereby production is enhanced.

In the sphere of agriculture, the Co-operative Organisations Play a vital role. These bodies are set up in Collective Farms. They take part in the management of these Co-operatives. They too promote cultural and social activities of the peasant engaged in various co-operative farms and enhance agricultural production.

POINTS TO REMEMBER

Organisation of the Soviets is the most fundamental feature of the constitutional machinery of the U. S. S. R. Entire administration of the U.S.S.R. is conducted by the Soviets at different levels. A Soviet is a council of delegates or deputies chosen by the workers employed in a factory or soldiers in a village or by any combination of such groups. Lenin handed over all power to the Soviets after the Revolution of 1917. Every Soviet is elected for a period of two years on the basis of universal, direct and equal franchise. It elects its own executive consisting of a chairman, a vice-chairman and a secretary. The higher Soviets have additional members on the executive. There are some 70,000 primary Soviets and 1,000 urban Soviets. Besides, Labour Unions and Co-operative Organisations play a vital role in the administration of factories and farms.

"The constitution does not recognise any difference in rights as between men and women, residents and non-residents, propertied and propertyless, educated and uneducated, for in it all citizens have equal rights."

—Stalin on the 1936 Constitution.

CHAPTER V

FUNDAMENTAL RIGHTS

The Stalin Constitution of 1936 embodied for the first time a bill of rights for the Soviet citizens after the mighty Revolution of 1917. Earlier Constitutions of 1918 and 1924 did not contain any such chapters though it was left to the Republican constitutions to incorporate any such rights if they so desired.

All rights guaranteed by the Soviet constitution are based on the assumption that mutually antagonistic economic classes do not exist in the Soviet Union. These rights are thus indicative of the achievements of socialism. This is in contrast with the tacit recognition contained in other constitutions about the existence of such antagonistic classes. The constitutions of the capitalistic states recognise the right to property which cannot be violated by any means save the payment of adequate compensation by the State. The constitutions thus give legal recognition to various economic classes existing in the society.

Another peculiar feature of the Soviet bill of rights is that the constitution regards rights and duties as inseparable. Immediately following the enumeration of rights, the constitution lays down the basic obligations of the citizens. The first and the foremost duty of the Soviet citizens is to abide by the constitution of the U.S.S.R. and to respect the rules of socialist intercourse. Moreover, unlike other constitutions, the Soviet Constitution does not content itself with enumeration of the rights alone. It also lays down ways and means by which these rights are to be enforced and given proper effect.

Q. S. "The Fundamental Rights embodied in the Stalin Constitution constitute one of the most extraordinary bills of rights known to history." Discuss.

Ans. The Stalin Constitution guarantees to the Soviet citizens a number of fundamental rights. Quite a number of these rights are unknown to their countries. The rights guaranteed by the Soviet Constitution are governed by the following principles:

(i) They must be in conformity with the interests of the working people with a view to strengthening the Socialist system.

(ii) Civil rights must be made secondary to the new social and economic rights. This is in contrast with the practice in other countries where the position is just the reverse. In the U.S.S.R. the State may restrict civil liberties, but it must guarantee economic well-being. In other countries, a citizen is allowed freedom of expression even though he may be starving.

(iii) The Constitution not only contains a bill of rights but also it lays down the basic duties of the citizens.

(iv) The Constitution does not confine itself to stating the formal rights of citizens, but stresses the guarantee of these rights, the means by which these rights can be exercised.

Let us now examine the fundamental rights guaranteed to the Soviet citizens one by one :

1. Right to work : The most important fundamental right guaranteed to the Soviet citizens is the right to work. A Soviet citizen has not to undergo the pangs of unemployment as do many people in countries with a capitalistic system of economy. The State is under obligation to provide work to an able-bodied citizens. The principle underlying the Soviet economic system is that 'he who does not work, shall not eat'. Every person is to be paid according to the quality of work put in by him. Work is thus both a right and duty of the Soviet citizens. In the Soviet land this right has been guaranteed on account of the success of the Socialist system or economy in which all possibilities of crises and unemployment have been ruled out. To satisfy the growing requirements of the people extensive work is being conducted to extend the existing factories and mills and build new ones. The constantly developing industry, agriculture, transport and development of culture and science in the U.S.S.R. create unlimited opportunities for mental and physical labour. All this makes it possible to provide remunerative work to all able-bodied persons according to their desire, ability and training. Position is quite the reverse in the capitalist states which are incapable of guaranteeing the right to the people. Italy, under its Constitution of 1947, guaranteed the right to work to its people but could not realise it in practice since it has been estimated that there are no less than four million unemployed persons in Italy. Even in the United States, the richest capitalist country in the world, there is always a certain percentage of unemployed, who have to be given doles. On the contrary, in Soviet Union, not only unemployment has been washed out, but also there has been a tremendous rise in the real wages of the workers.

2. Right to Rest and Leisure: The Stalin Constitution guarantees to the Soviet citizens the right to rest and leisure. This, right is ensured in practice by fixing hours of work for different trades. The maximum hours are seven a day. In addition to it, the Soviet citizens are given annual vacation with pay. In order to enable the citizens to make a creative use of their leisure the State has placed at their disposal vast facilities for recreation and entertainment. Numerous rest houses, sanatoria, clubs, cinemas, theatrical halls, libraries, reading room stadia, parks and athletic grounds nave been built by the State. All these establishments are open to the public either gratis or on payment of nominal charges.

3. Right to Material Security : The Stalin Constitution records the right of Soviet citizens to material security in old age, and also in case of sickness and disability. The State pays out of its funds various pensions and stipends to workers and other employees in the event of old age and disability caused by accident or disease. In 1953 alone 42,900 million roubles were spent on social maintenance. The State supplies free medical aid at home, and in its clinics, dispensaries and hospitals. For this purpose, a network of free medical service stations and health resorts has been opened. No country in the world has been able to guarantee social security to the extent it has been done in Soviet Union. In the United States, for the vast majority of the workers, the pension hardly exceeds. 30% of their wages whereas in Soviet Union pensions are given to every person and the amount varies from 50 to 60% of their average earnings. On the death of the bread winner of the family, the dependants who are minors are paid regular pension.

4. Right to Education : The Stalin Constitution grants to all its citizens the right to education. It provides for universal compulsory elementary education. Free education is given up to the-7th grade. Recently, free education has been extended to the 10th grade. There is a system of state stipends for students of higher educational institutions. The state also provides extensive facilities for free vocational and technical education. The instructions in every school or college are given in the regional language. In the U.S.S.R. higher and specialised secondary educational establishments are attended by over 3 million students. There have been amazing achievements in education in Soviet Union. Cent per cent people are now literate in Soviet Union.

5. Right to Equality : The Stalin Constitution does not differentiate between man and man. There is complete equality of all citizens irrespective of their race, nationality or sex. Article 123 of the Constitution strictly prohibits any direct or indirect discrimination among different citizens. It has been declared a criminal offence to preach racial discrimination or hatred.

6. Equality of Men and Women : The Constitution guarantees to women equal rights with men in all walks of life. The Soviet women enjoy equal rights with men as regards wages, rest and leisure, social insurance and education. Article 122 provides for State protection of the interests of motherhood. All state enterprises and State institutions grant special maternity leave with full pay. There exists a net-work of maternity homes and nurseries. Special aid is given to mothers of large families. Mothers in U.S S.R. are given State stipends upon the birth of the third and every succeeding child. Honorary title of 'Mother Heroine' is conferred on mothers who give birth to ten or more children. Female labour is forbidden in strenuous works injurious to their health. Women occupy all sorts of position in public life. They are judges, ministers, professors, doctors, scientists, engineers, factory directors,

pilots, deputies secretaries, etc. In 1954 general elections, 280 women were elected to the Supreme Soviet of the U.S.S.R. and 2209 to the various legislative organs of the Union Republics.

7. Freedom of Conscience : Article 124 provides for the freedom of conscience, separation of the church from the state, and the freedom of both religious and anti-religious propaganda. The Stalin Constitution guarantees to Soviet citizens genuine freedom of conscience and free performance of religious rites and ceremonies. At the same time the Constitution guarantees the right to engage freely in anti-religious propaganda. Religious education in the schools is prohibited. It is interesting to note that the constitution allows the freedom of anti-religious propaganda but not that of religious propaganda. The Communist Party tries its utmost to wipe out religious beliefs from the psychology of the people by continuous propaganda since the Marxists regard religion as a bourgeois institution upholding inequalities of wealth as divinely ordained. Recently, a policy of religious toleration has been adopted by the Soviet government.

8. Right to Vote and to be Elected : All citizens of the U.S.S.R. irrespective of race or nationality, religion, domicile, education or sex are given the right to vote at the age of 18. Every citizen who has reached the age of 21 is eligible for election to the Supreme Soviets of the Union or Autonomous Republics and at the age of 23 to the Supreme Soviet of the U.S.S.R.

9. Freedom of Speech, Press and Association : The Stalin Constitution guarantees to the citizens freedom of speech, freedom of press, freedom of assembly including the holding of mass meetings, street processions and demonstrations. They may organise trade unions, co operative societies, youth organisations and cultural, technical, and scientific societies. The Stalin Constitution, however, does not give the right to organise political parties to the Soviet citizens since monopoly of political power has been given to the Communist Party of the Soviet Union. The Party controls and guides all the non-political organisations in the state. These political civil liberties thus become meaningless in the context of one party rule. These freedoms can only be exercised in the interests of the working people and in order to strengthen the socialist system. A person holding different opinion is dubbed as a counter-revolutionary and is categorically denied all these liberties. It is on this point that *bonofid.es* of the Soviet democracy are challenged.

10. Inviolability of the Person and Secrecy of Correspondence : Inviolability of the person implies that no one in the Soviet Union can be arrested except by a decision of a court or with the sanction of a Procurator Complete privacy of personal correspondence is observed in the Soviet Union. **The personal** correspondence of a Soviet citizen can only be examined with the permission of a Procurator when such examination is necessary to discover the author of crime.

11. Right to Asylum: The constitution grants the right of asylum to foreign citizens persecuted for defending the interest of the working classes or struggling for their national liberation. It is due to this right that revolutionaries of the world find refuge in Russia in the last resort. The right clearly implies that persons held guilty of grave crimes committed for political motives in their own countries can find shelter in Soviet Union and Soviet Union would refuse to hand them over to proper authorities.

12. Right to Property : The constitution also allows limited right to private property. Although this right is not in the given charter on Fundamental Rights yet it is granted in the first chapter. A Soviet citizen can have non-productive private property only for personal use. It cannot be used for exploitation in any case.

Estimate of Fundamental Rights: Despite the fact elaborate fundamental rights have been guaranteed by the Constitution, there are critics who point out that these are not even worth the paper they are written on. The freedoms of speech, association and press are non-existent. These can only be exercised for propagating Marxist philosophy. These rights which constitute the core of democracy are subordinated to the cause of Socialism. The Press, the Radio and the Cinema are strictly controlled by the government and are freely used as propaganda machine of the Communist Party. Books which are unfavourable to or critical of the regime are purged. Even art has been made to conform to the requirements of the Socialist regime. The Soviet Government have taken care to make art a powerful weapon of propaganda and indoctrination. Educational institutions are freely employed for propagation of Marxian thought and philosophy. It is very frequently alleged that the economic rights are also not fully exercised. The denial of the right to interpret the constitution to the judiciary has strengthened the belief of these critics. During the Second World War, some decrees were issued which in effect modified some of the fundamental rights relating to rest, leisure etc. But whatever the critics may say, the fundamental rights as ensured by the Soviet Constitution are unknown to history. During the war some measures were taken to meet a supreme national emergency and the modification of fundamental rights cannot be grudged. The fact remains that the people in U.S.S.R. under socialist regime have been relieved of all material worries and cares. The problem of bread and butter has been solved once for all.

POINTS TO REMEMBER

The Stalin Constitution guarantees unprecedented rights to the Soviet people. Right to remunerative employment, right to rest and leisure, right to material security, right to education, right to equality, equality of men and women, freedom of conscience, right to vote and be elected, freedom of speech, press and association, inviolability of the person and secrecy of correspondence, right to asylum and right to property are very important liberties guaranteed by the constitution.

Q. 6. Describe the fundamental duties of the Soviet citizens as embodied in the constitution.

Ans. The Soviet Constitution regards rights and duties of citizens as inseparable. Besides enumerating the most challenging fundamental rights, the constitution lays down the basic obligations of the citizens.

The following are some of the obligations of Soviet citizens.

1. Observance of the Constitution : Observance of the Soviet Constitution and law is the most sacred duty of the citizens. Article 130 says that it is the duty of every citizen to abide by the constitution, observe laws, maintain labour discipline, perform! honestly all public duties, and respect the rules of socialist intercourse.

2. **Maintenance of Labour Discipline** : A socialist society cannot achieve the desired results unless labour is imbued with socialist ideas and socialist mind. Everyone is expected to work diligently for the welfare of the society as a whole.

3. Respect for Socialist Way of Life : A Soviet citizen is. expected to have respect for the rules of socialist intercourse. A citizen should not think in his own individual interest. The conduct of the individual should be governed by the interests of the whole society.

4. **Safeguarding Public Socialist Property** : All the means, of production in the U.S.S.R. are the property of the State. Every citizen is expected to look to the State property as something sacred. Persons committing offences against public socialist property are considered to be enemies of the State.

5. Universal Military Service : The Soviet law and constitution regards military service in the armed forces as an honourable duty of the citizens of the U.S.S.R. Universal Military Law was. adopted on September 1, 1939. All male Soviet citizens without distinction of nationality, race, religion, education, social origin and status must serve in the armed forces of the Soviet Union They may be called up for service at the age of 19 years, or 18 years, for those who have completed their secondary education. The periods of active service ranges from 2 to 4 years. Those who have completed their active service are placed in the reserve until they are 50 years of age.

6. Defence of the Country : If military service is an honourable duty of the citizens, defence of the country is their sacred duty. Treason to motherland is punished with all the severity of law, Treason in the U.S.S.R. includes violation of the oath of allegiance, desertion from the Army or espionage.

POINTS TO REMEMBER

The Soviet Constitution lays down basic duties of the Soviet people. They must observe the constitution and laws of the Soviet Union. They must

maintain labour discipline. They are expected to respect the socialist way of life. They are supposed to safeguard public socialist property. Compulsory military service is an honourable duty of the Soviet citizens and defence of the. country is their sacred duty.

PROBABLE QUESTIONS WITH HINTS

'The Stalin Constitution goes farther than any other constitution in so far as formal guarantee of personal liberties is concerned'—(***Munro***) Analyse and comment.

"The Soviet Constitution guarantees material security but robs people of their political liberty." Comment.

[For answer refer to question dealing with the fundamental rights.]

"Theoretically speaking, the Supreme Soviet of the U.S.S.R. is really supreme."

CHAPTER VI

THE SUPREME SOVIET OF THE U.S.S.R.

The All-Union Legislature of Soviet Russia is known as the Supreme Soviet of the U.S.S.R. It is a bicameral legislature consisting of two chambers—the Soviet of the Union and the Soviet of Nationalities. Article 30 of the Soviet Constitution states that "the highest organ of State power in the U.S.S.R. is the Supreme Soviet of the U.S.S.R." It exercises all powers vested in the Union by the Constitution. The executive of the U S.S.R. which is known as the Council of Ministers, is responsible and accountable to the Supreme Soviet. The control of the legislature over the executive is greater in the U.S.S.R. than in any other country. Even when the Supreme Soviet is not in session its control over the executive is exercised by the Presidium of the Supreme Soviet which is elected by both Houses of the Supreme Soviet in a joint session.

The constitution vests equal and co-ordinate powers in both the Houses. One is not inferior to the other either in theory or in practice. Unlike other federations, the second chambers represent the nationalities and not the constituent units. Both the Houses meet and terminate simultaneously.

Q. 7. Discuss the organisation and functions of the Supreme Soviet of the U.S.S.R. Explain its legislative procedure and analyse mutual relations between the Soviet of the Union and the Soviet of the Nationalities. What are its peculiar features ?

Ans. The Supreme Soviet of U.S.S.R. is the highest organ of State power. It is a bicameral legislature, the Soviet of the Union being its Lower House and the Soviet of the Nationalities the Upper one.

Life : Both the Houses have a normal life of 4 years. The Supreme Soviet may be dissolved by the Presidium before expiry of its normal term in the event of disagreement between the two Houses. Since the promulgation of the Stalin Constitution, the Supreme Soviet has been elected four times. The first was elected in 1937 soon after the promulgation of the constitution. And since election could not be held during the war, the second was elected in 1946.

Composition of the Soviet of the Union : The Soviet of the Union is the Lower House. It is popular chamber and represents the general interests of the Soviet people. It consists of deputies elected by the Soviet citizens on the basis of universal, equal and adult franchise. All persons having attained the age of 19, excepting criminals and insanes, are entitled to vote. Any person of 23 years of age is eligible for election to the Supreme Soviet of the U.S.S.R. One Deputy is elected by every 3,00,000 inhabitants. In 1946 elections, there were 657 members in the Soviet of the Union. In 1950

general elections, 678 members were elected to the House. But the Soviet of Union elected in March, 1954 consisted of 708 members. The number of Deputies has, however, increased with the increase of population. (Figures taken from the 'Soviet Land' April, 1954 published by the Tass in India.)

Composition of the Soviet of the Nationalities : The Soviet of the Nationalities represents specific interests of the nationalities inhabiting the U.S.S.R. Each Union Republic has the right to send 25 members to this House, 11 members each are elected by the Autonomous Republics, 5 members each by the Autonomous. Regions and 1 member each by the National Areas. The elections to this House are also held on the basis of universal, direct, equal adult franchise. In 1946, there were 682 members in the Soviet of the Nationalities and in the 1950 general elections 638 members were elected to the House. But the Soviet of the Nationalities elected in March, 1954 consisted of 639 members. (Figures from the 'Soviet Land'.)

Sessions of the Supreme Soviet: The Presidium of the Supreme Soviet convenes its sessions twice a year. The Presidium may convene special sessions either at its own discretion or on the demand of one of the Union Republics. The duration of a session is generally one week. The sessions of Both the Houses begin and terminate simultaneously. Each House elects its own Chairman from amongst its own members. The Chairman presides over the meetings of the House and maintains decorum and discipline in the House. In case of joint sittings of the two Houses, the Chairmen of the two Houses preside alternately. Besides Chairman, each House elects two Vice-Chairmen from amongst its members.

Functions of the Supreme Soviet: The Supreme Soviet is. the highest organ of State power in the U.S.S.R. It enjoys exclusive jurisdiction over all subjects vested by the constitution in the All-Union Government. Its main functions may be discussed under the following heads :

Legislative : It has the exclusive right to make laws regarding the subjects mentioned in the Ail-Union List given in the constitution. These laws are binding upon all the Union Republics. Such laws are published in all the different regional languages under the signatures of the President and Secretary of the Presidium. All laws passed by the Supreme Soviet are final and no authority in the U.S.S.R. enjoys an executive veto. Signatures of the President and the Secretary of the Presidium are just a formality. The constitution, however, empowers the Presidium to conduct referendum on any law passed by the Supreme Soviet either on its own initiative or on the request of one of the Union Republics.

Financial Powers: The Supreme Soviet of the U.S.S.R passes the consolidated budget for the whole country and exercises control over its execution. It allocates taxes and revenues to the

Centre and the constituent Union Republics. Besides, all rational economic plans are passed by it.

Constitution Amending Powers : The Supreme Soviet of the U.S.S.R. has an exclusive right to amend the constitution. A proposal for constitutional amendment must be passed by a majority of not less than two-thirds of votes cast in both of its Chambers separately.

Appointment of Investigating Committees : The Supreme Soviet of the U.S.S.R. is authorized to appoint investigating and auditing commissions on any question, the requirements of which must be complied with by all government departments and officials.

Control over External Affairs : It decides about the representation of the U.S.S.R. in international relations and ratifies treaties with foreign States. All questions concerning war and peace are decided by it. It also determines general procedure governing **the** relations **of** the Union Republics with foreign States.

Military Powers : Although the constitution authorises each Union Republic to raise its military formations, yet the Supreme Soviet determines the directive principles governing the organisation of such defence forces.

Power to admit new Republics : The Supreme Soviet of **the** U.S.S.R. alone **has** the right to admit new Republics to the Soviet Union. It may create new Autonomous Republics, Autonomous Regions and National Areas. All alterations in the boundaries of the Republics must be ratified by it.

Electoral Powers : The Supreme Soviet, at a joint sitting of **its** two chambers, elects the Presidium of the Supreme Soviet from amongst its members. It also elects members of the Council of Ministers, Judges of the Supreme Court and the Procurator General. All these bodies have a constitutional responsibility to the Supreme Soviet.

Procedure of Law-Making : The Soviet Constitution does not make any distinction between money-Bills and non-money-Bills. A Bill in order to become law, may originate in either House of the Supreme Soviet. The two Houses elect three permanent commissions in the first session. These commissions are known as the Legislative, Budget and Foreign Affairs Commissions. A Bill after introduction in one of the Houses goes to the appropriate Commission. The Commission collects the relevant data and considers the Bill clause by clause. It may suggest some amendments. It then presents the Bill to the House. The Commissions may also initiate some Bill themselves. After a Bill has been passed by one House, it is sent to the other House. After having been passed by both the Houses, it becomes law after being signed by the President and the Secretary **of** the Presidium of the Supreme Soviet. The latter have no veto.

Mutual Relations : In case there is disagreement between the two Houses of the Supreme Soviet, a Conciliation Committee consisting of equal number of members from both the Houses is formed. If the efforts of the Committee fail, a joint session of Supreme Soviet is convened to discuss the issue. In the event of failure of the joint session also, the Presidium dissolves the two Houses and orders for fresh elections. This shows that both the Houses of the Supreme Soviet have equal powers. Each of them has the right to initiate legislation and introduce corresponding Bills. Both the Houses are convened and hold their sessions simultaneously.

Peculiar Features : 1. The powers of the Supreme Soviet in every sphere have led some critics to say that the Soviet system is not based on the 'principle of separation of powers'. The legislature has a great control over the executive and judiciary since both these bodies are elected by it and these are responsible to it. It also elects the Procurator-General a functionary vested with tremendous powers over the administration of justice. The control of the Supreme Soviet over the executive and the federal judiciary is a clear violation of the principle of separation of powers. The Soviet constitutionalists condemn the very idea of separation of powers on the ground that the doctrine is employed in order to show that political power is being justly exercised, although in the ultimate analysis, political power in the so-called capitalist democracy is wielded by a small minority of capitalists. The Soviet Union, on the other hand, is a classless society of workers and peasants and political power is exercised by them through their representatives forming the Supreme Soviet.

2. The two chambers of the Supreme Soviet enjoy co equal powers in every sphere. This is in contrast with the practice in other countries where lower chambers enjoy more powers than the upper ones. Generally, distinction is made in the case of money-Bills over which the Lower House has complete jurisdiction. The only exception to this is the U.S.A. where the Senate has more powers than the House of Representatives. But in the Soviet Union there is no such distinction. Moreover, the basis of representation in the second chamber in U.S.S.R. is very different. It represents the nationalities and not essentially the constituent Republics.

3. There is no distinction in the term of the second chamber in the U.S.S.R. Like the Lower House, it can also be dissolved earlier. It meets and terminates simultaneously with the Lower House. In other countries the second chambers have a continuous life and are not subject to dissolution.

4. In other countries government servants cannot seek election to the legislature. But in U.S.S.R. there is no such restriction.

5. Unanimity is regarded as the logical and consistent part of the Soviet Legislation. There is no 'nay' in the Supreme Soviet.

The laws are usually passed by unanimous vote. This is possible in view of the fact that only one political party rules the country.

6. The powers of the Supreme Soviet are mostly exercised by its Presidium. The Presidium is a sort of Supreme Soviet in miniature and is the real repository of all power. The rest of members of the Supreme Soviet usually meet for a few days in a year only to ratify the decisions of the Presidium. There is no such practice in any other country. The Presidium consists of all the important leaders of the Communist Party. Thus the Supreme Soviet is an instrument for the implementation of the decisions already taken by the Communist High Command.

7. There is no opposition party in the Supreme Soviet. In other parliaments or legislatures, the opposition criticises the policy and programme of the majority party forming the government. In the absence of any opposition the working of the Supreme Soviet becomes a formality to ratify the decisions already taken by the Communist leadership.

8. One of the most characteristic and interesting features of the Supreme Soviet is the reality of intimate relationship that exists between the electorate and their representatives in the legislature. Each member of the Supreme Soviet is expected to give an account of the conditions prevalent in his constituency to the Supreme Soviet. Similarly, on his return from Moscow, he has to report the proceedings of the Supreme Soviet to his electors. A member who may fail to satisfy the electors about his work, may be recalled by a majority of the voters in a prescribed manner. Usually, while electing a Deputy, each constituency also elects a substitute. The substitute members attend the meetings of the Supreme Soviet as observers. So it is very easy to replace a member by the substitute Deputy, if such a need arises. This sort of practice is unknown in any other country. In fact, in most of the countries, the deputies forget the electorates after their election and remember them only when another election is due.

POINTS TO REMEMBER

The Supreme Soviet of the U.S.S.R. is the highest organ of State power. Both the Houses are elected for a period of 4 years. The Soviet of the Union consists of 708 members and the Soviet of the Nationalities consists of 639 members. Both the Houses meet and terminate simultaneously. The Supreme Soviet has exclusive jurisdiction over the All-Union Subjects It can amend the constitution and admit new republics. It can appoint investigation and auditing commissions. It passes the consolidated budget of the U.S.S.R. It decides about the representation of the U.S.S.R. in international relations and lays down general policy about the organisation of the armed forces. It elects the various, executive and judicial bodies. Both money and non-money Bills can originate in either House. The Bills after formal introduction are referred to appropriate committees. A Bill becomes an Act when passed by both the Houses. Both the Houses have equal and co-ordinate powers. In case of differences, a Conciliation Committee is formed. In the event of irreconcilable differences, the Supreme Soviet is dissolved by the Presidium. There are certain peculiar features of the Supreme Soviet. Its powers violate the principle of the separation of powers. Both the Houses enjoy equal and co-ordinate powers. Even

government employees can contest elections. The Upper Chamber does not have **a** continuously life. Decisions are generally taken by a unanimous vote. Its powers are mostly exercised by the Presidium. There is no opposition. The members may be recalled by the electors.

PROBABLE QUESTIONS WITH HINTS

1. "The Supreme Soviet or as it is often called, the Supreme Council, is: regarded as the highest organ of power in the U.S.S.R." Why ? *(Punjab April, 1959)*

[For answer refer to the powers of Supreme Soviet.]

2. 'Describe the powers of the Supreme Soviet of the U..S.S.R. and comment on the statement that there is no separation of powers in the Soviet Union.'

[For answer refer to the powers of the Supreme Soviet and also the first peculiar feature of Supreme Soviet.]

"Our State is headed, not by a single person, but by a collegium consisting of 33 members of the Supreme Soviet of the U.S.S.R. who, to use Stalin's expression, constitute the collegial President of the U.S.S.R.. *Karpinsky*

CHAPTER VII

SOVIET EXECUTIVE

Who is the chief executive in the U.S.S.R. is a question which poses a serious proposition before the students of constitutional law. Article 30 of the constitution makes the Supreme Soviet the highest organ of State power in the U.S.S.R. This is further supplemented by Article 48 providing for the election of a Presidium by the Supreme Soviet. Article 49 vests powers in the Presidium which are usually exercised by the executive in other countries. This leads one to believe that the Presidium constitutes the executive in the U.S S.R. But the constitutional anomaly of the Presidium is reflected in Article 64 which says: "The highest executive and administrative organ of the State power of the Union of Soviet Socialist Republics is the Council of Ministers of the U.S.S.R."

However, on a closer examination of the working of the Soviet Constitution, we find that the Chairman of the Presidium of the U.S.S.R. does not told a position analogous to that of the President of India. The Presidium performs all those functions which in other States are performed by the executive heads. All foreign envoys accredited to the U.S.S.R. are received by the Chairman of the Presidium, who represents the U.S.S.R. at all ceremonial functions. The Council of Ministers is responsible to the Supreme Soviet when in session and to the Presidium when it is out of session. The fact of the matter is that sovereign powers of the people are exercised through the Supreme Soviet which has control over both the executive and the judiciary.

Q. 8. Describe the composition and functions of the Presidium of the Supreme Soviet of the U.S.S.R. What constitutional position does it occupy under the Soviet political system ?

Ans. The Presidium of the Supreme Soviet occupies a unique position in the political structure of the U.S.S.R. It consists of 32 members one Chairman, 15 Vice-Chairmen, 1 Secretary and 15 ordinary members.

Originally, according to the Stalin Constitution, the number of members of the Presidium was 37. But it was reduced to 15 in 1946 by a constitutional amendment.

The Presidium is elected by a joint session of the two Houses of the Supreme Soviet. The 15 Vice-Chairmen represent the 15 Union Republics of the U.S.S.R. By convention, Chairman of the Presidium of a Union Republic sits as Chairman of the Presidium of the U.S.S.R.

The normal term of the Presidium is 4 years, coinciding with the term of the Supreme Soviet. If the Supreme Soviet is dissolved earlier by the Presidium, its own term also comes to a close. But generally, it continues functioning till the new Presidium is elected by the newly elected Supreme Soviet.

The Presidium of the Supreme Soviet has vast legislative, executive, judicial and miscellaneous powers. These may be discussed as follows :

Legislative : The Constitution gives law-making powers exclusively to the Supreme Soviet. Neither the Presidium nor any other organ can make laws. The Presidium, however, exercises, certain powers in relation to the Supreme Soviet. These are :

1. It convenes the sessions of the Supreme Soviet twice a year. It may also convene extraordinary sessions of the Supreme Soviet on its own initiative or on the request of one of the Union Republics. It, however, does not conduct the sessions of the Supreme Soviet.

2. It dissolves the Supreme Soviet in the event of final disagreement between the Soviet of the Union and the Soviet of Nationalities and orders fresh elections.

3. It conducts referenda on its own initiative or on the demand of one of the Union Republics. This is done to get the verdict of the people regarding a certain matter of vital public importance.

4. It can issue decrees which have the force of law. These decrees must be based on the All-Union laws in operation and must come within their purview.

5. All laws passed by the Supreme Soviet must be signed by the Chairman and the Secretary of the Presidium. This is analogous to the Royal assent in England, or the Presidential assent in India. The Presidium has, however, no executive veto. Simply laws passed by the Supreme Soviet are published under the signatures of the President and the Secretary of the Presidium in all the different languages of the Union Republics.

Executive : 1. During the recess of the Supreme Soviet, the Council of Ministers is responsible to the Presidium. It can appoint or remove the different Ministers on the recommendations of the Chairman of the Council of Ministers.

2. During the intervals between sessions of the Supreme Soviet of the U.S.S.R. the Presidium can declare war in the event of military attack on the U.S.S.R. or when a friendly State is attacked by another State, if the U.S.S.R. by a treaty is committed to go to

the help of that friendly State in such a case. The Presidium exercised this right during Second World War when it declared war against Germany.

3. The Presidium represents the Soviet Union in its relations with foreign States. It ratifies and denounces treaties with other countries. It appoints and recalls the diplomatic representatives, of the Soviet Union to foreign States. It receives the credentials and letters of recall of diplomatic representatives accredited to the Soviet Union by foreign States.

4. It appoints and replaces the Supreme Command to the armed forces of the U.S.S.R., declares partial or general mobilisation.

Judicial : 1. The Presidium of the U.S.S.R. interprets All-Union Laws. It explains their purposes, the duties they impose and methods of properly applying their provisions. It is a purely judicial function which in other federations is performed by the federal judiciary.

2. It exercises the power of reprieve and pardon over all persons sentenced by the highest court in the country. The Presidium can annul the actions of the Council of Ministers of the U.S.S.R. and also of the Council of Ministers of the Union Republics if they do not conform to the Union Laws. The Presidium thus sits in judgment over the actions taken by the executive.

Miscellaneous Functions : 1. It bestows decorations and titles of honour, military distinctions and other honours on the distinguished citizens of the U.S.S.R.

2. The constitution grants immunity to the Deputies against arrest. No Deputy can be arrested without the consent of the Supreme Soviet or if the Supreme Soviet is not in session, without the consent of the Presidium.

Constitutional Position of the Presidium : The Presidium of the Supreme Soviet is a strange innovation of the Stalin Constitution. According to Karpinsky, the Presidium by virtue of powers granted to it is the highest permanently functioning organ of state power of the Soviet Union. Stalin named it as the collegial President of the U.S.S.R. It has strange constitutional significance. A body corresponding to it is not found in the constitutional set-up of any other country. The Presidium is responsible to the Supreme Soviet for all its decrees.

The Presidium of the U.S S.R. performs legislative, executive and judicial functions at the same time. Its powers to summon and dissolve the Supreme Soviet, to appoint and dismiss high diplomatic Representatives and military command and to bestow honours and titles' remind one of the powers of chief executive heads like the King or Queen of England or the President of India. Its powers to declare

war or peace, and to ratify international treaties and agreements remind one of the powers of the U.S. President and the Congress. Its power to interpret laws and invalidate the actions taken by the executive remind one of the Supreme Court of India, and the United States. All this indicates that the powers of the Presidium of the Supreme Soviet violate the principle of 'Separation of Powers' which in varying degrees is the basis of most of the constitutions in the world. The Marxists, in fact, do not accept this theory according to which the functions of law-making and interpreting of laws should be vested in separate and independent bodies. The Marxists believe that every State is a class-State and power in every State is wielded by the dominant economic class. Since the Union is a State of workers and peasants, both laws and interpretation of laws should reflect the will of the proletariat. They believe that the Presidium alone can interpret the intention of laws as expressed through the Supreme Soviet, a representative body of the proletariat.

Whatever may be the constitutional position of the Presidium, it occupies a pivotal position in the governmental structure of the U.S.S.R. Although theoretically the Presidium is a sort of Standing Committee of the Supreme Soviet and it is to perform all the functions of the Supreme Soviet during its absence, yet in actual practice it dominates the Supreme Soviet. The Supreme Soviet is an unwieldy body. It meets only twice a year and that too for short periods of a week or so. Most of its functions are, therefore, performed by the Presidium which takes all the decisions that are formally ratified by the Supreme Soviet without any hesitation. It may also be remembered that decisions taken by Presidium are those which have already been taken by the Presidium of the Communist Party of the U.S.S R. In most cases, some persons are members of both the bodies.

POINTS TO REMEMBER

The Presidium of the Supreme Soviet is a strange innovation of the Soviet Constitution. It consists of 33 members, all elected by the Supreme Soviet in a joint session. Its term coincides with the Supreme Soviet. It performs a variety of functions in the legislative, executive and judicial spheres. Its powers clearly violate the theory of 'Separation of Powers.' In some respects its powers are similar to those exercised by the King or Queen of England or President of India. In some respects, this body compares with the President of the United States. In fact, it is the Supreme Soviet in miniature -as it performs all its functions when it goes out of session.

Q. 9. Describe the composition and functions of the Council of Ministers of the U.S.S.R. Is it a Cabinet in the real sense or not ?

Ans. The Council of Ministers (called until March, 1946 the Council of People's Commissars) is the highest executive and administrative organ of the U.S.S.R. The Council is elected by the Supreme Soviet in a joint session of its two chambers.

The Council of Ministers is responsible and accountable to the Supreme Soviet when it is in session. During the recess of Supreme-

Soviet, it is responsible to the Presidium. This strengthens the constitutional supremacy of the Presidium.

Composition : The Council of Ministers consists of a Chairman of the Council as a whole, a Vice-Chairman of the Council, a Chairman of the State Planning Commission of the U.S.S.R., Chairman of the Committee on Arts, Chairman of the Committee on Agricultural Products, Vice-Chairmen of these Committees and a number of other Ministers. The number of Ministers is progressively increasing. At present there are not less than 60 Ministers besides. Vice-Chairmen. The Chairman of the Council of Ministers is popularly known as the Prime Minister of the Soviet Union. Mr. Alexi Kosygin is now holding the coveted office.

There are two groups into which the Ministers are classified. There are All-Union Ministers and Union-Republican Ministers. The All-Union Ministers administer those subjects which fall under the exclusive jurisdiction of the All-Union Government, ***e.g.,*** foreign trade, transport and communications, heavy industry, defence industry etc. There are about 36 such All-Union Ministries.

The Union Republican Ministers deal with matters assigned to the joint jurisdiction of the Federal Government and Governments of the Constituent Republics. There does not exist any classification of this nature in any other Federal Government. The function of the Union Republican Ministry is to co-ordinate its work with the corresponding Ministry in the Government of a Union Republic as similar departments exist side by side in the Central Government and the Governments of the Units. Every Union Republican Ministry maintains its representative at the capital of each Union Republic and each Union Republic has a representative at Moscow, who is entitled to attend meetings of the Council of Ministers whenever any matter affecting his own Republic is under consideration. In this way, a close contact is kept between the Government of the Union and Governments of the Constituent Republics.

The Union Republican Ministries, at present, number about 22. The Ministry of Internal Affairs, the Ministry of Higher Education, the Ministry of War, the Ministry of Foreign Affairs, the Ministry of Cinematography, the Ministry of Justice etc., belong to this category.

The Inner Cabinet: The size of the Council of Ministers in the U.S.S.R. has become very large. It is difficult for a body of some 60 persons to take quick and speedy decisions. Hence all the decisions are taken by a relatively smaller body consisting of some 10 to 15 prominent Ministers. It is known as the Inner Cabinet.

Powers : Article 68 of the Stalin Constitution enumerates the powers of the Council of Ministers, which run as follows :

1. Direction and co-ordination of the work of the federal departments.

2. Execution of the State budget and the national economic plans.

3. Administration of the monetary and credit system of the U.S.S.R.

4. Maintenance of public order and protection of the rights off citizens and interests of the State.

5. General supervision of the foreign relations of the U.S.S.R.

6. Direction of the general organization of the Armed Forces, of the country and fixing the annual contingent of citizens to be: called up for military service.

7. Issuing orders and instructions within the limits of their respective Ministries on the basis of All-Union Laws.

8. Finally, the Ministers have the right to suspend the orders, of the executive organs of the Constituent Republics if such orders, contravene federal laws or decrees and to annul orders of the Ministers of the U.S.S.R.

The Council issues decisions and orders on the basis of and in pursuance of the laws of Supreme Soviet and verifies their execution. The decisions and orders of the Council are binding throughout the country.

Nature of the Soviet Council of Ministers : In certain respects the Council of Ministers of the U.S.S.R. has some similarity to a cabinet as it exists in England, France or India.

The Council of Ministers of the U.S.S.R. is elected by the Supreme Soviet which is the All-Union legislature. It is also responsible for its policies to the Supreme Soviet when it is in session and to its Presidium when it goes out of session. It can, therefore, be maintained that the U. S. S. R. has a Ministry responsible to the legislature. On paper, there does not seem to be much difference between parliamentary systems of Soviet Russia and England. In actual practice, however, there is a world of difference between the two systems. In the first place, the U.S.S.R. has no functionary who can be compared to the British or the Indian Prime Minister. There is a Chairman of the Council of Ministers, but he does not hold the same position as is held by the Prime Minister in a parliamentary government. He is neither the leader of a parliamentary party nor the central figure in the Cabinet. He is simply a presiding officer. The Ministers are not his choice. They are elected by the Supreme Soviet so far as the theory goes and by the Communist High Command so far as the practice goes.

In the second place, though the Ministers have a constitutional responsibility towards the Supreme Soviet yet they are responsible to the Presidium to the Communist Party in practice. This is a clear negation of the Cabinet system. Moreover the Ministers are individually and severally responsible to the Supreme Soviet. Even the Supreme Soviet may remove the Chairman of the Council of

Ministers without changing the personnel of the Cabinet. Mr. Malenkov, for instance, was removed from Chairmanship and Mr. Bulganin was elected in his place but the personnel of the Ministry was kept intact.

In the third place, there is no constitutional head in Soviet Union comparable to the British King or the Indian President. The Presidium which is collective President of the U.S.S.R. is an active or powerful body. The Council acts under its direction, supervision and control.

In the fourth place, there is no opposition party which can function as an alternative government and can criticise the policies of the government. The absence of an opposition party in the Supreme Soviet constitutes one of the greatest defects in the Soviet Cabinet system. One party system is a negation of parliamentary democracy. Stalin himself declared in a speech delivered on November 25, 1936, "I must admit that the draft of the new constitution actually leaves in force the regime of the dictatorship of the working class as well as it preserves unchanged the present leading position of the Communist Party." All these facts clearly indicate that the parliamentarianism of Soviet Union is a unique pattern in itself.

POINTS TO REMEMBER

The Council of Ministers is the highest executive and administrative organ of the U.S.S.R. It is elected by the Supreme Soviet in its joint session. It consists of some 60 members. There are two categories of members—All Union Ministers and Union-Republican Ministers. The first category of Ministers deal with purely All-Union subjects and the second category deals with common subjects. The Council of Ministers has a constitutional responsibility towards the Supreme Soviet when it is in session and to the Presidium when it goes out of [session ....It enjoys extensive powers in the administration of the country. In some respects, it resembles with the Cabinet form of government but in many respects it is decidedly different from parliamentary government as it exists in England, France or India.

PROBABLE QUESTIONS WITH HINTS

1. "One is likely to obtain a wholly misleading impression of Russian Government by merely reading the constitution."—*(Munro)* How far is this true of the parliamentary character of the Russian Government ?

(P.U. Sept. 1953)

[For answer refer to features of the Soviet Executive.]

2. Discuss the nature of the Presidium of the Supreme Soviet, Do you agree to the opinion that it has become the real legislature ?

[Discuss with reference to the position of the Presidium.]

"The prime function of the Soviet Judiciary is to protect the social order established by the Revolution against attacks made by individuals and classes hostile to it."

CHAPTER VIII

SOVIET JUDICIARY

Article 102 of the Soviet Constitution lays down that "Justice in U.S.S.R. is administered by the Supreme Court of the U.S.S.R., the Supreme Court of the Union Republics, the Courts of the Autonomous Republics, the Autonomous Regions and Areas, the People's Courts and the Special Courts of the U.S.S.R established by decisions of the Supreme Soviet of the U.S.S.R."

A peculiar feature of the Soviet judiciary is that all courts are based on the elective principle. The highest judicial court is the Supreme Court of the U.S.S.R. Unlike the U.S. Constitution, the Soviet Constitution does not provide for any other federal court except the Supreme Court of the U.S.S.R. The other categories of courts are Union Republican Courts.

The judiciary in the U.S.S.R. has many other features as compared to the judiciary in other federal systems. The Supreme Court of U.S.S.R. does not enjoy any special powers to interpret the constitution. It does not have any judicial veto. It is merely a subordinate agency of the Supreme Soviet. The Supreme Court of the U.S.S.R. is a very large and unwieldy body consisting of 55 judges. This is in contrast with a maximum number of 11 judges pro-Tided for the Indian Supreme Court. The Soviet Constitution says nothing about the number of judges of the Supreme Court. The judiciary in the U.S.S.R. functions mostly on the lines laid down by the Judiciary Law of 1938.

Q. 10. Discuss the structure and functions of the Soviet Judiciary. What are its peculiar features 7

Ans. The judicial system in the U.S.S.R. is quite different from the one prevailing in other countries of the world. All these courts are elective. Like the executive, the judiciary has been subordinated to the legislature in the U.S.S.R. The structure of ?the Soviet judiciary may be described as follows :

The People's Courts : The basic Soviet judicial organ is the People's Court, consisting of a judge and two people's assessors. They are elected by the voters of a district directly by secret ballot for a term of 3 years. They are liable to recall, and are account-able to their electors for their work. The jurisdiction of the People's Courts extends to a number of minor criminal and civil cases. The criminal cases arise out of murder, assault, rape or failure to perform duties imposed by the State. The civil cases arise from damage to public property and minor property rights.

The Territorial Courts : Next in the judicial set-up of the Soviet Union come the Territorial, Regional and Area Courts. The personnel for these courts is elected by the Territorial, Regional and Area Soviets for a term of 5 years and consists of 5 judges each. They are also subject to recall. These courts possess civil and criminal jurisdiction in more serious cases like cases involving the

security of State and embezzlement of Socialist property. They also hear appeals against the decisions of the People's Courts.

The Supreme Court of Autonomous Republics and Union Republics : Next to the Territorial Courts come the Supreme Courts **of** the Autonomous Republics and the Union Republics. These are the highest judicial organs in their respective areas. They are elected by the Supreme Soviets of the Autonomous or Union Republics concerned, for a term of 5 years and consist of 5 judges each. They supervise the judicial activities of all other courts of their respective republics. They have both original and appellate jurisdiction. Their original jurisdiction extends to cases against government officials and high political crimes. The appellate jurisdiction extends, to all civil and criminal cases decided by the courts lower in grade.

The Supreme Court of the U.S.S.R. : This is the highest judicial organ in the U.S.S.R. It is elected by the Supreme Soviet of the U.S.S.R. for a term of 5 years. Article 104 charges the Supreme Court of the U.S.S.R. "with the supervision of the judicial activities of all the judicial organs of the U.S.S.R. and of the Union Republics." The Court consists of 78 Judges and 35 people's, assessors. The number, however, varies from time to time. It functions in five sections—criminal, civil, military, railway and. water transport. It also includes in its members the Presidents of the Supreme Courts of the Union Republics. The Court has both, original and appellate jurisdiction. Its original jurisdiction extends, to cases regarding counter-revolutionary activities, treasons, felony etc. It holds trials of the highest officials charged with State, military, economic or service crimes or cases which have been referred to it by the Presidium of the U.S.S.R. involving legal complexity or political importance for decision. It has power to review and revise the decisions of all lower courts. In fact, its main function is to take appeals from the lower courts and to give final interpretation of the laws compelling the lower courts to follow suit. However, it cannot invalidate any law passed by the Supreme Soviet of the U.S.S.R. and in this respect it differs vitally from the Supreme Court of the U.S.A. or India.

Special Courts : The constitution also provides for the establishment of Special Courts by the Supreme Soviet of the U.S.S.R., in addition to the Supreme Court of the U.S.S.R. Special Military and Line Courts are attached to the Army and Navy and some transport services. The judges of the Special Courts are also elected by the Supreme Soviet of the U.S.S.R. for a term of 5 years.

Procurator-General : The Soviet Constitution provides for the post of a Procurator-General who occupies a very important position in the judicial set-up of the U.S.S.R. The Procurator-General corresponds to the Attorney-General in other countries. But in reality there cannot be any comparison between an Attorney-General and the Soviet Procurator-General. The latter enjoys so vast powers that he forms an integral organ of the State power. Article

113 of the Soviet Constitution says that the "Supreme Supervisory power to ensure the strict observance of the law by all Ministers and institutions, subordinated to them, as well as by officials and citizens of the U.S.S.R. generally, is vested in the Procurator-Genelal of the U.S.S R." The Procurator-General is appointed by the Supreme Soviet for a term of 7 years. He, in turn, appoints procurators for the Republics and other territories, for a term of 5 years-each. This system introduces a highly centralised supervision and control over the entire judicial administration. It is the duty of the Procurator to appeal against all unlawful decisions and actions or the State organs and officials. Every citizen is entitled to complain, to the Procurator concerning any violation of law. There is a difference between a court and a Procurator's office. The courts simply try cases but Procurators investigate and prosecute the criminals and submit cases to the court. They may also enter appeals if decisions are wrong in their opinion.

Peculiar Features of Soviet Judiciary : The Soviet judicial system has a number of peculiar features which distinguish it from the judicial set-ups in other countries. Some of these may be summed up as follows :

1. The judiciary in the U.S.S.R. is not considered to be a separate branch of administration, as it is treated in England, U.S.A. or India. In the Soviet Union the judiciary forms a part of regular administration like any other department of the government.

2. The Soviet judiciary is meant primarily to protect the social and economic system established by the Revolution. The civil liberties of citizens cannot be protected by the courts if they clash with the interests of the socialist system. The general purpose of the Soviet judiciary, on the other hand, is to educate the citizens of the U.S.S.R. in a spirit of devotion to the country and Socialist way of life.

3. Although Article 112 declares the judges to be independent and subject only to law yet they are not so in practice. The elective principle ensures that the judges in all cases are loyal supporters of the party in power. This is in contrast with the practice in other countries. Moreover, an over-all control of the Procurator-General is there.

4. Though the U.S.S.R. is a federation the judiciary there has no right to act as the guardian of the constitution. It cannot invalidate any law of the legislature even if it violates some provision of the constitution.

5. There is no prescribed qualification for judges in the U.S.S.R. Any person entitled to vote, may be elected as a judge of an assessor. All of them are subject to recall.

6. A very peculiar feature of the Soviet judicial system is the absence of lawyers. In this respect the judiciary in the U.S.S.R. differs vitally from the judiciary in other countries. There are no

professional lawyers in the U.S.S.R. Instead, there is a college of advocates functioning under the direct supervision of each court. Its members are bound to give legal advice to the accused persons on stipulated remuneration, or free of charge if the court declared that the defendant is unable to pay,

7. The Soviet law draws a sharp distinction between civil and criminal offences and counter-revolutionary crimes. The latter are dealt with more severely.

8. Capital punishment is abolished except in cases of traitors, spies and wreckers.

9. All higher courts supervise the work of the courts lower than themselves.

10. When the courts hear cases in appeal, assessors do not sit.

There is no denying the fact that judicial system of U.S.S.R. is the best in so far as non-political offences are concerned. But arbitrary and merciless cruelty is employed for political offenders. Political cases are dealt with by a special political police organised under the control of the Ministries of State Security and internal Affairs. This police organisation can send a political offender direct to a labour camp without a proper and fair trial in a court of law. Treason to Motherland is punishable by all the severity of law.

POINTS TO REMEMBER

The judicial organisation of the U.S.S.R. is essentially different from that of other countries. Justice in the U.S.S.R. is administered by the Supreme Court of U.S.S.R., the Supreme Courts of the Union Republics, the Courts of Autonomous Regions and Areas, the Special Courts and the People's Courts. The judges are elected by the Soviets concerned. The lower courts are elected for 3 years and higher ones are elected for 5 years. Besides the courts of various categories, there is an office of Procurator-General. He is entrusted with the general supervision of the administration of justice. He is elected for a term of 7 years by the Supreme Soviet of the U.S.S.R. The judicial system of the Soviet **Union** is characterised by a number of novel features. The judiciary is not independent. It is only a part of regular administration. The main function of the judiciary is to protect socialist order as established by the Revolution. All judges are elected and there are no qualifications prescribed for them.

PROBABLE QUESTIONS WITH HINTS

1. "The Judiciary in Russia is a part of the regular administration."—' *(Munxo).* Elucidate. (*Punjab, 1952)*

"The Soviet, Judiciary is a subordinate agency of the Supreme Soviet." Discuss.

[Discuss with reference to this peculiar feature of the Soviet Judiciary.

"One-Party rule is the plus and not the minus of the Soviet System." —*Samuel Harper.*

CHAPTER IX

THE COMMUNIST PARTY

An understanding of the Soviet constitutional theory and practice cannot be complete unless one grasps the role of the Communist Party of the Soviet Union in the political set-up of the country. The Soviet political system allows only one political party to exist there. This has led many constitutional experts bred up in the western political ideas of democracy with a number of political parties to declare that the Soviet system is only another name for dictatorship of the Communist Party. The basically different economic and social structure of the U.S.S.R., however, does not allow the rule of only one party to become a negation of democracy. The reason for this is that a multiple-party system can-exist only in capitalistic States where there are a number of interests to be safeguarded. Multiple political party system implies that the economic interests of various sections of people are contradictory and that these are represented by different political parties. In the Soviet Union, on the other hand, the application of the Marxist doctrine has led to the elimination of antagonistic economic classes from the Soviet society. Not only do workers and peasants exist there as two friendly classes but their interests also are identical and complementary. Both equally aim at the strengthening of the socialist system. This common interest is safeguarded by the Communist Party of the Soviet Union which alone enjoys constitutional recognition.

Q. II. Discuss the role of the Communist Party of the Soviet Union in the constitutional structure of the U S S.R. Does the role of one party mean the negation of democracy there ?

Ans. The role of the Communist Party in the State structure Of the Soviet Union is so great that without its proper understanding, the study of the Soviet constitutional system is incomplete. Article 126 gives the Party a constitutional sanctity by providing that "most active and politically conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organisations of the working people, both public and State." Again, Article 141 of the constitution names the Communist Party as the only political party which can nominate candidates for elections to the Soviets. The constitution does not forbid the growth of other parties. The constitution gives the right to contest elections to public organisations, societies of working people, trade unions and cultural societies but all of them are non-political in character and are invariably organised by the Communist Party. The role of the party in the governmental affairs of the U.S.S.R, is so great that it is difficult to differentiate

one from the other. The persons at the helm of the party, are also at the helm of the government. All important leaders of the Communist Party are members of the Presidium of the Supreme Soviet or of the Council of Ministers. The bulk of the government employees of all types belong to the Communist Party or are its sympathisers. Every unit of administration is always headed by a Party member. In every factory, in every collective farm and in every establishment there is a Party cell to direct its activities. The Party is thus the ultimate source of all power. The U.S S.R. is a Socialist State of workers and peasants. The Communist Party is recognised as representing these forces in strengthening the socialist structure.

All decisions and decrees are in practice formulated by the Presidium of the Party. Various organs of the government simply ratify them. Again, the Supreme Soviet is the highest organ of State power. The Communist party nominates most of the members of this body. Members of the present Supreme Soviet are Party members. The members of the Presidium of the Supreme Soviet, the Council of Ministers and other bodies are in fact nominated by the Party. The Supreme Soviet simply formally elects them. Even the Procurator-General is some one high-up in the Party. Thus there can never be any conflict between the Party and the government. The Communist Party is, therefore, the central directive force in running the State machinery. It has thus penetrated every root and branch of life in the Soviet Union. While declaring the Draft Constitution in 1936, Stalin said, "The constitution preserves the regime of the dictatorship of the working class, just as it also preserves unchanged the present leading position of the Communist Party." This fact clearly indicates the position and prestige enjoyed by the Communist Party in the Soviet Union.

One-Party Rule and Democracy : It is very often alleged that the rule of one-party in the Soviet Union is a negation of democracy. The Soviet people, however, deny this charge and, **on** the other hand, contend that theirs is the most democratic constitution in the world. The basic reason for their having only one Party, as they put it, is the existence of an identity of interests between all the people. Soviet State is a classless State of workers **and** peasants having identical and common interests.

While defending the monopolistic position of the Communist Tarty Stalin said, "As to freedom for various political parties, **we** adhere to somewhat different views. A party is a part of class, its most advanced part Several parties can exist only in a society in which there are antagonistic classes whose interests are mutuary hostile and irreconcilable...But in the Soviet Union there are no longer such classes.. In the U.S S.R. there are only two classes workers and peasants, whose interests, far from being hostile, are on the contrary, friendly. Hence there is no ground in the U.S.S.R. for the existence of several parties and consequently for the freedom of these parties."

The democrats outside the Soviet Union point out that rule of just one party may easily degenerate into an autocracy and thus destroy democracy. The presence of an opposition party can always check the ruling party from degeneration. For the proper functioning of a true democratic government, an opposition is always essential. The stronger it is, the more wholesome will be the check on the government and the greater the spur to efficient administration. In the U.S S R. no Party other than the Communist Party is allowed to function. There is little chance for a candidate not approved by the Communist Party of winning any election. Hence it is the dictatorship of the Communist Party, pure and simple. In reply to this, the Soviet leaders point out that the Communist Party always indulges in criticism and self-criticism. At every meeting of the Party, the work done is reviewed and mistakes pointed out. New strategy is then evolved to rectify those mistakes.

Moreover, no one can remain in the Party unless he has full support of the people in his area. The masses regard the Party as their own. It is indicated by the vast popularity of the Party. People's faith in the Party is ever on the increase inasmuch as it is under the leadership of the Party that their standard of living has been progressively rising since the Revolution. It is the Communist Party which has brought them prosperity, wealth and honour. It is the Communist Party which has transformed Russia from the position of a wild animal to the status of a highly civilised and industrialised country of the world.

Moreover, the criticism that in the U.S.S.R. there is no possibility of any attack on the administration, is wrong. Very often one finds in the Soviet Press a scathing and trenchant attack on the errors of omission and commission on the part of the administration. Pat Sloan points out that "the people wholeheartedly support the present government and its policy because they see that it works in their own personal interests. But precisely because of that they are strongly critical of every act which distorts the policy and thus reacts against public interest. And for this reason, in the Soviet Press, one can read today the most harrowing stories of inefficiency and abuses of power by the bureaucracy and even by men like the late Stalin and Khruschev.

Thus we see that the one-party rule in the U.S.S.R. is not a negation of democracy. On the other hand, it is a logical corollary to the new social and economic system established there. Here we find the justification of Samuel Harper's remarks that one-party rule is the plus and not the minus of the Soviet System. However, the pattern of democracy there is different from what is understood in other countries There prevails economic, industrial and social democracy besides political democracy. In Capitalist States political democracy alone, prevails and that is hampered by the purpose of the wealthy who occupy all the important positions in the administration, judiciary, military and police and in Parliaments.

POINTS TO REMEMBER

The Communist Party is the only political party in the U.S.S.R.—it has got constitutional recognition—in practice there is almost no difference between the government and the party—the government is the organ to ratify and execute the decisions of the party—however, one-party rule is not a negation of democracy—it is the logical result of the social and economic system of the U.S.S.R.

Q. 12. Describe the organisation of the Communist Party of the Soviet Union.

Ans. The organisation of the Communist Party of the Soviet Union has considerably changed since the meeting of the 19th. Congress of the Party held in October, 1952. Further changes were introduced by the 20th Congress held in 1956. Formerly, the Party was known as the Communist Party of the Soviet Union (Bolsheviks). Now the word 'Bolsheviks' has been abolished. The Politbureau of the Party has been replaced by a Presidium. The Orgbureau has. been abolished.

Following these changes brought about by the 19th and 20th Congress, the structure of the Communist Party may be described as. follows :

1. Primary Party Organs : The basic units of the Communist Party are small organised groups of members in villages, factories, collective farms, universities, mines and other like places. Formerly, they were called cells, but now they are known as the Primary Party Organs. A Primary Party Organ consists of 3 or 4 members. There are over 2 lacs of Primary Party Organs in the U.S.S.R. The strength of the Party really lies here, as these organs are in constant touch with the people at large. Usually, there is one such organ in every village, factory or establishment. The activities of these organs are largely agitational and organisational. They work amongst the masses for the fulfilment of Party programmes.

2. Higher Party Organs : The Primary Organs elect delegates for representation on the city or district conferences of the Party. In turn, these organs elect representatives to the next higher organ in the pyramidal structure. This may be the Regional Congress or the Republican Congress. These organs, further, elect representatives to the All-Union Congress of the Party.

3. All-Union Congress : In theory, the supreme authority of the Party is vested in All-Union Congress. Party rules provide that the Congress should be held every 3 years. However, the Congress met only in 1952 after its last meeting in 1939. The gap was due to war, and later post-war reconstruction. The 20th Congress met in February, 1956.

The Congress lays down the 'Party-Line' which is to be carried out by all the subordinate organs of the Party. This Party-Line is enforced by the Central Committee of the Party which is elected by the All-Union Congress through secret ballot. The 19th Congress

elected a Central Committee consisting of 128 numbers and 110 alternates.

4. The Central Committee : The Central Committee is a very powerful organ of the Party. Though it has to carry out the programme laid down by the congress, it can modify it from time to time **if** need be. **In** view of the big size of the Central Committee, ft formerly elected a Political Bureau and Organisational Bureau, to carry on the day-to-day work. The 19th Congress abolished both these Bureaus, and instead has provided for the establishment of a Presidium of the Central Committee of the Communist Party of the Soviet Union. This must be distinguished from the Presidium of the Supreme Soviet of the U.S.S.R., which is a governmental organ. The 19th Congress elected a Presidium of 23 members and 11 alternates.

5. Secretariat: A Secretariat of the Party is also elected by the Central Committee of the Communist Party. The present Secretariat consists of 10 members,

Membership of the Party : Membership of the Communist Party of the Soviet Union is considered to be a great honour. It is not open to everybody. It has to be earned by working for a considerable time in accordance with the party programmes. Membership of the Party is a great privilege which is conferred only on deserving persons having a sound knowledge of Marxism. It is accorded according to rules to which no exception is allowed. Priests, merchants, landlords, capitalists and persons having capitalist mentality are debarred from membership of the Party. Young people between 18 and 20 years of the age born of working class parents or soldiers serving in the army are given preference. An application for membership must be recommended by 3 or 4 Party members of good standing. A complete watch is kept for the first one or two years over the activities of the new members. Slight suspicion regarding a person can result in his expulsion from the Party.

A high standard of personal conduct is expected from the members. They are not allowed to indulge in excessive drinking etc. They are supposed to serve as model for the general public. Every member is expected to work in accordance with the 'Party Line'. A little deviation cannot be tolerated. Free discussion is permissible inside the Party meeting but no opposition outside the Party meeting is allowed. Every Party worker receives a salary which is approximately equal to the income of a skilled worker in the U.S.S.R. Furthermore, the members are expected to spare no pains in increasing their personal qualifications and utilizing their time and energy in educating the people in Communist doctrines. Periodical scrutinies are also held. Unfit members are purged out of the Party. Major purges took place in 1921, 1926, 1927, 1920 and 1939. In 1939, the system of purges was abolished. But recently Beria, an important member of the Communist High Command along with others was expelled from the Party and afterwards

they were put to death. The 20th Congress of the Communist Party held recently in 1956, has again passed a resolution against Party purges in future. According to Gibbered : "Like soldiers in their regard to discipline, like missionaries in their sense of vocation, Russian Communists are, nevertheless, more self-responsible than the ordinary soldiers and without the missionary sense of divine support."

Features of the Organisation of the Communist Party : The Communist Party of the Soviet Union is claimed to have been organised on the basis of the principle of 'Democratic Centralism.' The principle was approved by the Sixth All-Union Congress of the Communist Party held in 1917. The principle revolves found four cardinal points which may be brought out as follows :

1. All bodies in the pyramidal structure of the Party from bottom to top shall be elected.

2. The Party organs shall be responsible and accountable to their electors

3. All Party-members should observe strict Party discipline. The minority must submit to majority decision.

4. The decisions taken by the higher Party organs shall be binding upon lower bodies and Party members.

The principle of 'Democratic Centralism' as claimed by the Soviet leaders combines the centralisation of authority with the highest ideals of democracy. But critics of the Soviet system point out that the Party organisation is characterised more by centralism, than by democracy, that a few top-ranking Communist leaders dominate the Party and the government, and that any opposition to the leadership is suppressed with an iron-hand.

POINTS TO REMEMBER

The organisation of the Communist Party of the Soviet Union has considerably changed since the meeting of the 19th Congress of the Party held in October, 1952. The world 'Bolsheviks' has been dropped from the Party name. Bodies like Politbureau and Orgbureau have been abolished and replaced by a new body known as the Presidium of the Communist Party of the U.S.S.R. The lowest unit of the Party Organisation is known as the Primary Party Organ, There are then District, Regional and Republican Party Organs. At the top of the pyramid, there is the All-Union Congress which elects a Central Committee. The Central Committee elects the Presidium and the Secretariat. Membership of the Communist Party is a privilege which is conferred upon **a.** chosen few having a sound knowledge of Marxist doctrines. The Party is organised on the basis of 'Democratic Centralism' which aims at the combination of centralisation of control and thorough- going democracy.

"The Soviet Constitution of 1936 has the quality of thorough-going democratism." —*Stalin.*

CHAPTER X

THE SOVIET UNION AND DEMOCRACY

The fact whether the U.S.S.R. is a democratic country or not is a subject of most controversial nature. Whereas the Socialists or Communists regard Soviet Union as a paradise on earth and the one country wherein democracy of the highest order has been achieved, anti-Soviet people condemn it as the worst type of dictatorship. Both Pro-Soviet and anti-Soviet people are equally vehement in their praise and condemnation of the Soviet Union respectively. A wide gulf of difference is created because both the groups view democracy from divergent angles.

If democracy lies in the participation of people in the affairs of government and freedom from material worries and cares, then one shall have to admit that the Soviet Union is the most democratic country of the world. Some 96 to 99 per cent voters take part in elections down from a village Soviet to the Supreme Soviet of the U.S.S.R. All-able-bodied citizens enjoy the right to remunerative employment and the disabled have been guaranteed material security under all circumstances. Unemployment has been completely abolished. Every person has been provided with a reasonable standard of living. Man has been freed from all possible material worries and cates. If democracy lies in the freedom of expression, press and assembly and also in, the existence of a number of political parties struggling for in the politicial arena, then, of course the Soviet Union is far from being a true democracy because these freedoms are subordinated to the cause of Socialism. The fact is that democracy assumes a new significance in the Soviet Union.

Q. 13. "The Constitution of the U.S S.R. is the only thoroughly democratic constitution in the world."—*(Stalin.)* **Critically examine this statement.**

Ans. Stalin in a speech claimed for the Constitution of 1936, the quality of thorough-going democratism. "It is fully democratic because it recognises no reservation and restrictions on the rights of persons such as are found in other constitutions. There exists no division of citizens into active and passive ones, for all citizens are active. It does not recognise any difference between the rights of men and women, residents and non-residents, the propertied and the propertyless, the educated and un-educated." In concluding his speech he said that "while in capitalist countries having antagonistic classes democracy exists only for the propertied classes ; in the U.S.S.R. it exists for all because the old class distinctions have ceased to exist. It is the personal labour that determines the position of any citizen in society."

In certain respects the Constitution **of** the U.S**.S**.R. enshrines a real type of social, political and economic democracy. The Constitution **of 1936** confers franchise on all citizens **who have reached**

the age of 18, irrespective of race, nationality, religion, education or residential qualifications, property status or past activity. All elections down from a village Soviet to the Supreme Soviet of the U.S.S.R. are direct. Age qualification is the minimum as compared to capitalistic States in the world. It is same for males and females. Votes are taken by secret ballot. Every person of 23 years of age can stand for election. Further, the constitution provides for a bicameral All-Union Legislature. The Soviet of Nationalities, the Upper Chamber of the Supreme Soviet, represents the specifier interests of the various nations and nationalities inhabiting Russia. Elections to both the Houses are held by a direct vote of the people. Both the Houses enjoy equal powers in theory as well as in practice. Unlike the Houses of Lords in England, the second House is not the fortress of reaction and vested interests.

Then the Soviet Constitution has granted unprecedented rights to the Soviet citizens. These rights have infused a new spirit in the democracy as established in the U.S.S.R. No capitalistic democracy has given the right to work or right to compulsory and free education.

By making all elections direct, by decreeing that voting shall be by secret ballot, by giving every citizen male as well as female, one and only one vote and by creating wholly elected legislatures, the Soviet Constitution has satisfied all the requirements of democracy.

The foregoing account is only one side of the picture. The critics of the Soviet Constitution refuse to accept this position. They contend that under outward garb of democracy, the Soviet Union retains the dictatorship of the working class and keeps unchanged the political monopoly of the ruling Communist Party.

The constitution, no doubt, gives all the civil and political liberties to the people but clearly provides that all the liberties granted by the constitution will be exercised in the interests of the social order as established by the Revolution. The State does not tolerate any opposition to the Communist creed and philosophy. This is pleaded as denial of true democracy. In a democratic country like England, every individual enjoys the right to express any opinion in favour or against the ruling party.

The existence of only one political party in the U.S.S.R. is said to be another defect in the Soviet democracy. Democracy always expresses itself" through various political parties A democratic government runs best when there is an opposition in the country and the legislature. The opposition keeps the government on the right path and also offers an opportunity to have an alternative government.

As has been pointed out in the introduction to this chapter, democracy is viewed from a different angle in the Soviet Union. Existence of one party is justified on the ground that the Soviet

Union is a classless State of workers and peasants. Hostile economic classes do not exist there. There is, therefore, no need of having a number of political parties. Only one political party is sufficient to represent the community of interests of the Soviet people. People are organised in various groups and associations, like trade unions, collective farms, writers' associations, etc., which keep democracy going on. They discuss matters, criticise policies, rather participate in making of policies. The Soviets manage administration at every Sevel. All these Soviets are elected by people directly.

Thus three fold democracy, *viz.*, social, political and economic democracy has been achieved in the Soviet Union. In the so-called political democracy of the capitalistic States like the U.S.A. and England, no doubt, political rights are equally distributed but the economic opportunities are available to a few only. Without economic independence the value of political rights is belittled to a very large extent.

The Soviet constitutionalists condemn this democracy as ballot-box democracy which in the ultimate analysis is only the dictatorship of a few capitalists since the political power in a class-divided society tends to gravitate in the hands of the economically dominant class. Nevertheless, the Soviet Union is the single country where political democracy is supplemented with economic democracy. The Soviet citizens apart from their electoral rights enjoy material security and a reasonable standard of living.

POINTS TO REMEMBER

The question whether the Soviet Union is a democratic country or not is hotly debated. Some declare it to be the best democracy and other condemn it as a dictatorship of the worst order. In fact, the U.S.S.R. enshrines social, political and economical democracy.

Q. 14. Discuss in brief the system of election in the Soviet Union.

'The Stalin Constitution establishes a genuinely democratic electoral system.' Comment.

Ans. All elections in the Soviet Union are conducted on the basis of universal, direct, equal franchise and secret ballot.

Universal Franchise: All the citizens of U.S.S.R. are entitled to the right of vote at the age of 18 irrespective of race or nationality, sex, religion, education, property status or past activities except insanes or persons convicted by a court of law. It may be noted that the age-limit is the shortest in the U.S S.R. The right of vote is given at the age 21 in India, England and the United State It is given at the age of 24 in France and 26 in Spain.

likewise, the citizens in the Soviet Union have the right to elected at the age of 24 to higher Soviets and at the age of 21 to the local Soviets. This may be compared with the minimum age of 25

laid down by the Indian Constitution for elections to the Lok Sabha and the State Legislative Assemblies and of 30 for elections to the Council of States and the State Legislative Councils. A similar age limit is to be found in the United States for elections to the House of Representatives and the Senate.

The women have equal electoral rights with men. The members of the armed forces and other State employees have both the right to vote and to be elected. This is in contrast with Indian Constitution which does not allow the right to be elected to all those who hold some office, of profit under the government, *i.e.,* members of the armed forces and other government employees cannot contest ejections.

Direct Elections : An important feature of the Soviet electoral system is that all elections in the U.S.S.R. are direct. The representatives from the Local Soviets to the Supreme Soviet of the U.S.S.R., are all elected by the direct vote of the people. It may be noted that the Indian Constitution provides for direct elections for the Lok Sabha and the State Legislative Assemblies and indirect elections for the Rajya Sabha and the Legislative Councils to some extent.

Equal Voting : The Constitution of the U.S.S.R. guarantees equal electoral rights to all irrespective of any consideration. The principle of 'one man, one vote', is strictly followed. There does not exist any system of plural voting. In India, for example, graduates and teachers have additional votes in the election to the State Legislative Councils. In England, too, some persons had more than one vote till the passage of the Representation of the People Act, 1948.

Secret Ballot : The voters freedom of expressing their will is strictly protected through the system of Secret Ballot. This system, however, is -practically found in every democratic country since system of'Public Voting' is considered to be undemocratic.

The Right of Recall : The Stalin Constitution provides for the recall of the representatives, by the majority of yoters in the constituency if they so desire. The electors can keep **a** check on their representatives through the right to recall. Such **a** right is not enjoyed by the voters in India. Certain States of the U.S A. have, however, given this right to the people for the recall of the governors, some high officials and the judges.

The electoral system of the U.S.S.R. appears to be genuinely democratic but the crux of the problem is that there is no free election in the context of the monopolistic position of the Communist Party. It is the Communist Party which mainly nominates candidates to the elections. Although other public organisations like the trade unions, youth organisations and cultural societies can also nominate candidates to the elections yet all bodies are organised and controlled by the Communist Party which according to the Constitution itself is the leading core of all organisations both public and

State. An election front known as the Communist and non-Party bloc is generally created during every general election. Invariably a single candidate is nominated for each constituency. Even though, there may be only one candidate in a constituency, the voting is held. Almost cent per cent voters cast their votes. The Communist leadership of the Soviet Union is very proud of the fact that voters in the Soviet "Union take an active and living interest in public affairs since almost 100% votes are recorded whereas in democratic countries like England and the U.S.A. only 50 to 75% voters record their votes.

The critics, outside the Soviet Union, however, point out that the elections in the U.S.S.R. are farcical. There is a single candidate for which votes are to be recorded. Electors are left with no choice. Cent per cent victory of the Communist and non-Party Bloc is. always a foregone conclusion. Thus the elections in the U.S.S.R. are fundamentally different from what one finds in other countries.

POINTS TO REMEMBER

The electoral system in the U.S.S.R. appears to be highly democratic. All elections are held on the basis of universal, direct, equal franchise coupled with secret ballot. But the critics point out that elections cannot be fair in the context of monopolistic position of the Communist Party. The voters have na choice but to vote for the Communists.

PROBABLE QUESTIONS WITH HINTS

"The Stalin Constitution created **a** democracy in front but not in fact.'—*Munro.* Discuss.

Some persons claim that the U.S.S.R. has been able to achieve the highest form of democracy, while others contend that there is no real democracy in the country. Where does the truth lie ? *(Agra, 1951)*

[For answer refer to the question dealing with Soviet democracy.]

THE CONSTITUTION
of
CANADA

"The various states of the adjoining Republic had always acted as separate-sovereignties. The New England states, New York State and the southern states had no sympathies in common. They were thirteen individual sovereignties, quite distinct from one another. The primary error at the formation of these constitutions was that each state reserved to itself all sovereign rights, save the small portions, delegated. We must reverse the process by strengthening the general government and conferring on the provincial bodies only such powers as may be required for local purposes. All sectional prejudices and interests can be legislated for by local legislatures. Thus, we shall have a strong and lasting government under which we can work out constitutional liberty as opposed to democracy, and be able to protect the minority by having a powerful central government." (Sir *John Macdonald)*

The legal implications of Canada's place in the British). Commonwealth are strictly Canadian, in that they rest on. Canadian public opinion.?' **-Kennedy.-**

CHAPTER I

INTRODUCTORY

The Dominion of Canada is the oldest member of the British Commonwealth of Nations. According to latest Census, the population of Canada is 16,42,000 and its area is 38,51,153 miles out of which water area is 3,01,153 sq. miles. But with the inclusion of New Foundland in the Canadian federation as the tenth Province in 1949, the. population of Canada has increased to 1,35,49,000- and area to 38,45,144 square miles. Out of this total population, about three million people are the original inhabitants of France.

French people founded the colony of Canada in 1603. France was itself governed by despotic kings in those days and the colony of Canada was not an exception to it. In Canada there was an autocratic regime of the Governor, a representative of the King of France. The administration was highly centralised and bureaucratic. The Seven Years' War which broke out in Europe between the French and the English spread out in Canada and the nationals of these two countries began to fight against each other. The English conquered Quebec, and Montreal in 1759 and 1760 respectively and thus the whole of Canada went into the hands of British military commanders. In 1763, the Treaty of Paris which recognised the cession of Canada by France to the King of England was signed. The King of England appointed a Governor for Canada. He was. assisted by a Council and an Assembly. The English law was introduced and a Protestant Assembly constituted, The French were thrown but of office on religious grounds. The administration was inefficient.

The Quebec Act which removed many grievances of the Roman Catholics was passed in 1774. The French law was retained side by side with the English law. The Roman Catholic Church, was given legal status. Membership of the Governor's Council was increased from twelve to not more than twenty-three and not less than seventeen. Legislative functions were vested in the Council but presence of half the members was essential for legislative work. The Council could levy taxes but only for the building of public roads. The English civil law was replaced by the French civil **law.**

The American War of Independence influenced the politics of Canada to a great extent. The immigrants from U.S.A. raised mew questions of political right. Thus a Constitutional Act (Canada Act) of 1791 was passed by the British Parliament. It divided Canada into Upper Canada and Lower Canada. Each part was provided with a separate Governor assisted by a parliament consisting of two Houses—the Council and the Assembly, with at least 7 and 16 members from Upper Canada ; fifteen and fifty members from Lower Canada respectively. The members of the Council were appointed for life whereas the members of the Assembly were elected for four-year term. The bills passed by the Parliament were sent to the Governor for assent. But the British Government could revoke them within two years after the assent of the Governor. Equality of religious freedom was ensured.

This Act could neither satisfy the British population of Upper Canada nor the French population of Lower Canada. There were frequent deadlocks because the Council was dominated by the British interests and the Assembly was packed by the French representatives. The problem was obviously more racial than political. In Upper Canada, a privileged class dominated the administration and the people wanted to get rid of it. Besides this, the powers of the executive were not clearly defined and it was thus irresponsible.

The British Government sent Lord Durham 'as Governor-General armed with vast powers to meet the situation. He was asked to recommend a suitable system of government in "Her Majesty's North American Possessions." After a careful study he recommended, the Federal Union of Canada with a strong centre and cabinet government responsible to the legislature. The government to be created thus should be internally sovereign. He advocated that there should be a definite demarcation of legislative powers between the Colonial and British Parliament in respect of Canada.

The Union Act of 1840 : The British Parliament passed the Union Act in 1840 on the basis of recommendations made by Lord Durham. The Lower and Upper Canada were united. The executive powers were vested in the Governor. A legislature consisting of two, Houses—Council and Assembly, was established. Upper and Lower Canada were given equal representation on the Assembly. The executive was made responsible to the legislature.

This Act produced far reaching effects by establishing Cabinet Government responsible to the legislature, because the position of the Governor was reduced to that of a constitutional head. Moreover, the Canadian Legislature was given the right to formulate its economic policy. But this Act also failed to satisfy the British and the French population of Canada. French minority resented the domination of the British majority in the legislature. Again, the system was defective because it tried to put together the two hostile

groups under a unitary form of government. Federal form of government was the real necessity. Almost every province had welcomed the idea of federation. So representatives from various provinces met at Quebec on October 10, 1864 and passed some seventy-two resolutions. These resolutions stressed importance of a federation for Canada. But on account of the evil consequences of Civil War in America, they[1] agreed to have a stronger central government—as compared to American federal government. The British Parliament accepted the proposals and passed the British North America Act 1867. This Act made Canada a Dominion and established a federation. The present constitution of Canada is bassed upon this Act.

The main features of the British North America Act are:

(i) The Act vests the executive powers in the Crown which is represented by the Governor-General of Canada.

(ii) The Governor-General is to be the constitutional head and has to act on the advice of the Cabinet.

(iii) The Cabinet is responsible to the legislature.

(iv) The House of Commons, the lower House of the Canadian Parliament, is directly elected on the basis of population.

(v) The Senate, the Upper House of the Canadian Parliament, has been deliberately made a Secondary House and is composed of nominated members.

(VI) The provinces are given limited powers and the residuary powers reside with the federation government.

(vii) The Supreme Court is the final court in criminal and civil cases but unlike U.S.A. it cannot interpret the constitution and has no power of judicial review.

(viii) The judges and the commissioners are nominated by the Governor-General-in-Council.

Since 1867, there have been many developments in the constitutional history of the country. This period can be divided into two parts, *i.e.,* from 1867 to 1914 and from 1914 to date. During the first period, Canada developed into a sovereign and independent state especially in internal affairs. During the second period, it achieved autonomy in her foreign relations. Until 1914, the Dominion of Canada was not enjoying independence in her diplomatic relations with other countries. It was supposed to obtain necessary permission for negotiating commercial treaties with other countries from the Imperial government. Thus, practically, it had no freedom in foreign affairs. The Imperial Conference of 1926 defined the status and the mutual relations of the Dominions as "autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs though united by a common allegiance to the Crown and freely associated as members of the British

-Commonwealth of Nations." The Statute of Westminster which gave a legal recognition to the resolution passed by the Imperial Conference was passed in 1931.

The Statute of Westminster, 1931 made the Dominion of Canada along with other Dominions of the British Commonwealth of Nations, externally sovereign. Canada can, therefore, have direct diplomatic relations with foreign countries and can conclude political and economic treaties with them. It can also decide independently, whether to participate in war or to remain neutral. It is up to the Canadian Parliament to recognize foreign states or not. It has achieved so much independence that it can even secede from the Commonwealth.

But there are still certain restrictions on the sovereignty of Canada, *e.g.,* **the Canadian Constitution can be amended by the British Parliament only. It is only formal because the latter cannot amend the constitution against the wishes of the people and Government of Canada. Thus the restrictions, have been voluntarily accepted by the Dominion and it can, remove them at any time. Prof. Kennedy has summed up the position of Canada in these words : "One thing is certain, that the legal implications of Canada's place in the British Commonwealth are strictly Canadian, in that they rest on Canadian public opinion while changes may come, if desired solely and exclusively through Canadian action,. . . . for better or worse and outside the understanding even of wise men—Canada is a Democracy."**

"For Federations give to the central authority, the extensive powers enjoyed by the Dominion Government in Canada." —*Dawson*

CHAPTER II

NATURE OF THE CONSTITUTION

The present Constitution of Canada owes its origin to the British North America Act, 1867. This Act together with subsequent amendments and the decisions of various Imperial Conferences, in particular, the Westminster Statute of 1931 forms the basis of the Canadian Constitution. New practices and conventions have been established. Today the Constitution is quite different from what it was envis aged in the Act. Canada is the first country which has blended parliamentary form of Government with federal one. The reason for this is that the fathers of the Constitution wanted to set up the British system of government and, the federal form was necessary because of mixed population of Canada.

Q. 1. What are the salient features of the Canadian Constitution ?

Ans. Canada is a dominion and a member of the Commonwealth bf Nations. It is a federation. The Queen is the head of **the** State, **Who** is represented by the Governor-General and is advised by a responsible ministry in the conduct of the business of State. The Constitution of Canada originally was given by the British Parliament but has evolved also. The Constitution **as it** stands in the original document established an autocratic rule but in practice it has become a democratic parliamentary system. There is, thus, great divergence between theory and practice like **that** in the British Constitution. The main features of the Constitution are as follows :

1. Written : The Constitution is primarily a written one. There is, however, no single constitutional document like the Indian Constitution, but the Constitution consists of many elements.

(i) The British North America Act, 1867 is the starting point. Subsequently eleven amendments have been added to it ; the last one was added in 1952. The Act itself is a brief document consisting of 147 sections and covers about 35 printed pages. It was passed by the British Parliament. The eleven amendments also have been passed by that very Parliament. This document does not cover many vital things. In some respect it is either vague or even misleading. It establishes an autoratic rule of the Governor-General as representative of the Queen but in practice, it is constitutional democracy. The Constitution of seven.

Provinces of Canadian federation rests outside the Act, because they joined it after the Act was promulgated.

(ii) Statutes passed by the British Parliament expressly referred to Canada or Empire and are not disallowed by the Canadian Parliament. Their number is about 130. But, the number of such really vital statutes is very small. These are like Colonial laws. Validity Act, Statute of Westminster or Acts passed by the British Parliament at the request of Canadian Parliament such as the Declaration of Abdication Act, 1936.

(*iii*) British Orders-in-Council form another part. These include among other orders admitting the North-West Territories. Rupert's Land, British Columbia, Prince Edward Island to the Dominion of Canada.

(iv) *Constitutional Statutes* **: These occupy a mid-way position between the British North America Act and the Canadian Statutes. These include statutes, passed by the Canadian Parliament but which cannot be amended by it, i.e., the Alberta and Saskatchewan Acts etc. They can be amended by their legislatures,**

(v) Act of Canadian Parliament and Provincial legislatures constitute another element. These have been described as 'organic laws'. These are of Constitutional importance not by their form but because of their contents. To take an instance, Dominion Act of 1875 establishes the Supreme Court of Canada. Other similar Acts have, created provinces or changed their boundaries. The House of Commons Act provides that no person holding an office of profit under the Crown can be a member of the House, etc.

(vi) Judicial decisions also constitute an important part of the Constitution. The privileges of the parliament and its members are determined by such decisions.

2. Rule of Law : The principles of Rule of Law as interpreted in Britain and particularly that part which deals with the prerogatives of the Crown form an important part of the Constitution of Canada. The office of the Governor-General was created by the King in 1878 by the exercise of his prerogative. The treaty-making, declaring war, and making peace are King's prerogatives. The Nova Scotia Constitution allows the English Rule of Law to be applied by its courts as the need arose. Similarly, immediately after the separation of Upper and Lower Canada in 1791, the Upper Canada passed a law recognising that the English civil law shall be resorted to in case of controversy relating to property and civil rights. No attempt has been made by the federal parliament or state legislatures to determine their, rights by statute. The English jaw is depended upon.

3. Conventions : Conventions, usages, practices and precedents play an important role in the Canadian Constitution.

have replaced the original law and have thus oiled the wheels of democracy. They have changed the constitution from an autocracy to a democracy. The working of Cabinet System is governed by conventions as in Britain. The office of the Governor-General has become merely a constitutional office, with no real powers through conventions. These conventions have "supplemented, modified, and in some instances preceded many of the other parts."

4. Federal : Canada is a federal union of 10 provinces. **The** tenth province, New Foundland joined the federation only in 1949. The British North America Act established a strong centralised federation. The powers of the federal government were enumerated in Section 91 and of the provinces in Section 92 Both were made co-ordinate, none could over-ride the other. The federal government has been given jurisdiction over 31 items. Three items like agriculture, immigration, old-age pensions etc., have been placed in the concurrent list. With respect to agriculture and immigration, the dominion law over-rides the provincial law in case of conflict but in case of old age pensions, the dominion law cannot over-ride the existing or future provincial law on that subject. The Federal Government has been given residuary power or general power to legislate for 'peace and order and good government' for Canada. However, in practice this power has been interpreted by the Courts conservatively and they have not allowed to accumulate much powers into the hands of the federal government. All the same the Federal Government did exercise wide powers after the 2nd World War and during the Korean War under emergency, though similar powers exercised by it during economic depression of 1929-31 under its, 'New Deal Legislation were declared *ultra vires* by the courts. **The** Provincial Lt. Governors are appointed and dismissed by the Governor-General. There is one single judicial set-up. All the courts function under the supervision of the Supreme Court of Canada. The Federal Government has further increased its powers by grants-in-aid and loans, given to the provinces.

5. Parliamentary System : The Canadian Constitution has established a parliamentary system of government. The Queen is head of the State and is represented by the Governor-General who is. appointed by the Queen on the advice of the Canadian Cabinet. The Cabinet is formed by the majority party in the Canadian House of Commons and is responsible to it. A similar system of government prevails in the provinces. It rejected the American system of Presidential form of Government.

6. Supreme Court ; The Supreme Court heads the judiciary in Canada and is the highest Court in the Dominion. It exercises, the power of 'Judicial Review' and can declare the laws of the Dominion Parliament and State Legislatures *ultra vires.* Till 1949 the Supreme Court was not really 'supreme' because appeals in civil cases could lie before the 'Judicial Committee' of the Privy Council in London. But in 1949, the jurisdiction of the Privy Council was

abolished. Today, the Supreme Court is the court of final resort in Canada.

7. Amendment : The Constitution is rigid because the method of amendment is difficult. The British North America Act can be amended primarily by the British Parliament on the request of the Canadian Government (Cabinet or Parliament). The British Parliament has not made any change since 1867 without such recommendations. Two amendments were made in the 19th century on the recommendations of the Cabinet, none during the twentieth century. The Canadian Parliament put on record in 1871 that no change in the constitution should be sought by the executive without the previous consent of the Parliament. This has become, thus, the prevailing method of amendment.

There has been another difficulty in this matter. Can the Parliament alone make this request or should it consult the provincial legislatures before making such request ? A theory was developed that they should be consulted. But it has neither legal nor historical basis. Till 1907 no such consultation took place. The 1907 Amendment was passed after consultation of all provinces. Subsequently out of the 9 amendments, it was only in case of 2 (1940 and 195l) that such consultation took place. So there is no legal obligation on Canadian Parliament to consult the provincial legislatures before recommending an amendment.

Another question is : Could the British Parliament turn down such request of the Canadian Parliament ? The practice and conventions prove that British Parliament shall not refuse such a request. Its power is a formal one.

In 1949, an element of flexibility has been introduced in so far as the Canadian Parliament has been given the power to amend the constitution itself except in the following matters

1. Provincial matters or subjects.
2. Constitutional guarantees regarding education.
3. The use of English or French language.
4. The five year term of the House of Commons.
5. The annual term of the House of Commons.

POINTS TO REMEMBER

(!) The British North America Act and subsequent eleven Amendments thereof **form primarily the Constitution of Canada. (2) But there are other elements as well. Acts of Dominion Parliament, Statutes of British Parliament, Orders-in-Council, Acts of Provincial Legislatures, etc. (3) Conventions play an important role. They have changed autocracy into a democracy. (4) Rule of Law is resorted to by the Canadian Courts to guarantee civil rights of people. (5) It is a federation with strong centre. (6) It is a Parliamentary System with Queen as head of State, represented by the Governor-General appointed on the advice of the Canadian Cabinet. (7) The Supreme Court is the final Court and possesses powers of judicial review. (8) Constitution is rigid besause it**

can be amended by the British Parliament on the recommendation of the Canadian Parliament. But now an element of flexibility has been introduced since the Canadian Parliament has been given power to British North America Act.

Q. 2. Give a brief account of Canadian federation. Clearly bring out its unitary tendencies.

Indicate the main points of difference between the American, the Canadian and the Indian schemes of federation.

Compare and contrast the powers of a Province in Canada with that of a State in America.

Ans. The British North America Act established a federation in Canada in 1867. The federation consists of 10 provinces and 4 territories of districts. It was the price paid for achieving unity of various provinces with different racial stocks, economic development, language etc. At the same time, it has not followed a pattern of American federation. The following points indicate a clear distinction between the Canadian and American Federations :

(1) Canada adopted a Parliamentary System as opposed to Presidential System of America.

(2) The provinces of Canada came into the Union at different times and under different conditions. All provinces do not enjoy equal rights while all States are equal in the U.S.A. To take an example, when Manitoha, Alberta and Saukatchewan joined the federation, the Dominion government retained the ownership in land in these territories, though later on it had to surrender it. Special conditions have been imposed on Newfoundland regarding education. The provinces do not enjoy equal representation in the Senate as in America. This inequality is further exhibited in case of financial and debt relations between the Dominion Government and provinces. Different provinces get different grants-in-aid, subsidies or debt allowances.

(3) The powers of the Dominion Government and the provinces were specifically mentioned in Sections 91 and 92 of the British North America Act respectively. In fact, the Dominion and Provincial Legislatures were made co-ordinate bodies. Powers of the (Dominion Government under Section 91 over-ride the powers of the provinces under Section 92 and the powers of the provinces under Section 92 over-ride the powers of the Dominion under Section 91. In America, the powers of the federal government are delegated and specified in the Constitution and the residuary powers are given to the State.

The Canadian Constitution was framed with the intention of establishing a highly centralised federation. But the Constitution does not stay where its makers desired it to stay. It has grown with the change of circumstances.

The Constitution placed formally 29 items under the jurisdiction of the Dominion Government under Section 91. Now there are

31 items. These include : Public Debt and Property, regulation off Trade and Commerce, any mode of tax system, Postal Services, militia, Military, and Naval Service and Defence, Banking, Currency, and Coinage, Unemployment Insurance, Marriage and Divorce, Criminal Law, amendment of certain parts of the Constitution etc.

The provinces are given exclusive powers over 16 items under Section 92. These include : amendment of provincial Constitution except the office of the Lieut.-Governor, appointments of provincial officials, property and civil rights, municipal institution in the provinces, prisons, civil law, administration of justice in the provinces.

The powers mentioned above are exclusive powers of the Dominion and provincial legislatures. One over-rides the other in its respective sphere.

Then there are three current **powers—**agriculture, immigration and old-age pension. Bo th the Dominion Parliament and provincial legislatures can make laws on these items ; in case of conflict, the Parliamentary laws replace the provincial laws.

Education is treated as a category in itself, in each province the Legislature can make laws exclusively in regard to education. But no such law would prejudicially affect any right or privilege with respect to denominational schools, etc. An appeal can lie to the Governor-General against an act or decision of a provincial authority, affecting any right or privilege of the Protestant and Roman Catholic minority. The Governor-General may issue necessary instructions to the provinces for protection of such rights. If provincial authorities do not execute his instructions, the Dominion. Parliament may make remedial laws in this respect.

The residual powers lie with the Centre as in India, while in the U.S.A., they lie with the States.

The Dominion Government was given the power to legislate for peace, order and Government of Canada', in any matters other than those given to the provinces under Section 92. The powers of the Dominion Parliament mentioned under Section 91 were merely to ensure greater certainty of the competence of Dominion Parliament rather than restrict its generality. However, in practice the courts have been very conservative in interpreting this generality of power of the Dominion Government. So much so that the 'New Dear legislation passed by the Dominion Government to meet the emergency created by the economic depression was declared *ultra vires* by the courts. However, during the two world wars and also during the Korean War, the Dominion Parliament exercised wide over riding powers on the plea of emergency. But the question is still-undecided as to how long the emergency can exist and the Dominion Government can extend itself in the provincial field. It will mainly

depend upon the courts. During normal times, the general power of the Dominion Government, in the words of Dawson, slumbers.

The Constitution had given to the Governor-General the power to disallow a provincial Act on the advice of the Dominion Cabinet and in particular of the Minister of Justice. Thus the Dominion Government had a revisory power over provincial Acts. This power was intended to cover the laws outside legal purview. It was intended to cover such unjust and confiscatory legislation against which safeguards were provided in the American Constitution. The Canadian provinces could abolish or confiscate private property without compensation. After 1893, this power has been seldom exercised and surely not on the basis of injustice or unreasonableness. In fact, powers of provinces have increased. The period from 1893 to 1918 was one of immense increase of provincial powers. Today the provinces are units with a life and purpose of their own.

The Governor-General was given the power of appointment and dismissal of the Lieut.-Governors of provinces. The power of dismissal has been exercised only twice so far and has fallen in disuse.

Though the powers of the provinces have increased widely during the 20th century, yet a new development has taken place giving wider control to the Dominion Government over provinces. This is a general development in all federations. The financial resources of provinces were too inadequate to meet the requirements of a welfare State. They had to depend more and more upon the Dominion Government. Naturally, the grant of money by the Dominion results in supervision of policies of the provinces. These grants have taken many shapes : debt allowances, annual grants to support provincial governments and legislature, *per capita* grants, special grants-in-aid, etc. In America 14% of the budget of States flows from the federal grants and consequent control of policy. So in India, the Central Government grants loans and grants-in-aid to the States.

In the judicial field, Canada follows Indian pattern as opposed to the U.S.A. system. All courts function under the hegemony of the Dominion Supreme Court.

The provinces have the right to amend their own Constitution except the office of the Lieut.-Governor.

Thus the Canadian Constitution started as a highly centralised federation but with the evolution of the Constitution, the provinces have acquired wide authority. Kennedy has well summed up the situation :

"Canada is a federation in essence ; that the Central **National Government is in no sense a delegation ; that the provincial governments are in no sense 'municipal' and that the national and local**

governments exercise co-ordinate authority and are severally sovereign within the sphere specifically or by implication constitutionally granted to them."

POINTS TO REMEMBER

(1) Canada is a federation consisting of 19 provinces and 4 districts. (2) It started as a highly centralised federation but the provinces have acquired wide powers and today both are co-ordinate bodies. (3) There is judicial review. (4) The provinces do not enjoy equal status. (5) Lieut-Governors are appointed by the G. G. (6) General powers of the federal government slumber during normal times. The interpretation of such powers during emergency will depend upon courts. (7) Grants-in-aid have increased the influence of the Centre over the provinces. (8) Provinces can amend their own Constitutions. (9) Both are co-ordinate authorities. With the evolution of the Consitution, however, the provinces have acquired wide authority.

"The administration of public affairs is conducted by ministers responsible to parliament and the Governor-General acts by ' their advice. By Convention, his appointment is subject to the approval of the Government of the day and his functions as an Imperial Officer are formal rather than real."

—Borden.

CHAPTER III

THE FEDERAL EXECUTIVE

Q. 3. Describe the powers and functions of the Governor—General of Canada.

Describe the powers and prerogatives of the Governor-General of Canada. In what sense does he represent the Crown ?

Give in outlines the status and powers of the Crown Representative (Governor-General) of Canada.

Ans. The State of Canada is headed by the Canadian Crown and not by the British Crown. The Crown is represented by the Governor-General as head of the State. The Governor-General **is.** appointed by the Canadian Crown on the advice of the Canadian Cabinet. Till 1952, the Governor-General came from the mother country. In 1952, a Canadian native, Mr. Vincent Massey, was appointed as G.G.

His term of office officially is six years, but customarily it is 5 years, though sometimes it has been seven years too. He gets a salary of £10,000 a year (348,666.87) plus other allowances amounting to $200,000 p.a.

Powers : Canada has a parliamentary form of government. The head of the State is the Governor-General who has formal powers. The real powers are exercised by the Cabinet which is tesponsible to the legislature. The Governor-General has been given powers by the Letters Patent, Instrument of Instructions and various Statutes. A new Letter Patent came into force on 1st October, 1947 in which it was laid down that the Governor-General should exercise his powers with the consent of his ministers. His powers may be discussed as follows :

1. Executive: The Governor-General appoints the Lieutenant Governors of the Provinces. But once appointed they function as direct representatives of the Crown. He also appoints the Speaker of the Senate, Judges, Commissioners, Justices of Peace, Represen-

tatives to the United Nations Organisation, and other diplomatic representatives etc. He concludes minor treaties with other countries which are not signed by the Crown directly. He administers the oath of office in various officials. He can also remove them. He can disallow the laws passed by the provincial legislature. But in all these matters, he acts on the advice of his Cabinet. He is the commander-in-chief of the Dominion armed forces. He nominally appoints the ministers **of** the Cabinet who hold office during his pleasure. But actually he summons the leader **of** the majority party in the House of Commons and designates him as Prime Minister. The Prime Minister then selects his colleagues who are appointed by the Governor-General without any hesitation.

2. Legislative : The Governor-General summons, prorogues and dissolves the Parliament (the House of Commons) but he exercises these powers on the advice of the Cabinet. He cannot dissolve it at his discretion before the expiry of its full term, but the Prime Minister can demand its dissolution even before the expiry of its normal term. He never attends the meetings of the Cabinet which are presided over by the Prime Minister. Every bill passed by the Dominion Parliament must have his assent before it becomes law. He can reserve a bill for His Majesty's pleasure. But this power has no significance today because he has to act on the advice of the Canadian Cabinet and not that of the British Cabinet. He can disallow the laws passed by the Provincial legislature on the ground of their being unconstitutional or illegal. But this power has also lost its previous significance because he must have the consent of ,the Dominion Legislature before doing so.

3. Judicial: As the representative of the Crown, he exercises the Crown's prerogatives of reprieve and pardon. He can reprieve and pardon any person and can remit fines, penalties or forfeitures imposed upon persons who have committed an offence against the Dominion of Canada. But in cases which affect the interests of the British Empire he has to consult either the Privy Council or the British Cabinet. Thus this prerogative is also not absolute.

The Canadian Governor-General has powers almost in every sphere but on closer scrutiny these are found to be more formal than real. He is thus only a titular executive head having practically no effective powers. The powers which he originally enjoyed have either lost their importance, because of change of time and have become obsolete or are exercised on the advice of the Canadian Cabinet. In the words of Dawson, "the specific grants of the Governor-General's authority and those powers which were his through usages were either formally altered or more commonty quietly abandoned. Precedents fell rapidly away on the one side and multiplied on the other. The driving force behind the movement was the insistence by Canadian people of self-government on a greater measure." His position resembles that of the King of England but he lacks the latter's prestige, influence and royal

dignity. When the King visits Canada, he acquires all the functions of the Governor-General, Thus his powers are delegated. His position is even lower than that of the Governor-General of India in the pre-independence days because the latter enjoyed many real powers. His powers are only to advise, warn and encourage the Canadian Cabinet. All decisions are taken by the latter. He must be politically neutral. If he possesses a strong personality, he may exercise influence upon the Cabinet.

Besides, he performs some functions independently, which add dignity to his office. He is head of the Canadian society and is supposed to exercise moral leadership. Greater emphasis is laid on his role in the field of art, literature, music, youth movements, universities, theatre, and similar other spheres of national life. He is ceremonious head of the State. He is to inaugurate schools, hospitals, lay foundation stones, and carry out tasks which the Queen does in the U.K.

He has to offer his services as mediator or conciliator between bodies of various political parties when occasion demands. Intervention of such kind is possible in emergency only. For example, the G.G. held such a meeting in 1917 and discussed the questions of conscription, formation of a coalition and avoidance of general election during the war.

He acts as quasi-diplomatic agent on the advice of the Canadian Cabinet. He receives foreign dignitaries and visits other States.

POINTS TO REMEMBER

The Crown is represented by the Governor-General who is a constitutional head in Canada. (2) The Governor-General is appointed by the British Crown on the advice of the Dominion Government. (3) He enjoys executive, legislative and judicial powers but they are formal and not real. (4) The Cabinet which is responsible to the legislature is the real executive and the Governor-General acts on the advice of this Cabinet. (5) He resembles the King of England but toe lacks the latter's prestige and royal dignity.

Q. 4. Describe the formation, position and working of the Cabinet in Canada. Discuss its relations with the Legislature and the Governor-General.

Ans. By the British North America Act, 1867, **the** Privy **Council** was provided to assist the Governor-General in the discharge of his duties. Due to its large membership, the Gover**nor**-General began to select a small committee out of it which enjoyed his confidence and which later on began to be known as the Cabinet. It is the Cabinet now which advises the Govern General and not the Privy Council. Every member of the Cab is made **Privy** Councillor. Thus all the members of the Cabinet are Privy Councillors but all the Privy Councillors are not the **taembers** of the Cabinet. At present the number of Privy Council lors is eighty-one. A distinction may also be made between the

Ministry and the Cabinet. The Cabinet is the inner part, the policy-making part of the Ministry. In 1954, the ministry consisted of 34 out of which 21 were the Cabinet ministers. A' Cabinet may have ministers without portfolio. One is always there to represent the government in the Senate. Others may be included to give representation to different sections or one may be unusually able and experienced and yet no longer capable of meeting the heavy demand of departmental work.

Formation : The Canadian Cabinet system is based on the British model. The Governor-General calls the leader of majority party in the House of Commons and appoints him as Prime Minister. In case of resignation of the Prime Minister, the leader of opposition must be called and appointed as Prime Minister. The Prime Minister, then proceeds to choose his colleagues from his party. He has free discretion and is not in any way obstructed by the Governor-General. While selecting his colleagues, however, he is guided by a number of considerations. He may sometimes even sacrifice merit under their pressure. Some of the considerations are as follows :—(1) Canadian Cabinet is generally a federalised Cabinet. Every province must have a representative in the Cabinet. (2) Quebec and Ontario must have generally 4 members each. Out of 4 from Quebec, 3 must be French **Catholics,** and 1 English Protestant. Similarly Northern and Western Outario must have separate representation. (3) Certain portfolios must be shared by certain provinces : Agriculture and Fisheries must **go** to Prairie Provinces and to the maritime Provinces respectively ; finance to Eastern Canada ; French Canadians from Quebec get either public works or Post Office, etc. (4) The Cabinet minister representing his province will command due consideration of **his.** views on matters concerning his province in the Cabinet The appointments to be made by a department in its offices in a province will be made by the minister concerned with previous, consultation of the minister in the Cabinet representing **that** province. (5) Race and religion are other considerations, Roman **Catholics,** Protestants, Irish Roman Catholics, English and French must find representaion in the Cabinet. (6) Ex Cabinet ministers present in the Parliament cannot be ignored either. Thus the formation of the Cabinet is a delicate task and the need of giving representation to 80 varied interests is one reason for such a **big** Cabinet in so small a country. Ministers must belong **to** either House of Parliament. By convention they belong only to the House of Commons except one minister without portfolio, who represents the government in the Senate. There are made some exceptions once a while. For example, in 1925-26, two ministers were from the Senate. In 1954, Senator Macdonald was made **Solicitor**-General and was a member of St. Laurent Cabinet. It a person is appointed from outside Parliament, he must become the member of the Parliament within reasonable time. No limit is fixed. General McNaughten remained a minister for 91 months without being a member of Parliament.

Salaries: A Cabinet minister gets sessional indemnity of $ 8000, plus an annual taxable $ 2000, plus a car allowance of $ 2000, plus $ 1600O a year for miscellaneous expenses. The Prime Minister receives $ 37000 per year.

Characteristics of Cabinet Working: The Cabinet has five characteristic features :

(1) Cabinet responsibility. (2) Secrecy. (3) Predominance of Prime Minister. (4) Sub-Committee-System. (5) Secretariat.

1. Collective Responsibility: The Canadian Cabinet is individually and collectively responsible to the House of Commons. No member can escape the responsibility on the ground that he was opposed to the Cabinet decision. Once a decision has been reached, all members are bound by it. A member must defend the actions of the Cabinet inside and outside the Parliament. If a Minister disagrees with the Cabinet, he may resign. But he has the privilege of explaining his resignation in the Parliament and his first statement must be made there so that the Premier may explain the position of his Cabinet. The Governor-General's permission is necessary for exercising the privilege as the proceedings in the Cabinet cannot be made public without his prior permission, but such permission is never refused. Thus the Canadian Cabinet is a corporate unit standing and falling together as an indivisible whole. Lord Mellourne once remarked : "It does not, in the least, matter what we say, but we must all say the same thing."

2. Secrecy: The proceedings of the Cabinet are kept secret, which is necessary in the interest of political solidarity of the ministry. The people outside should not know about the differences among the members of the Cabinet. Moreover, at the time of appointment, the ministers have to take an oath of secrecy and they are as such bound by it. Formerly, there was no Cabinet Secretariat and no record was kept. But on the recommendations of the special Committee of the Senate, a Cabinet Secretariat was established in 1919, on the lines of one established in England. This, secrecy is violated sometimes by careless, unscrupulous or garrulous ministers who allow certain leakages. Another occasion is when a minister resigns and makes a statement in the House on his differences with the Cabinet and debate takes place, that the secrecy is violated.

3. Prime Minister : The Prime Minister is not merely 'first among equals' *(primus inter pares).* He is the master of the Cabinet. He is the pilot. He selects his colleagues, distributes portfolios, is a link between the Cabinet and the G.G., can advise upon dissolution of Parliament, can dismiss a colleague; etc. Policy of the Cabinet is in fundamentals his policy. He has. special interest and responsibilities in foreign affairs. He tolerates no rivals to this supremacy and he has the means and the will

to superimpose his supremacy. The only limitation upon his authority is that he must retain the confidence of his party.

Functions of Cabinet: The Cabinet is the working instrument of the State. It is that part of government which exercises its real powers and directs its policies. The Cabinet controls both the executive and the legislature. It is link between the G.G., administration and the Parliament. It is the engine of the ship of the State.

Executive : The Cabinet formulates the executive policy of the government. Its members preside over individual departments and are responsible for their supervision, direction and control. They decide all important questions in their departments except major ones which require policy decision and are taken to the Cabinet and decided by it. The Cabinet appoints Investigation Commissions and Enquiry Committees on various administrative problems to ascertain facts and collect statistics. Ministers answer questions about the working of their departments in the Parliament and makes them efficient. They impart vigour, initiative and new outlook to them. The Cabinet thus plans and executes policies. It also co-ordinates the work of various departments. It makes top appointments like those of Ambassadors, High Commissioners, Judges, Senators, etc. It can remove such officers as well. It issues instructions to the representatives of Canada on various international agencies and conference and meetings. It negotiates, signs and ratifies treaties. It may consult the Parliament in this respect. Ratification of treaties is an executive action and consultation of Parliament is optional, and a matter of political strategy or convenience. It advises the G.G. on the appointment of Lieut.-Governor of provinces, disallowance of provincial laws, and on reserved provincial bills. It issues: instructions to Lieut.-Governors. It hears appeals from minorities in provinces on educational questions and may make recommendations to the provinces on those matters.

Legislative Powers : Apparently, Cabinet is a committee of the Parliament or more particularly so of the House of Commons. It is responsible to the latter individually and collectively and can removed by a vote of no-confidence. But, in practice, it has become the master of the Parliament. The latter does what the Cabinet allows it to do. Three factors have been responsible for this change : the Cabinet always enjoys majority in the House; it can demand dissolution of the House at any time and no such dissolution has been refused particularly after 1926 ; the strict party discipline and in the main two-party system. Today the position is that the House has become responsible to the Cabinet, instead of the Cabinet being responsible to the House.

The speech of the G.G. delivered to the Parliament is written by the Prime Minister. He decides upon the choice of the Speaker of the House. The Cabinet decides upon the daily order

of business of the Parliament and the allocation of time to various. matters. All important bills passed by the Parliament are introduced by the Cabinet or are supported by it. It controls all the financial legislation. Not only do money bills require previous consent of the G.G. expressed through a Cabinet Minister to be introduced in the House of Commons but it is also required that a proposal for the imposition of a tax must also be made by a member or the Cabinet. Nor can an amendment to increase tax or appropriation be made except by a minister.

The Cabinet enacts all the 'subordinate' or 'delegated' legislation. The number of such orders-in-council runs into thousands every year. The Cabinet disallows provincial bills, or may advise the G.G. to give his assent or reject some bills reserved for his pleasure by Lieut.-Governors. Legally, there are no limits on the exercise of these two powers by the Cabinet, but in practice, these are exercised only on exceptional occasions. From the beginning to the present only 112 provincial laws have been disallowed, though in many others, provinces were persuaded to make necessary modifications, 65 provincial bills were reserved for signatures of the G.G. and 14 of these became laws. The tendency during the recent times has been to exercise these powers sparingly. Since 1943, no law has been disallowed. During 1925 to 1937 no law was disallowed. Only 16 laws have been disallowed from 1925 up to date and 11 out of these 16 affected the jurisdiction of the Dominion Government.

4. Committee System. The Cabinet like its British counterpart functions through sub-committees. In 1939, there were 10 such committees. Three are most important : Reconstruction, Demobilization and Re-establishment and Defence.

5. Cabinet Secretariat : Till 1940, the Cabinet had no secretarial staff. In that year due to increase in work, a secretary was appointed. He, under the guidance of the Prime Minister, prepares the agenda of Cabinet meetings and circulates the necessary documents and explanations. He notes down the decisions reached at the Cabinet meetings and circultes them to the ministries concerned. The Secretary is assisted by a small staff.

The Cabinet and the Governor-General : The Governor-General does not attend the meetings of the Cabinet but he gets all official information through the Prime Minister. He exercises his powers on the advice of the Cabinet. Constitutionally he can dismiss them if they lose his confidence, but he does not do so because he is not sure to form another government. As a matter of fact, history records no such instance of dismissal. Now he is merely a constitutional head of the State.

POINTS TO REMEMBER

1. **The Canadian Cabinet system is based on the British model. 2. The Reader of the majority party is asked to form the Cabinet and while selecting his**

colleagues, he has to consider many things. 3. The Cabinet formulates the policies and administer them. 4. It initiates all laws in the legislature. 5. The principles of collective responsibility and secrecy are observed. 6. All ministers are members of the House of Commons and are responsible to it only. It can overthrow the ministry by passing a no-confidence motion. 7. The Cabinet has the power to dissolve (he House of Commons.

Q. 5. Discuss the status and position of the Prime Minister of Canada.

Ans. The first stage in the formation of the Cabinet is the selection of a Prime Minister. In theory, the Governor-General of Canada selects and nominates the Prime Minister, but in practice he has no discretion to exercise this power. He has to call the leader of the majority or the largest party in the House of Commons to form the Cabinet. The Governor-General appoints other members of the Cabinet on the advice of the Prime Minister. The Governor-General may exercise his discretion in the formation of the Cabinet when no single party gains a decisive majority in the House. But such cases are rare and there has been no case in recent years.

The Prime Minister, too, does not have an unfettered discretion in the formation of his Cabinet. While making the selection of his colleagues in the Cabinet he has to be very careful and cautious. He must include in his Cabinet the prominent members of his party and must satisfy various provincial, sectional religious, social and functional interests. The Prime Minister of Canada is rightly called the keystone of the Cabinet arch. He is the most outstanding figure in the Government. The members of the Cabinet accept his decisions but this does not mean that he can ignore the wishes of his colleagues. He cannot forget that his strength is due to the support of his party and its members in the Cabinet. The relation of the Prime Minister with other ministers is one of colleagues and not that of subordinates or servants. If a minister refuses to accept the Cabinet decision, the Prime Minister can demand resignation from him or may request the Governor-General for his dismissal. As for example, in 1902, the Prime Minister, Sir Willard Laurier forced the resignation of the then Minister of Public Works, Mr. Tarle since he had some differences with him. The resignation of the Prime Minister brings about the fall of the entire Cabinet. The Prime Minister is thus the creator, preserver and destroyer of the Cabinet.

When his Ministry is defeated in the legislature, he can demand the latter's dissolution before the expiry of its term. He advises the Governor-General on all matters. It is he who recommends to the Governor-General the names of persons for appointment as Lieutenant Governors and for all other important posts. He prepares the programme of the House of Commons. In fact, he is the link between the legislature and the executive. His position has been described as follows. "Still controlling an enormous patronage, able to influence the fortunes of almost every legislation

in his following, concentrating in his hands executive and legislative powers, the Premier exercises a real authority which is greater than that of the President of the United States or any modern King."

The position and powers of the Prime Minister depend much upon his own personality. If he is a man of dynamic personality, he is bound to have his own way. His success depends upon his ability to manage the Cabinet, the House of Commons and the public outside.

The position of the Canadian Prime Minister is stronger than that of the French Premier. The latter is weak because of multiplicity of the political parties. The Canadian Prime Minister generally belongs to a party which has a clear majority in the House of Commons. The growth of the two party system and rigidity of party discipline have also strengthened his hands. He is even more powerful than the American President in peace time. It is said that the Prime Minister's office combines the peculiar advantage of the Premiership as it exists in Great Britain with many of the powers of the American President.

POINTS TO REMEMBER

Functions **of** the Prime Minister : (1) The Prime Minister is the leader **of** the majority party in the House of Commons. (2) He selects his colleagues after many considerations. (3) He is the "first among equals." (4) He advises the Governor-General on all important matters. (5) He recommends names for appointment of Lieutenant Governors and for all other important offices. (6) He is even stronger than the French Premier and the President of U.S.A. in peace time.

"The House of Commons is the busiest painter of Constitutional issues in Canada, and it is rare session that does not leave behind some addition to the gallery of Political Science."
—Dawson.

CHAPTER IV

THE FEDERAL LEGISLATURE

The legislative **authority of Canada vests in the King-in-Parliament. The Parliament consists of two Houses, the House of Commons and the Senate. Constitutionally, concurrence of all the three wings of the Legislature is essential for making laws. But by a long established convention, it is the House of Commons which has emerged as the real Parliament of Canada. The powers of the Governor-General as representative of the King have fallen into disuse. He is now supposed to give his assent to every bill that is passed by the Parliament.**

Q. 6. Describe the composition and powers of the Canadian House of Commons.

Ans. The House of Commons is the lower and popular chamber of the Canadian Parliament. It represents the people and reflects the various trends in national public opinion. It forms the most formidable, effective and indispensable part of the Parliament, It speaks for the people and serves as the "peoples' forum and the highest political tribunal". It forms the government of the day and guides, advises, criticises and supports it. It informs the people **of** the working of the government and educates public opinion. It makes democracy real. It has made the government not **only-** representative but also responsible. It provides a device for peaceful change of government avoiding revolutions, coups or rebellions.

Composition : Till **1946,** the number of members of the House- was not fixed and was changed after every census. Quebec had fixed representation of 65 members and representation of other provinces, was linked with the population of Quebec. However, in **1946,** a new law was passed regulating the membership and representation in the House. This law was further amended in 1952. These laws fix the total membership of the House at 267. However, this may be increased slightly as a result of mathematical calculations devised for representation of provinces. In the 1952 elections, the total number was 265. The main lines of determining representation of provinces are as under :

(1) Yukon and Mackenzie territories have been given one seat each.

(2) The remaining 261 seats are distributed among provinces in proportion to their population.

(3) No province is to get less than the number of Senators from that province.

(4) Representation of a province cannot be reduced by more than 15% from what it was at last census.

(5) The representation of a province shall not fall below that of a province with less population.

(6) If seats are still left out of 261, they are given to provinces having the largest remainder while calculating their share on population basis etc.

The delimitation of constituencies is determined by an Act of Parliament. To avoid gerrymendering, such a bill is scrutinised by a committee with the opposition represented upon it. Two principles have been accepted in delimiting constituencies :

(1) Municipal and country boundaries are followed so far as possible ; (2) rural constituencies have lesser population than urban constituencies.

All constituencies are single-member territorial constituencies except 2 ; Helefax (city and rural) and Queens (P.E.I.) which elect 3 members each.

The elections are held 6n the basis of adult suffrage. Every Canadian citizen of 21 years of age or above possesses the right to Vote. He should have resided in Canada for 12 months preceding; the election and have been ordinarily resident in the electoral district. Judges appointed by the Governor-General-in-Council, lunatics, inmates in jails, persons guilty of mal-practices in elections, returning Officers in each district, Chief and Assistant Chief Electoral Officers do not exercise the right to vote. Right of voting, in provinces, is governed by provincial laws. One man, one vote is the basis of voting. Election is direct and by secret ballot. The names of candidates are placed on the ballot paper in an alphabetical order and the address and occupation of each, candidate are mentioned, but party affiliations are not indicated. Elections are held on one and the same day except for some geographical reasons.

Term *:* The term of the House is five years. But it can be dissolved earlier on a demand by the Prime Minister before the expiry of its full term. Its term may be extended by the Parliament by 2/3rd majority during war, insurrection or invasion. It is seldom that the House runs its full term, four years has become a general rule.

Session : Parliament must be called at least once a year Special sessions can be called by the Governor-General on the advice of the Prime Minister.

Salary : Members get $ l0,000 a year, $ 2,000 of which Represent a tax exempt expense allowance. $60 are deducted per day

for absence during sessions 21 days' absence is, allowed without such cut. Members get a pension also if they serve for about 9 or 10 years in Parliament and if they do not draw a salary from the government in any other capacity.

The Speaker *:* After the general, elections of the House of Commons, the House elects its Speaker and Deputy Speaker at its first meeting. The method of electing the Speaker is a little different from that of electing the Speaker of the House of Commons in England or the Speaker of the House of Representatives in the United States. Whereas the Speaker of the House of Commons in England is elected unanimously by all the parties in the House, **the** Speaker of the House of Representatives is elected purely on party line ; and is generally the leader of the majority party. But in Canada, the position is midway. The Prime Minister proposes **the** name for speakership. It is seconded by another member of **the** Cabinet. The nomination is usually supported by the leader of **the** opposition and the Speaker is generally elected without opposition. But not always so. In 1936, the leader of the opposition, Mr. Bennett strongly disapproved the candidate nominated. A convention has been established that the Speaker should bp elected from both the Canadian races, ***i.e.,*** the English and the French alternatively. Similarly, the Deputy Speaker must be from different r**aces. The** Deputy must possess a thorough knowledge of a language other than one the Speaker knows. Unlike the Speaker of the House of Commons in England, he does not sever his connections with his party. But, in practice, he is impartial and non-partisan. **He** changes with every Parliament. There are exceptions too. For example, Rodolphe Lemienx continued as Speaker in three successive Parliaments. The Speaker is the 'guardian of the powers, the dignities, the liberties and the privileges of the House of Commons' **He,** protects privileges of the House and is its spokesman. He presides over the meetings of the House and can vote only in case of a tie ***i.e.,*** when the House is equally divided. He maintains decorum and discipline in the House and interprets its rules. The Speaker gets **a** salary of $23,000 p**.a.**

The Opposition. The second largest party in the House constitutes the official opposition. The position of the leader of the opposition was recognised officially in 1927. The opposition leader gets the same salary and automobile allowance as a Cabinet Minister.

Speech from the throne : On the first meeting of the first session of every new Parliament, the Governor-General delivers a speech similar to the speech from the throne in the British House **of** Commons. This speech lays down the general policy of the Government.

Relations between the two Houses : The Constitution of Canada gives co-equal powers to both the Houses to be Dominion legislature. Ordinary bills can be introduced in the House but

it is specifically laid down that all money bills must originate in the House of Commons. Again, all Government bills must originate in the House of Commons because the Cabinet members are drawn only from the lower chamber; Theoretically, the Constitution gallows equal authority to the House of Commons and the Senate both in ordinary and financial legislation excepting that the money bills must orginate in the dower House. The Senate can reject or amend any bill passed by the House of Commons. There is no provision for resolving the deadlock between the two Houses except that the G.G. may appoint 4 or 8 additional Senators. But that may not help much because it may not counteract the opposition of the Senate. If the two Houses disagree, mutual decision is arrived at by communicating to each other through messages and not by Conference Committees as is the case in America. But in actual practice, these deadlocks are rare and the Senate never opposes the will of the House of Commons which represents the nation. The procedure for passing a bill is the same as that followed in the British House of Commons. It goes through the same stages, i.e., first reading, second reading, committee stage, report stage and the third reading. Money bills are considered by the committee of the whole House. The budget can be discussed and criticised but ordinary members do not have any power to propose amendment or alteration except that they may propose reduction in taxes. After the Bill has been passed by both the Houses, it goes for assent to the Governor-General who generally gives his assent.

Assent of the Governor-General: All bills passed by the House of Commons and the Senate are referred to the Governor-General for approval. The Governor-General may give his assent in which case the bill becomes an Act. He may withhold his assent and reserve the bill for signification of the Queen's pleasure. This signification of the King's or Queen's pleasure was formerly determined by the King or Queen on the advice of the British Cabinet. But now it is determined On the advice of the Canadian Cabinet. Thus the veto power Of the Governor-General has become obsolete.

Powers *:* The House of Commons is the most vital part of the Parliament. It controls both legislative and financial policy of the Government, The majority party in the House forms the Cabinet. All ministers sit in this chamber and are collectively and individually responsible to it. It can remove them by vote of no-confidence or by rejecting a vital bill initiated by the Cabinet. No money can be raised or spent unless the House agrees to it. The House elicits information from ministers through questions, which are asked three days a week. Supplementaries may be asked but these are rare and are discouraged. Motions and adjournment motions may be moved and/passed. Investigation Committees may be established. It is in this chamber, that the future ministers establish, their claim for leadership. The debates in the House are

illuminating, informative and educative. The Cabinet explains its policies, adjusts or modifies them according to tempo of the House. The opposition criticises the government and keeps it in the alert. The House, today, performs in the main one function, as other popular Houses do in the parliamentary systems, *i.e.,* that of electing the government and criticising it. The strict party discipline, majority with the Cabinet and the right of dissolution in the hands of the Cabinet have reduced its position to that of a watchdog rather than a legislative chamber. Thus, the working of the House has developed strictly on the British traditions.

POINTS TO REMEMBER

(1) The Canadian Legislature consists of two Houses, the House of Commons and Senate. (2) The House *of* Commons consists of 262 directly elected members. (3) It elects its own Speaker and Deputy Speaker who preside over the meetings of the House of Commons. The legislative procedure is the same as is followed in the British House of Commons. (5) Both the Houses enjoy co-equal powers but the money bills must originate in the House of Commons. (6) The bills after they have "been passed by both the Houses are referred to the Governor-General, for his approval which is never refused.

Q. 7. Describe the composition, powers and status of the Senate of Canada.

"The Canadian Senate never possessed either the glamour of an aristocratic and hereditary chamber, or the strength of an elected assembly, or the utility of a Senate representing the federal as opposed to the nationalidea".—(*Marriot*) Examine the statement.

It is said that the Canadian Senate is the weakest and that of the U.S.A. the strongest of the existing second Chambers. Do you agree to this statement ? Give reasons.

Ans. The Upper House of the Canadian Federation is called the Senate. Originally, according to the British North America Act. at consisted of 72 members. Since then, six new Provinces have joined the federation and with their addition, its strength has increased to 102 members (New Foundland, the newly joined tenth Province, has been assigned six members). Its maximum membership can be slightly increased up to 106 or 110 on the recommendation of the Governor-General and at the direction of the British Government. The representation of the Provinces is not equal. The Senators are appointed for life by the Governor-General on the advice of the Cabinet. It generally happens that vacancies are offered to old members of the party to which the Cabinet belongs. Senatorships have been regarded as the best plums in the basket of government patronage. All Prime Ministers have made appoinments to the Senate for party ends. MacDonald alone made one appointment of an opponent Liberal (MacDonald) and he was his personal friend. These appointments are made generally on the eve of general elections. For example, on the eve of 1935 elections,

17 Senators were appointed and in 1945, 18 Liberal Senators were appointed. Bruce Hutchison has well described the Senate. The Senate has become the refuge of old party servants, each party filling up the vacancies of death with its friends and rarely on the basis on ability. The genial old gentlemen...live on undisturbed, meeting for a few weeks in the year, mumbling and grumbling at the government, making a few good speeches and drawing an annual indemnity... or less work than any other citizen of Canada."

While making these appointments consideration is given to economic, racial, and religious groups in the, provinces. In 1930, Mrs. C. Wilson was appointed as representative of women of Canada.

Qualifications : A Senator must be at least thirty years of age He must be a natural born or nationalised British subject, residing in Canada and holding property worth 4,000 dollars over and above his debts and liabilities within the province for which he is appointed. In the case of Quebec, the Senator must be a resident holding property worth 4,000 dollars in the Senatorial division for which he is appointed. The Senator draws a salary of 8,000 dollars per annum and gets an additional allowance of 2,000 dollars for the session subject to deductions for non-attendance. He will lose his Seat if he resigns by writing to the Governor-General or fails to attend two consecutive sessions of the Parliament; or loses his British nationality ; or is declared bankrupt; or is accused of treason or convicted of felony or of any infamous crime ; or loses the property of residential qualification required of a Senator.

Powers : **The** British North America Act did not define the powers of the Senate. It made only one exception, that money bills must Originate in the House of Commons. So theoretically, with this limitation, it has co-equal powers with the House. However, in practice, the Senate has little powers. It is a leisurely chamber with little control over policy or influence in law-making. Neither it has the glamour of the hereditary House of Lords, nor the powers of the strong American State. Its life tenure, old age of members, and their desire to lead a peaceful old age with an ensured pension, and pension is paid not for active work) and unrepresentative character have made it a lifeless chamber.

The House of commons meets for over 100 days a year in session, but the Senate meets for about 50 to 60 days and even less than 50. Its debates are brief. In 1938, there were 26 days when the Senate dabates covered less than six pages of the Hausard (official reporter), 36 days when they covered less than 11 pages, 51 days less than 15 pages, while the debates in the commons would cover 30 to 40 pages of the same size in one day. The Senate has to wait sometimes for a month and even adjourns for this period to wait for the bills to come from the House of Commons so that it could review them. These bills generally reach the Senate at the close of the session and the Senate has to hurriedly pass them. The

general practice for the government is to initiate its bills in the House of Commons.

In twenty-two years (1924-45) only 36 Government bills were initiated in the Senate. It was during 1946-53, that the largest number of bills were initiated in the Senate, i.e., 138. But these were not new Acts. The government was engaged in overhauling, and consolidating all the statutes of the country and so it was a general routine review work, policy or new programme was not involved.

The Senate suffers from another defect. The Ministers do not sit in this chamber. In 1945, an amendment was made that Cabinet Ministers can appear before the Senate, but the practice is seldom followed. The result is that the Senate cannot even extract information by way of questions, debates or motions and adjournment motions.

The executive is not responsible to the Senate but to the House of Commons. The Speaker of the Senate is appointed by the Governor-General on the advice of the Prime Minister.

However, the Senate may become an obstruction to the House in case it has majority of a different party. It happened in 192ft when the Senate rejected the old age Pensions Bill passed by the Liberal House of Commons. But the Senate gave way, a year after, when after general elections the Liberal Party again got majority in the House. Such cases, however, have been rare, as Dawson says, "The Senate has never taken the position that its powers of rejection and amendment are absolute and independent of public opinion.....If the will of the people is clearly expressed, the Senate, even though it disagrees with the wisdom of the bill, will acquiesce in the popular decision.

Legally, it can reject or amend an ordinary as well as money bill. The constitutional remedy for deadlock is that the Cabinet might advise the Governor-General to appoint 4 to 8 additional Senators. But it has not been successfully employed so far. And it may not very much help in so far as these additional members may not counteract the opposition of the Senate.

The real field of activity of the Senate lies in the following spheres :

l. **Private Bills** : Private bills deal with either a particular locality or some person or body of persons. Bills divorcing a married couple, extending a railway line to a particular locality or incorporating a company are the examples of private bills. A private bill implies partly judicial and partly legislative activity. Such a bill is introduced in the form of a petition and is accompanied by a particular fee. It is then referred to a standing committee which, hears the parties concerned and gives a semi-judicial judgment and submits it to the Senate, which finally incorporates

it into the form of a statute and submits it to the House for its consideration.

Legally, private bills can be initiated in either chamber, but in practice they are almost exclusively initiated in the Senate. This has been further augmented by the legal requirement that such, a petition would have to be accompanied by $200 if initiated in the Senate and by $500 if in the House of Commons.

2. The Senate has rendered useful service in conducting; investigations into various political or social questions of importance. For example, recently it conducted such investigations into the Income War Tax Act and the Excess Profits Tax Act.

3. The Senate has done some work in the field of protecting social rights, particularly rights of private property. Its conservative character has been very much responsible for it. Its members hold important directorships of companies. For example in 1945, 40 Senators were directors of various companies. It has done little to protect the interests of the provinces as a federal chamber. That work is done by the Cabinet.

We are, therefore, led to the conclusion that the Canadian-Senate is not a revisory chamber because it never resists on any issues and says "ditto" to what the Commons decide. People do not take any interests in its proceedings. Little wonder, Sir Foster remarks "Who in the street wants to know what is. the opinion of the Senate upon this or that question ? Who in the press really takes any trouble to know whether the Senate has any ideas, and, if so, what they are, upon any branch of legislative concern, or upon conditions which require the best and most united work of all in order to arrive at a successful conclusion ?" In short the real cause of the weakness of the Canadian Senate is the method of its composition, such as the system of nomination, security of tenure, fixity of salary etc. Dr. Keith has summed up the powers and the status of the Canadian Senate, in the following words : "The Senate obviously from the outset was not based on true federal principles, for, apart from the lack of equality of representation of the Provinces, the mode of appointment secured that the members selected would be men not likely to champion, Provincial rights, and the Senate has never shown any special activity in this regard. It has also failed to carry out the idea that it might be the home of elder statesmen whose calm prudence would be a valuable aid to the Lower House."

Many suggestions have been put at different times to bring about reform in this second chamber but in words of Keith, "The chance of change is negligible". So we conclude the discussion with the lines of Sir J.A. Marriot, "It will be observed that the Canadian Senate attempts to combine several principles which, if not absolutely contradictory, are clearly distinct. Consequently, it has never possessed either the glamour of an aristocratic or heredit-

ary chamber, or the strength of an elected assembly or the utility of the Senate representing the Federal as apposed to national ideas. Devised with the notion of giving some sort of representation to provincial interests, it has, from the first, been manipulated by party leaders to subserve the interests of the central executive."

POINTS TO REMEMBER

(1) The Canadian Senate consists of 102 members. (2) They are appointed for life by the Governor-General on the advice of the Cabinet. (3) The Provinces are not given equal representation. (4) It enjoys co-equal powers with the House of Commons except that money bills cannot originate in it, (5) It proves to be a merely revisory chamber because it lacks popular support. (6) The American Senate is directly elected for six years, enjoys some executive powers and acts as a court of impeachment for the Presidents and other high officials (7) The Canadian Senate is weak because of its method of composition. (8) The method of nomination, security of tenure and the fixity of salary are some of its defects.

"There is no better test of the excellence of a government than the efficiency of its judicial system."

—Lord Brycet

CHAPTER V
THE JUDICIARY

The judiciary was not a separate and independent branch of government in the early period of Canadian history. Like the Deputy Commissioner of India in the pre-independence days, the same person performed both the executives and judicial functions. The judges were not impartial. They took an active part in the politics of the country. Racial problem was active in every sphere of the government. Even the judges showed favour to the communities to which they belonged and thus corrupted the administration of the country. Lord Durham has vividly stated in his report that, "the course of justice is entirely obstructed by the same cause ; a just decision in any political case is not to be relied upon; even the judicial bench is in the opinion of both races divided into two hostile sections of French and English from neither of whom justice is expected by the mass of the hostile party.'' In course of time, things began to change. The English judges with their high character and impartiality influenced the course of history of Canadian judiciary.

Q. 3. Describe the organisation of the Judiciary in Canada. How is the Supreme Court constituted ? What are its powers ? Compare it with the Supreme Court of U.S.A.

Ans. There are two sets of courts in Canada, *i.e.,* the Provincial and the Federal. The British North America Act, 1867 empowered the Provincial legislatures to make their own laws for the administration of justice in the Provinces, "including the constitution, maintenance and organisation of Provincial courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts." There are three types of Provincial courts. *viz.,* country courts, district courts and the superior courts. In addition to these, there are courts of local and municipal magistrates and justices of peace. These courts are exclusively under the control of the province. The judges of these courts are poorly paid.

Above them in a consecutive order are the country courts, **the** district courts and the superior courts. The judges of these courts in each province are appointed by the Governor-General, "subject to certain regulations connected with the Bars and to the exclusion of probate courts **of the** Maritime Provinces." Under **Section** of **the** British North America Act, 1867, **the** judges **of the** superior courts hold office during gobd behaviour and are removable by the Governor-General on the address of the Senate and the House of Commons. They are removed after thorough investigation on grounds of incapacity, misdemeanour, ill health

and such other causes. If removed, the order-in-council covering such removal including the correspondence report and evidence must be placed before the Parliament. The salary of these judges is very low and is charged to the federal revenue. These courts apply Provincial as well as federal laws. The Provinces regulate the procedure in civil matters whereas in criminal cases it is regulated by the Dominion legislature. Provincial Governments can seek the opinion of these courts on the constitutionality of the Acts. The courts are also authorised to hear election disputes and their jurisdiction in these cases is final.

Divorce cases are tried by the Canadian legislature. The Senate investigates the cases and gives decisions which the House of Commons generally accepts.

Federal courts are of two types, i.e., the court of Exchequer and Admiralty and the Supreme Court. The court of Exchequer and Admiralty was created as a part of the Supreme Court in 1875 but now it is a separate court. It consists of a President and four pusine judges who are appointed by the Governor-General-in-Council. They deal with cases of revenue where claims are made by or against the Crown. They also deal with the cases relating to patents and trade-marks.

The Supreme Court: The Supreme Court was the court of final resort in Canada. Till 1949, the Judicial Committee of the Privy Council in London was the final court. But in that year, a Canadian Law cut off all appeals to this body and made the Canadian Supreme Court really 'supreme'. The Judicial Committee decided the last case for Canada in 1954.'

The Supreme Court is a federal Court. It is originally established in 1875, under the British North America Act 1867, to exercise civil and criminal jurisdiction for the Dominion of Canada. The jurisdiction and composition of this court are determined by the Canadian Parliament. The Provincial legislatures cannot restrict its jurisdiction.

It consists of one Chief Justice and eight other Judges. They are appointed by the Governor-General on the advice of the Prime Minister. Appointments are made generally on political grounds, The old Parliamentarians or other party supporters are appointed upon it. They enjoy a term during good behaviour, retiring at the age of 75. However, they can be removed earlier on a joint address being presented by both the Houses of Parliament. The Chief Justice gets £ 25,000 a year and other judges get £ 20,000 a year as salary.

The Court exhibits? representative federal character like the Cabinet. The Judges must be from Quebec, familiar with the civil law and procedure of that province. In practice, three judges come from Quebec, two judges from Ontario, one from the Maritime

Provinces, and one from the Bench of British Columbia, one generally from the Prairie provinces.

Jurisdiction: The Supreme Court has wide jurisdiction. It hears appeals from provincial courts in civil cases when substantial sum of money is involved, in constitutional cases, when validity of dominion or provincial laws is in question, in criminal cases **or** such many other matters.

It hears appeals from the Canadian Exchequer Court, Board of Transport Commissioners and in election dispute cases.

It gives advisory opinion when so requested by the Dominion. It hears appeals from provincial courts on like matters when referred to the provincial courts by the provincial governments.

The Supreme Court grants special leave to appeals in certain cases.

It possesses 'judicial review' and can declare the laws both of the Dominion Parliament and the provincial legislatures *ultra vires.* It is the final interpreter of the constitutions and determines the validity of dominion and provincial laws. The weight of interpretation of the Constitution of Supreme Court has been to increase the powers of the provinces. It has generally limited the scope of generality of the power of the Dominion under "Laws of Peace, Order and good government of Canada." It declared the 'New Deal' Legislation passed by the Dominion government during depression period of 1930's *ultra vires.* Under this power, the Dominion government may legislate for emergency, but the extent of that emergency and the laws passed thereunder shall be determined by the Supreme Court. In this respect, it has differed with the American Supreme Court, which has strengthened the federal government at the expense of States.

The Exchequer Court of Canada is another federal court. It consists of the President and 4 other Judges. They are appointed by the Governor-General on the advice of the Prime Minister. They enjoy tenure during good behaviour retiring at the attainment of 75 years of age. They can be removed earlier by the Governor-General on a joint address being presented by both Houses of Parliament. The President gets $ 16,000 and other judges $ 14,400 as salary per annum.

The Court has original jurisdiction concurrent with the provincial courts in revenue cases and exclusive original jurisdiction in cases against the Crown in federal affairs. It deals with cases against the Crown involving property taken over or confiscated or affected by any public work or any other State purpose and in cases involving injury to a citizen arising out of negligence of any officer or servant of the Crown during the execution of his duties. It hears cases concerning copyrights, patents, inventions, etc. In most cases,

appeals lie to the Supreme Court against its decisions. It also hears cases in matters between the Dominion and the provinces where such jurisdiction is conferred upon it by the provincial legislatures. It also acts as the Co"urt of Admiralty. It hears such cases both in the first instance and in appeal against local Admiralty Courts.

POINTS TO REMEMBER

(1) Two sets of courts are in existence in Canada : Provincial and Federal. But they are not so separate as in America. Appeals from provincial courts lie to the federal courts. (2) Federal Courts are two ; Supreme Court and the Courts of Exchequer and Admiralty. (3) Divorce cases are tried by the Parliament particularly by the Senate. (4) Supreme Court is the court of final resort, really a 'Supreme' court. (5) It is the highest and federal court. It hears appeals and interprets the Constitution. (6) It possesses judicial review.

Political Parties in Canada are, "really loose federations of local, provincial or state machines held together chiefly by a. common desire to share in the 'pork barrel'."

—Frank H. Underhill

CHAPTER VI

POLITICAL PARTIES

Q. 9. Describe the main features of the Canadian Party System.

Ans. Political parties have been recognised as an indispensable institution in a modern democracy. The political parties in Canada are based on the model of the British political parties. There is no mentipn of the political parties in the British North America Act, 1867. Nor has the necessity arisen to recognise their organisation by law as is the case in U.S.A. There were small groups functioning locally in the country before the passing of the British North America Act. The bases of these groups were not political but Religious. The church played an important role in the rise and fall of the various parties. They aligned themselves with the liberals or the conservatives according to the exigences of the situations. Thus the parties developed in Canada with a view to oiling the administrative machinery of the democratic government.

The political parties in Canada are controlled by big interests like industrialists, manufacturers and wine merchants. They are associated with many abuses and evils. Elections are controlled by these business magnates Parties issue manifestoes and the candidates for election have no real choice but to follow them. There has been a controversy whether the candidates are bound by these "platforms' or 'planks' after their election or not. But it is certain that the leaders must follow the general principles laid down in the 'platforms' and can modify them according to time and need.

At present there are two major political parties working in Canada, *viz.*, the Conservatives and the Liberals. Besides these, some new small groups have grown up in recent years, *e.g.,* the Co-operative Commonwealth Federation, the Labour, the United farmers, the Social Credit etc. These parties hold few seats in the House of Commons and have practically no representatiop in the Senate.

The political parties in Canada are not so well organised as they are in England. In this respect, they resemble more the American political parties. They have no permanent central organisation. At the time of election the parties assemble to occupy

as many seats as ?hey can and share in the 'pork barrei.' Frank H. Underbill says that they are really "loose federations of local, provincial or state machines held together chiefly by a common -desire to share in the 'pork barrel'. It is in the structure of our parties that the most important federal element of constitution appears". According to Munro, "a political party is nothing but a bundle of factions held together by elastic bonds of common nomenclature''. Due to racial and linguistic differences and the vast area of Canada, many diverse interests are represented in a party. This fear has led Lord Bryce to say that "in a country inhabited by two races of different languages and religions, it might be expected that these differences would form the basis of the political parties." But such is not the case and the parties have not lost their political character. History does not record any instance of their open rupture.

The parties have their local organisations as is the case in England. Party leaders are elected and party programmes are chalked out by the delegates sent by the local organisations in the annual meetings of the party.

Conservatives and Liberals : No clear cut line of demarcation can be drawn between the programmes of Conservatives and the Liberals. They have many things in common but they differ mainly on the point of tariffs, policy towards the State and intervention by the State in the economic life of the people. The Conservatives are in favour of high tariffs, greater State intervention in the economic field and labour legislation. They advocate schemes for employment, social insurance and the enforcement of minimum wages. The Liberal Party believes in low tariffs, less interference by the government in the economic life of the people and public ownership of public utility services such as Railways etc. It is popular among French people,

Labour Party : In recent times, the Labour Party has attracted much attention of the public. It advocates nationalization of banks, public ownership of the social utility serviced and large scale industries, provision of Work for the unemployed, equal rights for all irrespective of sex, class or religion and the right to trade unionism, abolition of Senate and private property etc. It places ''human needs" above "property rights."

POINTS TO REMEMBER

1. Political parties in Canada are based on the English model. 2. These are controlled by big interests like industries, businessmen and merchants. 3. There is no legal recognition of the parties as is the case in U.S.A. 4. Party platforms' or 'planks' are issued at the time of election. **5.** There are two major parties working in the country. They have no permanent central organisation but have branches in different parts of Canada. 7. Though religion has a strong hold in Canada yet the parties are secular in character. 8. They mainly differ on the point of tariffs.

THE CONSTITUTION OF SWITZERLAND

"Every definition of democracy is inefficient—inefficient for belief in it—if it is to be confined to the technical political aspects. It is inefficient to define the democratic principle as the principle of majority rule and to translate the expression literally, all too literally, an expression of double meaning which should also signify mob-rule, for that is more nearly a definition of Fascism. It is even inadequate, correct as it may, to reduce the demosratic idea to the idea of peace, and to assert that the right of free people to determine its own destiny is the best guarantee for the creation of a community of nations and for peace. We must reach higher and envisage of the whole. We must define democracy as that form of Government and of society which is inspired above every other with the feeling and consciousness of the dignity of man."—*Thomas Mann.*

"The Swiss are not only a united people, but one of the most united and certainly the most patriotic among the peoples of Europe." —*Lord Bryce.*

CHAPTER I

INTRODUCTORY

Physiography : Aptly described as 'the country of a thousand valleys', Switzerland is the geographical and ethnological centre of Europe. Its area is 41, 259,000 kilometres (about 15,950 sq. miles), which is a little more than half the area of West Bengal. About 30 per cent of the area is under thick forests. Henry Hazlitt has described the entire country-side as an enormous golf-course that has just been rolled and mowed, Switzerland bas no outlet to sea. She is surrounded by France, Italy, Germany and Austria. High mountains surrounding Switzerland isolate her from the neighbouring: countries. Though the climate is healthy, the rocky soil has rendered the yield very low. Switzerland also lacks in mineral resources. The mountainous ranges in the Alps and Jura make transportation very difficult.

But against an adverse nature, the Swiss people have proved to be very industrious, hard-working and honest. Although there are sharp differences of race and religion amongst the Swiss, they work as a united nation in all respects. This has helped the Swiss to make their homeland prosperous even though there were no natural, resources. Their only advantage is enormous resources for hydro-electric power which are spread all over the country. "Nature only permitted Switzerland to exist, but the Swiss have made it a fairly prosperous country with a reasonable stable economy."

Population of Switzerland is 50.7 lacs at present. But this small size of population does not constitute a homogeneous whole It represents a diversity of racial stock, multiplicity of languages and variety of religions. In spite of the fact that the Swiss are sharply divided on the basis of race, language and religion, they have demonstrated strong national unity and political solidarity. They are again sharply divided geographically by Cantonal boundaries. But they have given a striking demonstration of a successful federation. They form a single united nation, at the same time preserving their distinctive characteristics. The geographical situation of the country, common history and common struggle have overcome the separatist tendencies, normally generated by diversity of race, language and religion.

The Swiss' people belong to lour racial origins—the German. the French, the Italian and the Austrian. Of the total population,

some three-fourths speak German, one-fifth French, one-twentieth Italian and the rest a dialect known as Romanche. a dialect derived from ancient Latin. All the four languages enjoy official recognition. Almost every educated Swiss knows at least two languages, German and French being most common. Not only are the Swiss divided on linguistic basis, but also they profess different religions. 57% of the population are Protestants and 41% Roman Catholics. There are nearly 10,000 Jews and 50,000 persons belong to no particular religion. The Protestants have their majority in 12 Cantons whereas the Catholics have in 10. Luckily, the local boundaries of religious confession do not coincide with those of language.. Of the 12 Protectant Cantons, 9 are German speaking while 3 are French and of the 10 Catholic Cantons, 7 are German speaking, 2 French and only 1 Italian. In spite of a wide diversity of race, language and religion, the Swiss, in the words of Lord Bryce, 'are not only a united people but one **of** the most united and certainly the most patriotic among the peoples of Europe.' There is no nation in the world, the people **of** which demonstrate such a high degree of national unity as is the case **With** the Swiss. They have evolved true national unity put **of** natural diversity.

Production and Industry *:* Switzerland, as has been pointed out earlier, has to fight against adverse nature. About three-fourths of the total area is covered by mountain ranges making cultivation extremely difficult. About 30% of the area is under forests. For this reason, only twenty-two per cent of population depends upon agriculture and Switzerland has to import a good deal of her food requirements from abroad. The country also lacks valuable minerals. Nevertheless, she is a highly industrialised country. She imports raw materials like coal, iron and petroleum etc., and in spite of hilly barriers, she has developed a well organised system of transport. She is very rich in hydro-electric resources. She has plenty of building stones, cement and salts. Her main industry consists in manufacture of precision goods like watches, hospital instruments etc. Dairy products constitute another important industry. Switzerland is the third most highly industrialised country of Europe, others being Britain and Belgium. Forty-three per cent of the people are engaged in industries, some twenty-nine per cent in agriculture, ten per cent in commerce, four per cent in hotel business and the rest in miscellaneous professions. Due to her healthy climate and charming natural scenery Switzerland has a flourishing tourist traffic.

Switzerland has a larger per capita volume of foreign trade than any other nation in the world. Her specialised precision goods like watches and instruments command an uncompetitive market in the world. The mam purpose of exports is to buy imports. According to Hazlitt, Switzerland must export or die, import or die. The means that Switzerland cannot exist without a large volume of export and import. Her industries depend upon foreign raw material and her manufactured goods must have access to the markets of the world.

On the whole, the Swiss form a very prosperous nation and a striking aspect of their prosperity lies in their significant equality. Material worries and cares do not exist anywhere and prosperity extends to everyone and everywhere. Extremes of wealth do not exist. A vast majority of the people enjoy a reasonable standard of living.

Political Neutrality : Another conspicuous characteristic of Switzerland has been her, policy of political neutrality for the last four centuries. She kept herself aloof in the religious wars between the Protestants and the Catholics in the 17th century. She was dragged a bit in the Napoleonic Wars no doubt, but she maintained an attitude of strict neutrality in the two World Wars in spite of German pressure. She has not joined the U.N.O. with the sole object of keeping away from power politics. Her political neutrality has been internationally recognised. It was **first** guaranteed by the Congress of Vienna in 1815 and reaffirmed by the League of Nations in 1920. It is to be noted that it is not a pacifist neutrality. It is rather an **armed** neutrality. The Swiss **nation is** a **nation** in arms. There is compulsory military training in Switzerland. Every Swiss citizen keeps his rifle **and** equipment in his home and **is** ready for active military service at a moment's notice. The policy of neutrality **is in** keeping with the demands of life in Switzerland. Geographically, Switzerland is surrounded by big military powers. Economically the Swiss depend upon the various countries of the world for export and imports without which Switzerland **is** bound to be doomed. Moreover, they have liberty and respect the liberty of others. And then they realise that the traditional policy of neutrality has brought them prosperity at home **and** respect abroad.

Constitutional Development: The starting point of the Swiss confederation is the First Perpetual League of the three forest Cantons of Uri, Schwyz and Unterwalden formed in 1291. Its object was mutual defence against encroachment by feudal lords in the north. The Cantons retained a sovereign status and Switzerland as a State had hardly any existence. After a chequered history, the confederation which included many more Cantons, was recognised for the first time in 1648 by the Treaty of Westphalia as an independent State. But internally, the confederation was a very loose one. All the Cantons were more or less autonomous and it was only when some matters of common interest arose that a Congress of delegates was convened and decisions taken by common consent. The occasional Congress was known as *Diet.* It was the only official organ of the confederation. The *Diet* had no authority to enforce its decisions on the Cantons.

The Helvetic Republic : It was the French Revolution which was to some extent responsible for the emergence of Swiss national State. The French armies conquered the whole of the country and imposed on Switzerland a highly centralised government under **the** Constitution of Helvetic Republic. The Cantons were **deprived of**

their autonomous status. But the Swiss reacted so strongly against the French-imposed constitution, that Nepoleon was forced to restore cantonal autonomy under the Act **Of** Mediation **in 1803.** Switzerland again became a federal State and Cantons enjoyed a substantial, amount of independence.

Pact of 1815: With the fall of Napoleon, the Congress of Vienna enforced a new constitution for Switzerland. Under this constitution, an extremely weak federal government was established, and Cantons were left more or less sovereign politically. The loose confederation failed to imbibe a spirit of national unity among the people. Consequently, a civil war broke out in 1847 between the Catholics and the Protestants. For the first time, the Swiss people decided to have some strong and effective central government.

Constitution of 1848 : A **draft constitution was drawn up by a committee of the** *Diet* **in 1848. It was ratified by the Cantons and enforced during the same year. Under this constitution, real federation was established in Switzerland. But still the federal government lacked sufficiently adequate powers to deal with various emergencies. A total revision of the constitution was, therefore, done in 1874. Some fifty more amendments have been made since 1874.**

"Switzerland is a land of political paradoxes and a laboratory of politics." —*Felix Bonjour.*

CHAPTER II

FEATURES OF THE SWISS CONSTITUTION

Switzerland has as distinctive a constitution as her history. Though small in area, population, military importance and in many other respects which make a nation great, the Swiss Republic is one of the oldest and best democracies in the world. It is the one State in Europe which has always been a republic and never a monarchy. If Great Britain is the classical home of parliamentary democracy, the United States, the originator of federal government, it goes to the credit of Switzerland to be a traditional home of direct democracy. It is the, only country where primary assemblies still survive, and devices of direct democracy in the form of referendum and initiative are widely employed. In the words of Felix Bonjour, "Switzerland is a land of political paradoxes and a laboratory of politics."

Q. I. Discuss the salient features of the Swiss Constitution.

Ans. The Constitution of Switzerland is a unique one in the history of federal constitutions. It establishes a weak federal government with delegated authority. The most significant aspect of this constitution is the plural Executive, and devices for Direct Democracy. The constitution was originally enacted in 1848 but was substantially revised in 1874. Since then 50 amendments have been carried through. In view of these various political institutions in the Confederation and Cantons, Felix Bonjour has rightly called Switzerland "a laboratory of politics."

We may discuss the salient features of the Swiss Constitution as follows :

1. Its Written Character *:* Like *all federal constitutions,* the *Swiss Constitution is a written one.* It was passed by a representative Assembly *(Diet)* and ratified by the majority of citizens. It consists of 123 Articles and 6 transitory provisions. The Swiss Constitution **a** *pretty lengthy document*—twice as long as that of **the** U.S.A. On the other hand, it is neither so bulky nor so detailed as the Indian Constitution is. At the same time as happens in every "^constitution, important conventions have come into existence. To take an example, the federal government has the right to determine the conditions under which aliens are to be naturalised in various Cantons but by a long established convention, the Cantons independently lay down the conditions for naturalisation.

2. Its Republicanism : *Switzerland is a Republic* **The head** *of the State is the federal Council* consisting of seven members. **The** Swiss people never had monarchy during a long and chequered

history of their country. They are opposed to monarchist way of thinking and have never soiled their hands with the blood of imperialism. This aversion for 'One Man Rule' is not due to fear of tyranny but it is mainly due to their love of equality.

In the words of Hans Huber, the State in Switzerland is 'the affair of all its citizens, and its guidance is not to be hereditary, nor is it even to be entrusted to an elected individual.' Some critics,, however, point out that the Swiss, Constitution does not give its. women the right to vote. In spite of repeated attempts to extend suffrage to women, it has not been done so far. However, gradually these laws are being relaxed in many Cantons. Moreover, the absence of suffrage does not place women in a position inferior to men. They enjoy equal rights with men in all other spheres of life.

3. Its Federalism : Switzerland is a federation though it is known as Swiss Confederation. It consists of 25 units 19 full Cantons and 6 half Cantons). The federal government is weak like the U.S. government and has delegated powers. The powers not given to the federation lie with Cantons. Cantons are sovereign except that their sovereignty is limited to the extent of powers given to the federal government. Residuary powers lie with Cantons.

Like the American States, the Cantons are free to have their separate Constitutions subject to the following restrictions :

(a) The Cantons must preserve the Republican form of government; (b) the Cantonal Constitutions are subject to revision by popular vote ; and (c) they must not contravene the federal constitution.

4. Its Rigidity : The Swiss Constitution is very rigid. The process of amendment is quite difficult.

There are two stages of an amendment: Proposal and Ratification. An amendment or revision can be proposed in one of the two. ways. It may be proposed by the Federal Assembly in the manner as it proposes ordinary bills. Over '60,000 voters can also initiate an amendment. They can do so in general terms or in the form of a detailed bill.

After an amendment is proposed in one of the above two ways, it must be submitted to referendum for ratification. In referendum,, it must be approved by majority of voters casting their votes and majority of voters in majority of Cantons. A full Canton has one vote and half Canton, has half vote. Thus neither big States nor 6mall States alone can make any change in the Constitution. So far 60 amendments have been passed there.

5. Plural Executive : The most peculiar features of the Swiss Constitution is the Plural Executive. There is no singular individual who can be called the head of the State. The executive authority of the federation is vested in the Federal Council consisting of 7 members. This Council in its collective capacity is the President

of Swiss State. The Council has a President of its own but he has no powers attached to his office. He has no special powers more than his colleagues. The Council is a mixed executive. It has some features of the Cabinet system and others of the Presidential system. To take a few examples, it is elected by the Federal Assembly, but it enjoys fixed tenure of 4 years. Its members, participate in the work of Federal. Assembly and even initiate Bills but have no vote. The Council cannot dissolve the Assembly.

6. Its Legislature : The Federal Assembly consists of two Houses—the Council of States and the National Council. Like **the** American Senate, the Council of States represents the federal units and consists of 44 members—two members from each Full-Canton and one from each Half-Canton. The National Council is the Lower House representing the general interests of the people. **It** is elected on the basis of manhood suffrage and proportional representation.

7. Its Judiciary : The Federal Tribunal is the federal Supreme Court and it is the only Federal Court. It differs from its counterparts in India and the U.S.A. It consists of 24 members, who are elected by the Federal Assembly at a joint sitting for a term of 6 years. It submits an annual report of its working to the Assembly. It has no judicial review against the laws of the federation and cannot declare them *ultra vires.* However, it has judicial review against Cantonal laws and can declare them null and void if they are repugnant to the Federal laws.

8. Direct Democracy : Switzerland has been described as model democracy. It is in Switzerland alone that direct democracy prevails in 4 half-Cantons and one full-Canton. Besides, there are devices of referendum, recall and initiative. There are about 4,000 elected local bodies to manage civic affairs. In a small country with about 50 lakh population, there are 26 law-making bodies. The powers of the State are thus highly decentralised and democratised.

9. **Absence** of a **Bill of Rights** : The Swiss Constitution like other written constitutions does not contain any formal bill of rights. But this does not mean that the Swiss people do not enjoy any civil and political liberties. Article pertaining to rights of the people are scattered all over the constitution. The constitution grants rights of press, association, settlement, conscience petition etc. It grants male adult franchise, right to election, right to education, freedom of marriage and equality before law.

10. Liberal Constitution : The Swiss Constitution establishes a liberal democracy. It protects liberal rights. The political life is controlled by liberal parties. The nation is not divided into classes like Britain where Conservative Party and Labour Party represent to extremes. It is dominated by middle classes. The people are engaged in liberal professions and earn their living mainly from cottage industries and tourist trade. The state has a permanent policy of neutrality in international politics.

11. The Constitution of Switzerland is written but like many other constitutions of the world it has been modified in certain directions by customs and conventions. Some of the conventions are given below.

1. The Constitution lays down that the Presidents and the Vice Presidents of the legislatures will be elected every session. By convention they are elected every year.

2. According to a convention the Cantons of Berne, Vand and Zurich must be represented in the Federal Council.

3. It is for the Confederation to regulate the naturalization of foreigners. But in practice this is in hands of Cantons.

POINTS TO REMEMBER

A unique constitution in many respects—republican in form—federal in character with great autonomy for Cantons like the American States—like most federal constitutions it is rigid though amendment is simpler than that of the American Constitution—very lengthy but not more detailed than the Indian Constitution which is the lengthiest in the world—plural executive which it neither Parliamentary nor Presidential—Bicameral legislature—Judiciary-different from usual federal judiciaries—devices for Direct Democracy unique absence of a regular bill of rights—a real type of secular State has been established in Switzerland.

The method of constitutional amendment has given the constitution majesty higher than possessed by ordinary laws.'

—Finer.

CHAPTER III

FEDERALISM OF THE SWISS CONSTITUTION

Even though the Constitution of Switzerland refers to it as a Confederation, 'Switzerland is in reality a Federation. The term Confederation implies a very loose association of States without any effective and strong Central Government. But such is not the case with Switzerland because it now fulfils all the essential requisites of an ideal federation.

The constitution clearly distributes powers between the Federal Government and the Cantonal Government. It leaves the residuary powers with the Cantons which are autonomous within their own sphere. Thus the distinct identity of the Cantons has been upheld. The second important characteristic of a Federal Constitution is its rigidity. The Swiss Constitution satisfies that aspect too. The Swiss Constitution is essentially rigid and cannot be amended in an ordinary legislative procedure. It lays down a special procedure for its amendment. Although the process is simpler than that prescribed by the Federal Constitution of the United States yet it is not an easy one.

Federalism also requires a powerful judiciary which can act as the guardian of the constitution. In Switzerland this principle of Federalism has been apparently ignored. But the principle of judicial review is present in another form which may be termed as the principle of popular review. The constitution is adopted by the people. The Swiss Constitution, in fact, makes the people themselves the guardian of their constitution by giving them the weapons of initiative and Referendum.

Q. 2. Describe the procedure by which the Swiss Constitution can be amended.

Ans. The constitution is rigid when the method adopted for the amendment of a constitution is difficult and other than the one followed in ordinary law making. As the Constitution of Switzerland can not be amended the way a bill becomes a law, it is rigid.

The most distinctive feature of the amendment procedure of the Swiss Constitution is the association of the people with It. Chapter III of the constitution provides for its total or partial revision. Total revision pertains to the replacement of the constitution by a new one, while partial revision refers to an amendment of certain specific portions of the constitution. There are two methods of amendment. It can be amended on the initiative of the Federal Assembly or on the initiative of the people. In both cases, ratification in referendum is necessary.

1. Proposal by the Assembly : If the Federal Assembly wishes to effect a total or partial revision of the constitution, it can do so by undertaking legislation on the same lines as is done for ordinary Bills. After such a bill is passed it must be submitted to referendum of the people in the country. Referendum is compulsory or obligatory in this case. The constitution is revised wholly or partially if the measure is ratified by a majority of the valid votes cast and by majority of such votes in majority of Cantons. A full Canton has one vote and half Canton has half vote.

In case one House passes a proposal for amendment and the other does not agree, the former can submit that proposal for vote of the people. If a majority of the citizens vote for the proposal, fresh elections are held to both Houses of the Federal Assembly **and** the necessary revision is carried by the new Assembly. After it is passed by this new Assembly, it is again submitted to referendum **and** it becomes effective after being ratified as stated above, **i.e.,** by majority of all the valid votes cast and, by majority of voters in majority of Cantons.

2. Proposal by the People : The constitution can be revised wholly or partially on the initiative of the voters themselves. At least 50,000 citizens having the fight to vote, may submit a petition proposing revision of the constitution. The following procedure is prescribed for this purpose :

(a) If 50,000 voters submit a petition to the Federal Assembly asking for a total revision of the constitution, the Assembly refers the proposal to the popular vote. If the proposal is approved by majority of voters, fresh elections are held to the Federal Assmebly. The new Assembly then proceeds with the revision of the constitution. The revised constitution is then again put to referendum. It is put into force when ratified by the majority of voters in majority of Cantons.

(b) If only **a** partial revision is demanded by the voters through **a** petition signed by at least 50,000 citizens, it may be of two kinds. It may be a proposal merely in general terms, or it may be **a** specific proposal complete in all details. In the first case, it is known as *Unformulative Initiative* and in the second case, it is termed as *Formulative Initiative.* In both the cases the procedure for amendment is different.

(i) If the proposal is couched general terms, it is just an expression of a popular desire to amend the constitution. If the Federal Assembly agrees whith this demand, it formulates an amendment along the lines indicated in the petition, and submits it for ratification by the voters and the Cantons with whose approval it becomes law. If, however, the Federal Assembly does not agree to the demand made in the petition, the proposal whether there should be a partial revision or not must be submitted to the popular vote If a majority of the voters approve it, then the Federal Assembly

proceeds to draft it suitably and then gets it ratified by the voters, and the Cantons.

(ii) If the popular proposal is couched in definite terms and the Federal Assembly agrees to it, it must submit the same for ratification by majority of the Cantons.

But if the Federal Assembly disagrees to such a proposal, it may submit it to referendum for rejection. It can also submit along with this its own counter-proposals for approval by the voters.

Estimate of Amendment Procedure : Thus we see that constitutional amendment is a very difficult task in Switzerland. Yet it is easier than that provided in the U.S. Constitution. The most peculiar aspect of amendment procedure in Switzerland lies in the fact that it must be approved by the people whatever the type or nature of the amendment may be. So far only 50 amendments have been carried after popular approval, although the Swiss have gone to the polls 96 times for constitutional revision. That means that 46 amendments that were proposed in different manners have been rejected by the people. The supremacy of the constitution in Switzerland is asserted in the procedure of its amendment. Although optional referendum is provided for in the case of ordinary legislation, it is compulsory in the case of constitutional amendment. The Federal Assembly alone cannot make amendments. This method of constitutional amendment, as Finer says, has given the constitution "majesty higher than that possessed by ordinary laws."

Another conspicuous feature to the Amendment procedure of the Swiss Constitution is the fact that it is the will of the people that ultimately prevails. The Federal Tribunal cannot declare *ultra vires* a law passed by the Federal Assembly. An 'Initiative Proposal' to vest the power of judicial review in the Federal Tribunal Was rejected at a referendum in 1938. It is clearly indicative of fact that the Swiss people regard judicial veto a direct infringement of democratic principles. The Swiss people are under a Constitution and they have not allowed the judges to meddle with their affairs.

POINTS TO REMEMBER

Amendment of constitution is a complicated process—but it is easier than the amendment of U. S. Constitution—revision can be total or partial—it can, be initiated either by the Federal Assembly or by 50,000 voters—all amendments, to be carried out only if ratified by a majority of voters in a majority of Cantons-i—if the two Houses of the legislature disagree on an amendment, the proposal is referred to the people—if it is approved fresh elections are held to the legislature to carry out the revision-popular initiative may be formulative or unformulative.

Q. 3. Discuss the division of powers between the Federation and the Cantons in Switzerland.

Ans. The division of powers between the Federal Government **and** the Federating Units is an essential feature of Federalism. The Swiss Constitution follows the pattern of the American Constitution.

in this regard. Like the American Constitution which vests the residuary powers with the States, the Swiss Constitution also leaves the residuary powers with the Cantons. This is in contrast with the Canadian and Indian Federations wherein the residuary powers are vested in the Central Government. The Swiss Constitution expressly leaves the Cantons sovereign in all matters which are not delegated to the Central Government. However, as Bryce points out, the Swiss Constitution is not as precise in the matter of distribution of powers as are some other Federal Constitutions. It is sometimes difficult to draw a definite line between the powers of the Federation and the Cantons. Besides, there is concurrent jurisdiction of the Centre and Units over certain subjects.

The following are the exclusive powers of the Federal Government :

Foreign affairs including the appointment of diplomatic agents, declaration of war and peace and conclusion of treaties; defence and military system; communications including posts, railways, telegraphs and telephones ; currency and coinage; weights and measures ; customs; commerce including inter-Cantonal trade; copyrights and patents; monopoly of gunpowder and alcohol; control of water power, forests, naturalisation, maritime transportation, civil and criminal law; industrial legislation; public hygiene; production and marketing of wheat and social welfare projects.

The following subjects are under the Concurrent Jurisdiction of both the Federal Government and the Cantons :

Education (higher education being exclusively a Federal subject) ; control of the press ; highways ; industry ; immigration, quarantine and banking.

In case of conflict between the laws passed both by the Federal and Cantonal Governments on these subjects, the law of the Federal Government prevails. But a peculiar feature Of the Swiss administration is that even in the case of Federal subjects the Cantons often join hands The constitution, for example; confers the right of concluding treaties with foreign governments on the Federal Government, but at the same time it provides that the Cantons can conclude treaties with foreign powers regarding certain specified matters. Moreover, excepting some subjects, almost all pther Federal powers are exercised by Cantonal officials. This has led to the position that there is a very small number of Federal officials in Switzerland. Every Canton has its own constitution and legislature, executive and judiciary.

The Federal Government is entitled to draw its income from the following sources of revenue:

Income from federal property, including the postal, telegraph and telephone systems ; railways; customs; proceeds from gunpowder monopoly ; half of the gross receipts from tax on military exemptions levied by the Cantons ; and any other contributions from

the Cantons with special reference to their various other resources. It levies taxes on income, property, profits, securities, insurance premiums, tobacco, war profits, etc.

Another interesting feature of the Swiss Federation is the decentralisation of its defence system. Though the constitution gives the powers to. organise defence and military system to the Federal Government yet it also lays down that it cannot keep a standing army during peace, though a Commander-in-Chief is. elected by the Federal Assembly. In normal times, military service is compulsory for all citizens between the age of 20 and 48. In view of Switzerland's traditional neutrality, there has not been any real need to organise any strong defence force. In times of emergency all these men can be called to active service. The Cantons, on the other hand, are allowed to keep their military formation up to the extent of 300 soldiers. In times of war, the federal government can raise an army. But it is raised, trained and equipped by Cantons, though the expenditure is borne by the Federation. Thus Switzerland on the one hand saves a lot of expenditure on its defence organisation, on the other, it maintains armed militia to defend its neutrality.

Further, unlike the American Constitution, the Swiss Constitution has combined legislative centralisation with administrative decentralisation because the Federal laws are given an effect, as a rule, by the Cantonal authorities. However, the process of growth, of constitution has been towards more powers to the federal government. The war has had its impact and economic depression too. These required national solution of problems raised. The people also have been liberal in this respect. They have been ready to accept the proposals enhancing powers' of the federal government. The financial relations also helped in the process. About ***25%.*** budget of Cantons comes from the central grants-in-aid. Naturally, the federal government exercises supervision over its expenditure and hence general policies of Cantons.

POINTS TO REMEMBER

Division of powers on the model of the American system—residuary powers vest in the Cantons—constitution enumerates federal powers—there are certain concurrent powers too—most of the federal powers are exercised by-Cantonal officials—thus decentralisation is the key note of Swiss administration —Federal Government not allowed to impose direct taxation.

Q. 4. Discuss the government set-up in the Swiss Cantons.

Ans. There are 22 Cantons in the Swiss Federation. Out of these three are split up into Half-Cantons. Thus there are 25 political units in all. These Cantons vary greatly in size and population. Under the Federal Constitution each Canton has the right to have its own constitution which is guaranteed by the Federal Government. These constitutions, however, should not be repugnant to the Federal one. The rights and powers of the Cantons roughly correspond to those of the States in the U.S.A. There are as many consti-

tutions as the number of Cantons. But during the past years there have been a number of total as well as partial revisions of the Cantonal constitutions. The net result of these amendments is that most of the Cantonal constitutions are now similar in all important matters. The differences, wherever they are, exist more in degree than in kind.

Broadly speaking, there are two different kinds of Cantonal constitutions :

(a) Absolute direct democracy Cantons, and (b) Representative Cantons.

The Cantons in the first category are 6 in number. They stick to their traditional way of government through primary assemblies known as the *Landsgemeinde.* All the voters meet once a year in an open air assembly where they have the right to speak and vote. These primary assemblies are presided over by a Landamman who is elected annually by the people. The assembly enacts laws and elects an Executive Council. It also elects judges. All important executive and legislative business is transacted by these primary assemblies.

In the representative Cantons the following is the broad pattern of government:

Great Council ? In these Cantons there is a unicameral legislature known as the Great Council. It is elected on the basis of adult manhood suffrage, either for three or four years. It passes all Cantonal laws and appoints a number of Cantonal officials in the same manner as does the Federal Assembly in the case of Federal officials.

Executive Council: Like the Federal Government, **the** executive powers are also vested in a body and not in one individual. It is known as the Governing Council or the Executive Council. It consists of 5 to 11 members. Its work is also divided in the departments on **the** model of the Federal Council. It is also subordinate **to the** Great Council. **The** Councillors are elected by **the** Legislature and must report to the latter about the Cantonal administration. In each Canton direct democratic devices of Referendum and Initiative are employed. Whereas in the case of Federal constitution, Initiative can be used only in case of constitutional revision, in many of the Cantons it can be used in the case of ordinary legislation as well.

Judiciary : The Cantonal Judiciary consists of three types of Courts a Court of Appeal, Courts of First Instance and Justices of the Peacei The judges are chosen either by the people themselves or by the Great Council. Like the Federal constitution, the judges are not appointed by the Executive CounciL in any Cantory Another peculiar feature of the Cantonal Judiciaries is the preference of administration,

Communes and Districts : The Commune is the smallest unit **of** Swiss Governmental system. There **are** over 3,118 Communes in

Switzerland varying in size and population. A Commune in Switzerland deals with many problems of local administration.

The District is in between the Canton and the Commune. But it is generally merely an administrative unit and not a political community like the Commune. The Chief District official is directly elected by the people and is often assisted by a Council.

This brief description of the local administration in Switzerland reveals that it is very near the Indian conception of Panchayat Raj. The essence of Swiss Democracy is described as "Communal before being Cantonal, and Cantonal before being Federal." Bryce regards this system to be the best one because people of Switzerland receive practical experience of working republican institutions.

POINTS TO REMEMBER

The Swiss Constitution provides for separate Cantonal constitution. There are as many constitutions as is the number of Cantons. There are 19 full and 6 half Cantons. Through partial and total revisions, now all the Cantonal constitutions are almost similar. In some there is direct democracy practised through primary assemblies. In others there are representative institutions. Referendum and Initiative are frequently employed. A Commune is the lowest unit of administration.

PROBABLE QUESTIONS WITH HINTS

1. '"The Swiss Constitution really creates "the Confederation, in some measure into a tutor and inspector of Cantons." In the light of this statement, examine the nature of Swiss Federation.

[Refer to relevant part of the text of Q. 3.]

2. 'The Swiss Constitution combines legislative centralisation with administrative]decentralisation.' Elucidate.

[Refer to Q. 3.]

"The Swiss Executive is a Board of Directors appointed to manage the concern of the Confederation in accordance with the wishes of the Federal Assembly." —*Dicey-*

CHAPTER IV

THE SWISS EXECUTIVE

The executive authority of Swiss Confederation is exercised by a commission of seven men known as the *Bundesrat* or Federal Council. As such the Swiss Executive does not correspond to the Presidential Government of their. S. A., or the Parliamentary Government of England or of India. The seven members of the Federal Council are not ministers nor is the President of the Council like a Prime Minister. The members of the Federal Council are elected by both Houses of the legislature at their joint sitting. The term of the Council corresponds to that of the National Council which is the Lower House of the Legislature, *i.e.*, 4 years. The President of the Federal Council is, however, elected every year, and so also is elected its Vice-President. The same persons cannot be elected to both these offices for two consecutive years. "The Swiss Constitution," as Strong points out. "insists upon rotation." The President of the Council presides over its meetings and has a casting vote in case of a tie and draws about £60 more per year than his colleagues. But this does not mean that he enjoys more powers than his colleagues. He is just like other members, of the Federal Council and individually he cannot be regarded as the executive head of Switzerland.

Q. 5. Describe the composition and powers of the Swiss Executive. Analyse the relations of the executive with the legislature.

A unique feature of the Constitution of Switzerland is its plural executive.

Ans. The executive in Switzerland is known as the Federal Council. It is head of the State as well as of the executive. It combines both the powers of the ceremonial head of State like the Queen and the real powers of government as are exercised by the Cabinet. Originally, the term of members was fixed at three years. As the term of the National Council was increased from three to four years in 1931, so the term of the members of Federal Council was also increased to four years. It consists of seven members elected by the two chambers of the Federal Assembly for a term of four years. This coincides with the life of the National Council, the Lower House of the Federal Assembly.

Not more than one member can be chosen from the same Canton. The persons related by blood or marriage cannot be at the same time members of the Council. They cannot be removed from office before the expiry of their term. After election, a Federal Councillor cannot hold any other office in the Federal or Cantonal Services nor can he engage himself in any other professional Although any citizen can be elected to the Federal Council under the provisions of the constitution, yet by **a** long established

convention the members of the Council are elected from amongst the members of the federal legislature. However, they resign their membership of the legislature on getting into the Council. Again, by convention the Federal Councillors are re-elected so long as they desire to serve. According to another convention, out of the seven seats on the Council, one each must go to the Cantons of Berne, Zurich and Vaud. There is yet another convention by which the Federal Councillors usually belong to the following linguistic groups : German speaking—4, French-speaking—2, and Italian-speaking—1. The Federal Councillors are generally leaders of political parties in the Federal Assembly. The Council is always a coalition. Leaders of 3 or 4 parties are always present in it. But they are supposed to be politically neutral in the conduct of administration.

President and Vice-President : The Federal Assembly elects every year a President and a Vice-President of the Federal Council. The same person cannot be elected to that office for the second consecutive year, although he can be re-elected every alternative year. The President cannot be elected to the Vice-Presidency at the expiry of his term as President. Usually what happens is that at the end of one year the Vice-President becomes the President and another member is elected to the Vice Presidency. The two offices rotate among the members of the Federal Council according to seniority. It means that a Federal Councillor can become a President for more than one term though not consecutively. The President of Federal Council is known as the President of the Swiss Confederation in general practice. But the President does not enjoy any special powers which other Councillors do not enjoy. He is in no sense the chief executive head of the State. All decisions are taken in the meeting of the Council by a majority vote. The President is simply a chairman of the Federal Council and presides over its meeting where he can use a casting vote in case of a tie. However, in practice, the President gets precedence over other members although constitutionally this is not very significant. By virtue of a convention, he performs the function of supervising other departments. He is also the ceremonial head of the State and receives all foreign diplomatic representatives accredited to Switzerland. As a matter of honour, he is paid £60 more per year than what his colleagues get.

Chancellor ; Besides the Office of President, there is an office of the Chancellor of the Confederation. He is also elected by the two chambers of the Federal Legislature in a joint meeting but he is not the member of Federal Council. He, too, holds office for a period of 4 years. He acts as the General-Secretary of the Federal Council and the National Assembly. He maintains the records of their proceedings. He conducts elections, and Referenda. All Federal laws are countersigned by him. He is thus a mere glorified head clerk. The Chancellor is assisted in his work by a Vice-Chancellor who is appointed by the Federal Council.

Organisation of Departments : Federal administration in Switzerland is divided into seven departments. Allocation of departments made by the Councillors by mutual arrangement. Each department is put under the charge of a Federal Councillor. Although Federal Councillors are individually responsible for running their departments yet all decisions regarding executive policy must emanate from the Council as a whole. There are the following seven departments of the government:

1. Political Department (Foreign Affairs, naturalisation and emigration).
2. Department of Public Economy (Industry, Commerce, Labour and Agriculture).
3. Department of Justice and Police (Internal Security).
4. Military Department.
5. Finance and Customs.
6. Department of Posts and Railways.
7. Department of Interior (Museums, Public Buildings, Forests, Fisheries etc.)

Each department is divided into bureaus or services with a relatively small number of federal officials.

Functions of the Executive : The work of the Federal administration is divided into seven departments and each one of them is put under the charge of a Federal, Councillor." The constitution lays down that the division of departments should be done in order to expedite the governmental business, otherwise all executive decisions must emanate from the Council as a whole. It meets occasionally to discuss important policy matters and collectively presents the annual report,to the legislature. In practice, however, each member is responsible for his department and it lies with the President to co-ordinate and supervise the work of all the seven departments. There is also a secretariat known as the Chancellery under the Chancellor of the Confederation to aid and assist the ministers. The functions of the Federal Council may be detailed as follows:

(i) **Executive** : The executive functions of the Federal Council relate to the execution of all laws, conduct of foreign affairs, preparation of budget, appointment of officials and control of army. All executive action is taken in the name of the Federal Council. The Council acts as the guardian of the constitution. It also guarantees the constitutions of the Cantons as provided under the Federal Constitution.

(ii) Legislative : The legislative functions of the Federal Council include the preparation of Bills, introduction of Bills, parti-

cipation in debates and submission to the Assembly of a report on administration every year. The Council presents the annual budget to the Assembly and gets it passed by it. It submits a report on expenditure every year. It submits reports on every bill introduced in the Legislature. The members answer questions, participate in debates and report on various questions.

(HI) Judicial: The Council executes the decisions of the Federal Court. Originally it served also as the Chief Administrative Court. But lately its judicial powers are on the decline and today the Council hardly performs any judicial function.

Relations of the Executive and the Legislature. As in other Swiss political institutions, the relation of the Swiss executive and legislature is also unique. Although elected by the National Assembly, the Federal Councillors cannot be removed from office before the expiry Of their term of 4 years. The Councillors can attend and speak in either Souse of the Assembly, but they cannot vote. If a Bill moved by a Councillor is defeated, that does not mean his resignation. The Councillors initiate most of the Bills in the legislature. If a private member takes the initiative of introducing a Bill, it is submitted first to the Council for its opinion. The members introduce bills in general form. After the report of the Council, the bill is discussed by the Assembly. If approved, it is referred again to the Council which drafts it in the form of a detailed bill. The Council has thus been called the drafting bureau of the Federal Assembly. The Councillors are considered to be the servants of the Federal Assembly and as such they are not expected to leave their jobs when the employers decide to get something done against their wishes. **They** merely submit to the will of the legislature with good grace. They either drop the matter or amend the Bill in the light of the criticism. This enables the Swiss to retain their experienced and tried ministers and have a stable government. Instability of parliamentary system is thus avoided. Servitude of the Federal Council to the Federal Assembly is also clear from the facts that the Federal Councillors; are appointed by the Federal Assembly. It issues directives in the shape of resolutions indicating the way in which the Council is to discharge its functions. The Council cannot launch its external or internal policy without the previous or subsequent approval of the Assembly.

In spite of the fact, tie Federal Council is theoretically subordinate to the Federal Assembly, in practice the former is not so weak in relation to the latter. The Federal Council has acquired for itself a dignity and status by virtue of which it exerts a far greater influence over public affairs than its subordinate position would warrant. Bills moved by it are seldom rejected or seriously amended. The Council is responsible to the Assembly. But it cannot, be removed by a vote of no-confidence because it enjoys the fixed tenure of 4 years. In case of differences the Council submits to the will of the Assembly. In practice, it is, possible because the

Council is always a coalition Cabinet and includes the leaders of 3 to 4 parties that control the Assembly and hence, the Council always carries majority with it in the Assembly. The Federal Councillors are considered to be experts in legislation and their opinions are always respected by the members of the Assembly. We may conclude in the words of Lord Bryce that 'the Federal Council is legally the servant of the legislature, it exerts in practice almost as much authority as do English, and more than do some French Cabinets. It is a guide as well as an instrument and often suggests as well as drafts measures."

POINTS TO REMEMBER

Collegiate executive known as Federal Council—elected by the Federal Assembly for four years. It has **a** President who is commonly known as President of the Confederation—Federal Councillors conduct all executive business jointly—in practice each of the seven Councillors is in charge of **a** department—The Federal Council initiates Bills in the legislature though it cannot vote—defeat in legislature does not mean resignation from office.

Q. 6. Discuss the special features of the Plural Executive in Switzerland. Compare and contrast it with the Presidential and Parliamentary types of executive.

Ans. The Swiss Executive is a class by itself which is neither Parliamentary nor Presidential. The collegiate executive of Switzerland is regarded as one of the most unique political institutions in modern constitutional practice. The special features of this executive may be discussed as follows :

1. Collegiate Character : The Swiss Executive is collegiate in character The executive authority of the confederation has been vested in a Federal Council consisting of seven members. All the seven Federal Councillors are equal in status and authority. Every year one of the Federal Councillors is appointed as the President. But the constitutional position of the President is neither like the American President nor like the British Prime Minister. He has no special powers attached to his office. He presides over the meetings, of the Council and can use his casting vote in case of a tie but has no over-riding powers.

The Council is both head of the State and constitutes the government of the federal union. It is at once real executive and nominal executive. There is no single President of Swiss State. In this respect it differs with Cabinet system in so far as there is a distinction between nominal and real executive. In Britain, the Queen is the titular head with little powers. On the other hand, in America the President is both real and nominal head but with the difference that he makes a single executive while the Federal Council is a collegiate body.

2. Mixed Executive : The Federal Council has mixed features of the Cabinet arid Presidential systems of government. Like a Cabinet, it is elected by the Federal Assembly generally from

amongst its own members ; though outsiders may also be included. But as under Presidential system, they resign from the Assembly after their appointment on the Council. Like a Cabinet, its members attend session of the Assembly, answer questions, participate in debates, initiate bills, submit reports on the working of the governments. The Council controls budget and submits an annual report at the close of the year on the expenditure of the State. This report is discussed and becomes an occasion for the review of the government policies in that year. The Council is responsible to the Assembly like a Cabinet in Parliamentary democracy. But as in the Presidential system, it enjoys a fixed tenure of 4 years and cannot be removed by a vote of no-confidence. In case of difference of opinion, it submits to the will of the Legislature and changes its policy accordingly. As in the Presidential system, it has no direct control over the Legislature. It cannot dissolve the Legislature as a Cabinet can. Like a Cabinet the Council is generally a coalition; it includes leaders of all the important parties in the Assembly and therefore in practice controls majority therein.

3. Permanence : The Federal Council enjoys a fixed tenure of four years and thus can follow a strong and continuous policy. The members are eligible to be elected for any number of years. Lignor Mota was a Councillor continuously for more than 30 years. The Councillors are generally professional politicians and hence bring the element of permanency in the government. Thus more or less the Council is a permanent body. Though it is responsible to the Assembly yet is not removed by its vote of no-confidence. It simply changes its policy. Thus the Federal Councillor is like 'a lawyer or an architect in that his advice is generally and usually heeded, but who is not supposed to throw away his job in a hurry whenever his employers insist on not acting on his advice.' Thus the Swiss Executive combines the responsibility of British Cabinet System and the permanency of the American System.

4. Collective Responsibility : The Council acts as a corporate body. Its decisions are collective decisions taken by majority vote. The annual reports submitted to the Assembly are collective reports coming from the Council. The proposals introduced in the Assembly are initiated in the name of the Council. However, a dissenting Councillor is allowed to express his differences with the collective policy privately or 'unofficially'. In this respect it resembles the British Cabinet to some extent with the difference that ministers are not allowed to express their difference even unofficially.

POINTS TO REMEMBER

Swiss Executive a class by itself—Collegiate or Plural Executive—neither Parliamentary nor Presidential but a mixed Executive—servant of the Legislature in all respects—combines responsibility with permanence—generally a coalition. Leaders of all parties are included.

PROBABLE QUESTIONS WITH HINTS

1. 'The Federal Council is one of the institutions of Switzerland that best deserves study.' Discuss. (*Agra 1950)*

[Discuss with reference to Q. 5 & 6.]

2. 'The relation of the Swiss Ministry to the Legislature differs from that which exists in any other country.' Discuss. *(Agra 1940, '44y*

[Discuss with reference to the relations between the Executive and the Legislature dealt with in Q. 5.]

3. 'A system of government which falls in a class by itself, which differs, from the Presidential and the Cabinet types but which combines certain features, of both, is that of Switzerland." Discuss. (*Dacca 1943)*

[Discuss with reference to Q. 6.]

4. 'The Swiss Federal Council is said to be Collegiate.' Elaborate the **statement,**

[Refer to the text of Q. 6.]

"The Swiss Federation has most effectively harmonised national with Cantonal interests, through its bicameral Legislature." —*Edwine Muller*

CHAPTER V

SWISS FEDERAL LEGISLATURE

The Federal Legislature in Switzerland consists of two Chambers—the Council of States and the National Council. The Council of States is Upper Chamber and represents the Federal Units, while the National Council is the Lower Chamber and represents the federal citizens. The Council of States consists of 44 members—two from each Canton and one from each Half-Canton. The National Council consists of 196 members elected on manhood suffrage on the basis of population. No person can be a member of both the Houses at the same time. Moreover, no member of either House can hold any office under the Federal Government, though he may hold any office under a Cantonal Government. The Legislature is jointly known as the Federal Assembly. Both the Houses enjoy equal powers. The Assembly cannot be dissolved like the British or Indian Parliament by any executive order before the. expiry of its term.

Q. 7. Describe the organisation and position of the Swiss Council of States.

Ans. The Council of States is the Upper Chamber of Federal Assembly. It is Federal chamber representing the Cantons as fede? rating units. Each Canton, irrespective of its size and population, lis entitled to send two representatives to the Council of States. Each Half-Canton can, however, send only one representative. Thus the Council of States consists of 44 members there being 19 full Cantons and 6 Half-Cantons. In this respect it resembles the American Senate on which all the States are equally represented irrespective of differences in size and population, but it differs greatly from the Indian Council **Of** States where the States are represented in propor- to their population.

The election to the Council of States is conducted by each ton according to its own laws. The result is that while some ntons elect their representatives by direct vote of their people, her elect them indirectly through their ligislature. Seventeen mtons elect them directly, 4 in their Landesgemeinde Primary assemblies and the remaining 4 through their legislatures. Another urious fact about the Swiss Upper House is that the Federal Constitution does not fix any tenure for it. The tenure of members of the Council of States is determined by their Cantons. It varies from one to four years. They are elected for 4 years in fourteen Cantons, for 5 years in eight Cantons and for one year in three Cantons. Full autonomy given to the Cantons in electing their representatives to the Council of States is also evident from the fact

that while the constitution prohibits clergymen from being elected to the National Council, a Canton may allow them to contest election to the Council of States. Thus the members are emissaries of their Cantons.

There is, however, another feature of the Council of States. The Council of States is supposed to represent the Cantonal interests but article 91 of the constitution prohibits the Deputies to vote according to Cantonal instructions. Thus the Deputies generally vote according to their individual judgment.

Its Presiding Officer : The Council of States elects its President and Vice-President for one year. The same persons cannot retain these offices for two consecutive terms. The Vice-President of the preceding year is usually promoted to the office of President the following year. Both the President and Vice-President cannot belong to the same Canton. Persons related by blood cannot hold the two offices at the same time. The President presides over the meetings of the Council and conducts its proceedings. He does not enjoy the same dignity and prestige as is enjoyed by his prototype in England or America. In case of a tie, however, he can use his casting vote but in the election of Federal of the Councillors, the judges and the Chancellor, he votes in the same manner as other members do. Though he has no special powers, yet he enjoys respect and dignity.

Its Language : Speeches in the House can be made in any of the three national languages—German, French or Italian. Every public document is published in all the three languages.

Its Sessions : The Council of States holds an ordinary session fence a year on a day fixed by standing orders. It can also hold extra-ordinary sessions On being summoned by the Federal Council on the request of at least one-quarter of the members or of 5 Cantons. Attendance of an absolute majority of the members is essential to fill the quorum.

Its Position : The Council of States enjoys equal powers with the National Council in all respects. The authors of the Swiss Constitution wanted it to be a model of the American Senate. A Bill whether ordinary or financial or constitutional, must be passed by both the Houses in the same form. In case of money bills, the Lower House enjoys no superiority as in Britain or America. Budget is introduced in both the Houses in alternate years. If in one year it is initiated in one House, the second year it shall be introduced in the other House. It case of a conflict between the two Houses, the bill, whether ordinary or money bill, is referred to a joint conference consisting of representatives of both the Houses. If this Committee fails to reach an agreement, the Bill is killed. If it reaches a compromise, it is referred to both the chambers. If it is accepted by both, it becomes law : If either of them rejects the compromise, the Bill is killed. The Federal Councillors appear in both chambers and answer the questions put to them by members and submit reports. The Chairmen of both the Houses mutually decide as to the priority of legislation to be discussed in the two chambers.

As compared to the House of Lords, it is much stronger. Nor has it become a 'fortress of wealth'. As compared to the American Senate, it is weaker. It does not enjoy the executive powers which the Senate enjoys with the President. It has no extra powers which the National Council does not enjoy.

In practice, in spite of co-equal powers, the weight of working of the constitution has been towards strengthening the Lower House as against the process in America where the Senate has become stronger than the House of Representatives. It has been so because the Swiss Council of States suffers from certain weaknesses. It has no fixed term as its term depends on the Cantonal Constitutions. Quite a number of Deputies have shorter terms than those of the members of the National Council. So quite a number of politicians prefer to be in the National Council rather than in the Council of States. Membership of the Council of States is usually regarded as a stepping board for something big.

POINTS TO REMEMBER

The Council of States represents the Cantons on the basis of equality—every full Canton sends two and Half-Canton sends one representative The. members of the Council of States are elected according to Cantonal Law. Its total strength is fourty-four. It elects its President and Vice-President every year. It enjoys equal and co-ordinate powers with the National Council. It is not as strong as the Senate of America, nor as weak as the House of Lords of Britain.

Q. 8. Discuss the organisation of the Swiss National Council.

Ans. The National Council is the Lower Chamber of the Swiss Federal Assembly. It is a popular chamber. It represents the Swiss people as a whole as against the Cantonal representation provided in the Council of States. Its composition and organisation are regulated entirely by the Federal Constitution as against that of the Council of States whose election and tenure of members are regulated by the various Cantonal Constitutions Elections to this House are held on the basis of manhood franchise, secret ballot and proportional representation. Every male citizen who has completed *2,0* years of age has the right to vote and to be elected. Clergymen, servants of the Federal Government, members of the Federal Council and Council of States are not eligible for this House. Women have no vote nor can they be elected.

A unit of population not exceeding 24,000 is entitled to return one member to the House, but a Canton having lesser population has the right to send at least one member. Populous Cantons like Berne and Zurich have 31 and 28 representatives respectively while Uri, a very small Canton, has only one member. The total strength of the National Council at present is 196,

The members are elected on the basis of proportional representation. Every Canton constitutes one constituency. The method

of election is list system. Every voter has as many votes as the number of representatives. He has to spread these votes on a similar number of candidates It is known as spread-over system. He cannot accumulate these votes in favour of fewer candidates.

Its Life : It is elected for a period of 4 years. It cannot be dissolved earlier before the expiry of its normal term by an executive decree. It may, however, dissolve itself by its own resolution or people may force its dissolution by demanding a total revision of the constitution or it may be dissolved when the two Houses disagree on a proposal for constitutional amendment.

Its Sessions : According to the constitution, the National Council must meet at least once a year. But extraodinary sessions, can, however, be convened by the Federal Council on the request of one-quarter of the members of the National Council or of 5 Cantons. In practice, there are about four sessions of both the Houses in a year. The quorum is an absolute majority of the total membership of the House.

Its Presiding Officer : The House elects a President and a Vice-President for each year. These offices are usually filled by rotation. The same person cannot be re-elected for the second consecutive year. Both the offices cannot be held by persons belonging to the same Canton nor can these be held by persons related by blood or marriage. The Vice-President of the preceding year is. usually promoted to the office of President the following year. The President presides over the meetings of the House and conducts its proceedings. The Presiding Officer of the Swiss National Council does not enjoy the powers and position enjoyed by the Speaker of the House of Representatives in America. It is because of the fact that meetings of the Swiss Legislature are most orderly, calm, solid and business-like. He can, however, use his casting vote in case of a. tie but when the House meets for election, he has no casting vote.

Its Language : Speeches in the House can be made in any of the national languages—German, French or Italian. Every public document is published in all the three languages.

No Opposition : The role of the political parties in Switzerland is insignificant. The political parties do not dominate the scene on account of two specific reasons. Firstly, a majority party in the Legislature is not to form its executive and secondly, the Legislature is not all in all in legislative affairs since its powers are subject to the referendum of the people. There is, therefore, no division 'of the House into Government Benches and Opposition. Benches. The Federal Councillors are not members of the Legislature though they take part in the debates and discussions of the House. They do not in any way represent the majority party. It is generally a coalition and includes leaders of 3 or 4 parties. Since there is no ministerial party, the question of opposition does not arise. The members in the House sit by Cantons in a neighbourly

fashion and not by way of their party links. The Swiss people themselves do not display any strong political hostility. They view every legislative measure from the point of its practical utility and not from any political angle. In fact, the Swiss nation is not divided into economic class like Britain. It is dominated by the middle class who follows liberal professions or small scale industry and trade.

Functions : The Swiss National Council has equal and co-ordinate powers with the Council of States. Its functions are discussed in the next question.

POINTS TO REMEMBER

The National Council is elected directly by the people of Switzerland on the basis of manhood franchise, proportional representation and secret ballot. A unit of population not exceeding 24,000 elects one representative to this House. The present strength of the House is 196. Its normal life is 4 years and in very rare cases it can be dissolved earlier. It holds four sessions a year. It elects its President and Vice-President. Speeches are made in all the three languages.' There is no demonstration of party spirit in the House.

Q. 9. Discuss the powers and legislative procedure of the Swiss Federal Assembly. Analyse the mutual relations between the two Houses of the Federal Assembly.

Ans. The Federal Assembly is competent to deliberate on matters within the federal sphere. Its powers may be discussed under the following heads :

Legislative Powers : The Federal Assembly has the following powers in the legislative sphere :

1. It enacts laws dealing with the organisation and mode of election of federal authorities. It elects the Federal Council, the Federal Tribunal, the C-in-C, the Chancellor etc. It fixes their salaries.

2. It legislates on all federal subjects.

3. It devises measures to ensure observance of the Federal Constitution, fulfilment of Federal obligations and sanctity of Cantonal Constitutions.

4. It formulates measures regarding external safety, Independence and neutrality of Switzerland.

5. It passes the annual budget of the Confederation.

All bills passed by the Federal Assembly become laws. No-executive or judicial veto can be applied against its laws. They are final. However, all ordinary laws are subject to an optional Referendum. 30,000 voters or 8 Cantons can demand a law to be submitted to referendum and such a law shall remain in force only if approved by the majority of voters in the country. Such a demand must be made by at least 30,000 voters and within 90 days Of the promulgation of the law in question. However, financial laws

and 'urgent' laws are not subject to such referendum. But an 'urgent' law can remain in force for one year, after the expiry of which it must be submitted to referendum if required to be continued.

Though the Assembly has been given delegated and specified powers yet it may make any law which may fall even in the field of Cantonal jurisdiction. It shall not be *ultra vires.* The Constitution states that a 'federal law breaks the Cantonal law.'

Executive Powers: 1. The Federal Assembly elects the Federal Councillors, the Chancellor, Judges of the Federal Tribunal and the Commander-in-Chief in times of war.

2. It supervises the work of other federal services.

3. It decides disputes and conflicts of jurisdiction between federal officials.

4. It controls the federal army.

5. It declares war and concludes peace, and. also ratifies treaties and alliances.

6. It decides action against a Canton if it fails to execute federal laws or obligations.

7. It also confirms all treaties between Cantons themselves.

Judicial Powers : The Federal Assembly grants amnesty **or** general pardon. It elects members of the Federal Tribunal. The latter submits an annual report on its working to the Assembly.

Constitution-Amending Powers : The Federal Assembly can initiate proposals to amend the constitution subject to approval by the people through a Referendum. People of Swiss Confederation may also put forward a proposal for Constitution amendment through Initiative. The Federal Assembly must consider the proposal initiated by the people.

(Full details regarding the procedure of Constitutional amendment are discussed elsewhere in the book.)

Legislative Procedure : The Bills are introduced simultaneously in both the Houses of the Legislature. This is in contrast with the practice in other countries where Bills are passed by one House and then referred to the other. The Swiss practice ensures independent deliberation by both the Houses. Although any member can introduce a Bill, yet in practice, all the Bills are drafted and introduced by and through the Federal Council. The Federal Council as a matter of practice drafts Bills on, the request of a member of Federal Assembly or on popular demand. A member of either House may introduce a bill in the form of a *postulate'* or a *'motion.'* A postulate is a request to the Executive that a certain matter deserves consideration, but it makes no specific recommendations or proposals, A motion, on the other hand, is a demand suggesting some effective measures to the executive. The Federal Council then transforms it into a properly drafted Bill and the same is pub-

lished in the official journal. It is then examined, by a Parliamentary Committee. When approved by the Committee, the Bill is placed before the House supported by the statement of the Committee and speech of the Federal Councillor in charge of the Bill. If the Committee is not unanimous, two reports, one majority and other minority, are submitted for the consideration of the Assembly. Financial Bills are exclusively introduced by the Federal Council which alone is competent to initiate them.

Mutual Relations of the Two Houses : Both the Houses of the Swiss Federal Assembly have equal powers in all matters. In practice, it has been observed that there are almost no deadlocks between the two Houses. However, if there is disagreement between the two Houses, reference is made to an arbitration Committee composed of an equal number of members from both the Houses. The constitution does not make any provisions for resolving deadlocks if no decision is arrived at in the joint Committee. If no compromise is reached, the Bill is killed. In practice, the absence of a suitable provision for meeting such an eventuality has not been felt. The constitutional history of Switzerland reveals that the two Houses have always worked in complete harmony with each other. The deadlocks are very rare. If at all there is one, a solution has always been found. Hans Huber has rightly said, "In actual fact, a way out has always been found and even the process of arbitration here defined is generally quite unnecessary."

Critical Estimate : The Swiss Federal Assembly is the most business-like body in the world doing its work quietly. The members attend the meetings punctually and regularly. The debates are few and unemotional. There is perfect discipline and decorum in the House. Educational standard of the members is high. Majority of them are University graduates. Party spirit is never so keenly demonstrated as is the case with the House of Commons in England or U. S. Congress. The members sit by Cantons in a neighbourly manner and do not sit on party basis. The debates are orderly. Rhetoric is almost unknown. Debates are not intercepted by cheers or cries of approval or dissent. Obstruction is unknown and divisions are seldom. According to Bryce, "the Swiss Legislator is accustomed to take a middle-class business view of question, being less prone than German to talk about abstract first principles, and much less likely than the Frenchman to be dazzled by tinsel phrases." The role of political parties in the Swiss Legislature is not like that in England or France. This is probably due to the fact that the Executive is non-partisan and cannot be removed by the legislature. Moreover, even in the legislative field the Assembly does not have the last word. The ultimate authority vests in the people who can exercise it whenever they like.

The fear of Initiative and Referendum always acts as a restraint on the activities of the Legislature. It has eliminated the fear of legislative tyranny, or the tyranny of the Parliamentary majority

party. Some thinkers hold that these checks on the Federal Assembly have reduced its prestige and have even lowered the quality of its membership. This opinion is incorrect, because these Checks have helped to stimulate the enterprise of the Assembly. According to Finer, the possibility of the Initiative has stimulated the enterprise of the Assembly and has reduced the need of the Initiative.

POINTS TO REMEMBER

Federal Assembly has legislative, executive and judicial powers—it can legislate on all subjects within the federal sphere—it elects a number of officials -itgrants pardon—besides it can also amend the constitution subject to its ratification by the people—deadlocks between the two Houses very rare-no influence of party politics in the Assembly—the most business like legislature in the world.

PROBABLE QUESTIONS WITH HINTS

1. "The Swiss Federal Assembly is said to be the most business-like Parliament in the world'. Discuss.

   [Discuss with reference to the concluding paragraph of Q. 9]

2. Discuss the distinctive procedure of the Federal Assembly.

   [Refer to the paragraph under Q. 9, dealing with legislative procedure]

"The Swiss people prefer a rough, simple, or as they say, practical sort of justice." —*Bryce.*

CHAPTER VI

FEDERAL JUDICIARY

One of the main characteristics of Federalism is the authority of the judiciary. According to Dicey "the characteristics of Federalism—the supremacy of the constitution, the distribution of powers, the authority of the judiciary re-appear, though no doubt with modifications, in every true Federal State." In Switzerland there was no Federal Judiciary worth the name prior to 1874. All disputes between the Confederation and the Cantons or between the Cantons themselves were decided by the Federal Council and the Federal Assembly. The Constitution of 1874 provided for the establishment of a Federal Tribunal at Laussane, capital of the Canton of Vaud. Although the capital of the Executive and the Legislature is at Berne, the Federal Tribunal was set up at Laussane in deference to the -wishes of the French speaking people who felt that all the offices were concentrated in the German-Canton of Berne.

The Federal Tribunal is the only national court in Switzerland. **There** are no inferior Federal Courts as is-the case in the U.S.A. The reason for this state of affairs is that a large amount of judicial work is done by Cantonal Courts themselves. The Tribunal also does not have its own staff to enforce its judgments which in Switzerland is the duty of the Federal Council.

10. Describe the composition and functions of the Swiss Federal Tribunal. How does it differ from the U.S. Supreme Court ?

Ans In the Swiss Federal System the Judiciary does not play as important a part as it does in other Federations like that of the U.S.A. and India. There is only one Federal Court known as the Federal Tribunal or *Bundesgerischt.*

Composition : The Constitution does not say anything about its composition and organisation and instead leaves it to be determined by the Federal laws. It, however, lays down that the judges must represent the three official languages of the Confederation Any citizen who is eligible for election to the National Council can be appointed judge of the Federal tribunal.

At present the Tribunal consists of 26 to 28 judges and 11 to 13 alternate? judges. They are elected by the Federal Assembly at its joint sitting for a term of 6 years. The Federal Assembly selects a President and a Vice-President for two years' term from amongst the judges. The President and the Vice-President cannot be re-elected to the same offices for the second consecutive term. Here too the system of rotation is applied. Usually, in practice, the judges are elected as long as they desire to serve in that capacity. Here, too the Swiss follow the same conventions which they have built up regarding the Federal Council and other important federal offices.

This practice guarantees a more or less permanent tenure and thus, removes the danger to judicial independence inherent in a short term tenure. It sits at Laussane while the Council and the Assembly sit at Berne.

Qualifications : Even though the constitution does not prescribe any legal qualifications for judges, in practice, men of high, legal learning and ability are elected for this purpose. Further, the judges cannot hold any office of profit under any government in Switzerland. The President of the Federal Tribunal draws a salary of 32,000 francs a year and other judges 30,000 francs. The judges, retire at the age of 60 and are entitled to a pension provided they have served for at least 10 years.

Powers of the Federal Tribunal: The Swiss Federal Tribunal enjoys both original and appellate jurisdiction. Its original jurisdiction extends to constitutional, civil, criminal and administrative cases.

Constitutional Jurisdiction: The original jurisdiction of the Swiss Federal Tribunal extends to the following constitutional disputes:

(a) Cases of conflict between the Confederation and the Cantons. (b) Disputes between the Cantons themselves. (c) Cases of violation of the constitutional rights of citizens guaranteed under the Federal or Cantonal Constitutions and inter-Cantonal treaties, and arrangements.

The Tribunal can declare as null and void a Cantonal law if it contravenes the Federal or Cantonal Constitution but it cannot invalidate any law passed by the Federal Assembly. This is in strange contrast with the powers conferred upon the Supreme Court of the United States or India. This shows that the Swiss Federal Court cannot sit in judgment on the laws passed by the Federal Assembly. Thus the Federal Court does not enjoy full powers regarding the interpretation of the Federal Constitution. This power belongs to th? Federal Assembly and the people who can exercise it through Referendum and Initiative.

Civil Jurisdiction : The jurisdiction of the Court in civil cases extends to all civil disputes between the Confederation and the Canton or between the Cantons themselves. It also extends to disputes between the Confederation on the one hand and corporations, or individuals on the other, provided the sum involved exceeds 4,000 francs, The Court also enjoys jurisdiction in certain other cases, like the loss of citizenship, commercial law, copyrights and industrial inventions.

Criminal Jurisdiction : The criminal jurisdiction of the Tribunal extends to the following cases :

(a) Cases of treason against the Confederation or revolt or violence against the federal authorities. (b) Crimes and offences which call for federal military action, (c) Criminal charges **against**

federal officers brought by their superiors, *(d)* Crimes and offences against the law of nations.

Administrative Jurisdiction : The Tribunal enjoys limited administrative jurisdiction **as** well. It decides disputes regarding legal competence of public officials and various other administrative disputes. Formerly, the Court had no administrative powers as these were exercised by the Federal Council but by an amendment carried in 1925, the Federal Tribunal has been given some powers in this sphere as well.

"**Appellate Jurisdiction** : The Swiss Federal Tribunal enjoys very little appellate jurisdiction. It is only under certain circumstances that it can hear appeals against the decisions of the Cantonal High Courts. As a matter of rule, the appeals in civil cases involving relatively large amounts of money can be taken to the Federal Tribunal against the decisions of the Cantonal High Courts. The Federal Assembly, however, by law can increase the appellate jurisdiction of the Court.

Comparison with U.S. Supreme Court: 1. One of the essential features of a Federal Judiciary is that it acts as the guardiaa of the constitution. It can declare as null and void a law enacted by any Legislature in the country if it violates any provision of the constitution. The Supreme Courts of America and India possess this power but the Federal Tribunal of Switzerland enjoys a very limited power of judicial review. It cannot invalidate any Federal law although it can annul Cantonal law.

2. Just as in U.S.A. the decisions of the Supreme Court are enforced by the President so in Switzerland the decisions of the Federal Tribunal are enforced by the Federal Council through the Cantonal authorities.

3. In U.S.A. the judges are appointed for life by the President with the approval of the Senate. But by convention a judge retires if he has served on the Court for 10 years and has reached the age of 70. In Switzerland they are elected for 6 years by the Federal Assembly sitting in joint session. In practice, however, the judges are re-elected and usually retire at the age of sixty years.

4. In U.S.A. there are subordinate Federal Courts. But in Switzerland the Federal Tribunal is the only National Court of its kind with the exception of the Federal Insurance Tribunal.

5. In U.S.A. as in a number of other countries, administrative cases are tried by ordinary courts. But in Switzerland most of them are tried by the Federal Tribunal.

6. The Supreme Court of America is the guardian and custodian of the constitution and in this capacity it has developed and changed the constitution beyond recognition. The Swiss Federal Tribunal, on the other hand, has played no such role.

7. The Supreme Court of America is not under the control of the Congress but the Swiss Federal Tribunal is only a subordinate agency of the Federal Assembly. In the first place, it is elected by the Assembly and in the second place, it is supposed to submit an annual report of all its activities to the Federal Assembly.

Thus we see that in the Swiss Constitution, the Federal Judiciary does not enjoy an equal status with Federal Legislature. The former cannot invalidate the laws enacted by the latter even if they tend to violate the constitution. The reason probably is that the laws passed by the Legislature have the implicit consent of the people and as such the framers of the constitution did not consider it worthwhile to get them scrapped by the judiciary merely on certain technical grounds. If any law does not appeal to the people they can reject it through Referendum. It is probably this fact which led Hans Huber, a judge of the Swiss Federal Tribunal, to remark that "the Swiss as a whole, place democracy, the observance of the will of the people, above constitutionality."

POINTS TO REMEMBER

Federal Tribunal forms the highest federal judiciary—26 to 28 judges and 11 to 13 alternate judges elected by the Federal Assembly for 6 years, usually all judges are re-elected—has civil, original and limited constitutional jurisdiction—unlike most federal judiciaries it has no power to invalidate any federal law on the ground that it violates the constitution—it enjoys some administrative jurisdiction as well.

PROBABLE QUESTIONS WITH HINTS

1. 'The Swiss Federal Judiciary is only a subordinate branch of the Swiss federal Assembly', Comment.

[For answer refer to the position of the Federal Tribunal.]

2. 'The Swiss Federal Judiciary, fades into insignificance before the Supreme Court of America.' Elucidate.

[For answer refer to the comparison between tthe U. S. Supreme Court and the Swis's Federal Tribunal.]

"Nothing in Swiss arrangements is more instructive to the student of Democracy, for it opens a window into the soul of the multitude. Their thoughts and feelings are seen directly not refracted through the medium of elected bodies."

—Bryce on Direct democracy.

CHAPTER VII

DIRECT DEMOCRACY

Although the entire Swiss Constitution is unique in the history of constitutions for the various systems, yet the most significant aspect of the Swiss Governmental system is the provision of direct democratic devices. These devices are present in the form of the *Referendum* and the *Initiative.* These two forms of Direct Democracy are present in some of the State Constitutions of U.S.A. as well. But they are taken from the Swiss Constitution where these devices are as old as the Swiss history itself. The method of popular legislation directly by the *people is* fully manifested in the Swiss institutions like the *Landsgemeinde* or primary assemblies—the mass meetings of all citizens. These institutions are still kept alive with all their ancient traditions in a number of Cantons.

The *Landsgemeinde* is a Political Assembly which meets annually in the open air under the chairmanship of an annually elected Landsmman or President. This has been described by Brooks as "the most picturesque and fascinating of all the Swiss Political Institution." Every adult male citizen of the Canton has the right to attend such an Assembly and also to speak and vote on various public affairs under consideration. It makes laws, approves the budget, elects official and reviews their work in the past. The entire political authority of the community is centred in this primary assembly. This is the purest form of Direct Democracy.

Q. 11. Discuss the working of the devices of Referendum and Initiative in the Swiss Constitution. What are their merits and demerits ?

Ans. Among the unique features of Swiss Constitution the Direct Democratic devices of *Referendum* and *Initiative* occupy the first place, In countries like France, England, U.S.A. or India democracy finds its expression through bodies elected by the people. But the Swiss Constitution provides for Direct Democracy. Although there are elected bodies which conduct the day to day business of the Government, yet the constitution gives the people the power to keep them under their control and participate directly in the affairs of the government, if they feel the necessity therefor. Thus the Swiss political system envisages a mixed democracy.

The Referendum : The Referendum means reference of any particular legislation to the people for approval or rejection. In Switzerland, the Referendum is the constitutional right Conferred upon the electorate to give its opinion on any legislative or constitu-

tional measure already passed by the Legislature It is of two types : compulsory and optional. In case of constitutional amendments referendum is compulsory. Every amendment when proposed either by the Assembly or initiated by the people must be approved in Referendum to become law. It must be approved by majority of votes cast and along with it by majority of voters in majority of Cantons. In case of ordinary legislative measures it is optional. An ordinary legislative enactment is submitted for Referendum if it is so demanded by at least 30,000 citizens or 8 Cantons. But the Cantons have never demanded a Referendum. Such demand must be made within 90 days from the date of its promulgation. However, financial and 'urgent' laws' are not subject to referendum. An 'urgent' law shall have to be submitted to referendum if it is to be extended beyond one year. In case of such referendum only majority of the voters casting their votes is required for approval. The vote of majority of Cantons is not necessary.

The Referendum also finds a place in the Cantonal Constitutions. It is compulsory in case of amendments to the Cantonal Constitutions. In eight Cantons it is compulsory for ordinary legislation as well. But in Cantons having the institutions of *Landsgemeinde*, there is no need for Referendum.

The Constitutional Initiative : The Initiative denotes the right of the people to propose legislative measures for enactment. In Direct Democratic devices, the Referendum has only a negative effect. It can only enable the people to reject a measure if they dislike it. The Initiative, on the other hand, is a positive measure. It enables the people to originate legislation if they so desire. Thus the Referendum is only a shield to ward off undesirable legislation but the Initiative is a weapon in the hands of the people to chisel out the enactment of their own ideas into laws. The Initiative removes the shortcomings of the Referendum whereas the Referendum is a corrective to errors of commission of the Legislature, the Initiative is a corrective to the errors of omission of the Legislature. The Swiss Federal Constitution, however, allows the use of the Initiative only for Constitutional amendments The voters cannot propose ordinary legislation. However, some of the Cantonal Constitutions give this right to their citizens even in cases of normal legislative measures. A distinction must be made between a Petition and the Initiative. A Petition is only a submission to the Legislature which does not bind it to bring the proposal under consideration. The Initiative, on the other hand, is the assertion of the sovereign powers of the people A proposal made by way of Initiative cannot be ignored by the Legislature. It must be considered by it.

It may be noted that the device of Initiative is applicable to Constitutional amendments alone. It is not applicable to ordinary legislation in the sphere of Federal Government. 50,000 voters can initiate amendment or total revision of the constitution. It may be

in general terms or in the form of a detailed bill. Such initiation is submitted to the Assembly, which has got to submit it to referendum with or without its own recommendation. The decision of the people is final However, in certain Cantons it is applicable to ordinary legislation as well.

Working of Direct Democracy : The Direct Democratic-devices of the Referendum and the Initiative are not just recorded on paper. They have been frequently used. Between 1848 and 1947. the Swiss were called upon to vote 96 times in Constitutional Referenda. It is this fact which led Wheare to remark that while the Swiss Constitution is rigid, the Swiss people are flexible. Again, between 1874 and 1945, optional Referenda were held 49 times for ordinary legislative measures. Out of them 39 measures were rejected by the people.

Between 1891 and 1947, thirty-seven proposals for constitutional revision originated from the people by way of Initiative. Though only eighteen of these proposals were ultimately accepted bv a majority of the Cantons, yet it shows that the Swiss have made effective use of their rights. The Swiss people vote 4 to 8 times a year and each time on various issues. They have made a moderate use of these devices. This is in strange contrast with the working of Direct Democratic devices in some American States and Australia, where they have not worked successfully. The main reason of the remarkable success of Direct Democratic devices lies in the fact that the Swiss by nature are calm and cool-headed. They are inspired more by considerations of pure Democracy than by distrust in their representative Legislatures. They take a dispassionate view of things. They vote after carefully judging the merits and demerits of each measure. The Swiss have made a greater use of Referendum than that of Initiative. Their main desire is to check bad legislation and not to instruct their legislators. The result of the working of these devices has been generally conservative. The people are less prone to change than the Assembly. It results in localism and individualism. Radical measures initiated by the people have seldom been approved in referendum. These devices tend to increase 'the influence of political parties, and the pressure groups. In American States, on the other hand, the Initiative has been used more often than the Referendum. This difference emphasises the distrust which the Americans have got in their law makers whereas it proves that the Swiss have greater faith and confidence in their elected representatives. It is very rare that these powers are abused by the Swiss people but, on the other hand, these powers are very often abused by the Americans. Agents of interested parties go round collecting and even purchasing signatures in favour of the proposal they want to initiate. In some cases signatures are even forged. In short, the devices of Referendum and Initiative have achieved such a remarkable success in Switzerland as has not been achieved elsewhere in the world.

Merits : 1. The concept of democracy is based on the theory of sovereignty of the people. An effective realisation of this principle is possible only if the people have the right to express their judgment upon the measures passed by the Legislature as also the right to propose and initiate legislative and constitutional changes.

2. The Referendum and the Initiative are the surest means of expressing public opinion. Opinion expressed by representative bodies is often partisan and biased.

3. Both these devices provide a corrective to all errors of omission and commission committed by the Legislature. The Initiative can help people in putting forward proposals which the legislature have ignored for one reason or another. The Referendum, on the other hand, enables the people to vote upon measures enacted by the legislature if these are not considered to be desirable.

4. The system of Direct Democracy reduces to the minimum the baneful influence of political parties and eliminates evil practices like log rolling and political manoeuvres. Possibility of corruption is minimised.

5. Direct Democracy is the best means of political education of the masses. It promotes patriotism and infuses a sense of responsibility in them because they feel themselves closely associated with the process of law-making. People closely identify themselves with the laws and develop a greater respect for them because they reflect their own will.

6. The Initiative helps to eliminate political upheavals as legislation cannot be postponed indefinitely.

7. The system enables the legislators to keep in touch with the people at time other than election period and to feel the pulse of the nation.

Demerits : 1. It undermines the prestige of the legislators and may tend to lower their sense of responsibility. It also leads to inferior quality of members of the Legislatures as first rate politicians may not like to come into the legislatures.

2. Legislation requires special technical skill and knowledge. The man in-the-street is not competent to initiate legislation or sit in judgment on legislative measures passed by the Legislature. As for example, there appears to be no sense in asking a cowherd or stable boy to cast his vote in favour of or against and recommending nationalisation of banking and credit about which he knows nothing, "the language of the popularly initiated Bills is often vague and ambiguous. This creates difficulties in interpreting them. It is the

very fact which led Eismen to remark that Direct Democracy simply involves an appeal from knowledge to ignorance and from responsibility to irresponsibility.

3. Direct Democracy does not necessarily eliminate party-politics. In fact, it increases the importance of political parties because frequent votes are taken in Referenda and Initiative.

4. The Referendum often involves delay which is harmful in case of measures of urgent importance.

5. Simple 'yes' or 'no' in a Referendum does not necessarily indicate the real will of the people. They have to accept or reject a measure as a whole. They cannot suggest amendments. Thus the real democratic spirit is lost.

6. These devices are calculated to retard the progress of a country because the masses are generally of conservative nature and usually averse to change.

7. The system is not suitable for present day large-sized States.

Conclusion : A dispassionate study of the Direct Democratic devices in Switzerland reveals that they have more merits than demerits. Felix Bonjour regards Referendum as "an excellent barometer of the political atmosphere." Muller has praised the Swiss electorate for standing more firmly than the Legislature against half-baked laws through the devices of Referendum. While nationl progress in other countries has suffered in past to a considerable extent due to a series of laws passed by a certain majority class in the Legislature, Switzerland has not suffered like that. The people there have acted as a 'Third Chamber' which is more sovereign and powerful than the other two Chambers. It is, therefore, wrong to say that the advantages of Direct Democracy are more apparent than real.

POINTS TO REMEMBER

The Referendum means reference of any particular legislation to the people for approval or rejection. It may be compulsory or optional. It is compulsory for constitutional amendments and optional for ordinary laws. The Initiative denotes the right of the people to propose legislative measures for enactment* It can be used for constitutional amendments. The Swiss people have made an extensive use of these measures. These devices have achieved a marvellous success in Switzerland whereas they have been unsuccessful in American States and Australia.

Merits : They fulfil the spirit of democracy. They are a check on the tyranny of the legislature. They are the surest means of expressing pubic, opinion. They reduce the baneful influence of political parties. The Referendum is the best means for resolving deadlocks. Direct democracy is the best means of political education, etc.

Demerits : These devices are calculated to lower the prestige of the legislators. A common man does not understand the technique of modern legislation. It enhances the influence of political parties. There is no scope for amendment. Popular vote retards progressive legislation. The system is not suitable for large sized States.

PROBABLE QUESTIONS WITH HINTS

Describe the working of Direct Democracy in Switzerland. Would you advocate its adoption in India ? *(Agra 1942, '51)*

"The advantages of Direct Democratic devices are more apparent than real." Discuss.

[For answer refer to *Q. 11.]*

THE CONSTITUTION OF CHINA

CHAPTER I

CHINA

Q. I. Give a brief historical background [of the circumstances leading to the establishment of Communist Regime in. China.

Ans. Red China is one of the Big Powers of the world. It has the largest population, as compared to other states of the world. Its population is 601,938,035 and occupies an area of 9,736,000 kilometres There was a time when China had no respectable place in the family of nations and it did not occupy an important position in the International Politics. But today the Red China is a monster—a great power which threatens the peace and security not only of its neighbours but of the whole world. The whole of Asia is afraid of this giant and the European Powers look at its every act with suspicion and anxiety. Recently, it has been able to explode the A. Bomb and has therefore the claim of being one of the nuclear powers of the world. By creating troubles and disputes regarding boundaries, it is trying to over-run its small and weak neighbours. Even India is not an exception. In 1962 it attacked our country and had tried to grab thousands of square miles of our sacred territory by the use of naked force. China claimed to be a friend of India and its treacherous attack on our country in 1962 belied all its professions. To-day everyone thinks, of and is anxious to know the next step of the Chinese Government. In 1949, the Communists had completely entrenched themselves in China and since then they are ruling over the mainland of China popularly known as Red China. It must be admitted frankly that under the leadership of the Communist Party and the Communist Controlled Government China has come out as a very strong nation both militarily and economically. Looking at the enormous strength of China and its position in the modern International set-up, one is reminded of the words of Napolean Bonaparte, which he said about hundred years back .'—"China, there lies a sleeping giant. Let him sleep, for when he wakes he will shake the world." His prophecy has. come true. The giant is wide awake today, and the world rightly regards it as its greatest enemy.

The Chinese civilization is one of the most ancient Civilizations of the world and right from the beginning it had its religious cultural and political connections with India. The Communist claim that in China, first of all, there was primitive communism. It was replaced by slave-society and then by feudalism. Later on, China remained under the influence of foreign countries and it remained

divided into a number of "Spheres of Influence" for a pretty long time.

Ancient China was ruled over by several dynasties. From 2205 B.C. to 1766 B.C. HSI dynasty, from 1766 B.C. to 1122 B. C. Shang dynasty and after this the Chou dynasty ruled over China. From 618 A.D. to 907 A.D, the, Tang dynasty ruled over China and this period is regarded as the most glorious in the Chinese history. The Tang dynasty was followed by several others till the rise of Manchu dynasty which ruled during the period 1616-1908 A.D.

By the end of the 17th century, several foreign nations had started trade with China. The East India Company also carried on its trade with China. The East India Company freely encouraged the trade in opium. It produced an injurious effect on the health and working capacity of the Chinese and consequently in 1800 A.D. the Chinese Government prohibited the trade in opium.

In reality, the British were anxious to get special rights of various kinds, including equality of status in dealing with Chinese Government in China and this resulted in 1841, with the British bombardment of Canton, into the First Opium War. The First Opium War was concluded with the treaty of Nanking which *inter alia* provided cession of the island of Hong Kong to Britain, payment of fifteen million dollars as compensation to British merchants for the losses suffered, opening of a number of ports for British trade and residence. The treaty, also provided that in future the communications between the British and Chinese officers were to be made in a manner which gave equality of status to both. This is the first of those treaties which were termed by Chinese as 'Unequal' Treaties. Similar concessions were also later on granted to the Americans by the Chinese Government.

In 1858, the war again started between the Chinese and the British, which was concluded by the Treaty of Peking. This gave considerable rights to the British and French, including the right to enter into the Chinese territory freely. The Chinese Government also accepted the responsibility for the protection of the Christians in China. All these concessions affected the Chinese economy considerably. The Chinese came to believe firmly that all this insult and humiliation that they had to bear at the hands of the foreigners was due to the weakness of the Manchu dynasty. This feeling of resentment gave rise to several small revolts against the Manchu rulers which were, however, successfully crushed.

A war took place between Japan and China on the question of Korea. Japan wanted Korea to be an independent state, but China was determined to keep Korea under her control. As a consequence of this war, Korea was recognised as an independent state and China had to pay indemnity to Japan. This war created a threat to the integrity of China and the danger of her partition. In such critical moments, the Western Powers wanted to fish in the troubled waters. [Western Powers, therefore, offered to lend money to

China in return for concessions] of trade. Ultimately Britain acquired financial position in the rail-road between Mukden and Peking. Similarly, the Americans and the Germans acquired rights to construct different sections of the extension of the rail-roads.

By the end of the 19th century, China was so much under the foreign influence that it was no other than a tool in the hands of European powers. The foreigners were draining away the wealth from China, which resulted into a heavy loss to the Chinese economy, industry and the state revenue. The Chinese buoyants believed they could not become a strong and respectable nation unless the foreigners were thrown out of China. The politically conscious Chinese organised themselves into new revolutionary movement to free the country from foreign domination and to establish a republican government after overthrowing Manchu regime.

Sun-Yat-Sen was the moving force of this revolutionary moment. On account of his revolutionary activities he had to run away from China in 1895. But he continued guiding the movement from outside China. Consequently, in 1898 the Boxer-uprising took place which resulted in violent attacks on foreign legations in Peking and Chinese Christians. It resulted into the death of several diplomats and Chinese Christians. The foreign powers in order to safeguard their interests combined together to combat the Boxers. The Boxers could not withstand the onslaught of the combined forces and the uprising was crushed in big cities though the uprising as such could not be suppressed. On September 7, 1901 the Boxer Protocol was signed. The Protocol provided reparation for the assassinated, punishment for the authors of crime, payment of heavy indemnity, occupation of twelve specified places by the combined troops etc., etc.

After the Boxer uprising, the Chinese Government undertook **a** programme of reforms which was anti-foreign in spirit and aimed at the over-throw of Manchu regime. The movement soon spread throughout the country and the Manchu dynasty's rule was eliminated from the whole of Southern China. The representatives of the revolutionary sections of the people met in a Representative Assembly which, in December 1911 established the Chinese Republic, Dr. Sun-Yat Sen, who was then returning from America was made its President. At this very time, the Chinese Government authorised Yuan Shin-Kai, the Prime Minister to crush the Boxer-uprising fully. However, an agreement was reached between Dr. Sun-Yat-Sen and Yuan-Shin-Kai and Sun-Yet-Sen resigned his provisional Presidentship in favour of Yuan, and on January 12, 1912, he persuaded the six year old emperor to abdicate his throne.

After 1912. At the end of the year 1912, elections were to be held. Each section of the revolutionaries organised itself for the elections. One section, under the leadership of Dr. Sun-Yet-Sen, organised itself into Kuomintang or National People's Party. This party won majority of the seats in both the Chambers of the legislature of the Chinese Republic. Sung-Shio-Jen, an impor-

tant person in the National People's Party was expected to be the Prime Minister. But Yuan, the President, dissolved the legislature, declared the Kuomintang as illegal and decided to proclaim himself the Emperor of China. The Kuomintang opposed this programme of Yuan vigorously.

In 1914, the First World War started and Japan in January 1915 placed before China, the famous 21 demands. China could not stand against Japan and it had to accept 15 out of 21 demands. Being weak in health and nationally humiliated, Yuan died on June 6, 1916. Former Vice-President, Li Yuanhung took over as the President and the country was, thus, once again united under the leadership of Kuomintang.

The October Revolution in Russia in 1917 had its effects on China as well. Many of the Chinese Nationalist began to think that only by adopting the principles of Marxism the economic and political ills of China could be removed. The National People's Party opposed the communists. However, in 1923, an agreement was reached between Sun-Yat-Sen and the Chinese Communists and the Communists while retaining their own party organisation were allowed to enter the Kuomintang. The Chinese Communist Party worked under the guidance of the Russian Gommunist Party. Chiang-Kai-Shek was appointed as the head of the Whampa Military Academy where youth was imparted military training. However, in 1925 Sun-Yat-Sen died and Chiang-Kai-Shek was acknowledged as their leader by the Kuomintang.

Chiang-Kai-Shek was alarmed by the efforts of the communists to bring about a full scale class-struggle. In 1927, he determined to crush the Chinese communists and then an open conflict arose between the Communists and the Kuomintang. Soon Chiang-Kai-Shek was able to re-establish the power and influence of the Kuomintang in the north of China. On 25th October, 1928, a new National Government was established at Canton and Chiang-Kai-Shek was declared its head. A provisional constitution was adopted on May 12, 1930. After 1927, the Chinese Communist Party came under the leadership of Li-Li-San and his Lieutenant Chou-En-Lai. On the other hand, Mao-Tse Tung was successful in establishing a Soviet in Kiangai. In 1931, Mao-Tse Tung was elected as the head of the central Soviet government but as the actual control over the party machinery and the army remained in the hands of Chou-En-Lai it was not until 1935 that Mao came to assume the undisputed leadership of the Chinese Communism.

In 1936, united front was established between the Kuomintan (KMT) and the communists, to fight against Japan. During the period 1937-1945, the communists, on the one hand, fought against the Japanese and, on the other hand, weakened the Kuomintang's hold over China. After the end of the Second World War, China legally remained under the control of Kuomintang and Chang-Kai-Shek, but real power in the country belonged to the communists.

Efforts were made to establish a Coalition Government but they failed, and in 1946 open fighting broke out between the communists and nationalists (KMT). Chiang-Kai-Shek tried to combat the communists with the massive aid from America. But despite the massive financial and military aid it received from America, it could not withstand the communists and by 1949 the nationalist government, and the nationalist troops were driven away to Formosa. Chiang established the nationalist government on the small island of Formosa and declared to continue to fight to liberate the mainland from the communists.

A Chinese People's Political Consultative Conference was called on September 21, 1949 to establish the new Government on the mainland. In the conference parties, groups, regions, army units, people organisations representing workers, peasants, youth, women, students, industrialists, national minorities, overseas Chinese, religious circles and scientific, cultural and educational workers were represented. The Chinese People's Political Consultative Conference adopted a common programme, drafted an organic law, established the Central People's Government of China and the Central People's Government Council. Mao-Tse Tung was named the chairman of the Council, and Chou-En-Lai became the Prime Minister. On October 1, 1940, People's Republic of China was formally proclaimed.

Q. 2. Write a brief note on the making of the Constitution of the People's Republic of China.

Ans. Despite the massive support in men and material, the Kuomintang received from America, it could not face the Communists and by the middle of 1949, the Nationalist Government was defeated. On October 1. 1949, the People's Republic of China was formally proclaimed and the country was ruled by the Chinese People's Consultative Committee. This Chinese People's Consultative Committee (CPCC) adopted a common programme and an organic law for itself. These two documents together formed "a sort of provisional constitution".

But the formal constitution was yet to be made. It may be said that from 1949 to 1954, the People's Republic of China did not have a formal constitution. A Drafting Committee, with Mao-Tse Tung at its head, was set up by Central People's Government Council to draft the Constitution. The Committee had 33 members and was composed largely of high ranking Communist leaders but also contained a few non-party men. The -first draft of the constitution was completed in March 1954. It was discussed in the public, and it is claimed that about 8,000 persons discussed it in Peking and other provincial cities. Certain amendments were offered and a revised draft was published in June 1954. It was thrown open to public discussion on a much wider scale. As a result of these discussions, the draft was once again revised and

was finally approved by the Central People's Government Council on September 9, 1954.

In September 1954, the All China People's National Congress was elected. On September 20, 1954, the draft was finally adopted by the first National People's Congress of the People's Republic of China. To-day the Red Chinese Government is run according to the provisions of this constitution which, it is claimed, is a constitution made by the people and adopted by the people of China.

Q. 3. Critically examine the fundamental rights and duties of the citizens in the Communist China.

Or

'The Constitution of the People's Republic of China embodies an impressive list of fundamental rights and duties'. Discuss the nature of the fundamental rights and duties in Red China, in the light of the above statement.

Ans. Chapter 3 of the Constitution of Red China contains, the fundamental rights and duties of the citizens. It has 19 articles in all. In almost all the democratic countries, only the fundamental rights have been guaranteed by the constitution, but in China, like the constitution of Soviet Russia, the constitution speaks of duties of the citizens as well. The State expects from its citizens the performance of certain duties in return for the rights it guarantees. From articles 85 to 99 the fundamental rights are enumerated and from Articles 100 to 103 the fundamental duties of the citizens of the People's Republic of China.

The citizens of Red China, according to the constitution enjoy the following fundamental rights :

(1) Article 85 declares that the citizens of the People's Republic of China are equal before law.

(2) All citizens who have attained the age of 18 are entitled to vote and participate in elections. But insane persons and those deprived by law of right to vote and stand for election are disqualified for the enjoyment of this right.

(3) There shall be no discrimination against any citizen on the basis of the differences in nationality, race, sex, occupation, social origin, religious belief, education, property, status, or length of residence.

(4) According to article 87, the citizen enjoys the :—

(a) freedom of speech,

(b) freedom of press,

(c) freedom of assembly,

(d) freedom of association,

(e) freedom of processions and demonstrations.

(5) Article 88 ensures the freedom of religious belief.

(6) Freedom of person is also guaranteed. No one can be arrested except by decisions of the people's court or with the sanction of the people's Procuratorate.

(7) Inviolability of home, privacy of correspondence, freedom of residence and of change of residence are also guaranteed.

(8) Article 91 declares that all citizens have the right to work. It is also said that the State shall endeavour to create increasing employment opportunities and better working conditions by the planned development of economy so that the citizens may use the right to work effectively. In this way the state guarantees the right to work to its citizens and accepts its responsibility in providing work and in improving the conditions of work.

(9) Article 92 guarantees the right to rest and leisure to the working people of the People's Republic of China. The State has, therefore, limited the hours of work and has prescribed holidays also. The State has also undertaken to provide better facilities for building up of health.

(10) Article 93 guarantees the right to material assistance in old age and in case of illness or disability by providing for social insurance, social assistance, and public health services.

(11) The citizens have a right to education. For this purpose, the State is responsible for establishing various types of schools and colleges.

(12) Citizens are free to engage in scientific research, literary and artistic creation and other cultural pursuits. The state provides facilities for this purpose and encourages the same.

(13) Article 96 provides equal rights to women with men in all spheres of political, economic, cultural, social and domestic life. It also assures protection of marriage, the family, the mother and child.

(14) Article 97 declares that "Citizens of the People's; Republic of China have the right to lodge complaints against any person working in organs of State for transgression of law or neglect of duty by making written or verbal statement to any organ of State at any level. Provisions for compensation have also been made in this connection."

(15) Article 98 declares that the People's Republic of China protects the rights and interests of Chinese residents abroad.

(16) Article 99 empowers the Republic to grant the right of asylum to any foreign national persecuted for supporting a just cause, for taking part in the peaceful movement or for engaging scientific" activity.

(17) By Article II, "The State protects the right of citizens to own lawfully earned incomes, savings, houses and other means of life." But it is also stated that no citizen may use his property to the detriment of the public interest.

Following the example of the Soviet Union, the Constitution of Republic of China also imposed certain duties on the citizens of Red China. The following are the duties of the citizens of the People's Republic of China.

(1) Article 100 says that the citizens of the People's Republic of China (i) must abide by the Constitution and the law. (ii) uphold discipline at work, (iii) keep public order and respect social ethics.

(2) It is the duty of every citizen to respect and protect public property.

(3) It is the duty of every citizen to pay taxes according to law.

(4) It is the sacred duty of every citizen to defend the homeland.

(5) It is an honourable duty of every citizen to perform military service according to law.

ARE THESE RIGHTS REAL ?

It is clear from the above description that the bill of rights is very impressive. But in practice most of these rights particularly political ones, are meant only for publicity purposes. These rights cannot, in practice, be availed of by the citizens according to their wishes. Like Soviet Russia, the Communist Party rules in Red China and controls every organ of the Government—machine. No function of the State can go against the wishes of the Communist Party. The Constitution guarantees to the citizens the freedom of speech, of press, of assembly, of forming associations, of demonstrations etc. But in practice none of these rights may be used against the interests of the working people. All have to accept and work according to the policies of the Communist Party. Moreover, as there is no impartial and independent judiciary in China, these rights lose much of their value and become meaningless in reality.

Q. 4 Name the highest organ of State authority in People's Republic of China Also explain its composition, powers and -functions.

Or

"The National People's Congress is the highest organ of state authority in the People's Republic of China." Discuss ?

Ans. Chapter II of the constitution of the People's Republic of China describes the organisation of the legislature. Article 21 declares the National People's Congress as the highest organ of

State authority and the next article declares that it is the only legislative authority in the country. All the legislative powers of the People's Republic of China are vested in the National People's Congress. Unlike the Supreme Soviet of U.S.S.R. the National People's Republic is unicameral Composition. It consists of deputies elected by provinces, autonomous regions, municipalities, directly under the central authority, the armed forces, and the Chinese residents abroad. Their number and the manner of their election are not given in the Constitution but are prescribed by electoral law.

Term of Office : According to article 24, the National People's Republic is elected for a period of 4 years. But if the election becomes impossible because of exceptional circumstances, the term of office of the sitting congress may be extended until the first session of the new congress.

Its session is convened once a year by the Standing Committee. But additional sessions may be convened whenever the Standing Committee thinks necessary or when one-fifth of the deputies demand it.

Powers and Functions : The National People's Congress exercises all kinds of powers and covers all aspects of state functions. The Constitution of China is not based on the theory of separation of powers. It has legislative executive, electoral, financial and constituent powers. It has the power to remove many a high •officials of the State. The powers and functions of the National People's Congress may be summed up as under :—

(1) According to article 27 (i) the National People's Congress las the power to amend the Constitution.

(2) According to article 27 (b) the National People's Congress has the powers to enact laws.

(3) It supervises the enforcement of the Constitution.

(4) It elects the Chairman and the vice-Chairman of the Republic of China.

(5) It elects the President of the Supreme Court.

(6) It elects the Chief Procurator of the Supreme People's Procuratorate.

(7) It has the power to decide on the choice of the Prime Minister of the State Council (Council of Ministers) upon the recommendation of the Chairman of the People's Republic.

(8) It decides and approves the appointment of members of the States Council on the recommendations of the Premier.

(9) It decides on the choice of the Vice-Chairman and all other members of the Council of National Defence upon the recommendations of the Chairman of the Republic of China.

(1) It decides and approves the National Economic Plans.

(11) It passes the State Budget and the financial report.

(12) It ratifies the status and boundaries of Provinces, autonomous regions and municipalities directly under the Central authority.

(13) It decides on questions of war and peace.

(14) It decides upon general amnesty.

(15) To exercise such other functions and powers as the National People's Congress may think necessary.

According to article 28, the Congress has the power to remove the undermentioned from office :—

(1) The Chairman and Vice-Chairman of the People's Republic of China.

(2) The Premier and Vice-Premiers, Ministers and heads of Commissions and Secretary-General of the State Council.

(3) The Vice-Chairman and other members of the Council of National Defence.

(4) The President of Supreme Court.

(5) The Chief Procurator.

The deputies of the Congress may ask questions to the State Council or to the Ministers and commissions of the State Council. They may ask any question concerning administration in order to elicit information.

Privileges :

The deputies, as in other legislatures of the world, enjoy some privileges. They cannot be arrested or placed on trial without the consent of the Congress and if the Congress is not in session, of its Standing Committee. The deputies are subject to the supervision of units responsible for their election. And if the work of any deputies is not satisfactory that deputy may be recalled by the concerned unit according to the procedure prescribed by law.

The above description of the powers and functions shows that the Congress is a very powerful body. It exercises various kinds of powers and functions and is the only body that is authorised to make laws for the whole of China. As various kinds of functions have ceen entrusted to this body, it occupies an enviable position in the constitutional system of the People's Republic of China. But as the Congress is an unwieldy body and it meets quite infrequently, -it cannot exetcise all these powers in practice.

Q. Explain the composition, powers and functions of Standing Committee of the National People's Congress ?

Ans. The National People's Congress meets **once in** a year and that also for a very short period of time. Therefore during its long absence, some other body is needed. As in Soviet

Russia, the Presidium acts and exercises all the powers and functions of the Supreme Soviet of U.S.S.R., when the latter is not in session, the Standing Committee does in the constitutional system of China. The Standing Committee of the National People's Congress exercises almost all the powers of the National People's Congress. Article 30 of the Constitution describes the Standing Committee as the "Permanently acting body."

Composition : The Standing Committee consists of the following members :

Chairman, Vice-Chairman, Secretary-General and some other members. All these members are elected by the National People's Congress. According to Article 33, the Standing Committee "is responsible to the National People's Congress and reports to it." The members of the Standing Committee may be recalled by the National People's Congress.

Term of Office : The Standing Committee is elected for a term of 4 years. But even after the expiry of its term of office, it continues to function till the new Standing Committee is elected by the next National People's Congress.

Powers and Functions : According to article 31, the Standing Committee exercises the following powers and functions :—

(1) To conduct the election of deputies of the National People's Congress.

(2) To convene the annual session of the Congress or the extraordinary session whenever the Standing Committee or one-fifth of the deputies so propose.

(3) The Committee interprets, laws and adopts decrees.

(4) It supervises the work of the State Council, the Supreme People's Courts, and the Supreme People's Procurator.

(5) Annuls the decisions and orders of the State Council which are in contravention of the constitutional laws or decrees.

(6) To annul or revise decisions of the Governments of the provinces, autonomous regions, and municipalities directly under the central authority.

(7) Decides on the appointment or removal of any Vice-Premier, Head of a Commission or the Secretary-General of the State Council when the National People's Congress is not in session.

(8) Appoints and removes the Vice-Presidents, Judges and other members of the judicial committee of the Supreme People's Court.

(9) To appoint or remove the Deputy Chief Procurator, Procurators, and other members of the Procuratoral Committee of the Supreme Procuratorate.

(10) To appoint and recall the ambassadors of China accredited to foreign States.

(11) To decide on the ratification or abrogation of treaties: concluded with foreign States.

(12) To decide on the proclamation of state of war, when the congress is not in session, in the event of armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression.

(13) To decide on the enforcement of martial law throughout the country or in certain parts.

(14) To decide on general or partial mobilization.

(15) To institute military, diplomatic or other special titles, and ranks.

(16) To decide and grant pardons.

(17) To institute and decide on the award of State orders, medals and titles of honour.

(18) To exercise and perform such other powers and functions as are vested in the Standing Committee by the Congress.

The National People's Congress performs its functions through various committees, such as, the Bills Committee, the Budget Committee, the Credentials Committee etc. All these committees-work under the direction and supervision of the Standing Committee when the Congress is not in session.

However, it must be remembered that the powers enumerated above, though quite impressive, are neither complete nor exhaustive. The Constitution authorises the National People's Congress to vest in the Standing Committee any other powers, thus the National People's Congress and not the Constitution is the final determining authority as to what powers shall be enjoyed by the Standing Committee.

Like the Presidium of the Supreme Soviet of the U.S S.R. the Standing Committee occupies the central position in the constitutional structure of Red China. Constitutionally speaking, it is a committee of the National People's Congress and is responsible to it. But in actual practice, it acts as the legislature of the Chinese Republic. Being a small body and practically dominated by the Communist Party of China, it occupies an enviable position in the structure of the Chinese Government.

Q How is the Chairman of the People's Republic of China elected ? Also explain his powers and functions ?

Ans. The highest executive authority of the Chinese Republic is vested in the Chairman and the State Council. The Chairman is the head of the State and the State Council is, at least in form, like the Parliamentary Executive in other countries:

Election : The Chairman of the People's Republic of China is elected by the National People's Congress. This high

office was first held by Mao-Tse Tung, but after 1959 it is occupied by the Liu-Shas-chi. Both men are top-ranking leaders of the Communist Party of China.

Term of office : The Chairman is elected for a term of four years. According to the Constitution he may be re-elected also. Unlike the President of U.S.A. there is no limit as to the total number of years for which he may occupy this office.

Powers and Functions: The Chairman of the People's Republic of China is vested with all the powers of the head of the State. His powers and functions may be given as under :—

(1) The Chairman, in pursuance of the decision of the National People's Congress or its Standing Committee :

(a) promulgates laws and decrees,

(b) appoints or removes the Premier, Vice-Premiers, Ministers, Heads of Commissions and Secretary-General of the State Council *(i.e.,* the Council of Ministers.),

(c) appoints or removes the Vice-Chairman, and other members of the Council of National Defence,

(d) confers State orders, medals and titles of honour,

(e) proclaims general amnesties and grants pardons,.

(f) proclaims Martial law,

(g) declares a state of war,

(h) orders mobilization.

2. The Chairman of the Republic is the Supreme Commander of the armed forces of the country and concurrently he is the Chairman of the Council of National Defence.

3. (a) He represents the Republic of China in its relation with foreign states. All correspondence with foreign states is conducted in his name.

(b) He appoints or removes Embassadors etc. to foreign-states and ratifies treaties concluded with foreign states. But, this function is performed by him in accordance with the decision of the Standing Committee of the National People's Congress.

4. Whenever he thinks necessary, he convenes a Supreme State Conference He acts as the head and Chairman of this Conference. The Supreme State Conference consists of a Vice-Chairman of the Republic, the Chairman, of the Standing Committee of National People's Congress, the Premier of the State Council another persons concerned. He then submits the view of this conference to (i) National People's Congress (ii) Standing Committee of the National People's Congress (iii) The State Council (iv)

other body concerned for their consideration and decision. The Supreme State Conference is therefore, an advisory body only and furnishes its views on important affairs of the State.

The Chairman is assisted in the discharge of his responsibilities by a Vice-Chairman. He may ask the Vice-Chairman to Perform any of his functions.

A careful study of the above powers and functions shows that most of his powers are to be exercised by him only in accordance with the decisions of the National People's Congress or its Standing Committee. He is, therefore, only a figure-head. But as both the persons who have occupied this exalted office have been top-ranking party leaders, the Chairman is in actual practice, because of his position and prestige in the Communist Party, able to guide and influence the decisions of the bodies concerned. It is, therefore, an office of position and respect in China and much depends upon the person occupying it.

Q. How is the State Council of the People's Republic of China formed ? Give its powers and functions.

Or

Describe the composition, powers and functions of the Central People's Government" in the People's Republic of China"

Ans. The State Council of the People's Republic of China **is** similar to the Council of Ministers in other countries like India and particularly the U.S.S.R. It is also described by the Constitution as the 'Central People's Government.' It is the highest administrative organ of the State.

Composition : The State Council, *i.e.,* the Council **of** Ministers comprises :

(a) the Premier (Prime Minister)

(b) the Vice-Premiers.

(c) the Ministers.

(d) the heads of commissions and

(e) the Secretary-General.

The Premier is elected by the National People's Congress and other members of the State Council are appointed by the Congress on the advice of the Premier.

The Premier is the head of the State Council and presides over its meetings. The supervision and direction of the working of the State Council is also the task of the Premier. The constitution says that the Ministers and the heads of the various commissions direct the administration of their respective departments.

Powers and Functions : The State Council exercises the following powers and functions :

(1) To formulate administrative measures, issue decisions, and orders and verify their execution, in accordance with the Constitution, laws and decrees.

(2) To submit Bills for enactment to the National People's Congress or its Standing Committee.

(3) To co-ordinate and lead the work of the various Ministries and Commissions.

(4) To co-ordinate and lead the work of local administrative organs of State throughout the Republic.

(5) To revise or annul the orders and directives of the Ministries and commissions.

(6) To annul or revise decisions and orders issued by local administrative organs of the State.

(7) To put into effect and supervise the implementation of the National Economic Plans and Provisions of the State Budget.

(8) To control foreign and domestic trade.

(9) To direct cultural, educational and public health work.

(10) To administer affairs concerning the nationalities.

(11) To administer affairs of the Chinese citizens living abroad.

(12) To protect the interests of the State, maintain public order and to safeguard the rights of citizens.

(13) To direct the conduct of foreign affairs.

(14) To guide the building up of defence forces.

(15) To ratify the status and boundaries of autonomous chow, counties, autonomous counties and municipalities.

(16) To appoint or remove administrative personnel according to law.

(17) To exercise such other powers and functions as may be vested in the State Council by the National People's Congress or its Standing Committee.

It is claimed that the State Council of the People's Republic of China is akin to a cabinet in a parliamentary system of Government. At the face of it, this claim appears to be justified because there are number of resemblances. Like other countries, having; parliamentary government, the State Council is responsible to the Congress and reports to it or to the Standing Committee when the Congress is not in session. The members of the Congress has the right to ask questions to the State Council or to the Ministers or the Commissions of the State Council. Like the Prime Minister of other countries, the Premier directs the work of the State Council and presides over its meetings. The Ministers and heads of commissions preside over their respective departments and issue orders and directives in accordance with the laws and decrees and decisions **and** orders of the State Council relating to their departments.

State Council is the creation of the National People's Congress and is responsible to it for all its public acts. The above analysis shows that the powers and functions of the Premier are very much like the powers and functions of the Prime Minister in England or India.

But there is a great difference in theory and practice in China Outwardly it appears to have all the features of the cabinet form of Government but in reality it would be a gross mistake to conclude-that there is a parliamentary form of Government in China. In practice, there is complete centralization in China and the Communist party has a tight grip and exercises a strict control on all the Governmental bodies including the State Council. The collective responsibilities is also missing. And above all, there is no organised opposition to the State Council in the Congress. The Communist Party of China is in complete control of both the Congress and the State Council. From all this, it can, therefore, be safely concluded that in China there is no parliamentary government consistent with, the accepted principles of the Parliamentary form of Government.

Q. Describe the judicial system of the People's Republic of China with special reference to the Supreme People's Court.

Ans. Section VI of Chapter two of the Constitution of the People's Republic of China gives the description of the judicial system of China. It declares that the aim of the judiciary in China is to give to the citizens of China, speedy and cheaper justice.

According to Article 73 of the Constitution, there are three types of courts in China.

(i) Supreme People's Court.

(ii) Local People's Courts.

(iii) Special People's Courts.

The composition and organisation of all these courts is determined by law.

Supreme People's Court: The Supreme People's Court is the highest and the final court in China. It consists of a President, a Vice-President and some other judges. The President of the Court is elected for four years by the National People's Congress, He can also be removed by the Congress. The Vice-Chairman, and the other judges are appointed by the Standing Committee of the National People's Congress and are removable by it.

Powers and functions of the Supreme People's Court. The Constitution has not given the powers and functions of this court in detail. It, however, enjoys both original and appellate jurisdiction.

Original jurisdiction : In its original jurisdiction, it hears cases of national importance.

Appellate jurisdiction : In its appellate jurisdiction, it hears appeal from the decisions of higher local people's courts. It should, however, be noted that in China, "only one appeal is allowed.

Apart from the above powers, the Supreme People's Court supervises the judicial work of the local people's courts and the special people's courts. The constitution also provides that Supreme People's court is responsible to the National People's Congress and also submits its report to it. In the absence of National People's. Congress it is responsible to the Standing Committee of the National People's Congress.

As the organisation of judiciary in China is like a pyramid, the Supreme People's Court is at the top and below the Supreme Court are :

(i) Higher People's courts for provinces, autonomous regions and municipalities directly under the central Government.

(ii) Below the higher people's courts are the people's courts, in the counties and in the autonomous Chow.

(iii) Last of all, are the primary people's courts.

The above courts are organised by the Congress of the respective areas. These Congresses exercise control over these courts, in addition to the supervision and control of the Supreme People's Court.

Q. Write an Essay on the general features of the judicial system of China.

Ans. The judicial system of China is a single heirarchical organisation. At the top is Supreme People's Court and below it are the higher and lower People's Courts and Primary People's Courts. According to Article 79 the Supreme People's Court supervises the judicial work of the local People's Courts and the Special People's Courts. People's Courts at higher levels supervise the judicial work of People's Courts at lower levels. Thus the principle of Higher People's Courts supervising the work of those at lower levels is followed.

2. In all the courts at all levels the cases are heard in the public unless otherwise provided by law. According to the Constitution complete opportunity is given to the accused to defend himself. People's assessors are also associated with People's. Courts.

3. As China is a multi-national State citizens of different nationalities are allowed the use of their spoken and written languages in court proceedings. Decisions and judgments are also delivered in the languages of the localities concerned. There is provision to have interpreters also, if necessary.

4. According to article 78, it is said that "in administering justice the People's Courts are independent subject only to law." It means that, constitutionally speaking the judges are free to decide the cases only according to law, independently and free from other influences.

5. In order to see that the various departments and the citizens maintain due observance of laws of the country, provision has been made for the office of the Supreme People's Procuratorate. Local administrative areas have their own Procuratorates. But they work under the supervision and control of the Supreme People's Procuratorate. The organisation of the Procuratorates is also determined by law and is based on the principle of democratic centralism. The Procuratorate is independent in the performance of its duties and works independently of other organs of the Government. However, the Procuratorate has to report to the Supreme People's Congress and is responsible to it and in its absence to its Standing Committee.

6. Unlike other Western Democratic countries, the Supreme People's Court is responsible to the Supreme People's Congress and submits its report to it or to its Standing Committee. Similarly, the local People's Courts are responsible to their respective Local People's Congresses and submit their reports to them.

7. The courts in China cannot, however, in practice, claim to be independent and impartial. A citizen may get justice from the court in case of his dispute with another citizen, but he cannot expect justice against the Government. For all practical purposes, the Judiciary in China is subservient to the Legislature, the Executive and the Procuratorates and cannot dare give decisions against them. In fact, the Judiciary is one of the organs of the Governmental structure, and like the Executive its duty is also to act as the watch-dog of the socialist order and to supress the reactionaries and counter revolutionaries. It is in no way the guardian of the rights and liberties of the people as the Judiciary in India or America is.

8. The independence of Judiciary in China is also marked by the fact that the Chairman and other judges do not enjoy security of tenure. The National People's Congress and its Standing Committee can throw them out of their office at any time.

9. The Supreme People's Court has no right to act as the guardian of the constitution. It cannot declare any law or decree unconstitutional. This task is done by the Standing Committee of the National People's Congress.

10. And above all, in China as in other Communist countries the Communist Party has the ultimate control over all the organs of the Government. Judiciary is no exception to this rule. The judges are not non-political. On the contrary, they are also the members of the Communist Party and are such persons who have firm belief in the socialist order. Thus, the Judiciary in China is not independent and free as we understand it by that term in India or in England.

Q. Write a short note on the People's Procuratorates as found in the People's Republic of China.

Ans. As in the Soviet Russia the People's Republic of China has a well organised system of Procuratorates. The organisation of the Procuratorates runs parallel to that of the People's Courts.

Like the organisation of Judiciary the Procuratorates are also organised in a single hierarchical pattern. At the top is the Supreme People's Procuratorate. The Supreme People's Procuratorate consists of a Chief Procurator, Deputy Chief Procurator, Procurators and members of the Procuratorial Committee.

The Chief Procurator of the Supreme People's Procuratorate is elected by the National People's Congress. He is elected for a a term of 4 years. But the Deputy Chief Procurators, the Procurators and the members of the Procuratorial Committee are appointed by the Standing Committee of the National People's Congress. They can also be removed by it.

The Supreme People's Procuratorate is responsible to the National People's Congress and reports to it. In the absence of the National People's Congress it is accountable to the Standing Committee.

Below the Supreme People's Procuratorate are the local People's Procuratorates and the Special People's Procuratorate. The organisation of the Procuratorate is highly centralised one, and ultimate control over all levels of Procuratorates is exercised by the People's of Supreme Procuratorate.

The Supreme People's Procuratorate exercises Procuratorial authority throughout the country over all departments of the State Council, all local organs of State, persons and citizens. Its basic duty is to ensure the due observance of laws. It can take action against any of the Governmental agency or department or organ, whether local or central, if they act in contravention of the law. Similarly they can take action against any citizen of China if he violates the laws of the country. In short, they have the right to prosecute Government's officials and employees as well as the citizens for illegal activities and crimes.

The Procurators in China may be compared to the Public Prosecutors in India of prosecuting the government departments, officials and citizens etc. But they perform some duties which are not performed by the Public Prosecutors in our country. The office of the Procuratorates is a unique institution of the Communist countries and China has followed the example of Russia in this respect.

Q. Describe the administration of Local Areas or Administrative Areas in Communist China. Is the Chinese Republic a federal State ?

Ans. According to Article 53 of the constitution, the People's Republic of China, has been divided into the following local areas for administrative purposes :

(i) The country is divided into Provinces, Autonomous Regions and Municipalities directly under the Central Government.

(ii) The Provinces and Autonomous Areas are further divided into Autonomous Chow, Counties, Autonomous Counties and Municipalities.

(iii) Counties and Autonomous Counties are again divided into Hsiang, National Hsiang and Towns.

(iv) Municipalities under Central Government and bigger Municipalities are divided into Districts.

(v) Autonomous Chow is divided into County, Autonomous Counties and Municipalities.

People's Congress and People's Councils : All these **areas, i**.e, Provinces, Municipalities under Central Government, Counties, Municipalities, Districts, Hsiangs, National Hsiangs and Towns **have** their respective People's Congress and People's Councils.

The deputies of the People's National Congress of Provinces, Municipalities under the Central Government, Counties and bigger Municipalities are elected by the lower People's Congresses of the respective areas. The people of the other areas elect deputies to their respective Congresses as prescribed by law. The term of each provincial congress is 4 years, whereas it is 2 years at the lower levels. All the deputies of the various Congresses are responsible to those bodies or people from where they are elected and may be recalled by them.

Powers and Functions of the People's Congress : The People's Congress at each level has to perform the following functions within their respective areas :

(i) To ensure the observance and execution bf laws and decrees.

(ii) To draw up plans for local economic and cultural development and public works.

(iii) To examine and approve local budgets and financial reports.

(iv) To protect public property.

(v) To maintain public order.

(vi) To safeguard the rights of the citizens and the equal rights of minorities.

(vii) The People's Congress of each area elect and recall members of the People's Councils of their respective areas.

(viii) The People's Congress at county level and above elect and have power to recall the President's of People's Courts at corresponding levels.

(ix) The respective People's Congress have the power to revise and annul inappropriate decisions and orders issued by the People's Councils of their respective areas.

(x) The People's Congress at county level and above, have the power to revise and annul the inappropriate decisions and orders issued by the People's Congresses and People's Councils of areas below the county level.

(xi) The Congress at National Hsiang level has also the power to take specific measures appropriate to the characteristics of the nationalities concerned.

The People's Councils are the executives organs and exercise administrative authority within their respective areas. The term of each council corresponds to that of the Congress at each level. The organisation of the Council is determined by law and it carries out the decisions of the Congress to which it is responsible. The Councils have one Chairman, some Vice-Chairmen and some other members as prescribed by the law of the respective areas. In provinces the head is called the Governor and in some areas he is called Mayor, in Counties as county-head etc.

The main function of these councils is to exercise administrative authority within their respective areas. It also carries out the decision for the Congress to which it is responsible and also that of the Congress above that level. Within their respective areas, they can issue decisions and orders. People's Councils appoint officials in the departments under their control and can remove them also.

Though the People's Council at each level is responsible to the People's Congress at that level, still all the People's Councils at all levels are subordinate to and work under the co-ordinating direction of the State Council (the Council of Ministers of the Chinese Republic).

Is it Federal ? The above description of the administrative areas clearly shows that there is complete unification of authority and the Central Government exercises full control over all the administrative units. Each administrative area is responsible to the higher one till the whole authority is centralised in the Central Government. People's Republic of China is, therefore, a unitary and not a federal state. True, due care has been taken to provide provisions in the constitution so as to protect th languages and local customs of the various nationalities from interference by the Government organs, but the fact that Centralism is the key-note of the Chinese Governmental System goes against the principles of federalism. Local areas have their own People's

Congresses and People's Councils but they do not enjoy them independent of the control of the higher organs. No fissiparous. tendencies are allowed to exist which might encourage regionalism. Article 2 of the constitution says that "the National People's Congress and other organs of State practice Democratic Centralism." In fact the element of centralism is much more dominating than that of democracy. This principle results in the concentration: of power at the top because the decisions taken by Governmental authorities at one level can be over-ruled by the higher authorities. Thus in accordance with this principle the People's Congress at each level is responsible to the People's Congress at the higher level and ultimately the Supreme People's Congress exercises its control over all other People's Congresses at all levels. Similarly the State Council exercises control over all People's Councils at all levels. In conclusion we may say that there are various provinces and other areas in China but they do not enjoy such autonomous rights and powers as exercised by the units of federation in India or America. Hence the People's Republic of China cannot be labelled a 'Federal State'.

Q Write a critical note on the Preamble to the Constitution of the People's Republic of China.

Ans. The pew Constitution of the People's Republic of China was adopted on the 20th day of September, 1954 and the new government of China started functioning according to the new Constitution from the 4th November, 1954. There are 106 articles, that have been divided into 4 chapters.

Preamble : Like many other constitutions, the Constitution of the People's Republic of China also begins with the Preamble. But the Preamble is very lengthy one. In addition to the main objectives of the State, it describes its background also. It has been said in the Preamble that in the year 1949, after more than a century of heroic struggle the Chinese people led by the Communist Party of China, finally achieved their great victory in the people's revolution against imperialism, feudalism and bureaucrat capitalism. It is in this way that a long history of oppression and enslavement have been brought to an end, and the People's Republic of China has been founded.

It further declares that the 'People's Democracy' is a new-system of democracy that guarantees that China can in a peaceful way banish exploitation and poverty and in its place build a prosperous and happy Socialist Society.

It is further said that "from the founding of the People's. Republic of China to the alternate of a socialist society is a period of transition." During the transitional period the fundamental task of the State is to, step by step, bring about the Socialist Industrialisation of the country and to accomplish the Socialist transformation of agriculture,' handicrafts and capitalist. industry and commerce. The present Constitution of China.

according to its Preamble, 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.

It declares that all nationalities of the country are united in a great family of free and equal nations. It hopes that this unity of China's nationalists, as it is based on ever-growing friendship and mutual aid among themselves, will continue to gain in strength. It is the duty of the state to pay full attention to the special characteristics in the development of each nationality.

It recalls "an indestructible friendship" with the great Union of Soviet Socialist Republics and the People's Democracy of China and hopes that this friendship will be constantly strengthened and broadened.

With regard to the future International Policy it reaffirms its faith in the "principle of equality, mutual benefit and mutual respect for each others sovereignty and territorial integrity." In international affairs, the Preamble says that "our firm and consistent policy is to strive for the noble cause of world peace and progress of humanity."

The Preamble to the Constitution of the People's Republic of China is couched in fabulous and attractive language. In national and international affairs it hopes to follow lofty ideals and principles. It declares the Chinese Republic a 'Socialist State', in which there is no room left for private property and private trade. The working of the Government of the People's Republic of China since 1954 shows that the principles and policies declared in the Preamble are only high sounding words and the government does not intend to carry them out. The communist regime of China has completely forgotten its gratitude to and friendship with China and can no more claim to possess the 'indestructible friendship' between China and Soviet Russia. On the contrary, it stands bitterly opposed to the policies pursued by Soviet Russia and is ceaselessly engaged in the carrying out an anti-Russian propaganda. This attitude of China is clearly demonstrated by the determined opposition of China to the admission of Russia into the Afro-Asian Conference.

Similarly the claims of China that it believes in peace and sincerely endeavours to establish cordial relations with the peace-loving and democratic countries of the world are not true. Conversely, China is a country that is bent upon to disturb the peace of the world and to eliminate democracy from its neighbouring countries. India was the first country to support the cause of China's membership in the United Nations. It had established the most cordial relations with China, but in spite of all this China treacherously attacked India in Oct. 1962, and thereby showed glaringly to the whole of the world that China considers its declarations in the Preamble as meaningless and wants to use them for deceiving the people of its country as well as the people at large.

Q. Examine the General Principles of the Constitution of the People's Republic of China.

Ans. Chapter I of the Constitution of the People's Republic of China deals with General Principles. It has 20 articles in all. A study of these general principles and the main features of the Constitution may be made as given under :—

(1) The Chinese Constitution is Written document. It is a brief document containing 106 articles only. Though it is brief, yet it lays down in sufficient detail the political, social and economic objectives of the regime. It deals not only with the structure of the State machinery but it also embodies a programme for the future.

(2) Article 1 of the constitution declares that "the People's Republic of China is a people's democratic State led by "the working class and based on the alliance of workers and peasants."

(3) Article 2 says that all power in the People's Republic of China belongs to the people. The organs through which the people exercise this power are the National People's Congress and the Local People's Congress.

(4) It is also said that the National People's Congress, the Local People's Congresses and other organs of State practise Democratic Centralism.

(5) Article 3 declares that the People's Republic of China is a single multi-national state. All the nationalities are equal. Discrimination against or oppression of any nationality, and acts which undermine the unity of the nationalities are prohibited.

(6) Article 4 ensures the gradual abolition of system of exploitation and the building of a socialist society.

(7) Article 5 allows the ownership by individual working-people and capitalist ownership of the means of production in addition to the State ownership and co-operative ownership.

(8) All mineral resources and water, as well as forests, undeveloped land and other resources which the State owns by-law have been declared to be the property of the whole people. The State also ensures priority for the development of the State Sector of the economy.

(9) The State also protects the right of the peasants to own land and other means of production according to law. But the policy of the State towards rich peasants economy is to restrict and gradually eliminate it.

(10) The State also protects the right of handicraftsmen and other non-agricultural individual working people to own means of production according to law.

(11) The State also protects the right of citizens to own lawfully earned incomes, savings, homes and other means of life.

(12) Provision has also been made whereby the State may in the public interest buy, requisition or nationalise land and other means of production both in the cities and country side according to provisions of law.

It must however be noted that there is no provision for compensation in case of requisition of property by the State.

(13) The State forbids any person to use his private property to the detriment of the public interest. Again it be noted that in China, it is the Government and in ultimate sense, the Communist Party that wholly determines what the 'public interest' is.

(14) The State accepts 'economic planning' and by it the State directs the growth and transformation of the national economy to bring about the constant increase of productive forces.

(15) Great importance has been attached to 'wort' and 'work' has been declared ''a matter of honour for every citizen of the People's Republic of China, who is able to work."

The interest of the people have been given primacy.

(16) The Constitution directs all organs of State to rely on the masses of the people, constantly maintain close contact with them, heed their opinions and accept their supervision.

Similarly all servants of the State have been directed to be loyal to the People's Democratic System, to observe the Constitution and the law and strive to serve the people. However, in practice, the people are controlled by the Communist Party in all walks of life and has no say in the administration or policies pursued by the regime. They are supposed to follow faithfully the line of action laid down by the Communist Party.

(17) In order to safeguard the People's Democratic System, the People's Republic of China suppresses all treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries.

This provision is a drastic one and has far reaching effects. Any person who refuses to follow the line laid down by the Communist Party may be dubbed as a counter-revolutionary or a traitor and thus tried on this account. Thus those who cannot be persuaded into supporting or acquiescing in the policies of the regime can, in the last resort, be silenced or crushed through the use of repression and terror.

(18) Some categories of persons have not been included in the people's feudal landlords and bureaucratics capitalists have been deprived Of political right foe a specific period of time according to law, But at the same time it provides them with a way to earn a living in order to enable them to reform through work and become citizens who earn their livelihood by their own labour.

A resume of the above provisions shows that China is a socialist country which is led by the peasants and workers, and in which the capitalists have practically no place. The policy of the regime, as declared in these General Principles, is to eliminate the capitalist economy together. Again though the right to maintain lawfully earned property is granted, yet the state can requisition any property or means of production in the public interest. In India also the Constitution authorises the State to requisition the private property for 'public purposes, but there is a wide difference in this matter between the Indian and the Chinese Constitution. In India State has to pay reasonable compensation in the case of requisition of property, but in China, what to speak of "reasonableness" the Constitution does not guarantee, even compensation. The Judiciary, in China, being a part of the Governmental machinery can afford no help to the citizens when they are deprived of their property. Similarly, all other provisions have a bias towards centralization and give primacy to the interests of the State, peasants and workers. In fact numerous persons are deprived of their political rights on the ground that they are the enemies of the people and therefore, excluded from the privileges of citizenship. The proclaimed sovereignty of the people is in fact a mask for the supremacy of the Communist Party. The governmental system of the People's Republic of China, based as it is on the Principle of Democratic Centralism, is totalitarian. Its professions of peace and reaffirmations that China shall work for the noble cause of peace have already been belied by its treacherous attack on India in the October of 1962. The inevitable conclusion of the above analysis is that there is not in practice what seems to be on the paper and that there is a wide gap between theory and practice in China.

Q. Describe the organisation and importance of the Communist Party of the People's Republic of China.

Ans. Though the Constitution of the People's Republic of China does not emphatically and clearly declare the supreme position of the Communist Party, yet in practice, the party exercises complete control over the machinery of the government. As in the Soviet Russia, the party is the real ruling power and the various agencies of the government are, in fact, the mere instruments which carry out it policy.

The party controls the work of the Government by issuing specific directives "to the State as to the nature and orientation of work" and by selecting and promoting "loyal and competent Party as well as non-party cadres to work in the organs of the state." The fact is that the major questions of policy, whether Satural or international are first decided by the Party and then announced and implemented by the State organs. The Party occupies the position of paramountcy not only in the legislative and executive branch of the Government, but also in the Judiciary

Thuse very organ of the Government is under its control and nothing can be done either without its consent or against its will The persons who control the party also control the various governmental agencies. The National People's Congress, the Standing Committee, the National Defence Council, the State Council and other agencies of the Government are all dominated by the members of the Communist Party. These members do not exercise their voting right and their powers according to the dictates of their conscience, but in accordance with the dictates of the party.

Organisation and its Basis : Like other communist countries, the Communist Party of China is also based on the principle of Democratic Centralism". The members of all its organs at all levels are elected by the organs immediately lower to them. The National Party Congress is the Supreme organ of the party. Its members are elected by the local organ of the Communist Party. The National Party Congress elects the various committees which, run and control the whole party machinery.

The organisation of the Communist Party of China is based on territorial basis. All persons, living in one area can be the members of the same local party unit irrespective of its race or nationality etc. The Chinese living abroad can make no communist party of their own, but they have to form an organ of the same single Communist Party of China.

The Central Committee is the most powerful Committee of the Communist Party of China. It has 97 members and 73 alternate members. These members and alternate members are elected by the National Party Congress. This committee has the real control over all the organs and members of the Communist Party and no act can be performed against the wishes and orders of this committee.

In addition to the Central Committee of the Communist Party of China, there are two more important committees. One of them is the Politburo. It has 17 members and 6 alternate members. The second one is the Secretariat which has 6 members and 3 alternate members. The members of the Politburo and the Secretariat are elected by the Central Committee.

The Central Committee also elects one Commission known as the Control Commission of the Central Committee. It has 17 members and 4 alternates. It upholds the discipline of the Party. The Secretariat of the Control Commission has one Secretary and 5 Deputies.

Below the above mentioned organs of the party we find party organisation in provinces, autonomous regimes and the large municipalities which are direct under the Central government. Orga-

nisation at, each of these levels corresponds to that of the central level. The lowest organ of the party is the "cell'. It usually has about 20 members working in the same farm, factory, army unit, government office, cells etc. are found in various non-party organisations also,

All the people of China are not the members of the Communist Party, but none the less it exercises control over the entire people of China through various youth and other mass organisations like the Communist Youth League, the Youth Pioneers, the All-China Federation, of Trade Unions, the All-China Federation of Democratic Women etc.

Through the vast organisation of its own and with the help of the various other organisations which are practically controlled by it, the Communist Party "directs and controls the army, the government, the mass political organisations and in fact, every element in the extraodinarily extensive political apparatus" of the People's Republic of China.

THE CONSTITUTION
of JAPAN

CHAPTER I

JAPAN

Q. Describe the power, functions and the position of the Emperor in Japan.

Ans. Perhaps, the oldest monarchy in the world is that of Japan dating back from 660 B.C. The Emperor remained as an unquestionable ruler for several centuries. Later on, the powers of the Emperor were eclipsed and under the Meiji Constitution of 1889,. though the absolute power was vested with the Emperor, but he was. guided by the Ministry and by the Military.

Under the present constitution the Emperor has only a symbolic role in the Japanese political system. He is only "the symbol of state and of the Unity of the people, deriving his position from the will of the people with whom resides sovereign power".

The powers of the Emperor have been so much curtailed that he does not have any specifically political or executive functions of more than ritual or ceremonial importance. The Emperor performs "only such acts in matters of state as are provided for in this constitution and he shall not have powers related to government." Evidently, this is a departure from the status he enjoyed under the Meiji Constitution which provided him with supreme executive, legislative and administrative powers.

Powers of the Emperor

Executive Powers, (i) According to Article 6 the Emperor appoints the Prime Minister as designated by the Diet.

(ii) With the advice and approval of the Cabinet he attests the appointment and dismissal of ministers of state and other officials as provided for by law.

(iii) With the advice and approval of the cabinet he attests the full powers and credentials of the Ambassadors and Ministers.

(iv) With the advice and approval of the Cabinet he awards honours.

(v) With the advice and approval of the Cabinet he attests the instruments of ratification and other diplomatic documents as provided for by law.

(vi) With the advice and approval of the Cabinet he receives foreign ambassadors and ministers.

(vii) With the advice and approval of the Cabinet he performs ceremonial functions.

Legislative Powers : (i) The Emperor promulgates amendments of the constitution, laws. Cabinet orders and treaties with the advice and approval of the cabinet.

(ii) The Emperor convokes the Diet with the advice and approval of the Cabinet.

(iii) The Emperor issues the proclamation of general elections of members of the Diet.

(iv) The Emperor discloses the House of Representatives either after the expiry of its term or on the recommendation of the Prime Minister.

Judicial Powers : (i) According to Article 6, paragraph 2, the Emperor appoints Chief Justice of the Supreme Court as designated by the Cabinet.

(ii) The Emperor, with the advice and approval of the Cabinet attests general and special amnesty, commutation of punishment, reprieve and restoration of rights.

The Position of the Emperor :

The powers and functions of the Emperor are only formal. He acts only as the symbol of the state and unity of the people. He is deprived of all governmental functions None of the above functions involve any initiative, discretion, or the influence on his part. He acts only on the advice of responsible governmental officials and in accordance with their decisions. Technically he is not even "Chief of State", but merely a "Symbol of the State".

The Emperor is not above law and has to act only in accordance with the provisions of the constitution. In the words of Dr. Yanaza,

"It is quite evident that now more than ever, the Emperor reigns but does not govern. His power is practically nil compared with that of the British Monarch., who plays a very definite role in the governmental process. While the British monarch has the right to be consulted by the Prime Minister, to encourage certain courses of actions and to warn against others, the Japanese ruler has none of **these** rights."

However, according to Ward and Macrides,

"It would be a serious mistake to conclude that because of his purely ceremonial position and negligible governmental powers the Emperor does not play a very important role in the Japanese political system. A nation needs powerful, loyalty begetting—symbol about which to forge its national unity. For Japan, such a focus is provided pre-eminently by the Imperial Family.....Under the present circumstances there is nothing that can readily or effectively take its place. Its role is not to be discounted nor lightly discarded."

Q. What are the main features and fundamental principles of the Japanese Constitution. ?

Ans. In modern times Japan has had two constitutions. The first of these is popularly known as the Meiji in 1890. The second one, simply known as the Constitution *of* Japan, came into effect on May 3, 1947. The new Japanese Constitution differs from the Meiji Constitution in many respects. The main features of the constitution may be studied as under :—

1. Written Constitution : The new constitution is a written document and was proclaimed on November 3, 1946, though it came into effect six months later On May 3, 1947. The new constitution consists of a preamble, 11 chapters and 103 articles. The constitution is a unique amalgam of British and American institutions and is almost twice as long as the Meiji Constitution.

2. The constitution is based on the theory of Popular Sovereignty. It expressly says that the constitution is the act of the people and not a gift of the Emperor. The Preamble of the Constitution reads

"We, the Japanese people, acting through our duly elected representatives in the National Diet—do proclaim that sovereign power resides with the people and do firmly establish this constitution. Government is a sacred trust of the people, the authority for which is derived from the people and the benefits of which are enjoyed by the people."

3. The Japanese Constitution like the Constitution of U.S.A. is a rigid constitution. It lays down a special procedure for its amendment. Amendments to the constitution require initiation by a two-thirds concurring votes of all members of both houses of the National Diet and ratification by the people through an affirmative vote by a majority of these participating in a referendum on the proposed amendment. The amendment so ratified is promulgated by the Emperor in the name of the people and it becomes an integral part of the constitution.

4. Influence of the U.N. Ideals : The influence of the U.N. Principles is clearly visible in the Constitution of Japan The Japanese Constitution very much like the words used in the U.N. Charter, reads, "We, the Japanese people.....determined that we shall secure for ourselves all nations and the blessings of liberty throughout this land," The Preamble further says that "We desire to occupy an honoured place in the international society striving for the preservation of peace and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognise that all peoples of the world have the right to live in peace free from fear and want." Thus we find that every word of the Preamble resembles the principles incorporated in the Charter.

5. Recognition of the International Law : The Japanese Constitution has taken due care to mention their respect for International Law. The last paragraph of the Preamble reads that

> "We believe that nation is responsible to itself alone but that laws of political morality are universal, and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign, relationship with other nations."

6. Renunciation of War : Chapter **II** of the Japanese Constitution deals with the renunciation of war. This is a peculiar feature of the constitution and such a thing is found in no other constitution. Article 99 reads that:

> "the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." Curiously enough the same article states that
>
> "Land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognised.

7. Limited Monarchy : The constitution preserves the institution of monarchy but strips the emperor of any semblance of authority. The Emperor has been preserved only as "the symbol of the state and of the unity of the people."

8. Parliamentary form of Government : Like the British Government, the present Japanese Government is also parliamentary. Article 41, makes the National Diet the highest organ of the State power and shall be the sole law making organ of the State. The Prime Minister and the members of the cabinet are responsible to the Diet and resign if a Vote of no-confidence is passed in the House of Representatives.

9. Unitary form of Government : Unlike the constitution of America or India, and like the Government of England the Japanese Government is Unitary. All the powers are vested in the Central. Government and the provinces or the local governments do-not have any authority independent of the centre.

10. Bicameral Legislature : The constitution retains a Bicameral Legislature, known as the Diet. The Upper House, known as the House of Councillors, is a continuous Chamber and half of its members retire after every three years. The Lower House is known as the House of Representatives and consists of 467 members elected for 4 years.

11. Rights and Duties of the People: The constitution in its Chapter III has guaranteed various rights to the people of Japan. These rights have been declared to be "Eternal and Inviolate," by

the constitution. The constitution guarantees freedom of assembly association, speech, press, freedom to choose and change one's residence, etc., etc. Under article 27, all people shall have the right and the obligation to work. The right and freedom mentioned above are but a few of the various rights enumerated in the Constitution from Article 10 to Article 40.

12. Judicial Review : Like the American Constitution, the Japanese constitution also has the system of Judicial review. Article 76 says that "The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law. The constitution expressly says that no extraordinary tribunal shall be established nor shall any organ or agency of the executive be given final judicial power.

With regard to judicial review article 81 states that the "Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act."

13. Universal Adult Suffrage : Under the Meiji Constitution there was no mention about the suffrage. The present constitution lays, down no special qualifications for the voters. Article 15 says that:

"The people have the inalienable right to choose their public officials and to dismiss them." Universal adult suffrage is guaranteed with regard to the election of public officials. Article 15 further says that "in all elections, secrecy of the ballot shall not be violated."

" From the above it may be concluded that it is an admirably democratic constitution.

"It introduces democratic rights, institutions and practices into Japanese politics that undoubtedly go far beyond anything the Japanese themselves might realistically have been expected to establish. In fact, on the basis of text above, it is a considerably more democratic document than is the constitution of the United States." It must however be noticed that in Japan a strong revisionist sentiment continues to flourish, especially among the leaders of the "Liberal Democratic Party. They argue that the present constitution does not really represent the "freely expressed will of the Japanese people." They also argue that "It was imposed by foreigners, that it is un-Japanese in both spirit and language, that it is poorly drafted, and that it needs changes in a number of particulars," Despite all this, the Japanese "have so far displayed a considerable reluctance to exchange them for something more familiar and more Japanese."

Q. Describe the structure, powers and functions of the National Diet.

Ans. The Parliament of Japan is known as the Diet. The constitution describes the Diet or the Parliament of Japan as the "highest organ of State power" and "the sole law making organ of the State."

Under the Meiji constitution the Emperor was more than the highest organ of state power and Diet was not so high placed in that constitutional structure. But now the change from the supremacy of the Diet is very significant. The government has thus been transformed from an Emperor centred to a Parliament-centred mechanism and the elected representatives of the people have become vastly more powerful."

Structure or Organisation : The Diet is a bicameral legislature. It consists of House of Representatives (Lower House) and House of Councillors (Upper House]. The organisation and powers of the two Houses of the Diet differ considerably. The House of Representatives consists of 467 members and the House of Councillors has 250 members. The members of both the Houses are elected by the direct vote of the people,

Term of Office : The members of the House of Representatives are elected for 4 years. But in actual practice, as the House of Representatives can be dissolved by the Cabinet, no Diet has "survived that long without dissolution by the Cabinet." Actual terms between general elections have ranged from six and one half months to three-years and eight months."

The House of Representatives also elects its own Speaker and also a Vice-Speaker. The Speaker is normally chosen from the majority party and the Vice-Speaker is "frequently selected front amongst the membership of the opposition party.?'

The House works either in plenary session or in committees. In 1960, there were some 16 standing committees dealing with foreign affairs, finance, justice, education, agriculture, budget etc. There is also a committee on discipline that deals with the internal problems of the House.

The members of the Upper House are elected for 6 years, and one half of the members retire after every 3 years. Since the Upper House cannot be dissolved, its members usually Serve for their full period.

Powers and Functions : Legislature of the Diet is the primary law-making body in Japan. A non-money Bill may originate in any one of the two Houses and after having received the assent of both the Houses it becomes the law of the land. However, the Lower House exercises supremacy over the Upper House in matters of legislation. The House of Representatives have a final say. The Lower House may enact a law against the opposition of the Upper House by passing a second time by a majority of 2/3 or more of the member present. If the House of Councillors fails to take action on a **Bill** within 60 days after receipt of a Bill passed by the Lower House, the House of Representatives may pass it a second time and thereby overrule the Upper. Home. Thus it may be concluded that the Upper House can delay an ordinary Bill for hot more than 60 days.

Executive Functions.: The Diet has other important functions in addition to legislature. Japan has a parliamentary form, of government and the Prime Minister must be elected from amongst the members of the Diet. In practice, the Prime Minister is selected from the Lower House by a formal resolution of the Diet. The Cabinet is responsible to the House of Representatives. The House of Representatives alone has the right to vote for lack of confidence in the Cabinet and thus to bring about their resignation. The Cabinet is also required to report to the House on the state of national affairs and foreign relations and on the state of national finances and submit final accounts of expenditure and revenues.

Financial: The constitution also gives the final and sole authority to raise and spend money for public purposes to the Diet. The House of Representatives enjoys a position of supremacy in financial matters as well. Article 60 of the constitution says that the budget must first be submitted to the House of Representatives. In case the House of Councillors fails to take action within thirty days after the receipt of the budget passsed by the House of Representatives, the decision of the House of Representatives shall be final. That means the House of Councillors may delay a money bill at the most for 30 days, but has no veto power.

Judicial : The Japanese Diet has the power to impeach the judges of the Supreme Court for the neglect of duty, corruption or for conduct which impairs the dignity of the Court. For this purpose the Diet is empowered to set up an impeachment court from amongst the members of both Houses. The charges for the removal of judges are framed by an Indictment Committee. This Committee consists of an equal number of members from both the Houses. However, no member can be a member both of indictment Committee and the Court of Impeachment.

Electoral Functions : The Prime Minister is elected by a resolution of both the Houses of the Diet. The electoral details of the members of both the Houses are regulated by ordinary law passed by the Diet.

Both the Houses elect their own Speaker and Vice-Speaker, the Chairman of the Standing Committee and the Secretary-General.

Constituent Functions : The Diet has the power to initiate-amendments to the constitution. An amendment may be initiated by a vote of two-thirds move of all the members of each House. When both the Houses do so, it is submitted to the people for ratification at a special referendum or at such election as the Diet specifies. The amendment to be valid must be passed by an affirmative vote of a majority of all votes cast.

THE CABINET

Q. Describe the formation, powers and functions a working of the Cabinet in Japan.

Ans. The Constitution vests executive powers in the Cabinet
The Cabinet is headed by the Prime Ministers. As the institution of

Cabinet is established by the constitution, the cabinet in Japan has the constitutional sanction behind it. Unlike England, it is not based on conventions.

The Constitution requires that all members of the cabinet, including the Prime Minister, must be civilians. It further requires that a majority of their members, including the Prime Minister is selected by a formal resolution of the Diet. A majority of those present and voting is required for selection and thus the post goes to the majority party. The Lower House has the controlling authority.

The Prime Minister thus selected, then selects the other members of the Cabinet. The number has not been fixed but in recent years it has ranged from fifteen to seventeen or eighteen. The Prime Minister has also the right to remove the Ministers.

Functions of the Cabinet: Article 72 states that the Prime Minister, representing the Cabinet submits bills, reports in general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

In addition to the general administrative functions the Cabinet performs the following functions as provided in Article 73. The Cabinet has the power :—

1. to Administer the law faithfully and to conduct affairs of state,
2. to manage foreign affairs,
3. to conclude treaties with the approval of the Diet,

to administer civil services in accordance with the standards established by law.

6. to prepare the budget and to present it to the Diet.

6. to enact Cabinet orders and to execute the provisions of this constitution and of the law. However, panel provisions are excluded from its orders.

7. To decide on general amnesty, commutation of punishment, **Teprieve** and restoration of rights.

According to Article 79, the Cabinet has also the power to appoint all the judges of Supreme Court with the exception of the Chief Justice.

As in England, the Cabinet in Japan recommends to the Emperor for the dissolution of the House of Representatives. It can also summon the House of Councillors, after the dissolution of the House of Representatives in an emergency session.

Every law and order of the Cabinet is signed by the competent Minister and is counter-signed by the Prime Minister. The Ministers during the tenure of their office are not subject to legal action except with the permission of the Prime Minister.

The peculiar feature of the Cabinet System in Japan is that Prime Ministers, since 1947, have been more durable than Cabinets . The Cabinet goes away, but the Prime Minister continues and he frames new Cabinet. Thus the fall of Cabinet may not necessarily mean the fall of the Prime Minister also. "Mr. Yoshida presided over five different cabinets, Mr. Hatoyama on three and Mr. Kishi over three." The average life of a Cabinet during this period was only ten months, but the average term in office of the Prime Minister from 1947 to 1960 was twenty five months. So far all the Cabinets, except one, have been headed by conservative politicians.

Q. Describe the Judicial System of Japan

OR

Describe the organisation of the Japanese Judiciary.

Ans. Like so many of the other institutions of the Pre-war Japan, the judicial system has been considerably changed. For the first time Anglo-American common law principles were widely introduced into the system. The Principle of the 'rule of law' has been for the first time introduced into the judicial system of Japan. In the pre-war Japan the courts had been an arm of the national government, but now the courts have been made independent of both the executive and the legislature. Previously, the courts 'were administered by the Ministry of Justice, but now the whole judicial power has been vested in the Supreme Court and in such other inferior courts as may be established by law. The Supreme Court is. given complete administrative control over all inferior courts. Furthermore, for the first time, the foreign principle of judicial review has been introduced. Now the Supreme Court has been given the power to determine the constitutionality of any law, order, regulation or official act.

Independence of Judiciary : Every effort has been made to make the judiciary in Japan independent and impartial. First of all, as said above, the judicial administration, instead of placing, it under the Ministry of Justice has been placed under the Supreme Court. The present constitution vests the "whole judicial power in a Supreme Court and such inferior courts as are established by law. "This provision creats a judicial branch of the government with an independent status that is substantially equal to that, enjoyed by legislature or executive branches" Article 76 says that all judges are independent in the exercise of their conscience and are bound only by the constitution and law. Moreover, no extra-ordinary tribunal can be established nor can any organ or agency of the executive be given final judicial power. Lastly, the constitution, in order to ensure the independence of Judiciary, provides that the "judges shall not be removed except by public impeachment unless judicially declared mentally of physically incompetent, to perform official duties."

Organisation of the judicial system ? At the top of the judicial heirarchy is the Supreme Court. It is located at Tokyo. It consists of 15 judges and a Chief Judge. At least 10 judges must have 20 years legal experience and the remaining should be learned persons, but not essentially legal.

Appointment and Removal: Art. of the Constitution requires that all such judges excepting the Chief Judge shall be appointed "by the Cabinet. "Thus the Chief Judge is appointed by the Emperor on the recommendations of the Cabinet and the ordinary judges of the Supreme Court are appointed by the Cabinet but their appointment is attested by the Emperor. The judges retire at the age of 70 and are subject to "decennial referenda by the voters upon their re**cords."** According to Article 79, the appointment of the Supreme Court judges is reviewed by the people at the first general election of the House of Representatives following their appointment and are again reviewed at the first general election of the House of Representatives after a lapse of ten years and in the same manner thereafter. When the majority of the voters favours the dismissal of a judge, he shall be dismissed.

Powers and Functions : The Supreme Court is vested with the rule making power under which it determines the rules of procedure and of discipline of the courts and the administration of judicial affairs. Even the public procurators shall be subject to the rule making power of the Supreme Court. Article 81 says that the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

The **Subordinate Courts** : Below the Supreme Court are 8 High Courts and 49 District Courts (with attached Family courts). The High Courts enjoy both the original and appellate jurisdiction.. In cases of crime in which attempt has been made to overthrow the Government the High Courts have original jurisdiction. In all other cases it has appellate jurisdiction. In a large number of cases its decisions are final. The number of the judges of the High Courts have not been fixed but varies according to the pressure of work in that region. The number varies from 64 to 7 at present.

The District Courts have original jurisdiction over criminal cases of serious character and civil suits involving large sums. They also **hear** cases appealed from the summary courts.

At the base of the pyramid are 570 summary courts, located in major cities, towns and villages. Their jurisdiction extends to all ordinary criminal cases subject to imprisonment for less than a month and to civil cases involving an amount of not more than 5,000 Yens.

Apart from the above courts, there are a large number of civil and family conciliation commissions, each composed of one judge and two intelligent and experienced laymen. These courts deal

with domestic relations such as divorce, breach of promise, inheritance, property division, guardianship etc. These courts are intended to provide facilities for the out-of-court settlement of disputes.

It must be noted at the end that "the Japanese are a rather remarkably non-litigous people. They are traditionally suspicious of the courts and of formal legal processes and have a pronounced preference for settling disputes by informal methods of conciliation and mediation."

The Supreme Court's power of judicial review is completely foreign to the Japanese legal traditions. From 1947 to 1959, the Supreme Court has handed down 232 judgments of unconstitutionality in criminal cases. But in these cases, "no national or local law, ordinance or regulation enacted since the end of the occupation was declared unconstitutional during this period. "According to Ward and Macridis, "In the light of such a record, it would seem highly improbable, under present circumstances at least, that the Supreme Court will ever make significant use of the power of judicial review."