COMPARATIVE GOVERNMENT AND POLITICS

BA [Political Science]

Fourth Semester

[ENGLISH EDITION]

Directorate of Distance Education

TRIPURA UNIVERSITY

Reviewer

Dr Madhusmita Giri
Assistant Professor, Ph.D (Jawaharlal Nehru University)

Author:

Dr Biswaranjan Mohanty: *Units* (1.2.1, 1.4-1.6) © Dr Biswaranjan Mohanty, 2017

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

VIKAS® PUBLISHING HOUSE PVT. LTD.
E-28, Sector-8, Noida - 201301 (UP)
Phone: 0120-4078900 • Fax: 0120-4078999
Regd. Office: 7361, Ravindra Mansion, Ram Nagar, New Delhi – 110 055
• Website: www.vikaspublishing.com • Email: helpline@vikaspublishing.com

SYLLABI-BOOK MAPPING TABLE

Comparative Government and Politics

Syllabi	Mapping in Book
Unit - I: United Kingdom 1. Sources and Features of the Constitution, Convention, Rule of the Law. 2. Position and Power of the Crown. 3. Prime Minister: UK. 4. Parliament-Composition and Functions. 5. A Comparative Study: UK Cabinet with US Cabinet.	**Unit 1:** United Kingdom **(Pages 3-50)**
Unit - II: United States of America 1. Salient Features of the Constitution. 2. President-Powers and Position. 3. Congress-Composition and Functions. 4. Supreme Court-Its Composition, Jurisdiction and Role. 5. A Comparative Study: (a) US President with UK Prime Minister, (b) US Speaker with UK Speaker.	**Unit 2:** United States of America **(Pages 51-84)**
Unit - III: France (Fifth Republic) 1. Salient Features of the Constitution. 2. President-Election, Power and Role. 3. Prime Minister-Functions and Role-Council Ministers. 4. Parliament-Composition and Functions. 5. A Comparative Study: US President and French President.	**Unit 3:** France (Fifth Republic) **(Pages 85-108)**
Unit - IV: People's Republic of China (Constitution of 1982) 1. Features of the Constitution, General Principles of the Constitution. 2. Fundamental Rights and Duties. 3. National People's Congress-Composition and Functions-Standing Committee. 4. State Council-Composition, Functions and Role. 5. Role of the Communist Party. 6. Unitary and Federal Form of Government with Special Reference to UK, USA and PRC.	**Unit 4:** People's Republic of China (Constitution of 1982) **(Pages 109-152)**

CONTENTS

INTRODUCTION

NOTES

Aristotle regarded man as a political animal who naturally longed to live in an orderly society by forming a valid system of government. The system of government in a nation is termed as the political system. The government is an authoritative agency that looks after the affairs of a nation and its citizens. This body has to be organized in ways found to be suitable for a particular nation or state. Power flows through this body to facilitate action and governance. The political system of a nation is governed by the interplay of institutions that constitute it and the welfare of its people. A comparative study of the political systems of the world allows an objective examination of different political systems and alerts us of the similarities in the working of the various political systems. This book offers a careful examination of the government of different countries such as the UK, US, France and China.

This book is written in a self-instructional format and is divided into four units. Each unit begins with an 'Introduction' to the topic followed by an outline of the 'Unit Objectives'. The content is then presented in a simple and easy-to-understand manner, and is interspersed with 'Check Your Progress' questions to test the reader's understanding of the topic. A list of 'Questions and Exercises' is also provided at the end of each unit, and includes short-answer as well as long-answer questions. The 'Summary' and 'Key Terms' section are useful tools for students and are meant for effective recapitulation of the text.

UNIT 1 UNITED KINGDOM

NOTES

Structure

1.0 INTRODUCTION

Britain is a conglomerate of Scotland, Wales and Northern Ireland. It is a democracy comprising a population of sixty million where a majority of people vote, have access to free press, and an independent judicial branch. It also provides numerous civil liberties to its citizens. However, when you look back and revisit the historical events that have nurtured it, you will find that it has evolved into its present state by a series of important historical changes. It was the Magna Carta or the Great Charter that laid the foundations of Britain as a state that respects the rights of its citizens. You will be surprised to know that this document came five and a half centuries before the American Declaration of Independence on 1797. The power struggle between the church and the state, break with the Roman Catholic Church, the increasing power of the Parliament, the establishment of the Protectorate, the restoration of monarchy, the creation of factions such as Whigs and Tories (which later went on to become the Liberal Democrats and Conservatives), the emergence of democracy in the state, increasing power of the working classes, etc. are important events and factors that distinguish the history of Britain.

The British Constitution, like all other constitutions in the world, is primarily a set of rules that direct the politicians how to run the country. But Britain has an

NOTES

unwritten constitution, which means that it has not been written, but has come about in an organic way by the means of its past traditions, customs and legalities. But the various laws in the country serve the role as well as a written constitution. But who makes the statute law in Britain? The answer is—the Parliament. It passes the bills after discussions and amendments. However, the bill becomes a law only with the signature of the monarch. Britain's laws have mostly been defined and shaped by conventions. For example, though the monarch is free to use the royal prerogative at any time, it has been seen that the monarchy has never taken advantage of this power. Though the Parliament has immense power concentrated in its hands, there are numerous checks and balances in this power. There are limits to the powers of the Parliament. Though rooted in history, customs and traditions, the UK government is one of the most efficient governments in the world, and the citizens of UK enjoy more freedom and civic liberties than most of their counterparts.

In this unit, you will learn about the sources and features of the Constitution, Conventions and the Rule of Law of United Kingdom, the position and the power of the Crown, and the composition and functions of the Parliament of United Kingdom. Towards the end of this unit, you will study the differences between the United Kingdom cabinet and the United States of America cabinet.

1.1 UNIT OBJECTIVES

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

- Discuss the sources and features of the Constitution, Conventions and the Rule of Law of United Kingdom
- Explain the position and the power of the Crown
- Describe the composition and functions of the Parliament of the United Kingdom
- Analyse the differences between the cabinet of the United Kingdom and cabinet of the United States of America

1.2 SOURCES AND FEATURES OF THE CONSTITUTION

The area of the United Kingdom is only twice as that of the New York State. The country comprises Great Britain (England, Wales and Scotland) and Northern Ireland. The Cheviot Hills demarcate England, which is the southeast part of the British Isles and Scotland in the northern region. From the hills, the Pennine Chain of the uplands reach out south via the centre of England, approaching its highest point in the Lake District in the northwest. Along the border of Wales in the west, in a land of steep hills and valleys are the exquisite Cambrian Mountains, while the Cotsworld, a range of hills in Gloucestershire, extend into the surrounding shires.

The North Sea located besides the United Kingdom is the mouth for many important rivers, namely, Thames, Humber, Tees and Tyne. The Severn and Wye

rivers in the west drain themselves into the Bristol Channel and are navigable, as are rivers Mersey and Ribble.

Parliamentary Democracy

NOTES

The United Kingdom is a constitutional monarchy and parliamentary democracy, with a queen as the Head of State, and a bicameral parliament in place consisting of the House of Lords and the House of Commons. While the former comprises 574 life peers, 92 hereditary peers and 26 bishops; the latter consists of 651 popularly elected members. The Parliament is the highest repository of all legislative powers in Britain. Unless dissolved otherwise, it remains operative for five years. The effectiveness of the House of Lords reduced considerably in 1911, and at present, it mainly revises legislation. The Crown wields the executive power only in name since it is the Prime Minister's cabinet that exercises the real power.

England was established as a cognate nation state in the tenth century. The unification between England and Wales started in the year 1284 in the device of the Statute of Rhuddlan. The actual formalization of this merger took place in 1536 with an Act of Union. Later, in 1707, England and Scotland joined together to form the Great Britain with another Act of Union. In 1801, Great Britain became the United Kingdom of Great Britain and Ireland with the legislative union affected between Great Britain and Ireland. After the Partition of Ireland (formalized in the Anglo-Irish Treaty of 1921), only its northern part—formally known as Northern Ireland—stayed as a part of the United Kingdom. Its present name, the United Kingdom of Great Britain and Northern Ireland, was formally adopted in the year 1927.

Magna Carta and House of Commons

The Magna Carta awarded the people of Britain, especially the nobles, certain basic rights. King John was compelled to sign the Magna Carta in 1215. This happened after his royal power had been centralized at the expense of the nobles. Edward I (1272–1307) was successful in overpowering Wales; and he also had eyes on Ireland and Scotland. But Edward I could not capture Scotland, and was defeated in the Battle of Bannockburn. A separate House of Commons was constituted and it was given the responsibility to raise and collect taxes in the late thirteen and early fourteen centuries. Edward III expressed his concern that a hundred years were wasted in fights and wars, and unlimited loss had threatened most of the English territory in France. Following the Hundred Years of War (1338–1453), a plague called Black Death spread as an epidemic, which decreased the population in England by one-third. The Wars of the Roses (1455–1485) was fought between the House of York and the House of Lancaster for the throne of England. This war ended in the triumph of Henry Tudor (Henry VII) at Bosworth Field (1485).

The British Constitution

Laws lay down a constitution that governs a country. Unlike the Constitution of the United States of America or that of the European nations, the Constitution of Britain is not laid down in one single document and is, thus, referred to as an unclassified constitution. It contains a number of documents. The sole reason for the differentiated

NOTES

documents which define the constitution is that it makes the rectification of any amendment easier and simpler. Constitutional amendments are made in Britain by gaining a simple majority support in both the Houses of the Parliament which have to be later approved by Royal Assent. The various differentiated sources of the Constitution of Britain are as follows:

- Statutes like the Magna Carta of 1215
- The Act of Settlement of 1701
- Parliamentary laws and traditions
- Political conventions case law
- Constitutional affairs settled in a court of law
- Scholars who have written on the subject of the Constitution

Features of the British Constitution

The following are the prominent features of the British Constitution:

- A unitary constitution
- Parliamentary sovereignty
- Partly written and partly unwritten
- A flexible constitution
- Evolutionary
- Difference between theory and practice
- A blend of monarchy, aristocracy and democracy
- Rule of law
- A parliamentary form of government
- Separation of powers combined with the concentration of responsibility
- A bicameral legislature
- Conventions of the constitution

British Monarchy

The monarchical system of governance prevails in Great Britain. The current monarch of Britain is Queen Elizabeth II, who ascended the throne on 6 February 1952. She, along with her family members, performs several official, ceremonial and representational duties. Being a constitutional monarch, the Queen carries out merely non-partisan functions like conferring titles and honours, causing the dissolution of Parliament and ordaining the Prime Minister. Even though the monarch is the executive head of the government, in practice, she has to function in accordance with the customs and conventions of England. Even royal prerogative is used in accordance with the laws of the land.

It was with the kings of the Angles and Scots that the British monarchy actually originated. By the year 1000, the kingdoms of England and Scotland had originated from the small kingdoms of early medieval Britain. As mentioned earlier, the monarchy was then conquered by Normans, who defeated Harold II in a battle

during the invasion of 1066. Wales became a part of England in the thirteenth century, and Magna Carta became an instrument that could diminish the political powers held by the monarch.

NOTES

The Scottish as well as the English kingdoms have been ruled by a single ruler from 1609. When England became a Commonwealth, monarchy received a major blow. The Act of Settlement, 1701 prohibited the accession of Roman Catholics, or those who married them, to the throne of England. After the unification of Great Britain with Ireland, the British monarch became the nominal head of the vast British Empire.

In the 1920s, most of Ireland (except its northern territories) became independent from the Union. The Balfour Declaration gave recognition to the autonomous entities of the empire that together formed the Commonwealth of Nations. With the Second World War, most of the British colonies and territories gained independence, thus curtailing the empire's existence. When George VI and his successor, Elizabeth II ascended the throne, they adopted the title of the Head of the Commonwealth that symbolized that the members of the Commonwealth were self-governing member states.

Republics and monarchies together formed the Commonwealth. Fifteen nations along with the United Kingdom share the same monarchy.

Constitutional Role of the Monarch

According to the Constitution of the United Kingdom, the monarch is the supreme head of the state or one might say the one having the sovereignty. 'God save the Queen' or 'God save the King' is the national anthem of Britain, and you can see the monarch's portrait on the coins, postage stamps and banknotes.

The monarch has limited participation in the government. She/He has the authority to delegate duties, powers and responsibilities to the ministers or officers of the Crown, or other public bodies, which are exclusive of the monarch. The following points will make the monarch's role clearer:

- Firstly, even though the Crown exercises the legislative powers in the Parliament, the advice and influence on the performance perpetuates from the consent of the Parliament, the House of Lords and the House of Commons only.
- The monarch's government is exercised by the executive power, constituting the Ministers, primarily the Prime Minister and the Cabinet, which is a committee of the Privy Council. This executive power council has the direction of the Armed Forces of the Crown, the civil services and other Crown Servants such as diplomatic and the Secret Services.
- The third and the most effective power is the judicial power, which is vested in the judiciary. The judiciary has been given the powers by the constitution and the statute.
- The monarch is the head of the Church of England. The church itself has hierarchies of power, i.e., it has legislative, judicial and executive powers and structures within itself.

NOTES

- Statute or statutory instruments influence the legal grant of powers to public bodies.
- Other than the members of Parliament and local authorities, no public officers are elected. Thus, the monarch can use his or her clout to give offices.

The role of the monarch in the British political structure has generated a lot of commentary. Walter Bagehot in 1867 had referred to the monarchy as the 'dignified part' rather than the 'efficient part' of government. The English Bill of Rights of 1689 affected the curtailment of the monarch's governmental power.

The Appointment of the Prime Minister

A Prime Minister is appointed only by the monarch. The Constitution says that the monarch must choose that candidate for Prime Ministership who has gained the support of the House of Commons, generally the leader of the party or coalition having a majority in that House. The Prime Minister has a private audience with the monarch, in which he formally kisses the monarch's hands to symbolize the taking of office. There is no other formality or instrument.

A 'hung parliament' is a kind of Parliament where no single party or coalition holds a majority. In such a parliament, the monarch has the authority to choose and elect an individual, but usually the designation is supposed to be bestowed upon the leader of the largest party. There have only been two hung parliaments since 1945. The first hung parliament followed the February 1974 general election, and the second followed the May 2010 general election.

Dissolution of Parliament

The power of the dissolution of Parliament has an interesting story. In 1950, the King's Private Secretary wrote anonymously to the *Times* asserting a constitutional convention: 'According to the Lascelles, if a minority government asked to dissolve Parliament to call an early election to strengthen its position, the monarch could refuse, and would do so under three conditions.' In 1974, Prime Minister Harold Wilson appealed to dissolve the Parliament. It was a request to which the Queen acceded because Edward Heath had been unable to form a coalition. Wilson was able to gain a small majority in the ensuing elections. Theoretically speaking, the monarch has complete power to dismiss a monarch. However in practice, a Prime Minister can lose office only in case of electoral defeat, death or resignation. The last monarch to dismiss a Prime Minister was William IV, who removed Lord Melbourne from Prime Ministership in 1834.

Royal Prerogative

The royal prerogative is defined as an extension of the government's executive authority that resides with the monarch in theory. Royal prerogative is wielded by the sovereign, who works in complete accordance with convention and precedent, and is exercised only through the Prime Minister or the Privy Council. Practically, the exercising of prerogative powers takes place after consultation with the Prime Minister, who wields the actual control. The sovereign holds weekly audience with the Prime Minister to discuss opinions regarding the ministry and administration, but

the decisions of the Prime Minister and cabinet are more binding according to convention.

'The Sovereign has, under a constitutional monarchy...three rights—the right to be consulted, the right to encourage, the right to warn,' says Walter Bagehot, economist and writer on constitutional monarchy.

NOTES

The parliamentary approval is not formally required for exercising the royal prerogative. Although it is quite extensive, it is still very limited. An authorization of the Act of Parliament is required for an action by the monarch, such as imposing new taxes, or collecting taxes. 'The Crown cannot invent new prerogative powers,' says a parliamentary report. The Parliament has the power which can supersede any prerogative power by ordaining legislation.

The royal prerogative includes the following:

- Appointment and dismissal of ministers
- Regulation of civil services
- Issuance of passports
- Declaration of war and peacetime
- Control of the military
- Ratification of treaties
- Formation of alliances and affecting international arbitration

The legislative laws of the United Kingdom are immune to any changes that may be accorded in a treaty ratified by the monarch because it is the Parliament's duty to enact or amend legislation. The sovereign also serves as the Commander-in-Chief of the Armed forces (the Royal Navy, the British Army and the Royal Air Force). He or she bears the responsibility of accrediting British High Commissioners and ambassadors, and of receiving foreign delegates.

The summoning, prorogation and dissolution of the Parliament are the prerogatives of the monarch. All the parliamentary sessions begin with the monarch's summons. The monarch addresses the members of the Parliament from the throne in the Chamber of the House of Lords, providing a blueprint of the government's programmes, in a new parliamentary session. Usually, prorogation takes place about a year after a session starts, and it officially brings down the curtain on the session. The term of the Parliament comes to an end with dissolution, which is succeeded by a general election for all seats in the House of Commons. A variety of factors influence the timing of dissolution. The limit for any parliamentary term is five years. After the parliamentary term ends, dissolution is the established mode of conduct under the Parliament Act, 1911, except in a rare contingency and even then only if the Parliament has approved such an action. An instance of this is the Second World War when a massive coalition was established from all the parties in the Parliament that congregated for more than its usual five year term; however, three Prime Ministers were changed during this period.

The Prime Minister usually selects the most politically advantageous time for his or her party. As per the Lascelles Principle, the monarch can theoretically deny

NOTES

the dissolution of parliament, but it is not stated specifically as to what circumstances fall under this principle. A bill can become a law even before being passed and approved by the legislative houses if the royal assent has been achieved. Theoretically, the approval may either be granted or refused, but any refusal has not taken place since 1707.

The power of appointing the First Minister of Scotland upon the recommendation of the Scottish Parliament, and the First Minister of Wales upon the recommendation of the National Assembly for Wales and Northern Ireland has been bestowed upon the monarch. The monarch is required to act in consultation with the Scottish Government as far as Scottish affairs are concerned. Similarly, for Wales, the monarch consults the Prime Minister and Cabinet of the United Kingdom. It is in the hands of the monarch to veto any law passed by the Northern Ireland Assembly, if it is deemed unconstitutional by the Secretary of State for Northern Ireland.

The British sovereign is touted to be the 'fount of justice'. Even though the monarch does not give a ruling or exercise any real judicial power, his or her name is pledged in judicial ceremonial events. The common law states that the 'monarch can do no wrong,' and she or he cannot be prosecuted for any criminal offence, as she or he is deemed to do no wrong. The Crown Proceedings Act, 1947 admits the filing of civil lawsuits against the Crown in its public capacity (that is, lawsuits against the government), but not lawsuits against the sovereign's person. The monarch has been embedded with the power to pardon convicted offenders and/or also to reduce their sentences.

The monarch is also the source of all honours and dignities, and is also called the 'fount of honour'. It is the responsibility and authority of the monarch to create all peerages, choose members of the orders of chivalry, grant knighthoods and confer awards and other honours. Most of the honours and awards are conferred upon the deserving persons after consulting with the Prime Minister, but some of these are within the ambit of the monarch's responsibility. Grants are given only on the advice of the monarch. It is solely the responsibility of the monarch to appoint members of the Order of the Garter, the Order of the Thistle, the Royal Victorian Order and the Order of Merit.

Status of the Monarch in the Contemporary Times

Sixteen out of fifty-three Commonwealth states, including the United Kingdom, share the same monarch. The present monarch of United Kingdom, Queen Elizabeth II succeeded her father in 1952, and works as a constitutional monarch. She has had some negatively charged followers also during her reign, and allegedly, this happened because of the negative publicity associated with the royal family. But even now, the Queen seems to be still going strong.

NOTES

Fig. 1.1 *Queen Elizabeth*

1.2.1 Judiciary

The judiciary occupies a place of pride in a democratic country. The first thing to be noted in British Judiciary is high reputation for fairness, impartiality and incorruptibility. One of the outstanding features of the British Constitution is the concept of the Rule of Law. Dicey's exposition of the Rule of Law is subject to various criticism. He was subjective in his approach and viewed the Constitution in the background of the liberal philosophy of the Whigs. The United Kingdom is a constitutional monarchy and parliamentary democracy, with a queen as the Head of State, and a bicameral parliament in place consisting of the House of Lords and the House of Commons. The royal prerogative is defined as an extension of the government's executive authority that resides with the Monarch in theory. The Monarch can only exercise veto if the cabinet advises him to do so.

The judiciary occupies a place of pride in a democratic country. If a democratic government is to be effective, it is essential that laws passed by the legislator should be applied and upheld without fear or favour. Professor Laski has said that the Acts of Parliament are not self-operative and, hence there is need for a judicial organ to see its operation. Hamilton opined that 'laws are a dead letter without courts to expound and explain their true meaning and operation'. Thus, there are courts of law in all democratic countries and England is no exception to it.

The present day organization of the British judiciary is relatively modern. Though the courts themselves are much older, yet they are entirely reconstituted by the Judicature Acts of 1873-1876, as amended by the Act of 1925. Prior to 1873 the judicial organization of England was in a state of chaos, with numerous courts possessing special functions, following procedure and overlapping jurisdictions. The Acts of 1873 reorganized the courts and simplified the judicial procedure.

The Rule of Law is the basis of the British constitutional system. There are three kinds of law in England namely, common law, statute law and equity. The courts in Britain administer these three types of law without any fear or favour. Except for statutes, common law and equity are based on traditions, customs and morality as decided by the judiciary. It is an accepted principle of the British judicial

system that a decision given by a judge shall be applicable in all similar cases, unless it is set aside by a judge of a higher court or until an Act of Parliament settles the issue.

NOTES

Salient Features of the British Judicial System

The salient features of the British judicial system are as follows:

(i) Impartiality and independence of the courts

The first thing to be noted in British judiciary is high reputation for fairness, impartiality and incorruptibility. The judges are free to pronounce judgment without fear and favour. The Act of Settlement of 1701 provides that the judges in Great Britain hold office on account of good behaviour and not due to the pleasure of the executive. Thus, there is a great tradition of administration of justice without fear or favour.

(ii) Absence of judicial review

In England, there is no judicial review and as such the judiciary cannot declare any act of Parliament as *ultra vires.* The case is just the opposite in America. Due to parliamentary supremacy in England, the parliament can pass any law and no court can question its authority.

(iii) Absence of separate administrative court

There are no separate administrative courts in England, as found in France and other continental countries. In France, there are two types of law, ordinary and administrative, and two types of court, administrative and ordinary respectively. The administrative persons are tried by administrative law in administrative courts. There is no such distinction between officials and ordinary citizens in England and all are subject to the same court of law.

(iv) Absence of uniform judicial organization

There is no uniform judicial system throughout the country. There is one set of court in England and Wales, another for Scotland and still another for Northern Ireland. Sometimes each court has its own peculiar procedure and practices. The Judicature Acts of 1873-76 tried to bring uniformity, but failed to achieve a uniform judicial organization throughout the country.

(v) Jury system

The prevalence of jury system is a salient feature of the British judicial system and in the trial of grave crimes; a jury trial may be demanded in all courts of England except the lowest and highest court. England is the classic home of the jury system. The charge in a case is framed by the judicial official and the trial is held by the judge with the assistance of jury. The juries have revealed impartiality, fearlessness, knowledge and common sense and have given decisions against the government.

(vi) Integration of courts in England and Wales

The courts of England and Wales were different organizations having different conflicting procedures and jurisdiction. Now the entire judiciary has been reconstructed and brought under the control of the Lord Chancellor. Thus, there is

integration of the judicial systems of England and Wales. The judicial system has been made simple and inexpensive as far as practicable.

(vii) Guardian of individual liberty

NOTES

The courts in England are the custodians of the liberty of the people. Liberties of the people are guaranteed not by parliamentary acts but by the common law of the land. The concept of rule of law pervades in all spheres of judicial organization.

(viii) High quality of justice

English people are proud of the high quality of justice dispensed by their courts. Cases are heard and decided in open court. The judges show a high order of independence, ability and integrity. There is a quick disposal of cases. The rules and procedures are also simple and logical. Independent attitude of a judge is deeply rooted in the British judicial system. The judges are not influenced by any consideration except that of justice and impartiality. Courts in England 'do not tolerate the pettifogging dilatory, hair splitting tactics which lawyers are so freely permitted to use in American halls of justice. The judge rules his court room, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so.

Organization of the British judiciary

The Anglo-Saxon judicial system is the oldest in the world. It has been influenced very much by other judicial systems of the world. Just as there is no written constitution in England, there is no rigid written code of law. The British judicial system has evolved and as such there is no single form of judicial organization throughout the country. In recent times, attempts have been made to reorganize the judicial system to a certain extent. The Judicature Acts, 1873-76 were the first attempt to organize the judicial system in modern times. These Acts set up a Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal. The Act of 1925 and the Court Act, 1971, made few changes in its organization.

The courts in Great Britain are broadly divided into two categories—civil and criminal. This division is almost common in all judicial systems of the world.

1. Criminal Court

The various aspects of the criminal court are mentioned below:

(i) **Justices of Peace***:* The lowest criminal court is the Justices of the Peace. When a person is charged with a crime he is brought before one or more Justice of the Peace (J. P.) or in the large towns, before a Stipendiary Magistrate for trial. The Justices of Peace are honorary persons and are appointed by the Lord Chancellor. They do not have legal training. They are layman appointed from all classes of people in society. The Stipendiary Magistrates are not honorary persons. They are appointed by the Secretary of States for Home Affairs and they receive regular salaries or stipends from their respective boroughs or urban districts. They are required to be barristers of seven years standing and they are appointed in the name of the Crown.

NOTES

The Justices of the Peace and Magistrates have jurisdiction over minor crimes which are punishable by a fine of not more than twenty shillings or by imprisonment for not more than fourteen days. Serious cases are tried by a Bench of two or more Justices who work in a Bench. It is called a Court of Petty Session which can impose a fine, of not more than 100 pounds or in some specified cases 500 pounds or a period of imprisonment up to six months and in some cases one year. If the punishment is more than three months imprisonment, the accused may demand a trial by jury.

(ii) **Court of quarter session:** The Court of Quarter Session is the next higher court in civil matters. Appeals from the lower court may be taken to this court. It consists of two or more justices from the whole country. In a large town it is presided over by a single magistrate. As this Court meets four times a year, it is known as the 'Quarter Session'. It exercises original jurisdiction over serious criminal cases and, in fact, is the court in which most of the serious cases are tried.

(iii) **Court of Assizes:** The Courts of Assizes are held in county towns and some big cities thrice in a year. These courts are branches of High Court Justice. Each such court is presided by a judge or often two judges of the High Court of Justice who go around on circuits. The entire country has been divided into eight circuits. The Court of Assize functioning in London is called 'Central Criminal Court' and in popular language it is known as 'Old Bailey'. The jurisdiction of the Assizes includes all the grave offences like armed robbery, kidnapping, murder, etc. The Assize Court is assisted by a Jury of twelve countrymen and the Jury gives its verdict. Whether the accused is guilty or not if the jury finds the accused is not guilty, he is forthwith discharged. If he is, on the other hand, found guilty, the Judge decides the punishment.

The accused may appeal to the Court of Criminal Appeal against the judgment of Quarter Sessions or the Assizes. This Court was set up in 1907, and before that there was no provision of appeal in criminal cases. This court consists of Lord Chief Justice and not less than three judges of the Queen's Bench. The Court meets without a jury in London. If the Court finds that there has been a serious lapse of justice, it can modify the sentence or even quash the conviction altogether. The Judgment of the Court of the Criminal Appeal is final except in rare instances when an appeal can be made to the House of Lords upon a point of law and when the Attorney General gives a certificate that the case is set for appeal.

2. Civil Court

(i) **County court:** The county court is the lowest court on the civil side. It decides cases in which amount involved is not more than 500 pounds. It is presided over by a judge who may take assistance of a jury, if necessary. Its procedure is very simple. At a place where a county court sits, there is an official known as the registrar who disposes of the great majority of cases by influencing withdrawals or effecting compromises, without ever referring them to the Judge at all. It may be noted that the county courts are not the part of county organizations and the area of their jurisdictions is a district which is

small than a county and bears no relation to it. The Judges and Registrars of the country courts are paid their salaries out of the national treasury and hold office during good behaviour.

(ii) **Supreme Court of Judicature:** The next tier above the county courts is the Supreme Court of Judicature which is divided into two branches:

(a) High court of justice

(b) Court of appeal

High court of justice: The high court of justice has three divisions:

- The Queen's Bench Division
- The Chancery Division
- The Probate, Divorce and Admiralty Division or the Family Division as renamed in 1971

In each of these divisions, judgment is made by a bench, consisting of one or more than one judge. The Queen's Bench is presided over by the, *Lord Chief Justice* of England having twenty other judges. It hears majority of cases including the common law cases which are referred to the high court.

The Chancery Division is presided over by the Lord High Chancellor having five other judges. It hears the cases which formerly belonged to the Courts of Equity or it deals with such cases in which the remedy or law is inadequate.

The probate, divorce and admiralty division is presided over by a president with seven other judges. They hear particular type of cases involving above three subjects. This division is known as the family division since 1971.

Any of the judges mentioned above may sit in any, division and all may apply common law or equity with restriction to their sphere of duty.

(iii) **The Court of Appeal:** The court of appeal is an appellate authority against the judgments of the county courts and three divisions of the high court. Appeals are made only on substantial questions of law and not on mere facts. The court of appeal meets in two or three divisions or occasionally all Lord Justices sit together in very important cases. In the Court of Appeal no witness is given and there is no jury also. For appealed cases the Court sits in trial. The Lord Chancellor is its president. The House of Lords may hear appeal against the judgment of the Court of Appeals. Thus, in the civil side there are county court, high court, court of appeal and House of Lords which are the highest court of appeal.

(iv) **The House of Lords as the Highest Appellate Court:** The House of Lords is not only a legislative body but also a powerful judicial organ. It is the highest court of appeal both in civil and criminal cases in England. When the House of Lords exercises its judicial function, the whole House never sits as a court. It is a convention that the appeals are heard by the Lord Chancellor and nine Law Lords. The Lord Chancellor is the presiding officer. He is also member of the Cabinet. The Law Lords are men of high judicial calibre who are made Life Peers by virtue of judicial eminence. These ten Lords exercise highest appellate judicial' power in the name of the House of Lords. They sit

and give judgment at any time, regardless whether Parliament is in session or not.

Judicial Committee of the Privy Council

NOTES

The discussion on the British judicial system would be incomplete without reference to the judicial committee of the Privy Council, which is the final court of appeal in cases which come from the courts of the colonies and from certain of the dominions, as well as from the ecclesiastical courts in England. The judicial committee of the Privy Council is not a court in the usual sense of the term but only an administrative body to advise the Crown on the use of its prerogative regarding appeals from the courts of the colonies and Commonwealth. It consists of the Lord Chancellor, former Lord Chancellors, nine Law Lords, the Lord President of the Privy Council, the Privy Councillors who hold or have held high judicial offices and other judicial persons connected with overseas higher courts. As it is a committee consisting of eminent persons, it is best competent to hear appeal on legal matters and advises the Crown on such matter. It consists of about twenty jurists but most of its work is done by the Law Lords of the House of Lords. The appeal goes straight forward to the judicial committee which advises the Crown to accept or reject it. There is no appeal against its decision. The committee has a special function. In time of war it acts as the highest court in naval prize cases.

The British Judicial System has earned a high reputation, both at home and abroad for its excellence, impartiality, independence and promptness. Legal profession in England is held in high esteem and attracts the best talents of the country. The concept of the Rule of Law pervades in their legal system and the people have not forgotten the dictum that 'where law ends, tyranny begins'.

Rule of Law: A Citadel of Liberty

One of the outstanding features of the British Constitution is the concept of the rule of law. Human dignity demands that the individuals should have certain rights and freedom. In most democratic countries, rights and freedoms are guaranteed and protected by the constitution. In the US and India the constitutions work like watch-dogs and protect the individual freedom and rights. In England there is neither a written constitution nor a bill of rights to act as a safeguard of individual liberty. However, England claims to be the classic home of democracy and British people enjoy their rights and freedom without any fear or favour like all free citizens of democratic countries.

The citadel of liberty of the people in Great Britain is the rule of law. John Locke, a liberal British political philosopher of the 17th century, wrote, 'where law ends, tyranny begins.'

British history is replete with tyranny and absolutism and, hence people and Parliament are always eager to preserve the liberty of the people through the rule of law. Though there are no written constitutions and bill of rights, the concept of the rule of law is carefully maintained and scrupulously adhered to by the people in Great Britain. Prima facie, the rule of law means that it is the law of England that rules and not the arbitrary will of the ruler. Lord Hewart defines the Rule of Law as

'the supremacy of predominance of law as distinguished from mere arbitrariness.' Towards the end of the 19th century, Prof. A. V. Dicey gave the famous exposition of the idea of the rule of law. He considered it to be the fundamental principle of British constitutional system and gave a lucid and vivid description of the concept rule of law.

NOTES

According to Dicey, rule of law involves the following three distinct propositions:

(i) 'No man is punishable or can be lawfully made to suffer in body or goods, except for a distinct breach of the law established in the ordinary legal manner before the ordinary courts of the land.' It implies that nobody in England can be punished arbitrarily simply because the authority wants him to be punished. A person can be punished only on the distinct breach of law. It also implies that nobody will be deprived of his life, liberty and property except by the verdict of the courts of law. The courts of law are the custodians of life, liberty and property of the people. England Courts are open in England and judgments are delivered in open courts.

(ii) 'Not only is no man above the law, but every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. 'Here according to Dicey, the Rule of Law means equality before the law or equal protection of law. Nobody is above the law. All citizens irrespective of any distinction are equal in the eyes of law and are subject to the same courts of law. Dicey observes, 'With us every official from the Prime Minister down to a constable is under the same responsibility as any other citizen. This minimizes and checks the tyranny of the government. This perfect equality before law is in contrast to the system of administrative law that prevails in France and other countries of the continent. There are no separate administrative courts to try the administrative officials in England.

(iii) 'The general principles of the constitution are the result of judicial decisions determining the rights 'of private persons in particular cases brought before the courts.' The third meaning of the Rule of Law as Dicey explains is that the legal rights of the British people are not guaranteed by any constitutional law, but assured by the Rule of Law. Dicey observes, 'The constitution is the result of the ordinary, law of the land.' He further writes, 'With us, the law of the constitution, the rules which in foreign countries naturally forms part of a constitutional code, are not the source, but the, consequence of the rights of individuals as defined and enforced by the Courts. The rights of the citizens in Great Britain are protected not by the constitution, but by the judicial decisions, free access to the courts of law is a guarantee against wrongdoers.'

Thus, judiciary has a great contribution in the protection of the liberties of the people. It is true that the parliament can at any time put those rights and liberties in

NOTES

statutes. To cite an example, the Habeas Corpus Act of 1679 guaranteed the citizens the right against unlawful arrest and detention. It is equally true that the parliament can, at any time, limit or repeal any right of the people, based on the statute or common law. In times of national emergency, such as war, the parliament limits and restricts the freedom of the people by passing an ordinary law like the Defence of the Realm Act of 1914 or the Emergency Powers Act of 1939.

In the ultimate analysis, rights and liberties of the people in Great Britain are protected not by law, but by the Rule of Law. The Rule of Law is based on long tradition and strongly supported by public opinion. It has been observed that although at first glance, civil liberties seem to enjoy no such sheltered position in Britain as in the United States and some other countries, they are both in law and practice, as secure as anywhere else in the world.

Hence, the rule of law is the product of centuries of struggle of the British people for the recognition of their rights and freedom. In Great Britain, the law is supreme and the constitution is the result of the ordinary law of the land and its general principles have evolved from the rights of persons as upheld by the courts in various cases. This is a great contrast with many a written constitution in which the rights of the citizens are declared. The rights declared and guaranteed by written constitutions in other democratic countries, are well-secured and protected in Great Britain.

Criticisms of Dicey's exposition

Dicey's exposition of the Rule of Law is subject to various criticism. He was subjective in his approach and viewed the constitution on the background of the liberal philosophy of the Whigs. His book, *The Law of the Constitution,* was published in 1885. No doubt it is a scholarly work, but it contains the remnants of the Laissez-Faire philosophy. Dicey himself was a liberal and was unaware of planned economy and welfare state. The emergence of welfare state has necessitated the grant of discretion and power to government officials. There is tremendous proliferation of the state activities. The Parliament neither has time nor competence to deal with the immense problems of the modern state. Hence, there is increasing use of delegated legislation, consequently leading to granting more discretionary powers to government officials. Lord Hewart has condemned it as new despotism but it seems inevitable in recent times. Dicey is not aware of emergence of the modern powerful state. Thus, the concept of the rule of law, as interpreted by him, cannot be strictly applicable in modern Great Britain.

Sir Ivor Jennings is also a strong critic of Dicey's concept of the rule of law. He criticized Dicey's concept of equality of law as too ambiguous as well as an ambitious phrase. Perfect equality is neither possible nor desirable. What Dicey suggests by equality, according to Jennings, is that an official is subject to the same rule as an ordinary citizen. But even this is not true in England. There are certain privileges and immunities granted to the public officials and these are not granted to the ordinary people. For instance, the police have a right to enter an individual's house with the intention to search the premises, if the particular individual is a suspect in a case. However, despite being a citizen, every person does not have the right to do so.

NOTES

Thus, the powers of the private citizens are not the same as the powers of the public officials. Dicey was not aware of volumes of statutory laws, by-laws and orders which are found today. The members of various groups and associations are often punished by statutory bodies. To cite another example, the General Medical Council, which is the statutory body, can punish any member of the medical profession for unprofessional action and ultimately may remove his name from the medical register. Thus, persons are first subject to group and professional laws and finally subject to the laws of the land.

According to Jennings, the phrase, 'equality before law', implies that among equals the law should be equally administered. Their right to sue and to be sued, to prosecute and to be prosecuted for the same kind of action should be the same for all persons irrespective of any distinctions. Further, there can be no complete equality before the law, while the rich will engage a better lawyer than the poor. Of course, the Legal Aid Scheme of the British government has done something to help the poor.

Dicey's assumption that the constitution is the result of ordinary law of the land is erroneous. Once the theory of parliamentary sovereignty is admitted, there is no doubt that the parliament can reverse the decisions of the courts. Even the parliament can do it with retrospective effect and there, seems to be no remedy against it to save public opinion. Dicey's exposition of the Rule of Law is only a mere eulogy of the British system, with a view to condemning the French system of administrative law. What Dicey thought was that the Rule of Law should be accepted as a principle of policy. Jennings does not accept even this contention. In his analysis, Jennings does not deny the concept of Rule of Law but he denigrates it. He writes, the truth is that the Rule of Law is apt to be rather an unruly horse. If it is a synonym for law and order, it is a characteristic of all civilized states.

If it is merely a phrase for distinguishing democratic or constitutional government for dictatorship, it is wise to say so. Further, if the Rule of Law means that power must be derived from law, most of the modern states have it. Thus, there is no precise definition of the Rule of Law. Dicey viewed the concept of the Rule of Law in the 19th century liberal background. Dicey was a liberal lawyer. His interpretation of the Rule of Law is much subjective. The Rule of Law does not guarantee democracy; rather it is a feature of democracy. It is a *sine qua non* of free and democratic society.

Great Britain is considered to be a classic home of the Rule of Law. In spite of the above limitations, the Rule of Law is considered to be a democratic embellishment. It is true that its content has undergone some transformation in recent times, yet it acts like a bulwark of the British liberty. Freedom is truly a part of the British way of life and nobody likes to part with it. What the Rule of Law implies today is that freedom of the individual should be restrained only under the authority of law. Justice should be available to all irrespective of any distinction. The Rule of Law is not dead today. It still remains as a principle of the British constitutional system and inspires not only the people of England but also the people of the world. According to a modern critic, it involves the absence of arbitrary power, effective control and proper publicity for delegated legislation, particularly when it imposes

NOTES

penalties, that when discretionary power is granted, the manner in which it is to be exercised should as far as practicable be defined, that everyman should be responsible to the ordinary law whether he be a private citizen or a public officer, that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land. No doubt, the Rule of Law is a prized concept in the British Constitution, and the British people are very proud of it as it acts like the citadel of their liberty. Of course, in the ultimate analysis, public opinion acts as the protector of liberty.

The rule of law would be valueless, if people do not resist arbitrary and discretionary laws. As Judge Learned Hand in a classic observation said 'Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it'. While it lies there, it needs no constitution, no law, and no court to save it. What is said about liberty is that this classic statement holds equally true in all democratic countries of the world.

1.2.2 Rule of the Law

The judiciary is said to be the foundation stone of the British constitution. It should play a very important role in legal perpetuation. The government should carry out its functions according to the law. This law should be framed and enforced by a judiciary that is not controlled by the government. The procedure of appointing judges should endorse the practicality of independence.

The Constitutional Reform Act, 2005 defended the liberty of the judiciary and it introduced drastic changes in the process of appointing judges. According to the new system, all appointments are controlled and managed by an independent judicial appointments commission. On the other hand, though the appointed judges may have been suggested by the commission, still the Lord Chancellor conducts all formalities of the appointments. This process suggests ways in which the government may rationalize the current level of executive involvement, if that is apposite. The possibility of the involvement of the parliament in the appointment process is also being considered.

Principles of Judicial Appointments

The basic features which the government should regard as the foundation of any judicial appointment procedure are as follows:

(i) Judicial independence is very important to the **rule of law**, specifically to instil public confidence in judges to uphold the law. This is socially and economically beneficial as it provides a sense of security to the citizens, when their rights are threatened, or when there is a need to enforce their duties. The citizens also get a sense of assurance that criminal cases will be dealt with in a just manner. This also projects Britain as an established country internationally and thus improves its business relations with other nations.

(ii) Therefore, the requirement to safe judicial independence is one of the basic principles and a keystone for any system of judicial appointments. It is important to be aware about the meaning of judicial independence, i.e., judges need to be aware about their rights and independence:

NOTES

(a) In a country which is working under the rule of law, judges need to be independent of the executive. The executives should not be able to improperly manipulate judges to deal with cases in the interest of the executives. At the same time it is vital for the public to believe that the judges will be impartial in deciding cases and will stand up for the rights of individuals, regardless of other interests.

(b) It is also imperative for the judiciary to be independent of the parliament. Parliament is a group that represents all political parties which are elected by the people and are empowered to make and change the laws of a country. In a parliament, the welfare and opinions of the common man are considered. The judges can only decide cases according to the legal provisions endorsed by the Parliament. The freedom of the judiciary within these limits is important for fair decisions. This is more important where cases are politically inclined.

(c) It is essential that judges are not intimidated by parties in a case that involves the government, directly as a party in civil cases and indirectly through the crown, as the prosecutor in criminal cases. Moreover, the basic requirement of a judiciary is that judges should not be under the influence of any kind of prejudice, nor should they be biased in any way.

(d) Out of the many significant ways of securing judicial independence, one main approach is to make sure that the appointments procedure does not result in politically biased judges, who are, or feel, obliged to the person or body who has appointed him/her, or to any individual or organization. This in turn helps to make certain that the judges who are chosen are capable to act independently and thus are free from political or other inappropriate pressures in office.

(e) There are also a variety of other reasons, further than the appointments procedure itself. These are essential to secure independence while a judge is in post. The first amongst these is safekeeping of term ensuring that judges cannot be discharged of their duties for the reason that they make fault-finding decisions against, or are not liked by the government. Judges need to be sheltered against pressure of salary deduction; against political pressure pertaining to their judgments.

(iii) Associated with independence is the rule that the appointment of judges should be based on their suitability to the relevant post. This is an effort to ensure that the appointment process results in the selection of first-rate individuals. This is another essential characteristic that should add power to an appointment procedure that is intended to bring into being a judiciary which is exceedingly capable, politically unbiased, has high standards of honesty and which avoids any form of unjust prejudice. Selection of individuals, based on their worth has fundamentally two aims: no one should be appointed for a post if they are not suitable for it and if two or more people have the same criteria for appointment, the better of the two should be selected. This will probably place appointments above the doubt of patronage and ensure that enrolment procedures underpin the political independence of the judiciary.

NOTES

(iv) Equality is another fundamental principle that should strengthen any judicial system of appointment. Britain's judiciary is appreciated all over the world for its value of integrity, justice and judgement. It is an extremely evident institution with a public focal point. It represents and sustains numerous values that the society considers important: our liberties, mutual admiration and admiration for the rule of the law. It is important for all members of society to be dependent on the judiciary for sustaining their values. The communities of Britain are changing continuously and their institutions have to become accustomed to ensure that they continue to replicate those changes. It also means ensuring that the judges have an efficient insight of the communities that they are serving. They would be able to attain it in a number of ways, for instance, by ensuring that judges are drawn from the different communities that make up modern Britain; or by ensuring that judges distinguish and comprehend those communities while performing their duties.

In the background of judicial appointments, equality requires both, inward and outward focal points. The inward focus must look in the direction of the working atmosphere for judges and the degree to which that atmosphere supports an assorted membership. Thus, it would assist to sustain and support a more varied membership. This will motivate a more diverse range of individuals to apply for judicial appointment and to reflect on the judiciary, as an institution which is one that can carry its duties independently.

Types of Judges

A list of the types of judges who sit in the courts of England is as follows:

(i) **Lord Chief Justice and Lord Chancellor:** Lord Chief justice has been the overall head of the judiciary since 3 April 2006. He was second to Lord Chancellor before the office lost its judicial functions under the Constitutional Reform Act 2005. Lord Chief Justice also holds the position of the head of the criminal division of the Court of Appeal.

(ii) **Lord Chancellor:** Though not a judge, still holds the disciplinary authority over the judges, jointly with the Lord Chief Justice.

(iii) **Heads of division:** The four heads of divisions, namely the masters of the rolls, the president of the Queen's Bench Division, the president of the family division and the chancellor of High Court. The master of the rolls holds the position of the head of the civil division of the Court of Appeal.

(iv) **Justices of the Supreme Court:** The Supreme Court is the highest court in England and all its judges are called Justices of the Supreme Court.

(v) **Court of Appeal:** Lord Justices, who also are the Privy Councillors, are the judges of the Court of Appeal.

(vi) **High court:** High court judges are referred to as the (right) honourable Mr./ Mrs. Justice Smith, as they are not normally holding the position of the Privy Councillors.

(vii) **Circuit judges:** Circuit judges hold a respectable position and unlike other senior judges, are referred to as his/her honour judge.

NOTES

(viii) **Recorders:** Recorders are usually practising barristers or solicitors. They are basically part-time circuit judges.

(ix) **Masters and registrars:** Masters are chiefly responsible for pre-trial case managements and they hold a position which is a level lower than that of the high court judge. A registrar is the senior master of the Queen's Bench division.

(x) **District judges:** Two diverse categories of judges come under the district judge. One group of judges sits at the county court and the other group sits at the magistrates' courts.

(xi) **Deputy district judges:** Barristers or solicitors who serve as part-time district judges, either after being retired from their post as district judge or being in the route to become full-time district judges are called deputy district judges.

(xii) **Magistrates:** Magistrates are appointed to sit and pass judgements at the magistrates' and youth courts. They basically are chosen from the community in groups of three.

CHECK YOUR PROGRESS

1. Why is the British Constitution referred to as an 'unclassified constitution'?
2. List any two features of the British Constitution.

1.3 POSITION AND POWER OF THE CROWN

Although British society has had continuous debates about the status of the King and the Crown and whether distinctions between the two are wholly relevant in the twenty first century, the political economy of Britain continues to distinguish between the two. Simply put, the Crown is the institution while the King (or the Queen) is an individual who is considered the physical manifestation of that institution. The maxim 'The King is dead, long live the King,' aptly sums up the distinction. It expresses the fact that even though the person holding the position of the king is dead, the office continues to exist.

The Crown, according to Mr. Sidney Low, is 'a convenient working hypothesis'. According to Sir Maurice Amos, 'The Crown is a bundle of sovereign powers, prerogatives and rights—a legal idea.' Thus, the rights and powers of the Crown are historically the rights and powers of the King or the Queen. This is still the case in theory, but in reality, the King is merely a nominal head, i.e., ministers exercise these powers on his behalf and in the king's name. These ministers are authorized by the Parliament, and are responsible to it. According to Dr. Finer, 'When we talk of the actions of the Crown in politics we mean that the People, Parliament and the Cabinet have supplied the motive power through the formal arrangements established by centuries of constitutional development. The Crown is an ornamental cap over all these effective centres of political energy.' The author of *England in the Reign of Charles II* David Ogg states that the Crown is a 'subtle combination of sovereign ministers (especially Cabinet members), and to a degree Parliament.'

Thus, it can be stated that the king is the physical embodiment of the crown, whereas the Cabinet is its visible embodiment.

Powers of the British Monarchy

NOTES

The powers of the British Monarch comes from the following sources:

(i) Prerogative

(ii) Statute

In earlier times, powers of the British monarch were considered to be 'prerogatives' and were not conferred to him or her by an act of Parliament. However, with time, the parliament began cutting away at the powers of the monarch. Today, whatever powers that remain with the monarch constitute the prerogatives of the Crown.

According to the constitutional theorist A.V. Dicey, prerogatives are the remnants of autocratic and discretionary powers legally remaining with the Crown. They mean powers that are not granted, but are possessed or conferred powers that have been acquired because they were prescribed, and confirmed by usage and accepted. The second source of power of the Crown comes from Acts of Parliament. The British Parliament may have reduced the powers of the monarch over the years, but it has also added to them. To give an example, whenever the Parliament authorizes a new tax, or introduces fresh duties of administration upon the Crown, it begins to expand the powers of the Crown in an imperceptible manner. However, whether a given power is derived from prerogative or statute is not important. What is really important is that the powers of the Crown keep changing off and on. Sometimes they are curtailed and sometimes they are allowed to reach new heights.

The powers of the Crown can be classified under the following heads:

- Executive Powers
- Legislave Powers

The executive powers of the Crown are as follows:

- The power to appoint all judges, military men, administrative and executive officers
- The power to supervise administrative functions and work
- The power to enforce national laws
- The authority to control the armed forces
- The right to represent the nation in foreign countries
- The right to wield the power of pardon and reprieve

Along with this, the Crown also has the powers to go to war or make peace or sign treaties with foreign countries without consulting the Parliament. However, this executive power in reality is exercised by the ministers of British government, or the cabinet. The cabinet and ministers also have the responsibility of administration of the country. They also appoint the members to the office and direct the British foreign policy as well as decide on expenses made by the Parliament. Thus, in Britain, real power is wielded not by the King, but by ministers and the Cabinet.

NOTES

The powers that are conferred on the Crown by Parliament, are actually delegated to the Cabinet. As the monarch is only a nominal head, as an individual the King is not granted any authority by the Parliament. The prerogative of mercy is primarily exercised by the Home Secretary. There is only a formal contribution by the royalty. Even when the King bestows honours on the public or his subjects, he is doing so with prior permissions from his ministers. It is the Prime Minister, and not the King, who is responsible to the Parliament for including or excluding items/ names from the list of honours.

Legislative Powers

Along with executive powers, the Crown also has legislative powers. In theory, laws of the British Parliament are passed with the King acting in consultation/tandem with the House of Lords and the House of Commons. However, just like the executive powers, the legislative powers of the monarch are nominal and in actuality rest with the Crown. In theory, the King does the following:

- Summons and prorogues the sessions of the Parliament
- Dissolves the House of Commons
- Gives his assent to the bills passed by the Parliament
- Issues Orders-in-Council

Although a Bill cannot become an Act until and unless the monarch gives his or her assent, however, no monarch can exercize veto on his own when a bill is passed by Parliament. The monarch can only exercise veto if the Cabinet advises him to do so. Therefore, it would not be wrong to say the Cabinet is the instiution exercising all these powers.

1.3.1 Reasons for the Survival of Monarchy in Britain

The following issues are debated regarding the existence of monarchy in Britain:

- According to the Treason Felony Act, 1848, it is treason if 'any person whatsoever, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious Lady the Queen from the style, honour or Royal Name of the Imperial Crown of the United Kingdom.' Several monarchists are of the opinion that it is seditious and illegal to advocate republican democracy.
- The current framework of governance has been existing in Britain since the 10th century. The system has changed now, even though the monarch still remains the Head of the State, and does not possess any political powers now. The current framework leaves the Prime Minister out of the useless events and has given him time to execute his duty of controlling the country well. Another reason for monarchy in Britain is that no one has been able to devise an alternative till now.

  However, it is equally important to bring a change in the British society and make it seem like an influential and modern state.

NOTES

The following are some suggested points against monarchy in Britain:

- A hereditary monarch in a developed nation cannot be justified because it represents the feudalism of the medieval English society. It seems like a superannuated system that has served its time and purpose. It encourages social division and snobbery by separating monarchy from the ordinary citizens. Monarchy stands in contrast to the system of meritocracy, where people are rewarded according to their abilities, and not on the basis of their birth. As long as the monarchy survives, the class system will also survive in Britain.
- The fact that monarchy is a mere ceremonial office supported by the money of the taxpayers is not justified. These funds can easily be used for the further development of the nation. They can be invested towards important sectors such as education, healthcare, infrastructure, transport and communications. It should be noted that public money (about £50,000) was once used for renovating the Buckingham Palace. Since the palace is a tourist attraction, abolishing monarchy would increase revenue from the same. Moreover, the palaces can be used as tourist spots rather than as a home for the royalty.
- Monarchy encourages the persistence of anachronous traditions and values. It not only paints the image of Britain as a country still stuck in the medievalism of the past, but is also the relic of an era gone by. Monarchy flourishes while the working class perishes.
- Monarchy is not regarded with the same degree of respect as in the past. It is often claimed to lack the sensibility to act as the head of state. Very few people are of the opinion that it should continue in its present form. The British citizens often face despondency when it comes to the question of the continuation of monarchy in Britain.

It is believed that monarchy is a style of governance where, by itself, it has no special role but many have to suffer because of its presence. To avoid this suffering of the innocent, it should be eradicated or at least reduced to some extent. Monarchy is a redundant framework, leading to no optimal positive results and simultaneously leading to racism, which is its biggest drawback.

Why does the system still prevail even after such criticism?

- The most common reason is that monarchy has not been practised in its true sense anymore. People do not perceive any direct adverse effect of monarchy in the state.
- Britain's sense of security has been embedded in the Crown only, and without it, things would not make much sense.
- Since the true sense has been lost, the behaviour of the Crown is considered irrelevant.
- Monarchy is constitutional. It renders Britain a unique and singular identity.
- The monarch is in a position in the state where he/she is able to work for the welfare of the civilians.
- Monarchy has no significance of its own.

- Any attempt to do away with the monarchy is a fundamental assault on the national way of life in Britain.

1.3.2 National Identity: Monarch is a National Icon

NOTES

The monarch is a physical representation of the history of the era that she or he rules. Monarchs depict the ups and downs of the nation during their reign. The Queen of Britain is a national icon as she is inextricably related to the history of the nation during her rule, and she cannot be replaced or substituted by any other politician or personality. This is a living continuity between the past, present and future.

A monarch truly depicts the nation, its traditions, ceremonies and many more things. The British monarchy is a cultural embellishment for the nation, divested of which it will appear impoverished.

Monarchs are representatives of the unique customs and traditions in a nation state. In a world where people believe that the government should be for the people, by the people and for the people, monarchy still has a place.

1.3.3 Abolition of the British Monarchy

The following arguments have been forwarded for the abolition of monarchy in Britain:

- The values of a monarchy are significantly different from that of a democracy.
- The royals spend a lot of state money for personal expenses, especially on pompous ceremonies.
- The political power and clout of the royal family cannot be neglected.
- The royals have invited criticism from various quarters by causing marital mishaps and demonstrating financial indiscretions.
- Monarchy is often seen as a symbol of everything that is wrong with the British society and its political system today.
- Most of the modern day nations practise democracy. It strengthens people and provides them with power to elect their leaders. The people of developed countries participate in the nation-making process. They elect the people who constitute their government. However, Britain has lagged in this respect by retaining monarchy.

CHECK YOUR PROGRESS

3. List any two executive powers of the Crown.
4. Give any one reason for the existence of monarchy in Britain.

1.4 PRIME MINISTER: UK

The Prime Minister is by far the most important man in the country. He is also described as the master of the government. It is the peculiarity of the British

Constitution that the man who holds such a high office has, strictly speaking, no legal sanction. The English law is very much silent with regard to the office of the Prime Minister.

NOTES

1.4.1 Selection of the Prime Minister

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

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

1.4.2 Functions of the Prime Minister

The functions of the Prime Minister are many and varied. He has immense powers and a considerable amount of prestige, which can be seen from the following description of his functions.

(i) Formation of the ministry

The Prime Minister forms the ministry. With the appointment of the Prime Minister, the essential function of the monarch is over, for it is left to the Prime Minister to select his ministers, and present the list to the monarch. The Prime Minister has also to select his cabinet colleagues. The Prime Minister can change the members of the ministry at any time.

(ii) Distribution of portfolios

The distribution of portfolios is another important task of the Prime Minister. However, while distributing portfolios, he has to see that important members of the party do get important portfolios. He also has to satisfy the aspirants for the important portfolios.

(iii) The chairman of the Cabinet Committee

The Prime Minister is the Chairman of the Cabinet Committee. He convenes the meetings of the cabinet and presides over them. He is to fix the agenda of the meetings and it is for him to accept or reject proposals put by its members for discussion in such meetings. He may advise, warn or encourage the ministers in the discharge of their functions.

(iv) Leader of the House of Commons

It is now an established convention that the Prime Minister should belong to the House of Commons. He represents the cabinet as a whole and acts as the leader of the House. He announces the important policies of government and speaks on most important bills in the House of Commons. He is responsible for the arrangement of business of the House through the usual channels. The members of the House look to him as the fountain of every policy.

(v) Chief coordinator of policies

The Prime Minister is the chief coordinator of the policies of several ministries and departments. He has to see that the government works as an organic whole and activities of various departments do not overlap or conflict with one another. In case of a conflict between two or more departments, the Prime Minister acts as the mediator. He irons out conflicts among the various ministries and departments. Thus, he plays a major role in coordinating the policies of the government.

(vi) Sole adviser to the monarch

The Prime Minister is the sole adviser to the monarch. You must already know that he is the only channel of communication between the monarch and the cabinet. The Prime Minister advises the sovereign in matters of appointment and any other matter of national importance. He recommends the names of persons on whom honours can be conferred. He is also responsible for a wide variety of appointments, and exercises considerable patronage. He also has the power to advise the King to create peers. Thus, he has a legal right of access to the sovereign, which other members of the cabinet ordinarily do not possess. For this reason, he frequently visits the Buckingham Palace to meet the monarch.

(vii) Leader of the nation

The Prime Minister is not only the leader of the majority party but also the leader of the nation. A general election in England is in reality an election of the Prime Minister. He should feel the pulse of the people, and try to ascertain genuine public opinion on matters which confront the nation. His appeal to the people in critical periods saves the nation.

(viii) Power of dissolution

The Prime Minister possesses the supreme power of dissolution, and it is his sole right to advise the monarch to dissolve the House of Commons. In other words, the members of the House of Commons hold their seats at the mercy of the Prime Minister. It is difficult to imagine a situation in which the monarch can refuse dissolution to a Prime Minister. Nevertheless, the Prime Minister should consult the cabinet before advising for dissolution.

(ix) Other powers

The Prime Minister possesses wide powers of patronage, including the appointment and dismissal of ministers. A large number of important political, diplomatic, administrative, ecclesiastical and university appointments are made by the monarch,

NOTES

on his recommendations. He may occasionally attend international conferences. He meets the Commonwealth Prime Minister in regular conferences. He may meet the Heads of other Governments at the summit talks and discuss international problems. The Prime Minister often discharges these functions without consulting the cabinet. However, the solidarity of the cabinet and the prestige of the Prime Minister should be always reconciled.

1.4.3 The Doctrine of the Prime Ministerial Government

In view of the vast powers exercised by the Prime Minister, some critics observed that there is Prime Ministerial form of government in England. R. H. S. Crossman writes, 'The post-war epoch has seen the final transformation of cabinet government into Prime Ministerial Government.' Under this system, the cabinet which is a 'hyphen which joins, the buckle which fastens, the legislative part of the State to the executive part' becomes one single man. Even in Bagehot's time, it was probably a misnomer to describe the Premier as Chairman, and *primus inter pares* (first among equals).

His right to select and remove his own cabinet, his power to decide its agenda, his right to announce its decisions and to advise the monarch for dissolution, his power to control the party members for the sake of discipline–all this has given him near presidential powers. Every cabinet minister has become, in fact, the Prime Minister's agent or his assistant. No minister can take an important move without consulting the Prime Minister. It may be said that the cabinet has become a Board of Directors and the Prime Minister is like a general manager or a managing director. Important policy decisions are often taken by the Prime Minister alone, or after consulting one or two cabinet ministers. The repeal of the Corn Laws in 1846 was done by the personal initiative of Robert Peel. The invasion of the Suez Canal in 1956 was decided by Anthony Eden in consultation with his few colleagues, and the cabinet was informed at the last moment before Israel attacked Egypt. Harold Wilson reached the final decision to dissolve the House of Commons in 1966 without consulting the cabinet. Once the Prime Minister announces his policy or takes a step, his followers have little chance to oppose him, for it may endanger party solidarity and stability of government.

Herbert Morrison and some other critics refute the thesis of the establishment of Prime Ministerial government in England. They hold the view that 'the Cabinet is supreme' and the Prime Minister is not the master of the cabinet. He cannot ride roughshod over the desire of the cabinet. As the captain, he must carry the whole team with him. A team is weak without a captain, and there can be no captain without a team. Both should work in mutual cooperation and perfect harmony. Hence, the Prime Minister is like an executive chairman.

The preceding two views seem to be extreme ones, and the real truth lies in between these two views. The Prime Ministerial powers change with political circumstances and with the concerned personalities. The Prime Minister is, no doubt, more powerful than any cabinet minister. But it cannot be said that he is more powerful than the whole cabinet. After all, he has to carry the whole cabinet with him.

CHECK YOUR PROGRESS

5. On whom does the selection of the Prime Minister in Britain depend?
6. State any one function of the Prime Minister of Britain.

NOTES

1.5 PARLIAMENT: COMPOSITION AND FUNCTIONS

The British Parliament is the oldest legislative institution in the world. It is one of the best representative assemblies of the world. It still upholds the theory of the supremacy of ballot. This Parliament meets in the Palace of Westminster. Incidentally, the parliamentary form of government of England is the oldest in the world.

Origin and Growth of Parliament

Etymologically, the word 'parliament' has been derived from the Latin word *parle*, which means consultation. In the beginning, the British monarch, who was the embodiment of the legislative, executive and judicial powers, found it convenient to consult with the Lords, Barons and the Commons for raising money. Its root can be traced to the *Magnum Concilium* (Great Council) of the Norman period. Simon de Montfort first used the word 'parliament' in 1265, and Edward I summoned the famous 'Model Parliament' in 1295.

Bicameralism is an accident in British constitutional history, for in the 'Model Parliament' of 1295, the Barons and clergy refused to sit with the common people. Hence, two houses were created: the House of Lords and the House of Commons. Initially, the House of Lords was more powerful, but with the extension of franchise which started with the passage of the first Reform Act of 1832, the House of Commons became a popular and powerful chamber. During the period of 1832–1971, there were several Reforms Acts which gradually granted every person of eighteen years in age the right to vote, thus completing the process of democratization of Parliament.

1.5.1 Powers and Functions of Parliament

The Parliament is a sovereign body. It has the right to make or unmake any law, and the judiciary has no right to override or set aside its act. The Parliament in general enjoys the following powers:

(i) Law-making powers

The Great Britain has a unitary form of government, and hence, both Houses of Parliament have the power to make law for the whole country. It is the principal function of the Parliament. In actual practice, it has neither time nor competence and hence the initiative is left in the hands of the cabinet. The cabinet dominates both in legislative as well as in executive fields. Further, in the legislative sphere, the House of Commons has more powers than the House of Lords.

NOTES

(ii) Financial power

The Parliament is the guardian of national finance. It may be pointed out here that it was largely on the question of money that the battle was fought between the King and Parliament. Finally, it was settled that Parliament has the supreme authority in the financial field. Here, the House of Commons is more powerful, and as per the provision of the Parliament Act 1911, the House of Lords can delay money bills for a maximum period of one month. Money bills can be first introduced only in the House of Commons.

(iii) Control over the executive

The responsibility of the executive to the legislature is the very basis of the parliamentary form of government. The cabinet in England is responsible to the Parliament. Here again, it is the House of Commons, and not the House of Lords that exercises effective control. The House of Commons may remove a cabinet out of power by a vote of no confidence. It may reject a bill or a budget proposal of the cabinet. Its members have a right to ask questions to the ministers. They move the vote of no confidence or vote of censure against the government.

(iv) Ventilation of grievances

The Parliament is a forum for deliberation on questions of public importance and the ventilation of public grievances. It is the mirror of the nation. Whatever happens in the various parts of the country can be discussed in it. That is why it is often described as 'a nation in miniature'.

(v) Educative functions

Besides the function of exercising control over the executive, the Parliament also performs educative functions. Its debates provide valuable political education to the people and create a process of awareness among them. Newspapers, radio and televisions give maximum publicity to its debates. It helps to educate and formulate public opinion in the Great Britain. It provides an opportunity to the opposition to criticize the government.

(vi) Miscellaneous functions

The Parliament protects the rights and privileges of its members. It provides a training ground for the future parliamentary leaders and ministers. Its members, particularly the members of the House of Commons, have to demonstrate talent, ability, wisdom and practical statesmanship.

1.5.2 Bicameralism and the Parliament

The Parliament of Great Britain is bicameral in structure. It consists of the following two houses·

- House of Commons
- House of Lords

The House of Commons is the popular chamber whose members are elected directly by the people. It has been aptly described as the 'most characteristic institution

NOTES

of British democracy'. It consists of elected representatives of the people who represent the nation as a whole. The House of Commons is now purely an elective body, and it has attained its present status through a long process of democratization. Free election is now an essential basis of the British democracy. The House of Commons at present consists of 635 members. These members are elected for a period of five years from single member constituencies, arranged on a geographical basis. If the House is dissolved earlier, there may be fresh election before the completion of the terms. The tenure of the House normally does not extend beyond five years, but it can be extended in great national crisis such as wars and emergencies. The House of Commons elected in 1910 continued to work till 1918 due to First World War, and one elected in 1935 continued till 1945 during Second World War.

The House of Lords is the oldest upper House in the world. As a second chamber, it has been in continuous existence for more than one thousand years. This House consists of more than one thousand Peers of Lords. The term 'peer' means an equal, and originally, it referred to the feudal tenants-in-chief of the monarch. These tenants in chief more or less enjoyed equal privileges, and they were summoned by the King to be present when a new Parliament met. It became customary that when a new Parliament met, the King used to summon the same old peers who had sat in an earlier one, or if in the meantime, they had died, for their eldest sons. Thus, peership became hereditary under the law of primogeniture, where the eldest son had the right to inherit the father's legacy, and become a member of the House of Lords.

At present, the House of Lords consists of the following categories of peers:

(i) Princes of the Royal Blood

(ii) Hereditary Peers

(iii) Representative Peer of Scotland

(iv) Representative Peers of Ireland

(v) Lords of Appeal

(vi) Lords of Spiritual

(vii) Life Peers

The members of the House of Lords have certain privileges and disabilities. They enjoy freedom of speech and individually meet the monarch to discuss public affairs. They are exempted from arrest when the House of Lords is in session. Eminent persons are conferred on peerage so that the country gets the chance of getting their services.

CHECK YOUR PROGRESS

7. What financial power is held by the British Parliament?
8. Name any two categories of peers of the House of Lords.

1.6 COMPARATIVE STUDY: UK CABINET AND US CABINET

NOTES

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

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

Evolution of the Cabinet

The British cabinet is not recognized by law. It is a product of conventions and it has a long historical growth. The system of cabinet government is said to have emerged when the King was excluded from the meetings of the cabinet. This happened by accident in 1714, when George I ascended the throne. George I and George II did not know English language and therefore, were not much interested in the English affairs. Hence, George I ceased to attend the meetings of the cabinet and nominated Sir Robert Walpole to preside in his place. The cabinet discontinued the practice of meeting at the Buckingham Palace. It met at the House of the First Lord of the Treasury and the First Lord became the Chairman of the Cabinet. As chairman of the Cabinet, Walpole presided over the cabinet meetings, directed its deliberations and reported the decisions arrived at the cabinet meetings to the sovereign. He was not only a link between the cabinet and the sovereign, as a member of the Parliament, but he was also a link between the cabinet and the parliament. This new position and responsibility of Walpole, in effect, resulted in the origin of the office of the Prime Minister, though he himself hesitated to accept such a title. Simultaneously this had given rise to collective responsibility of the Cabinet. Differences among the members of the Cabinet were resolved inside the Cabinet and unanimous decisions were conveyed to the Sovereign. For twenty years, Walpole headed the government and his administration gave birth to all the essential characteristics of the present day cabinet system. It was Walpole who first administered the Government in accordance with his own views of political requirements. It was Walpole who first conducted the business of the country in the House of Commons. It was Walpole who in the conduct of that business first insisted upon the support for his measures of all servants of the Crown who had seats in the Parliament. It was under Walpole that the House of Commons became the dominant power in the State, and rose in ability and influence as well as in actual power above the House of Lords. And it was Walpole who set the example of quitting his office while he still retained the undiminished affection of his King for the avowed reason that he had ceased to possess the confidence of the House of Commons. It was again Walpole who used No. 10, Downing Street as his

official residence and it continues till today as the official residence of the British Prime Ministers.

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

NOTES

The Cabinet and the Ministry

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

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

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

Lastly, there are parliamentary secretaries or junior ministers that are appointed almost in every department. Technically they are not the ministers of the crown because constitutionally they do not enjoy powers. Their sole function is to help and relieve their senior ministers of some of their burdens by taking part in the parliamentary debates and answering parliamentary questions. They also assist their senior members in their departmental works. They are also known as 'parliamentary

NOTES

under secretaries' who are different from permanent under secretaries. A permanent under secretary is a senior member of the civil service in the government and he is non-political, permanent and paid.

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

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

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

Organization of the Cabinet

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

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

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

NOTES

It may be pointed here that the Prime Minister is legally under no obligation to include any particular person in his cabinet. But in practice, some members of his party have such status and prestige that their inclusion in the Cabinet is most automatic. In 1929, James Ramsay McDonald did not want Arthur Henderson to be the Secretary for Foreign Affairs but when Henderson refused to accept any other office, McDonald had to yield. Another difficult task that the Prime Minister faces is the allocation of portfolios among his colleagues. There may be more than one claimants for the same post. The Prime Minister has to satisfy all shades of opinion in his party. He has a right to reshuffle his cabinet, when he likes.

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

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

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

It is based more on expediency than on law. It is more an advisory body than a policy-making organ. Some of the recent writers, like L. A. S. Amery, have suggested to reduce the size of the Cabinet to half a dozen members or nearly so. These members will constitute a smaller cabinet consisting of important members of important departments. It will work more efficiently and quickly than a bigger body. This suggestion, however, has not found favour with others. There is apprehension that it may be a 'Super cabinet' and its members may be described as 'Over-Lords'. Herbert Morrison strongly repudiated the idea and concluded that 'a cabinet

of a moderate size, say, sixteen to eighteen, which contains a limited number of non-departmental ministers and the rest departmental ministers, is probably the best'. A cabinet cannot discharge its function well without departmental ministers.

NOTES

Features of the Cabinet system

The cabinet system, as it is found in Great Britain, is based on certain recognized principles. The principles have been developed in course of time and these are based more on conventions than on law. The British cabinet is rightly described as 'one of the parts of the governmental machinery least governed by law'. However, the Cabinet occupies the most important place in the British constitutional system. The essential features of the Cabinet system are discussed below.

1. Exclusion of the monarch from the Cabinet

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

2. Combination of the executive and legislative functions

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

3. Collective responsibility

In the third place, the Cabinet system is based on the principle of 'collective responsibility', which is said to be 'the corner-stone of the working of the British Constitution'. All ministers swim or sink together. For the wrong policy of the government, the entire cabinet is held responsible. The cabinet is responsible to the House of Commons and it continues in office as long as it enjoys the confidence of the latter. The cabinet works like a team and meets the parliament as a team. Its members stand or fall together. The collective responsibility of the Cabinet is enforced in the parliament through various methods like the vote of no-confidence, vote of

censure and refusal to pass government bills. Whenever the Cabinet ceases to enjoy the confidence of the House of Commons, it may resign or advise for the dissolution of the House of Commons. In case of dissolution of the House of Commons, a fresh election takes place. Thus, the collective responsibility has strengthened the solidarity of the Cabinet in the British constitutional system.

NOTES

4. Ministerial responsibility

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

5. Political homogeneity

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

6. Leadership of the Prime Minister

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

7. Secrecy of cabinet meetings

The last feature of the British cabinet system is the secrecy of the meetings of the Cabinet. The entire cabinet proceedings are conducted on the basis of secrecy. The

NOTES

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

The establishment of a permanent cabinet Secretariat by Lloyd George III in 1917 has helped to write down the minutes of the proceedings and maintain secrecy. The secrecy of the proceedings of the Cabinet meeting helps to maintain collective responsibility and cabinet solidarity. Further, in order to strengthen the solidarity of the Cabinet its decisions are not arrived at by voting for or against a proposal. The Prime Minister tries to know the views of the members and uses his influence to reach a common decision. The members of the Cabinet are free to express their views, but once a decision is taken, they solidly stand behind it. Thus, secrecy and party solidarity may be considered to be the last but not the least essential feature of the British cabinet system.

Functions of the Cabinet

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

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

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

works well. He supervises the work of senior civil servants working under him and guides them in the implementation of government policies.

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

NOTES

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

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

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

NOTES

1.6.1 Cabinet in USA

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

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

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

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

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

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

NOTES

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

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

Comparison between the American and the British Cabinet

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

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

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

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

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

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

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

of the British Parliament.

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

NOTES

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

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

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

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

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

The Congress

The legislative branch of the American federal government is known as the Congress. Congress consists of two Houses—the House of Representatives and the Senate.

The organization of the Congress on the bicameral pattern was the result of a compromise between the claims of more populous states who wanted representation, in the new legislature, and the smaller states that were keen on equal representation to ensure equality of status in the new set-up. In accordance with the formula devised, aspirations of bigger and smallest states were fulfilled. Each state irrespective of its population, sends two members to the senate and representation of the States in the House is in proportion to their population.

NOTES

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

CHECK YOUR PROGRESS

9. State any one essential feature of the Cabinet in Britain.
10. Write down any one difference between the American and the British Cabinet.
11. What is the legislative branch of the American federal government known as and what does it consist of?

1.7 SUMMARY

- The United Kingdom is a constitutional monarchy and parliamentary democracy, with a queen as the Head of State, and a bicameral parliament in place consisting of the House of Lords and the House of Commons.
- England was established as a cognate nation state in the tenth century. The unification between England and Wales started in the year 1284 in the device of the Statute of Rhuddlan. The actual formalization of this merger took place in 1536 with an Act of Union. Later, in 1707, England and Scotland joined together to form the Great Britain with another Act of Union. In 1801, Great Britain became the United Kingdom of Great Britain and Ireland with the legislative union affected between Great Britain and Ireland. After the Partition of Ireland (formalized in the Anglo-Irish Treaty of 1921), only it's northern part–formally known as Northern Ireland–stayed as a part of the United Kingdom.
- The Magna Carta awarded the people of Britain, especially the nobles, certain basic rights. King John was compelled to sign the Magna Carta in 1215. This happened after his royal power had been centralized at the expense of the nobles.

  Laws lay down a constitution that governs a country. Unlike the Constitution of the United States of America or that of the European nations, the Constitution of Britain is not laid down in one single document and is, thus, referred to as an unclassified constitution. It contains a number of documents. The sole reason for the differentiated documents which define the constitution is that it makes the rectification of any amendment easier and simpler.

NOTES

- Some of the features of the British Constitution include: (a) A unitary constitution (b) Parliamentary sovereignty (c) A flexible constitution (d) A bicameral legislature.
- The monarchical system of governance prevails in Great Britain. The current monarch of Britain is Queen Elizabeth II, who ascended the throne on 6 February 1952. She, along with her family members, performs several official, ceremonial and representational duties. Being a constitutional monarch, the Queen carries out merely non-partisan functions like conferring titles and honours, causing the dissolution of Parliament and ordaining the Prime Minister.
- According to the Constitution of the United Kingdom, the monarch is the supreme head of the state or one might say the one having the sovereignty. 'God save the Queen' or 'God save the King' is the national anthem of Britain, and you can see the monarch's portrait on the coins, postage stamps and banknotes.
- A Prime Minister is appointed only by the monarch. The Constitution says that the monarch must choose that candidate for Prime Ministership who has gained the support of the House of Commons, generally the leader of the party or coalition having a majority in that House. The Prime Minister has a private audience with the monarch, in which he formally kisses the monarch's hands to symbolize the taking of office. There is no other formality or instrument.
- The royal prerogative is defined as an extension of the government's executive authority that resides with the monarch in theory. Royal prerogative is wielded by the sovereign, who works in complete accordance with convention and precedent, and is exercised only through the Prime Minister or the Privy Council. Practically, the exercising of prerogative powers takes place after consultation with the Prime Minister, who wields the actual control.
- The legislative laws of the United Kingdom are immune to any changes that may be accorded in a treaty ratified by the monarch because it is the Parliament's duty to enact or amend legislation. The sovereign also serves as the Commander-in-Chief of the Armed forces (the Royal Navy, the British Army and the Royal Air Force).
- The judiciary is said to be the foundation stone of the British constitution. It should play a very important role in legal perpetuation. The government should carry out its functions according to the law. This law should be framed and enforced by a judiciary that is not controlled by the government.
- The powers that are conferred on the Crown by Parliament, are actually delegated to the Cabinet. As the monarch is only a nominal head, as an individual the King is not granted any authority by the Parliament. The prerogative of mercy is primarily exercised by the Home Secretary. There is only a formal contribution by the royalty. Even when the King bestows honours on the public or his subjects, he is doing so with prior permissions from his ministers.
- The Prime Minister is by far the most important man in United Kingdom. He is also described as the master of the government. It is the peculiarity of the

British Constitution that the man who holds such a high office has, strictly speaking, no legal sanction. The English law is very much silent with regard to the office of the Prime Minister.

NOTES

- The selection of the Prime Minister depends essentially on the monarch. During the 18th century, the royal choice played an effective role in such election. It was a well-established rule that the Prime Minister must be either a Lord or a member of the House of Commons. All Prime Ministers since Sir Robert Walpole have been appointed from one of the Houses.
- The British Parliament is the oldest legislative institution in the world. It is one of the best representative assemblies of the world. It still upholds the theory of the supremacy of ballot. This Parliament meets in the Palace of Westminster. Incidentally, the parliamentary form of government of England is the oldest in the world.
- Bicameralism is an accident in British constitutional history, for in the 'Model Parliament' of 1295, the Barons and clergy refused to sit with the common people. Hence, two houses were created: the House of Lords and the House of Commons. Initially, the House of Lords was more powerful, but with the extension of franchise which started with the passage of the first Reform Act of 1832, the House of Commons became a popular and powerful chamber.
- The Parliament of Great Britain is bicameral in structure. It consists of the following two houses·: (a) House of Commons (b) House of Lords. The House of Commons is the popular chamber whose members are elected directly by the people. It has been aptly described as the 'most characteristic institution of British democracy'. It consists of elected representatives of the people who represent the nation as a whole. The House of Lords is the oldest upper House in the world. As a second chamber, it has been in continuous existence for more than one thousand years. This House consists of more than one thousand Peers of Lords.
- The cabinet is 'the core of the British constitutional system.' It is the most important single piece of mechanism in the structure of the British government. It is the supreme directing authority of the government and the real ruler of Great Britain. It has been described as the central fact and the chief glory of the constitution.
- The British cabinet is not recognized by law. It is a product of conventions and it has a long historical growth. The system of cabinet government is said to have emerged when the King was excluded from the meetings of the cabinet. This happened by accident in 1714, when George I ascended the throne. George I and George II did not know English language and therefore, were not much interested in the English affairs.
- The cabinet system, as it is found in Great Britain, is based on certain recognized principles. The principles have been developed in course of time and these are based more on conventions than on law. The British cabinet is rightly described as 'one of the parts of the governmental machinery least

NOTES

governed by law'. However, the Cabinet occupies the most important place in the British constitutional system.

- According to William Howard Taft: 'The cabinet of the President of United States is a mere creation of the President's will. It is an extra statutory and extra constitutional body. It exists only by custom. If the President desired to disperse with it, he could do so'. Though unknown to law yet it has become an integral part of the institutional framework of the United States.
- The size of the American cabinet has undergone a steady growth. George Washington's cabinet included only four heads of the existing departments. The cabinet's strength has increased to twelve with the creation of more departments. Besides, President may include others also. Some presidents invite the vice-president to the meetings of the cabinet.
- Both America and Britain have cabinets in their respective countries, but they fundamentally differ from each other. The American cabinet can be said to resemble the British cabinet in one thing only. Both have arisen from custom or usage. While in all other respects the American Cabinet stands in sharp contrast to its American counterpart.

1.8 KEY TERMS

- **Parliamentary democracy:** It is a form of government where voters elect the parliament, which then forms the government.
- **Magna Carta:** It is a document constituting a fundamental guarantee of rights and privileges.
- **Monarchy:** It is a form of government with a monarch at the head.
- **Royal prerogative:** It is defined as an extension of the government's executive authority that resides with the monarch in theory.

1.9 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The Constitution of Britain is not laid down in one single document and is, thus, referred to as an unclassified constitution.
2. Two features of the British Constitution are:
   - A unitary constitution
   - Parliamentary sovereignty
3. Two executive powers of the Crown include:
   - The power to supervise administrative functions and work
   - The power to enforce national laws
4. The monarchy still exists in Britain since the system of voting against the monarchy is yet to be followed in Britain, although the Parliament can vote for abolishing monarchy.

NOTES

5. The selection of the Prime Minister depends essentially on the monarch. During the 18th century, the royal choice played an effective role in such election. It was a well-established rule that the Prime Minister must be either a Lord or a member of the House of Commons.
6. The Prime Minister forms the ministry. With the appointment of the Prime Minister, the essential function of the monarch is over, for it is left to the Prime Minister to select his ministers, and present the list to the monarch.
7. The Parliament is the guardian of national finance. It may be pointed out here that it was largely on the question of money that the battle was fought between the King and Parliament. Finally, it was settled that Parliament has the supreme authority in the financial field.
8. The House of Lords consists of the following categories of peers:
   (i) Princes of the Royal Blood
   (ii) Hereditary Peers
9. An essential feature of the British cabinet system is the exclusion of the monarch from the Cabinet. The Monarch stands outside the Cabinet and he does not attend its meeting. He is neutral and above party-politics.
10. The British cabinet is characterized by political homogeneity, all its members being normally drawn from the same party. The American cabinet may be composed of politically heterogeneous elements.
11. The legislative branch of the American federal government is known as the Congress. Congress consists of two Houses—the House of Representatives and the Senate.

1.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define Magna Carta. What are the various sources of the British Constitution?
2. What are some of the prominent features of the British Constitution?
3. How is the British Prime Minister elected?
4. What is royal prerogative? What does it include?
5. What are the different types of judges who sit in the courts of England?
6. Why is Dicey's exposition of the Rule of Law criticized?

Long-Answer Questions

1. Discuss the constitutional role of the Monarch in the United Kingdom.
2. Describe the principles of judicial appointments.
3. Discuss the executive and legislative powers of the crown.
4. Define Parliament. Discuss the origin, power and functions of the British Parliament.

5. Differentiate between the Cabinet of United Kingdom and the Cabinet of United States of America with examples.

NOTES

1.11 FURTHER READING

Durverger, Maurice. 1957. *Political Parties: Their Organization and Activity in the Modern State.* Paris, France: Armand Colin.

Jennings, Ivor. 1961. *Cabinet Government.* London, UK: Cambridge University Press.

Muir, Ramsay. 1930. *How is Britain Governed.* London, UK: Constable and Co. Ltd.

UNIT 2 UNITED STATES OF AMERICA

NOTES

Structure

2.0 INTRODUCTION

The United States of America is a federal state in the sense that power is shared between the state and the national government. However, the US Constitution never mentions that it is a federal nation. Federalism has an interesting history in the United States. After the US became free from England, the thirteen colonies restructured themselves to become thirteen states. They were bound by a document called the Articles of Confederation, and formed a league to function together as one nation. These states were, each of them, autonomous in their own right, and the state governments had all the power. But this translated into a weak national government.

The Founding Fathers of America then came to an understanding that a new form of government was, indeed, required. They wrote the Constitution that sought to aggrandize the national government. Power was now divided between the state and national government. This is how federalism came to be adopted in the United States. The country is led by the President, who is not only the head of the executive branch of the government, but also the head of military. This means that the President can mobilize troops as he sees fit. This power was allegedly misused by George Bush Jr., the 43rd President of the United States. The Congress creates laws, but it is the President who approves them. The President enjoys the power of the veto and it is under his power not to sanction a bill. He represents his country in the world and ratifies treaties. The President is the main head of the government and is elected by the American citizens. In the way that we turn to our friends when we need advice, the President turns to his cabinet that comprises experts in various subjects.

NOTES

In this unit, you will study about the salient features of the Constitution of the United States of America, the powers and the position of the American President, and the composition and functions of Congress. You will also study about the differences between the power held by the American President and the British Prime Minister and compare the duties of the American Speaker with that of the British Speaker.

2.1 UNIT OBJECTIVES

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

- Discuss the salient features of the Constitution of the United States of America
- Describe the powers and the position of the American President
- Explain the composition and the functions of the Amrican Congress
- Differentiate between the powers held by the American President and the British Prime Minister
- Compare the duties of the American Speaker and the British Speaker

2.2 SALIENT FEATURES OF THE CONSTITUTION

The dilemma of recognizing major determinants of political behaviour is complex in the case of the United States because of the vast diversity of American life. Constitutional organization along with the prototypes of political action, frequently act and react upon each other. Prior to learning about the features of American politics, it is essential to return to the hypotheses that have been estimated to clarify the motivational forces, which are behind political systems, as well as the insinuations of these contradictory details for getting an understanding of the American system. These 'representations' of political life assist in understanding the intricacy of American politics at every stage of activity, in the electorate in general and in the formation of party and pressure groups, along with the functioning of congressional and presidential politics.

Model of Politics

The sense of affection to a region or community, has at all times, been one of the most dominant sources of political loyalty and action. The US grew out of various colonial communities, expanding progressively across the continent, in a way, which has a propensity to lay emphasis on local loyalties. The constitutional make up of federalism that was developed in 1787 provided prospects for the sustained appearance of regional loyalties through the governments of the states. Therefore, the history of the American political system has been powerfully exemplified by sectional outlines of activities by the people of particular geo-states. The Civil War (Figure 2.1) certainly was one of the most vivid confrontations of this nature, wherein the North and South became diverse warring nations.

NOTES

Fig. 2.1 *A Pictorial Representation of the US Civil War*

Source: www.glogster.com

However, sectionalism continues to be a moving force in American politics all the way through its history. The unanimity of a segment was dependent on some universal awareness and shared interests, which set it apart from the rest of the country and which were of ample significance for the unification of its people, despite class or any other internal division. Often this common interest was economic, on which the entire occupation of the region depended, for example, the significance of cotton and tobacco in the South or grain for the states of the Mid-West. Therefore, all the way through the 19th century, agricultural sectionalism had an immense effect on the American political behaviour. The extreme example of sectional loyalty was provided by the presidential election of 1860, in which not a single vote was cast in all the ten southern states for the candidate of the Republican Party, Abraham Lincoln.

In the last quarter of the 20th century, such extremes of sectionalism no longer existed, and indeed, the US developed a sense of national identity and unity that was more unified than that of older nations in Europe. Yet, sectional and regional factors continue to play a very important role in the working of American politics, a role that can be pragmatic in the stubborn decentralization of the party system. It is in the interrelationship between this unique brand of nationalism and the reality of the decentralization of political power, that the special quality of the American system is to be found.

The second model of political motivation is that which looks to the class structure of society as the major determinant of political behaviour. Although a number of political thinkers, such as Locke and Montesquieu, have emphasized this aspect of political behaviour, it was Karl Marx who saw class as the ultimate explanation of people's action. Taken to extremes, this is of course quite incompatible with sectionalism as a force in politics. If political loyalty is really a matter of social class, then regional loyalties will have no part to play in the political system and to the degree that these regional loyalties continue to exist; class solidarity across the nation will be diminished. In fact, recent American political history is largely the story of the complex interaction of these two political motivations, with sectionalism declining as class-consciousness increases. Each of these styles of political behaviour has very different implications for the type of party system one would expect to

NOTES

find. Indeed, if either sectional or class politics is taken to extreme, then party politics as we understand it would be ruled out. There would simply be a civil war either between geographical regions or between classes. The working of the democratic system depends on the fact that these extremes are never realized and that political parties must appeal to both, different sections of the country and different classes of the population.

We may describe our third approach to the political system as the pluralistic approach. This views the political system as a large number of groups, each with a different interest, so that politics is a continually altering model of group activities and interactions. Economic, class and geographic factors are important parts of the pattern, but many other kinds of groups are also important: religious groups, ethnic groups and other social groupings. Moreover, although economic groups play an important part in the political system, they do not come together into two or three big classes for purposes of political action. They are divided among themselves, union opposing union, one type of producer battling with his competitors, agriculture ranged against industry, small businessman against big businessman, the retailer against the manufacturer, and so on. Class and regional loyalties are disjointed, each group looking for support to win its battles wherever that support is to be found. Thus, we have a picture of the political system as a collection of a large number of groups, of anecdotal size and importance, battling for their interest in a society where no single group dominates. Since the membership of these groups overlaps significantly, there are Catholic and Protestant businessmen, Irish-American and Italian-American labour leaders—there is a continual set of cross-pressure on the leaders of these groups. This helps the processes of compromise between them and moderates their demands. At the extreme, the role of government in such a society is simply to hold the ring, to act as referee between the groups to enable the necessary bargaining and compromise to take place. The political machinery simply becomes the mechanism through which equilibrium is achieved between contending interests. As the government's main autonomous interest becomes that of maintaining law and order, there is little hope for active leadership to give directions to the national policy, and political parties have little coherence or discipline. They become merely organizational devices that are devoid of policy content.

Individualism is the final model of political behaviour that must be utilized to scrutinize American politics. In other accounts of the political system, a class, a section or a group dissolves the individual. Political behaviour is determined by class ideology, regional loyalty or group interests and the individual has little or no implication in affecting the outcome of political situations. Such interpretations of political life seem to bear little relation to the mainstream of traditional democratic thought.

For theorists, such as John Stuart Miller, the individual citizen was the central concern of writers on politics, and personality and individual choice were crucial elements in political decisions. It is ironic that it is in America, the land of individualism par excellence, that the students of political behaviour have demolished the classical description of the democratic political system. They have suggested that, in the 20th century, the influence of family, class, local community or other relevant social grouping is far more important in determining voting behaviour, rather than the knowledge of issues that face the electorate. In reality, however, individualism plays a role of

greater importance in America, than in the political system of any other modern democratic state.

2.2.1 Conservative Political Tradition of the US

NOTES

Concurrent to the formation of the American state system, the conservative tradition appeared on the US political scene. The Constitution of 1787, which had become the most complete expression of the philosophy and politics of bourgeois liberalism in constitutional rights, contained conservative features itself. While sanctifying the existence of slavery for many decades, it upheld the indivisible supremacy of the bourgeoisie in the north and the plantation owners in the south. These were united in one bloc by common economic and political interests. Till that time, the remarkably constructive conditions, both extrinsic and intrinsic, for the development of capitalism in the United States ensured the harmonious coexistence of two ruling classes: western farmers and southern plantation owners.

The opposing nature of their policies was the main topic of the internal political debates within the country. This led to the discussion of the following:

(i) Broad and narrow interpretations of the Constitution

(ii) The relationship between the powers of the central federal government versus the rights of the state

(iii) The priority of industry over agriculture and vice versa

In the first quarter of the 19th century, these deliberations did not leave any doubt about the value of compromise by different classes, which were achieved on the issue of slavery. The entry of American capitalism into the initial stage of the Industrial Revolution during the 1830s and 1840s, led to a severe escalation of class conflicts that rose from the coexistence of two social systems: free labour and slavery. It was exactly during this period that the conservative tradition finally took shape within the orb of politics, and became an integral feature of the party tandem.

During the course of two decades that led to the Civil War, compromise was the banner of conservatism in the struggle with the politically organized movements. These movements had liberal to abolitionists on the one hand, and extremist plantation owners from the south on the other. However, conservative politics proved inadequate for the practical demands of time.

The inevitability of an instantaneous solution to the problem of slavery, which had become the main obstruction in the path of the development of US capitalism, disturbed the balance of conservative powers in politics. The revolutionary tendencies in the American society ran so deep that it was not possible to overcome them, even with the most refined policies of compromise. The two-party system of that period, which had become an obstruction to socio-political development, by the middle of the 1850s had been wrecked and disorganized. The Whig Party had finally disappeared from the political arena. The disintegration of the two-party combination unleashed the forces of supporters and opponents of slavery, which were earlier suppressed within its devices. The struggle between them became the primary ingredient of American politics, till the beginning of the Civil War. However, the adherents to the conservative tradition did not surrender. Throughout this time, the defenders of the

idea of compromise did not lose hope for the possibility of returning politics to the conservative helm. The secession of the southern states and the Civil War that followed created completely new and alien conditions in which the conservative tradition was forced to operate.

NOTES

The campaigns for the presidential election of 1860 completed the process of separation of the country's political forces, over the issues of slavery and the attitude toward supremacy of southerners in the federal union. It also contributed to the crystallization of ideological positions by various divisions within the parties. The spectrum of politics, which preached conservative ideology on the eve of the Civil War, was broad enough to cover all the existing parties to some extent or another.

One of the bastions of conservatism was in the Republican Party, which had entered the national political arena in 1856. The conservative Republicans were quite a strong and influential group in political circles. Their leaders included Abraham Lincoln's ally Orville Browning (Illinois), Edward Bates (the well-known Missouri politician), Supreme Court Justice John McLean (Ohio), Senator William Dayton (New Jersey), Congressmen Thomas Corwin (Ohio), Edgar Cowan (Pennsylvania) and Albert White (Indiana). The conservative faction consisted of former representatives of parties that had fallen apart: the 'Know Nothings' and 'Jacksonian' democrats, who were the opponents of slavery. However, the largest conservative contingent carried the experience of political struggles under their belts, under the banner of the Whig Party.

The proof of the resilience of the conservative positions in the party was their dominating influence in the Republican organizations of Indiana, Pennsylvania and New Jersey and the visible effect on the course of party organization from New York, Massachusetts and Illinois. The conservative Republicans' programme on the issue of slavery, which was completely inherited from the ideological baggage of the Whigs, demanded a resurrection of the conditions of the Missouri compromise in 1819–1821, on laying the borders of the free and slave territories. It meant the virtual acceptance of the distribution of the slave system in the west, which extended to the south from a conditional line of the 1820 compromise and the entry of new slave states into the union. The conservatives opposed expansion of slavery, but they did not consider appealing to the federal authorities to help stop expansion by declaring this ploy unconstitutional. They reduced the whole spectre of contradictions between the north and the south to rivalry in the struggle for political power over the union. This was an effort to put an end to the southerners' hegemony in deciding key domestic political issues. The conservatives condemned slavery only from the point of view that it was the foundation of the south's absolute power. They declared their readiness to make new compromises with the southerners to achieve political stability in the country.

The conservative Republicans articulated the interests of the American bourgeoisie from heavy industry, who had long concentrated on markets in the 'free states,' and relied little on the delivery of goods from the slave south. They continued to follow the Whig conception of socio-economic development in the country. They were the supporters of swift industrialization, and they held to the theory of an active role for the government in inspiring economic growth in the US. The

conservatives also defended the idea of introducing protectionist tariffs and creating a central banking system.

The conservatives differed rather significantly from their party colleagues, both the radical and moderate Republicans, on the issue of slavery. Both, the radicals and moderates forcefully upheld the principle that had formed the foundation of the Republican Party platform during the campaign of 1860, which limited the system of slavery to within its existing boundaries. A major contingent of the Whigs and the nativists from the mid-Atlantic and border states and from the states of New England, who did not wish to be associated with the Republican Party, also held conservative views. They came forward on the eve of the election campaign of 1860 with the idea of forming a new organization, a constitutional union party. This development was noticed by the Republican leadership. However, overall, the Republicans pointed to the non-constructiveness of the unionists' course.

NOTES

The conservative faction of the Democratic Party, which had nominated Stephen Douglas as its own candidate for president drew support mainly from those states in the northeast, where there was a concentrated bourgeoisie of trade and finance, which had prospered from commercial enterprises with the south plantation. Conservative democrats, brought up in the spirit of northern political traditions, saw a destabilizing influence in the inferno of the slavery problem that endangered the foundations of the political system in the country. They followed the widening conflict between the north and the south with alarm, and attempted to crush the topic of slavery with all their power. They tried to counterbalance the growth of the political influence of both, open opponents and extremists from the southern camp.

In spite of all the differences in the views of the conservative groups from various parties on the issue of slavery and the ways to deal with it, they were certainly united by an obvious attempt to prevent conflict between the north and the south from becoming worse. Abraham Lincoln's (Figure 2.2) victory in the 1860 presidential election marked the end of the slave-owners' political hold on national power. It served as a signal to the southern extremists to split and form an independent slave government (the Confederacy).

Fig. 2.2 *Abraham Lincoln*

2.2.2 Main Features of the US Constitution

NOTES

On the basis of the preceding discussion, the following four features of the US Constitution can be discerned:

1. There is a balance of power between the main components of the government such as legislative, the Congress, executive, the President, the various government agencies and the Supreme Court. The Congress works out laws, which the President can veto. If this is not so, these laws have to be enforced by the executive to have any power, and the executive branch decides the due course unless the Congress passes a law to forbid the action. The Congress also enjoys the power to impeach the President. The judicial branch has emerged as a part of the balance of powers, as it seizes the power to declare laws as unconstitutional, but this was not the case in the original Constitution.
2. The Constitution renders the federal government only with powers that have been listed for them in the Constitution, and any non-listed powers reside with the states or the people. These are known as 'enumerated powers'.
3. The state governments play the role of keeping a check on the power of the federal government. The Constitution articulates that any powers not actually provided to the federal government are retained by the states or the people.
4. The Bill of Rights actually lists things, which the federal government is not permitted to do. The people also keep hold of the un-enumerated powers, which are not particularly provided to the federal government or the states.

Figure 2.3 indicates these features in a diagrammatical form:

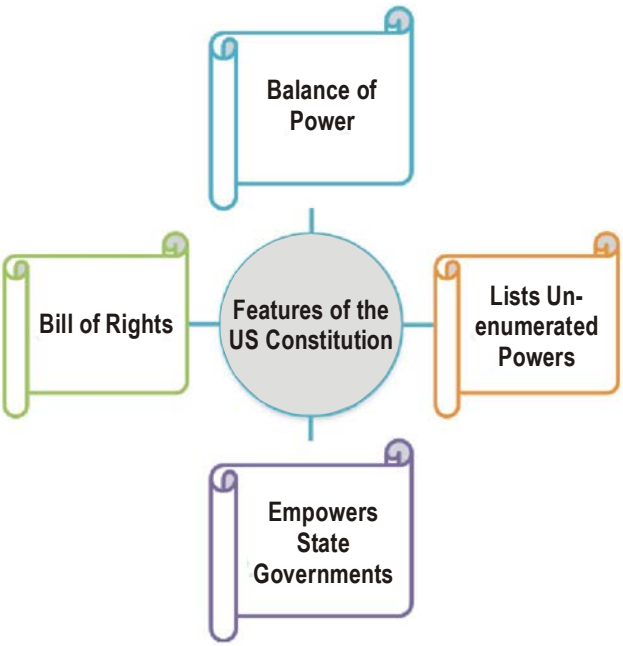

Fig. 2.3 *Features of the US Constitution*

CHECK YOUR PROGRESS

1. How does the pluralistic approach view the political system?
2. Name any two Conservative Republicans of 1856.

NOTES

2.3 PRESIDENT: POWERS AND POSITION

The US Constitution has bestowed all executive powers in the hands of the president. The president is the Chief Executive Head of the state in the US. There are presidents in parliamentary democracies also, but they are nominal executives. They have to work according to the advice of the cabinet, and are answerable to the legislature. India is a great example of one such democratic nation. The president is the real executive in the US. He and his cabinet are not answerable to the legislature. He is the supreme authority in the executive vicinity. His cabinet is actually a personal team that is meant to advise him. This team is neither responsible to legislature, nor does it have any collective responsibility. The Constitution has given powers to the President, and made him the real executive.

Harold Joseph Laski, an English political theorist, has rightly remarked about the presidential position: 'There is no foreign institution with which in any sense, it can be compared because basically there is no comparable foreign institution. The President of the US is both more or less than a king; he is also both more or less than a prime minister.'

2.3.1 Election Procedure

The President is indirectly elected by an electoral college of each state. Each state elects the electors who are equal to the number of senators and representatives in the Congress, from the state concerned. They meet in each state, and cast their votes on the day fixed for presidential election. The election of the President of America goes by the calendar.

The presidential electors (Electoral College) are elected on Tuesday after the first Monday, in November of every leap year. These electors meet in the capital of each state, on the first Monday after the second Wednesday in December. They record their votes for their presidential candidate. Then, each state sends a certificate of election to the chairman of the Senate. On 6 January, the Congress meets in a joint session and votes are counted. The candidate, securing absolute majority gets elected. The new president is sworn into his office on 20 January. In case, no candidate secures an absolute majority of votes, then the House of Representatives is authorized to elect one among the top three candidates, who have secured the highest number of votes. If this method does not succeed, then after 4 March the vice-president will automatically succeed to the presidential office.

NOTES

Qualification for US Presidency

The US Constitution states that a candidate for presidency should have the following qualifications:

- He should be a natural born citizen of the US.
- He must be at least 35 years of age.
- He must be a resident of the US for 14 years.

Term of Presidency

The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term. Earlier, George Washington, the first President of US (Figure 2.4), was elected twice. He refused to contest election the third time, though there was no restriction on re-election in the Constitution at that time. After this incident, it became a convention, but this convention was broken during World War II when President Roosevelt was elected four times. His fourth term was in 1944. However, the 22nd Amendment of the Constitution (1952) fixed the total term for any president at ten years. Normally, a candidate cannot be re-elected for the third time. In case a candidate (vice-president) has succeeded a president after two or more years of his term, the vice-president succeeding him will have two chances to contest election. In any case, the term should not exceed ten years.

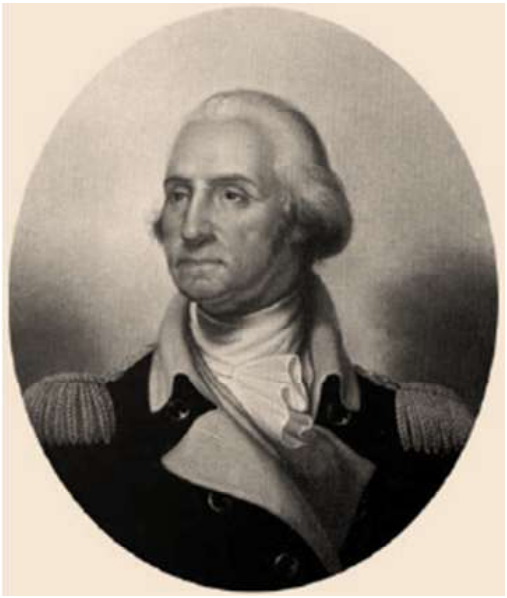

Fig. 2.4 *George Washington*

The Succession to Presidency

The Constitution has no say on the issue of succession to presidency, in case the office falls empty due to death or resignation of the president and the vice-president. In 1947, an act that was passed says that under such circumstances, the succession after the vice-president would be in the following order:

(i) The speaker of the House of Representatives
(ii) The president pro-tempore (for the time being) of the Senate
(iii) The secretary of the state followed by other members of the cabinet

NOTES

In case the office of the president falls vacant due to his incapacity or disability, either the president should have given in writing that he is incapable of managing the office or the vice-president, and the majority of heads of executive departments should have sufficient reasons to believe that the president is disabled to discharge his duties. This declaration should be sent to the Congress to that effect.

Removal of the President

The President of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes. Impeachment is not a very easy task. The Lower House frames the charges and the Senate acts as judicial tribunal for impeachment. Its meetings are presided over by the Chief Justice of the Supreme Court. The penalty cannot be more than the removal of the President from office, and his disqualification from holding any office of trust and responsibility under the American government.

Immunities

In the US, the President cannot be arrested for any offence, and he cannot be summoned before any court of law. He loses all immunities only when he is impeached.

2.3.2 Powers and Functions of the President

The president of the US is the most powerful authority. He commands high respect and backing in the country. The Constitution has given limited powers to the president, but in due course of time, due to several factors, this office assumed boundless powers in all areas of administration. The President enjoys enormous executive, legislative, financial and judicial powers, which can be discussed as follows:

(I) Executive powers

Some of the executive powers of the president, as per the Constitution, by interpretation of the Supreme Court and by customs and conventions, can be summed up as follows:

- **Chief administrator:** The president is the chief administrative head of the nation. All administrative functions are carried out in his name. He is responsible for implementing the federal laws in the country. He has to ensure that the laws of the Constitution and the decisions of the courts are enforced and implemented. He must see to it that the Constitution, life and property of the people of US are protected. He executes treaties with the consent of the Senate and agreements with other countries, and protects the country from foreign invasion.

  He is also responsible for maintaining peace and order on the domestic front. In case there is a breakdown in the governmental machinery in any state, he

NOTES

can act on his initiative and restore peace and harmony. In the discharge of all these enormous responsibilities, he can make use of all defence forces, civil services, police, etc. For example, John F. Kennedy sent federal troops into the University of Mississippi in 1962 to prevent non-compliance with the order of a federal court, on reconciliation of Afro-American students.

- **Commander-in-chief:** The president is the supreme commander-in-chief of the armed forces of US. He is responsible for the defence of the country. He appoints high officials of the army with the support of the Senate. He can also remove them at will. He cannot declare war because this power resides in the hands of the Congress, but he can create a situation with his administrative insight, where the declaration of war becomes inevitable.

  Once war is declared, the military powers of the president increase tremendously. He is given a blank cheque to look after the military operations. Many times, presidents have taken advantage of this power and involved US troops in undeclared wars with other countries.

(II) Delegated legislation

As it is, the President is constitutionally very powerful. He has legislative authority in the form of executive orders. He can make many rules through executive orders. Many presidents have made widespread use of this authority. In addition to this, the recent entry of delegated legislation has empowered the president absolutely. Delegated legislation is when the Congress makes laws in a skeletal form, creates a general outline and leaves the details to be filled in by the executive.

(III) Financial powers

The Congress is the custodian of the nation's finances. Nevertheless, the President also plays a central role in the financial matters of the country. The budget is prepared under his supervision and directions by the Bureau of Budget. High-level technicalities are applied by the Bureau while preparing the budget. Later, the budget is presented before the Congress, which has the power to amend the budget, but normally they avoid disturbing the budget with amendments because of the technicalities involved. Another reason for avoiding amendments is that the Congress lacks any skilled person who can set the disturbed budget right. Therefore, the budget is passed as it is presented.

(IV) Power of patronage

The president has huge powers of patronage. He appoints a large number of federal officers in superior and inferior services. The senators and the representatives would always prefer to be in the good books of the president.

2.3.3 Limitations of the President

It should not be assumed that the powers of the president are limitless. Certain limitations are placed on his powers. This is explained as follows:

NOTES

(A) Limitations on the powers of the President

The vast powers and liberties have made presidency in America quite magnificent, and it looks as if the president can easily become a dictator at any time, but the situation is not so. The fathers of the Constitution adopted the doctrine of separation of powers while framing the Constitution. Hence, there are lots of checks on the powers of the president to balance the situation. Some limitations of his executive powers are as follows:

(I) Harmonious working is difficult: The President of America does not have the power to initiate a bill or participate in the deliberation of a bill in the legislature. The ideology of separation of powers has kept the executive and legislature in separate impermeable compartments.

(II) Difficulty in executing his policies due to dependence on the Congress: The Congress is the only law-making body, and the President has to depend on it for conductive laws to be passed. At times, he is helpless as the Congress may not pass the necessary legislation for the smooth running of his administration. Therefore, he has to struggle a lot and alternate to other areas of power to get things done. Furthermore, he depends on the Congress for finances. It is the Congress, which is the custodian of the national revenue. Though the budget is prepared under the supervision of the president, the Congress has the power to bring changes in the budget and the president has to accept it.

(III) Senatorial approval: Senatorial approval is a big obstacle in the president's administration. The Constitution has provided that all federal appointments made by him are to be ratified by the Senate. Here also, the president does not have exclusive powers. He is under the check of the senatorial courtesy.

(IV) His veto can be nullified by the Congress: The president's veto can be nullified by the Congress in the following conditions:

(i) The president can use his veto power against a bill that is sent by the Congress. He can veto a bill within ten days and send it back to the Congress. However, if the vetoed bill is resent with two-third majority, then the President has to approve it.

(ii) When the Congress is in session and the President does not send the approved bill back to the Congress in ten days, the bill is considered to be passed without his signature.

(iii) The president has the power for pocket veto. Even here, the Congress has more power. It will not send any important bill to the President for his signature during the last ten days of the session, and the president gets the disadvantage of using pocket veto in these situations.

(B) Limitations of holding an elected office

The President of America is not an inherited authority; he is elected by the people because of his good qualities. He has to follow democratic values and sustain his image to return in the second term.

NOTES

(I) **Limited tenure:** The president is elected for a short term of four years or at the most, for one more term. He cannot contest election for the third term. Due to this limitation, he cannot execute a long-term programme, which according to him will be good for the nation.

(II) **Constitutional limitations:** The President must act within the structure of the Constitution, which also puts limits on his free exercise of powers.

CHECK YOUR PROGRESS

3. Which of the two, the President or the Prime Minister, has all the executive orders bestowed upon him/her by the US Constitution?
4. How is the President of the United States elected?
5. What is the procedure to remove the President of United States from the office?

2.4 CONGRESS: COMPOSITION AND FUNCTIONS

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

Constitutions reflect the beliefs, goals and aspirations of their authors and in many cases, the values of a given society. In this way, the American Constitution is no exception. To be able to understand the principles on which the US Congress was established, one must first understand the politics, which surrounded the formation of the United States of America.

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

NOTES

As the 18th century progressed, the British Crown and Parliament once again began to look to the west. The colonies had proved to be a success, and Britain wanted to expand its control of the continent. Its efforts directed at westward expansion, however, meant clash with the French forces who had established a powerful position in North America. The French-Indian War lasted from 1754–1763, until the French forces were defeated. This left the British in control of a large area. Presently, this large area is Canada and the US. The cost of the war and the resources needed to control their recently expanded western empire put a strain on British finances, and led the Parliament to look for new ways to raise revenue. Having decided that the colonies should pay more for their own defence, the British Parliament passed a series of acts, which levied taxes on colonial trade.

The British actions had endangered the ability of the colonies to trade freely and given the historical importance of colonial trade, this caused a great deal of bitterness. Over the next ten years, protest over British taxation and oppression grew, occasionally breaking into violence. Matters came to a head in Lexington, Massachusetts in 1775 when a raid by British troops on colonial militias led to full-scale fighting. This marked the beginning of the American Revolution.

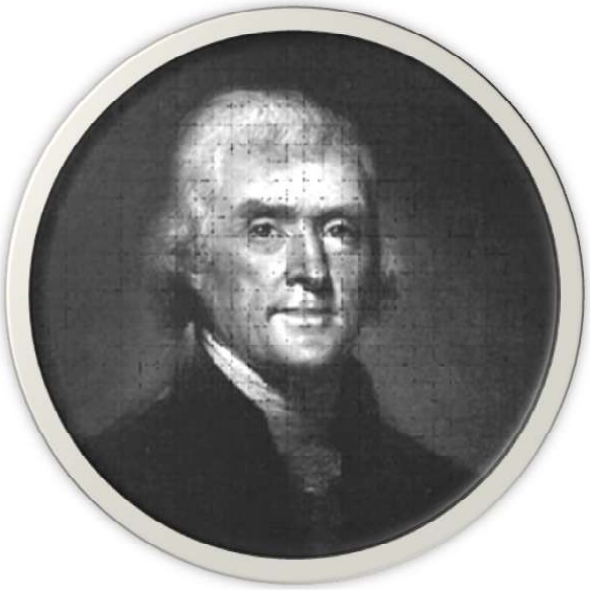

Fig. 2.5 *Thomas Jefferson*

A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson (Figure 2.5) of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule. Behind the declaration were the ideas of the 18th century philosophers and writers such as Thomas Paine and John Locke. These ideas were widespread among the aristocracy of that time. These ideas would go on to play a large part in writing the Constitution.

The War of Independence formally ended in 1783 with the signing of the Treaty of Paris, in which the British Crown recognized the independence, freedom and sovereignty of thirteen former colonies. With the certainty of victory, the thirteen

NOTES

states were faced with the task of devising a system of government. Having just conquered what they viewed as a tyrannical power, the leaders of the new states had no intention of replacing the British Crown with their own monarch, or creating a central government. However, it was recognized that some form of central administration was inevitable for a new found independent nation.

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

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

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

2.4.1 The Senate

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

First, the Senate is mainly a legislative body. It has the power to pass legislations that may become law, or to prevent legislations from becoming law. Moreover, it is responsible for approving or denying consent to ratify treaties, for approving and advising on presidential nominees and trying impeachments. Till date, it is more powerful and significant than any upper chamber across the world. Those who framed the Constitution wanted the Senate to be an incomparable legislative body, such that it should be both, unique in its structure and superior as an institution. They believed that this was essential for the republic to endure. So, the framers provided for the following, among other things, in the Senate: equal representation of every state; terms extending six years, beyond those of the house and the president;

elections in which only one-third of the total members would stand before the people every two years; and a minimum age requirement to attract 'enlightened citizens' to serve the body. These characteristics lent an exclusive character to the Senate–a small, stable, stately, thoughtful, independent, experienced and deliberative body. With equal legislative authority for the House of Representatives, the framers expected that the Senate would remain steady in a representative democracy. This, along with its duties specified in the Constitution, was the framers' design for the Senate. However, the Senate required a structure to operate. And that structure has for more than 200 years taken the form of Senate procedure: standing rules, rule-making statutes and precedents.

In 1789, the first Senate assumed twenty standing rules. Surprisingly, sixteen of those rules still form the core of the Senate procedure today. Since 1939, the Senate has assumed twenty-five rule-making statutes. The presiding officer has established a quantity of precedents over the course of the Senate's history to fill nearly 1,600 pages in the seminal reference work, known as the 'Riddick's Senate Procedure'.

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

2.4.2 House of Representatives

A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives. The official manual of house rules is more than a thousand pages long, and is complemented by more than twenty-five volumes of precedents. The ways in which the House applies its rules are moderately conventional, at least in comparison with the Senate. Some rules are certainly more multifaceted and more difficult to interpret than others; but the House does not tend to follow parallel procedures under similar circumstances. Even the ways in which the House does not have a propensity to follow similar procedures, generally fall into relatively limited number of recognizable patterns.

Most of the rules that representatives may call upon and the procedures that the House may follow are fundamentally important. The majority of members should be able to work their will on the floor in due course. While the House rules normally identify the significance of permitting any minority to present its views and sometimes to suggest its alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from prevailing without excessive delay.

Modes of procedure

There is no one single set of course of action that the house always follows, when it mulls over a public Bill or resolution on the floor. In some cases, the House rules

NOTES

require certain kinds of bills to be considered in certain ways. More often, conversely, the House chooses to use whichever mode of consideration is most fitting for each bill, depending on factors such as the importance and potential cost of the Bill and the amount of controversy over its provisions and merits. The differences among these packages of procedures rest largely on the balance that each strikes between the opportunities for members to debate and propose amendments, on one hand and the ability of the house to act swiftly, on the other.

Check Your Progress

6. The Constitution of the United States was drafted in which year?
7. When was the formal declaration of independence issued and who had written it?

2.5 SUPREME COURT: COMPOSITION, JURISDICTION AND ROLE

In addition to being legal institutions, courts are a significant part of the government of the US. They are seen as forums that help to resolve disputes and conflicts in a legal manner. They are the representatives of judiciary or the US legal system for the masses. When a layman refers to the law, they are more often than not picturing the courts in their mind's eye. But the court is a mere institution that is run by the lawyers and judges, plaintiffs and defendants, witnesses and jurors. Broadly speaking, the courts are just one of the key elements of a much expansive legal system.

The term 'legal system' encompasses several governmental bodies and a number of key participants. The lawmakers operate the legal institutions that lie at the heart of the legal system. The next in status are the lawyers and judges who are required to interpret the laws to the wide variety of situations that arise in the society. They also act as the gatekeepers who determine the cases that will be heard at the court. The witnesses, jurors and litigants participate in the legal process, but at the same time, lie outside the periphery of the system. They are the consumers of the legal system. They are the ones who bring cases to the courts and seek their intervention. They are the chief participants in any legal struggle. External factors that may be social, economic and political influence the legal system to a great extent.

Federal Judiciary

The history of the federal courts suggests a disorganized administration structure. The roots of the problem can be traced to the nature of the judicial system created by the first Congress. From the Judiciary Act of 1789 and consequent measures pertaining to the structure of the federal judiciary, emerged three important features: independence, decentralization and individualism. These features were particularly evident in judicial administration. Here, courts in all three tiers enjoyed virtual

autonomy. Judges in administrative matters were not only independent of the Congress and of the president, but they were also independent of each other.

Quintessentially, the Congress had created a hierarchy of courts that did not have direction and responsibility. Each judge had to take his own decisions. In the administration of his business, he was guided by his own temperament and sense of judgment. Chief Justice William Howard Taft was an important personality in the field of administration reforms. In 1922, on Taft's advice, the Congress extended the power of the chief justice to assign district judges where they were needed and create a judicial conference. This was an administrative mechanism which provided advice. The changes of the early 1920s were followed by the passing of the Administrative Office Act of 1939, which created the major part of the current administrative structure of the federal judiciary.

Supreme Court

There are several types of courts in the US. They can generally be divided into local, state and federal courts. Local courts take care of everyday matters, whereas state courts rule on more serious matters such as robbery or murder. The federal courts rule on cases that deal with the US government law.

As the name suggests, the Supreme Court is like the 'Head Umpire'. When people are not satisfied with the decisions of the state or the federal court, they go to the Supreme Court (Figure 2.6) to review the case.

Types of cases

Fig. 2.6 *The US Supreme Court*

Like all courts, the Supreme Court hears both civil and criminal cases. In a civil case, there is disagreement between people. In a criminal case, a person is accused of a crime. Criminal cases are brought to the Supreme Court by governments and not by individuals. America won its Independence from Great Britain in 1783. After winning Independence, leaders of the thirteen American colonies formed a new government. The colonies became states. Each state was a part of the United

NOTES

States. The new country's leader wanted to make sure that the US would have fair law and courts. The federal government was divided into the following three parts:

(i) **Legislative:** Included the Senate and the House of Representatives. Jointly, they formed the Congress.

(ii) **Executive:** Made up the president, vice-president and the people who assisted them.

(iii) **Judicial:** Included the federal courts. These courts construed the laws that were made by the Congress. The Supreme Court is part of the judicial branch.

The Constitution did not pronounce a great deal about the Supreme Court. It was left to the Congress and the justices to define the court's rule. The Congress decided that the Supreme Court would be made up of six justices, appointed by the president. Over the years, that number grew to nine. One of these justices is the chief justice who leads the Supreme Court. The Supreme Court first met on 1 February 1790 in New York City. New York was then the nation's capital. When the capital moved from New York to Philadelphia, so did the court. In 1800, the Supreme Court was permanently established in Washington, DC.

2.5.1 Powers of the Supreme Court

The Constitution was also not clear about the powers of the Supreme Court. In 1803, the case of 'Marbury versus Madison' helped ascertain those powers. In 1800, President John Adams lost his bid for re-election to Thomas Jefferson. Before leaving office, Adams appointed many of his friends for government jobs, including William Marbury. Jefferson ignored Marbury's appointment. He ordered his secretary of state, future president James Madison, not to give Marbury the assured job. Marbury went to court to get his job back. The Congress said the Supreme Court had the right to hear such cases. But Chief Justice John Marshall was afraid that if the court ruled for Marbury, Jefferson would disregard the decision. He did not want the court to appear weak. So, Marshall ruled that the Constitution had never given the Congress, the right to frame such a law about the court. Consequently, he said that the court should not hear Marbury's case. Marbury lost because the last court that had heard the case had ruled against him. With this ruling, Marshall instituted the principle of 'judicial review'. 'Marbury versus Madison' made the Supreme Court more powerful. The court could now overturn laws that went against the Constitution.

Section 2 of Article Three of the American Constitution delineates the jurisdiction of all federal courts in the United States, including the US Supreme Court. According to it, 'The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same

State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.'

This jurisdiction was further limited by constitutional amendment known as the eleventh amendment to the constitution. The amendment stopped federal courts from hearing cases 'commenced or prosecuted against [a State] by Citizens of another State, or by Citizens or Subjects of any Foreign State.'

NOTES

Federal courts in the United States can only hear cases if the following conditions are met:

1. If there is diversity of citizenship and the amount of damages exceeds $75,000.
2. If the case presents a federal question, meaning that it involves a claim or issue 'arising under the Constitution, laws, or treaties of the United States', assuming that the question is not constitutionally committed to another branch of government.
3. If the United States federal government is a party in the case

As a part of the three branches of the American federal government under the principle of separation of powers, the powers of the United States Supreme Court include the following:

- Interpreting the US Constitution
- Judicial Review
- Interpreting laws and making sure they are faithfully applied
- Dealing with cases involving the Constitution
    - o Federal laws, treaties and
    - o Disputes between states
- Interpreting and ensuring the proper application of the laws written by the legislative branch and enforced by the executive branch

Out of all these powers, the power of judicial review is perhaps the most potent. Judicial review gives the US Supreme Court the power to overturn any executive law and actions that it deems to be unconstitutional. Although, the power of judicial review is not explicitly given in the American Constitution, the founders of the United States accepted the notion of judicial review and today it is a well-established precedent. It would be pertinent here to mention that the American Supreme Court cannot directly enforce its rulings; instead, it relies on respect for the American Constitution and for the law for adherence to its judgments.

The court in action

The Supreme Court has two main jobs. The first job is to decide whether a lower court has ruled in the approved manner. The court may feel that part of the Constitution applies to the case. In this case, they may decide to hear the case's appeal. Its second job is to decide whether a law is constitutional. But the court does not decide to review a law on its own. The justices only rule on a law if a case concerning a law is brought before them.

Sometimes, the justices feel that a constitutional issue in a case has already been addressed. In such circumstances, they can refuse to hear the case. Cases that are refused by the Supreme Court are sent back to the lower courts.

NOTES

Judicial Review

The Supreme Court holds great powers. Despite Roosevelt's huge electoral majority in 1932, the Supreme Court was able to strike down eight statutes of the new deal as invalid in a period of sixteen months. The power of a court to analyse the actions of other branches of government is known as judicial review. It is based on the court's ability to act as an intermediary of the Constitution.

The fact that the Constitution of the US is codified means that there must be a body charged with the task of understanding what it means. This power gives rise to judicial review.

The Supreme Court's power to take such actions is not laid down in the Constitution. It is recognized as the supreme judicial power in the US.

As stated above, the American Constitution does not explicitly give the American Supreme Court the power of judicial review. The first time that the power of judicial review was established by the Supreme Court was in 1803 in *Marbury v. Madison*. In the case, the Supreme Court under Chief Justice John Marshall nullified a provision of the Judiciary Act of 1789 on the grounds that it violated the Constitution by attempting to expand the original jurisdiction of the Supreme Court. The judgement in the case consummated the system of checks and balances that have since become the hallmark of the American system. It made the Supreme Court the final authority on the allocation of power among the three branches of government, i.e., the executive, the legislature and the judiciary, and gave the Supreme Court the power to set bounds to their own authority, as well as to their immunity from outside checks and balances.

Judicial review and the Executive

Judicial review in the US has largely gone unchallenged. Current cases have shown the importance of the Supreme Court's ability to review other branches of government. In 'Youngstown Sheet and Tube Company versus Sawyer' (1952) case, the court ruled that President Truman had exceeded his constitutional power in ordering the takeover of US steel plants which were in the midst of an industrial dispute.

Judicial review and civil liberties

It is by the agency of the judicial review that the Supreme Court protects the civil liberties of the US citizens. The Supreme Court has passed jurisdiction in various civil matters such as the racial issues, citizen rights and the reapportionment of electoral districts. The case of 'Reynolds versus Simms' (1966) established the criterion of one person and one vote regarding the apportionment of electoral districts.

2.5.3 Theory and Separation of Powers: Checks and Balances

The theory of separation of powers states that all governmental functions should be

carried out by separate bodies and departments, where they should perform duties that fall within the ambit of their sphere. It further argues that they should do so without interfering in each other's business and that each of these departments should be independent within their sphere. The theory of separation of powers clearly divides powers into three organs of the government and believes in the decentralization of power and maintaining the liberty of people.

Views of Montesquieu

The classic definition of the theory of separation of powers is explained by Montesquieu. This French political thinker had expressed his political thinking in his book, *The Spirit of Laws*, which was published in 1748. He stressed that there must be separation of powers if liberty of the people is to be safeguarded. Montesquieu insisted on intimate relation between liberty and the separation of powers. He said that power should be checked, if law was to endure. The famous statement of Montesquieu stands for complete separation of powers, which he explained in the following points:

- If the legislature and executive powers are exercised by the same person or authoritative body, liberty of the citizens is threatened because the person or body might pursue power like a tyrant.
- Again, liberty cannot be present if the powers between the legislative and executive are not separated clearly. The person who makes the laws cannot be expected to be impartial while applying them. This may lead to arbitrariness in matters of judgements. The result would be a violent and oppressive state.
- If all three organs were joined together in one combined power, then there would be concentration of power in one person or body of persons. This would virtually end all liberty and result in despotism of that person or body.

Other supporters of the theory of Separation of Powers

American political writers like Madison Hamilton and the British political writers like Blackstone also elucidated the theory after Montesquieu. Blackstone expressed a comparable view in his book, *Commentaries on the Laws of English*. He said, 'Whenever the right of making and enforcing the law is vested in the same person or one and the same body then there can be no public liberty.'

This theory carried a deep influence on the theory and practice of several governments in various countries of the world. While writing the constitution of the state of Virginia, Jefferson examined all powers of government: legislative, executive and judiciary. The concentration of these in the same hands is specifically the definition of a tyrannical government.

Theory of Checks and Balance

The theory of separation of powers involves a multifaceted system of checks and balances. E. B. Schulz says, 'The doctrine of Checks and Balances is usually supplementary to the Separation of Powers. One of its important salient features is

the idea of enabling each coordinate branch of the government with the power to wield a limited degree of control over others, either by participating to some extent in the exercise of powers allocated to a particular branch, or by making the effective functioning of each branch contingent upon the supporting action by the others.'

NOTES

The theory of checks and balances is based on two principles:

(i) Power should not be concentrated in the same persons or in the same bodies of persons, because if all power is vested in the same person, then it is bound to become tyrannical.

(ii) Only power can check power, i.e., to check whether power is being abused, it is very important that those in power should be made to check power. The power of one organ can be checked if the other organ is made just as powerful.

In other words, the theories of separation of powers and that of checks and balances are always in harmony. The former stands for separating the three organs of the government and the latter stands for a network of checks and balances on all the three organs of the government. Montesquieu's theories of separation of powers and checks and balances have been adopted by the Constitution of the US. The working of the system of checks and balances can be studied under the following heads:

(i) **Legislative checks over the executive and judiciary:** The executive and judicial powers are given to the executive and the judiciary, but the legislature has been given the power to check over both these organs. For example:

- All appointments made by the US President (executive) are ratified by the Senate (upper house of the US Congress).
- All treaties made by the president are authorized by the Senate with two-third majority.
- The president depends on the Congress for finances.
- The Congress can remove the president through impeachment.
- The Congress has the power to establish new courts.
- The Congress can remove the judges of the Supreme Court through impeachment.
- The Congress has the power of initiating amendments in the Constitution.
- Last but not the least, the Congress has the power to declare war.

(ii) **Executive checks over the legislature and judiciary:** The executive is given the power of checking the two organs of the government. For example, in the Constitution of the US:

- The Bills passed by the Congress become acts only when they receive presidential assent.
- The president exercises veto to suspend any bill passed by the Congress within ten days of its submission to him.

- The president has the power to appoint judges.
- He has the right to pardon, reprieve and grant amnesty to any criminal.

(iii) **Judicial checks over the legislature and the executive:** The judiciary is free of the control of the legislature and the executive. It is given the checking powers over both these organs with a view to keep the two organs confined to their respective areas of activity, as directed by the Constitution. For example:

- The Supreme Court of the US has the power to decline the laws of the Congress and rules made by the executive, if it finds these as ultra vires.
- The power of judicial review acts as the greatest check over the power of the Congress and the President. The process of impeachment of the President of the US is supervised by the chief justice of the Supreme Court.
- The Supreme Court exercises full control over the President and the Congress since it decides the nature and limits of their constitutional rights and powers. This is because it is the custodian of the constitutional as well as the protector of the fundamental rights and liberty of the people.

As a theory, checks and balances signifies systematic and reciprocated checking and controlling of powers of the three organs of the government. Although they are separate departments, this theory should be used in moderation and not in an unbending manner because it can be counterproductive.

Check Your Progress

8. What are civil and criminal cases?
9. What kind of power does the Judicial Review provide to the US Supreme Court?

2.6 A COMPARATIVE STUDY: US PRESIDENT AND UK PRIME MINISTER

It is worthwhile comparing the office of the president of the US with that of the prime minister of the United Kingdom. There are significant differences between the two. Both the offices occupy top most position in the government structure of their respective countries, following large democracies. It is rather difficult to point out as to whose position is superior to the other one. Both are the choice of the people. They are the representatives of the people, and are popularly elected but in an indirect way. Both the offices wield enormous power in peace time as well as in

time of war. The relative strength of the two most powerful executive officers in the world depends upon the form of government prevailing in their respective countries.

NOTES

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

Appointment

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

Term

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

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

Administrative Powers

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

The British prime minister and his cabinet colleagues work under constant responsibility to the parliament. They have to answer a volley of questions regarding

their omission and commissions. But the British prime minister with a strong and reliable majority behind him in the House of Commons, can do almost everything that the American president can. He can conclude treaties and offer patronage without seeking the approval of the parliament.

Their relation to their respective cabinets

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

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

In relation to Legislation

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

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

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

NOTES

president can issue ordinance and executive orders; the prime ministers cannot do so.

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

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

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

2.6.1 US Speaker and the British Speaker

The speaker is the Presiding Officer of the House of Commons. After the General Election is over, the House of Commons meets as soon as possible and elects the speaker.

The decision of the Commons to sit separately necessitated appointing somebody to preside over the meeting and report the decision to the sovereign. The institution has its origin in 1377 when the first Speaker was Sir Thomas Hunger Ford, who was elected to this office in the same year. The speaker is elected at the beginning of each Parliament by and among the members of the House of Commons. Once the speaker is elected, he resigns from his party and continues as a non-party man. In the next election, he is elected without any contest. This is a convention, and no party wants to violate this convention. In practice, the election is always a matter of formality.

Convention provides that the speaker once appointed, holds office until his retirement. This tradition has been maintained in the British Constitution, and even today it is not violated. The office of the speaker has become synonymous with political neutrality. After elections, the speaker serves all party affiliations and scrupulously avoids any partisan spirit. He does not vote except in the event of a tie and even when he uses his casting vote, he does so with much caution and care. The speaker acts like a sanctum of neutrality among the warring factions of partners, and must act with the impartiality of a chief justice.

Powers and Functions of the British Speaker

In the early days, the House of Commons was more of a complaining or petitioning body than a law-making body. The speaker's main task was to take complaints or petitions to the monarch. Nowadays, the speaker rarely speaks and when he speaks, he speaks for the House, not to it.

However, he has to perform a variety of functions which are as follows:

- He presides over the meetings of the House of Commons.
- He defends the House of Commons.
- He interprets the rules of the House.
- He decides money bill.
- He announces the results.
- He protects the privileges of members of the House.

In all these above functions, the speaker refrains from displaying partisan spirit. He is an impartial umpire in the conduct of the proceedings of the House. As Lowell said, 'He is not a leader but an umpire'. His umpire-like quality is the characteristic of confidence which the House of Commons reposes in him. The attitude of neutrality of the British speaker is not a fiction but a reality.

NOTES

Comparison with the American Speaker

The office of the Speaker of the United States House of Representatives was constituted in 1789 by Article 1, Section 2 of the United States Constitution. The following are some points of difference between the speaker of the United Kingdom and the speaker of the United States House of Representatives:

(a) The speaker of the UK presides over the House of Commons, while that of the USA presides over the House of Representatives.

(b) The institution originated in the UK in 1377, whereas it was established in America in the year 1789.

(c) In America, the speaker conventionally has to be an elected member of the Congress, while in the UK, the speaker has to resign from his earlier post in the party and become a non-party member.

(d) The speaker in the UK continues to hold office until retirement, whereas this is not the case with the speaker of the US.

(e) The speaker of the UK does not vote unless there is a tie, while the speaker of the USA can vote only on very rare occasions.

(f) The speaker of the UK maintains political neutrality, while the position of the US speaker is a political one, depending upon the party he or she belongs to.

(g) The speaker is second in line for presidential succession in the USA. It is not so in the UK.

Check Your Progress

10. Who appoints the Prime Minister in Britain?
11. Who is more powerful, the American President or the British Prime Minister?
12. State any two functions of the British Speaker.

2.7 SUMMARY

NOTES

- The sense of affection to a region or community, has always, been one of the most dominant sources of political loyalty and action. The US grew out of various colonial communities, expanding progressively across the continent, in a way, which has a propensity to lay emphasis on local loyalties.
- The pluralistic approach views the political system as several groups, each with a different interest, so that politics is a continually altering model of group activities and interactions. Economic, class and geographic factors are important parts of the pattern, but many other kinds of groups are also important: religious groups, ethnic groups and other social groupings.
- For theorists, such as John Stuart Miller, the individual citizen was the central concern of writers on politics, and personality and individual choice were crucial elements in political decisions. It is ironic that it is in America, the land of individualism par excellence, that the students of political behaviour have demolished the classical description of the democratic political system.
- The entry of American capitalism into the initial stage of the Industrial Revolution during the 1830s and 1840s, led to a severe escalation of class conflicts that rose from the coexistence of two social systems: free labour and slavery. It was exactly during this period that the conservative tradition finally took shape within the orb of politics, and became an integral feature of the party tandem.
- The inevitability of an instantaneous solution to the problem of slavery, which had become the main obstruction in the path of the development of US capitalism, disturbed the balance of conservative powers in politics. The revolutionary tendencies in the American society ran so deep that it was not possible to overcome them, even with the most refined policies of compromise.
- One of the bastions of conservatism was in the Republican Party, which had entered the national political arena in 1856. The conservative Republicans were quite a strong and influential group in political circles. Their leaders included Orville Browning, Edward Bates, Supreme Court Justice John McLean, Senator William Dayton, Congressmen Thomas Corwin, Edgar Cowan and Albert White.
- The conservative faction consisted of former representatives of parties that had fallen apart: the 'Know Nothings' and 'Jacksonian' democrats, who were the opponents of slavery. However, the largest conservative contingent carried the experience of political struggles under their belts, under the banner of the Whig Party.
- There is a balance of power between the main components of the government such as legislative, the Congress, executive, the President, the various government agencies and the Supreme Court. The Congress works out laws, which the President can veto. If this is not so, these laws have to be enforced by the executive to have any power, and the executive branch decides the due course unless the Congress passes a law to forbid the action.

NOTES

- The US Constitution has bestowed all executive powers in the hands of the president. The president is the Chief Executive Head of the state in the US. There are presidents in parliamentary democracies also, but they are nominal executives. They have to work according to the advice of the cabinet, and are answerable to the legislature.
- The President is indirectly elected by an electoral college of each state. Each state elects the electors who are equal to the number of senators and representatives in the Congress, from the state concerned. They meet in each state, and cast their votes on the day fixed for presidential election. The election of the President of America goes by the calendar.
- The US President is elected for a term of four years. He can be re-elected for another term and according to the convention, no president can contest an election for a third term.
- The President of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes. Impeachment is not a very easy task. The Lower House frames the charges and the Senate acts as judicial tribunal for impeachment. Its meetings are presided over by the Chief Justice of the Supreme Court.
- A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson (Figure 2.5) of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule. Behind the declaration were the ideas of the 18th century philosophers and writers such as Thomas Paine and John Locke. These ideas were widespread among the aristocracy of that time. These ideas would go on to play a large part in writing the Constitution.
- There was never an issue that the new US would be anything other than federal. A federal state maintains more than one level of government, with each having their own rights and independence. Unlike in Britain, where the government in London is paramount and can create, alter or abolish local governments as it sees fit, the new US Constitution maintained the autonomy of individual states. They created a central or federal government with certain powers and responsibilities that rose out of necessity.
- The Senate of the US is generally known as the greatest deliberative body in the world for a number of reasons. Right from its beginning, the Senate chamber has been the setting of some of the most moving, influential and consequential debates in the American history.
- In 1789, the first Senate assumed twenty standing rules. Surprisingly, sixteen of those rules still form the core of the Senate procedure today. Since 1939, the Senate has assumed twenty-five rule-making statutes. The presiding officer has established a quantity of precedents over the course of the Senate's history to fill nearly 1,600 pages in the seminal reference work, known as the 'Riddick's Senate Procedure'.

NOTES

- A complex body of rules, precedents and practices governs the legislative process on the floor of the House of Representatives. The official manual of house rules is more than a thousand pages long, and is complemented by more than twenty-five volumes of precedents. The ways in which the House applies its rules are moderately conventional, at least in comparison with the Senate.
- There are several types of courts in the US. They can generally be divided into local, state and federal courts. Local courts take care of everyday matters, whereas state courts rule on more serious matters such as robbery or murder. The federal courts rule on cases that deal with the US government law.
- The Supreme Court has two main jobs. The first job is to decide whether a lower court has ruled in the approved manner. The court may feel that part of the Constitution applies to the case. In this case, they may decide to hear the case's appeal. Its second job is to decide whether a law is constitutional. But the court does not decide to review a law on its own. The justices only rule on a law if a case concerning a law is brought before them.
- The power of a court to analyse the actions of other branches of government is known as judicial review. It is based on the court's ability to act as an intermediary of the Constitution. The fact that the Constitution of the US is codified means that there must be a body charged with the task of understanding what it means. This power gives rise to judicial review.
- Strictly speaking, the American president is indirectly elected by an electoral college, but in reality, his election has almost become direct in actual practice due to strict party discipline. The British prime minister is appointed by the king. Normally, he has no choice as he 'has to call the leader of the majority party in the House of Commons'.
- The American president is more powerful than the British prime minister. He is the de jure as well as de facto head of the executive. He is commander-in-chief of the armed forces. He conducts foreign relations on behalf of the country. He concludes treaties and makes high appointments though, of course, with the consent of the senate. He wields a vast patronage.

2.8 KEY TERMS

- **Constitution:** It is a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.
- **Sectionalism:** It refers to restriction of interest to a narrow sphere; undue concern with local interests or petty distinctions at the expense of general well-being.
- **Conservative:** In a political context, it refers to favouring free enterprise, private ownership, and socially conservative ideas.

- **Jurisdiction:** It refers to the extent of the power to make legal decisions and judgements.

2.9 ANSWERS TO 'CHECK YOUR PROGRESS'

NOTES

1. Pluralistic approach views the political system as a set of many groups, each with a different interest, so that politics is a continually altering model of group activities and interactions.
2. Orville Browning and Edward Bates were the two Conservative Republicans.
3. The US Constitution has bestowed all executive powers in the hands of the president.
4. The President is indirectly elected by an electoral college of each state.
5. The President of the US can be removed only by way of impeachment on the ground of gross misconduct or high crimes. Impeachment is not a very easy task.
6. The US Constitution was drafted in the year 1787 by the founding fathers.
7. A formal declaration of independence was issued on 4 July 1776. Largely written by Thomas Jefferson of Virginia, the declaration set the grounds on which the colonies claimed their right to throw off the British rule.
8. In a civil case, there is disagreement between people. In a criminal case, a person is accused of a crime. Criminal cases are brought to the Supreme Court by governments and not by individuals.
9. Judicial review gives the US Supreme Court the power to overturn any executive law and actions that it deems to be unconstitutional.
10. The British Prime Minister is appointed by the king. Normally, he has no choice as he 'has to call the leader of the majority party in the House of Commons'.
11. Apparently, the American President is more powerful than the British Prime Minister. He is the de jure as well as de facto head of the executive. He is commander-in-chief of the armed forces. He conducts foreign relations on behalf of the country.
12. Two functions of the British Speaker include: (a) He presides over the meetings of the House of Commons. (b) He defends the House of Commons.

2.10 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What do you understand by 'Riddick's Senate Procedure'?
2. How is the President of United States of America elected?
3. What conditions are to be met for the Federal Court to hear a case?

4. What are the powers of the United States Supreme Court?
5. Define Judicial Review. What is the importance of Judicial Review?

Long-Answer Questions

NOTES

1. Describe the conservative political tradition of the US.
2. Explain the main features of the US Constitution.
3. Discuss the differences between the power held by the President of the United States and the Prime Minister of the United Kingdom.
4. Describe the powers and functions of the British Speaker.
5. Compare the duties of the British Speaker with that of the American Speaker.
6. Discuss the powers and functions of the President of United States.

2.11 FURTHER READING

Beard, Charles A. 1914. *American Government and Politics.* New York, USA: The Macmillan Company.

Johari, J. C. 2015. *New Comparative Government.* New Delhi, India: Lotus Press.

UNIT 3 FRANCE (FIFTH REPUBLIC)

NOTES

Structure

3.0 INTRODUCTION

The French republic is quite popular around the world. During the course of its history, many changes have been incorporated in the French Constitution. However, the Constitution of the Fifth French Republic holds significance. A small ministerial committee headed by Michel Debre under the authority of General de Gaulle drafted the Constitution of the Fifth French Republic. After having been approved by the Cabinet and the French Council of State, a group of high civil servants advisors to the government on legal and constitutional questions, the new Constitution was submitted for the referendum of the people on 28 September 1958 who approved it by a vast majority of nearly eighty per cent. It came into force on 4 October 1958.

In this unit, you will learn about the French Constitution, the election, power and function of the French President, and the composition and function of the Parliament of France. Towards the end of this unit, you will study about the differences in power held by the American President and the President of France.

3.1 UNIT OBJECTIVES

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

- Discuss the salient features of the Constitution of France
- Describe the election process, the power and role of the French President
- Explain the functions and role of the French Prime Minister
- Assess the legislative and executive powers of the French Parliament
- Compare the role and functions of the French President with that of the American President

3.2 SALIENT FEATURES OF THE CONSTITUTION

NOTES

The present constitution of France, called the 1958 Constitution, contains a Preamble and 92 Articles. It embodies both republican and presidential characteristics and is considered a hybrid of the two.

Its salient features may be described as follows:

- **Preamble:** The preamble of the French constitution reaffirms the revolutionary document of the French Revolution of 1789 known as the Declaration of the Rights of Man and the Citizen. The Declaration was based on the doctrine of 'natural law' and 'general will' and guaranteed the right of free speech, free press, assembly and religion, except when limited by law. It also provided for the right to private property except when it is required for public cause. Just compensation was to be paid for the acquisition of such property.
- **Popular sovereignty:** According to the French Constitution, sovereignty lies with the people of France who utilize this power through referendum and also by electing their public representatives. Article 2 of the French Constitution calls France an 'Indivisible, Secular, Democratic and Social Republic'. As such, the constitution provides for universal suffrage to French citizens on reaching a particular age. It also gives citizens the right to freely form political parties provided that they adhere to the principles of sovereignty and democracy.
- **Rigid Constitution:** It is extremely difficult to revise the French Constitution that was formulated in 1958. The Republican nature of the French Constitution is not subject to any type of revision. The process of constitutional revision is based on Article 89 of the French Constitution. According to Article 89, a proposal for constitutional revision from the President or from private members must be voted first in identical terms by both Houses of Parliament and then ratified by a Referendum or, if the President decides otherwise, by a three-fifths majority of both Houses, meeting as Congress. The consent of the Senate needs to be sought before a constitutional revision can be brought about. In case the president decides not to submit a proposed revision to a referendum, such revision must first be passed individually by both Houses of Parliament in identical terms and thereafter by a three-fifths majority of both Houses, meeting as Congress, before it can be brought on the Statute book. Due to this complicated process of revision many call the French Constitution a rigid constitution.
- **Quasi-presidential and Quasi-parliamentary:** The 1958 French Constitution can be considered to be an amalgamation of the principles of Parliamentary democracy and Presidential form of government. On the one hand, the Constitution provides for a democratic and parliamentary system of government. The Prime Minister is the head of government and is responsible to Parliament. The Parliament consists of two chambers, both of them democratically elected. The French Constitution gives the government the

duty of legislation. The Parliament is the supreme law-making organ, which delegates rule-making powers to the Government. Such powers can be withdrawn at its will by the Parliament.

NOTES

Fig. 3.1 *General De Gaulle*

The head of French state is the President. Now, in a parliamentary system of government, the President would be a nominal head (like in India); however, this is not the case in France. The 1958 French Constitution gives the President of France enormous powers. The former French President General de Gaulle (Figure 3.1), who was one of the main driving force of the new Constitution in 1958, considered the head of state as someone who represented the nation rather than parliament. As such, the President's main function was to be a representative of the continuity of the state—'an arbitrator above the accidents of political life'. Thus, the constitution gives the President of France an exalted position at the expense of the French Prime Minister and his or her cabinet. The French President does not govern, neither is he a nominal figurehead. The French President wields enormous influence in matters relating to foreign affairs and national security. His greatest power lies in his ability to choose the Prime Minister. However, this power is checked by the fact that the person chosen by the French President as Prime Minister must be someone who commands a majority in Parliament. Thus, it can be stated that the Constitution of France is quasi-presidential and quasi-parliamentary.

- **Vague and ambiguous:** Many critics have called the 1958 Constitution vague and ambiguous. This is because the Constitution does not adequately describe the system of government, and also omits to mention other extremely critical areas and institutions like the organization of the judiciary, electoral laws, composition of the two houses of Parliament, and so on. As a result, more than 300 ordinances were passed between 1958-1959 dealing with these issues. The huge number of ordinances makes the task of the French

NOTES

constitution interpreters extremely difficult. Another matter that complicates things for the interpreters of the French constitution is that the 1958 Constitution was drafted by a small group of ministers and General De Gaulle and was never debated in parliament. Thus, the precise meaning of phrases and articles in the Constitution was not ascertained, leaving the government to interpret the constitution in a way to suit its interests.

- **Separation of powers:** One important feature of the 1958 French Constitution is the separation of legislative and executive powers. As stated above, the French President nominates the Prime Minister, who in turn selects his cabinet who are then appointed by the President. Article 23 of the French Constitution specifically states that a member of government cannot be a member of parliament, i.e., it is forbidden to hold both governmental office as well as parliamentary membership. At the same time, a member of government is responsible to Parliament. Cabinet members have to answer questions put to them by Members of Parliament. Moreover, if the Parliament passes a censure motion against the cabinet, the council of ministers are forced to resign.
- **The Constitutional Council:** The French Constitution of 1958 provides for the establishment of a Constitutional Council. The main objective behind the establishment of this council was to create a watchdog over the government and check the constitutionality of government and parliamentary acts. The Constitutional Council has basically four distinct functions. According to Articles 58, 59 and 60 of the French Constitution, the Constitution Council supervises the Presidential elections as well as referendums and proclaims the results. They are also responsible for declaring the Presidency vacant if for any reason the President is cannot carry out his duties. Article 61 provides that the Council must also be consulted on the conformity with the Constitution of organic laws and Standing Orders of both Houses before their implementation. Article 16 states that the Council must be consulted by the president regarding both the existence of an emergency and the measures that he proposes to take to deal with them. The advice of the Council also needs to be taken in relation to the legality of international treaties; it must also resolve disputes between the government and the legislature regarding the delimitation of executive and legislative competence.
- **Advisory Council:** The 1958 Constitution provided for the setting up of an advisory body called the Economic and Social Council. Primarily a technical advisor of the government, the Economic and Social Council gives its opinion on the government bills, drafts ordinances, orders and private members' bill submitted to it by the government.
- **Political parties are recognized:** Another extremely important feature of the 1958 French Constitution is that unlike the American and Indian Constitution, it explicitly recognizes political parties. The recognition for political parties is found in Article 4 of the French Constitution. According to Article 4, 'Political

parties and groups shall be instrumental in the exercise of the suffrage. They shall be freely formed and shall freely carry on their activities. They must respect the principles of national sovereignty and democracy.'

NOTES

CHECK YOUR PROGRESS

1. What is the present constitution of France called?
2. Why do critics call the 1958 Constitution vague and ambiguous?

3.3 PRESIDENT: ELECTION, POWER AND ROLE

The French president is the head of state of the French Republic and is also the supreme commander of the French Armed Forces. He or she is elected through direct elections by universal suffrage, replacing the earlier method of Electoral College. As a result of various constitutional amendments, an individual can become the President of France for a period of two five-year terms only. Earlier, a Presidential term lasted seven years, however, under the tenure of President Mitterrand (Figure 3.2), the term was reduced to five years. In order to be elected, a Presidential candidate has to secure an absolute majority of the votes cast. If the candidate is unable to secure votes in the first ballot, another ballot takes place on the next Sunday. The two candidates who manage to get the maximum number of votes are subjected to the second ballot.

The Constitutional Council is entrusted with the task of supervising the Presidential elections as well as declaring the winner. In case the presidency falls vacant, the President of the Senate becomes the temporary President until the President returns to office, or if the Constitutional Council declares the president to be permanently, until after the election of the new president. A new president must be elected in not less than twenty days and not more than thirty-five days from the day the post of the presidency fell vacant.

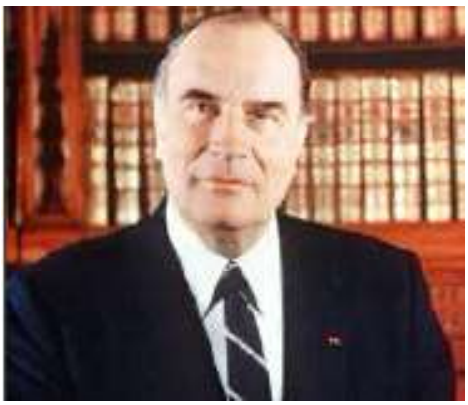

Fig. 3.2 *President Mitterrand*

NOTES

A. Powers of the French President

The powers of the French President are as follows:

Executive powers

With respect to executive powers, the French president:

(i) Appoints the Prime Minister and on the advice of the Prime Minister; nominates the other members of the government and also terminates their appointment

(ii) Is the Commander-in-Chief of the French Armed Forces and appoints people to civil and military posts

(iii) Appoints ambassadors and envoys to foreign countries and receives foreign ambassadors and envoys

(iv) Appoints the president and three members of the Constitutional Council

(v) Negotiates and ratifies international treaties

(vi) Presides over the Council of Ministers

Legislative powers

With respect to legislative powers, the French president:

(i) Promulgates laws within fifteen days following the transmission to the government of the said laws as finally adopted

(ii) Can ask the Parliament to reconsider a law or certain articles within a law before the expiry of the time-limit

(iii) Communicates with the two houses of the Parliament through speeches that cannot be debated

(iv) Can summon the Parliament for an extraordinary session in which it meets *ipso jure*

(vi) Signs the ordinances and orders decided upon in the Council of Ministers

(vii) Has the power to dissolve the National Assembly after consulting with the Prime Minister

Judicial powers

With respect to judicial powers, the French President:

(i) Can grant pardon to any convicted criminal

(ii) Presides over the High Council of Judges to which he nominates nine members

(iii) Guarantees the independence of the judiciary

Emergency powers

The Emergency powers of the French President are provided under Article 16 of the 1958 Constitution.

With respect to the emergency powers:

(i) The French President alone can decide when an emergency exists and what measures are to be taken; he only has to consult the Prime Minister, the Presidents of the Assemblies and the Constitutional Court

(ii) The Parliament cannot be dissolved during an emergency; at the same time, it cannot pass any measures restricting the power of the President during an emergency

(iii) The President alone can decide when to end an emergency

As it can be seen, there are no real safeguards given in the Constitution against the abuse of the emergency powers by the President.

Along with the rights stated above, the French President also has the right to interpret the Constitution in a way that he or she sees fit. This right is provided to him under Article 5 of the 1958 Constitution.

NOTES

B. Position of the President

As you now know, the French President is the head of state of the French republic and the commander of the French armed forces. The entire gamut of the powers that the constitution provides the President has been listed above. Along with those powers, the president is politically not responsible for acts carried out by him in pursuance of his functions except in the case of high treason. Unlike the President in the United States, the French President is not restrained by a Congress or any other legislature or a judicial review. Thus, he is neither accountable to the legislature nor can he be removed by it. All of these measures were essentially formulated by General de Gaulle to bring order and stability to the French state during the time of the French Algerian crises. Many in France criticized these measures, calling them 'quasi-monarchical' and 'tailor made for General de Gaulle'. However, even after General de Gaulle left office in 1969, these measures were retained and continue to be in existence. Thus, the French President is not a nominal figure head of the republic like the Indian President, rather, the authority and the prestige of the President is onerous and his powers are enormous. According to Campbell and Chapman, 'The (French) President's influence will depend on the personality of the man and on what type of men Parliament will accept as ministers. If the articles regarding the Cabinet and Parliament are applied, the President will neither be directing force once advocated by de Gaulle nor the directing force feared by some critics of constitution.'

3.3.1 Council of Ministers

The French Council of Ministers or Executive Council (*Conseils des Ministres*) constitutes the most important administration members of the Prime Minister's Cabinet. The French term *gouvernement* generally means the 'administration', but it also refers to the cabinet in the narrow sense of the term.

NOTES

Composition

After the President of France, the next in the order of importance are the Council of Ministers. The Council of Ministers comprises of the Prime Minister and other Ministers of various departments. The number of Council of Ministers has not been fixed by the Constitution and varies from government to government. As stated above, the President chooses the Prime Minister. However, the person chosen to be Prime Minister must have the backing of the majority in Parliament. The President, in consultation with the Prime Minister, selects the Council of Ministers. The Council of Ministers can be dismissed by the President on the advice of the Prime Minister.

Functions of the Council of Ministers

The legislative functions of the Council of Ministers are provided under Article 38 of the 1958 Constitution. According to Article 38, 'The Government may, in order to carry out its programme, ask parliament for authorization to take through ordinances during a limited period, measures that are normally within the domain of law. Government bills shall be discussed in the Council of Ministers after consultation with the Council of State and shall be filled with the secretariat of one of the two assemblies.'

Unlike the President of France, the Council of Ministers are accountable to Parliament. As you learned above, if the Assembly passes a censure motion against the Council of Ministers, they have to resign. Moreover, all Council of Ministers have to answers questions posed to them by the members of the Federal Assembly. These questions are referred to as the government questions (*questions au gouvernement*). Council of Ministers are also needed to attend Parliamentary sessions when discussions related to their department are taking place. In addition, no minister can recommend any legislation without the backing of Parliament; however, the French Prime Minister can sanction statutory instruments known as orders-in-council, that is, government orders with statutory force.

According to convention, Council of Ministers can be classified by rank into three categories. These are as follows:

- **Ministers:** Highest ranking members of government
- **Deputy Ministers:** They assist Ministers according to their expertise and portfolio
- **Secretaries of State:** Give assistance to Ministers in relatively unimportant areas and occasionally attend sessions of the Council of Ministers

Along with these three ranks, there is another rank that is given to some ministers of importance as a purely honorary title. These ministers are known as Ministers of State.

The Cabinet decides the agenda to be taken up by the houses of the Parliament. Parliamentary sessions are conducted so that they can suggest laws and amendments during these sessions. The cabinet also has at their disposal a host of methods that can be used to increase the pace of parliamentary deliberations. The President chairs the sessions of the Council of Ministers that usually take place on Wednesday

mornings at the Élysée Palace. Along with these functions, the Council of Ministers also have other executive and financial functions.

CHECK YOUR PROGRESS

3. State any one executive power of the French President.
4. State any one emergency power held by the French President.

NOTES

3.4 PRIME MINISTER: FUNCTIONS AND ROLE

The French Prime Minister is the head of the government in France as well as the head of the Council of Ministers. As you already know, the 1958 French Constitution is partly Presidential and partly parliamentary. Thus, the position and prestige of the Prime Ministers lies someway in-between. According to Article 8 of the Constitution, the President may select a Prime Minister of his choice. The Prime Minister need not be a member of the National Assembly. However, the person chosen to be Prime Minister must enjoy majority support in Parliament. Thus, only individuals from the majority party in Parliament is chosen to be PM. The President cannot dismiss the PM once he is appointed unless the President chooses to present his government's resignation. The only way for the PM to be removed is if he loses majority support in the Assembly. As head of the government, the French Prime Minister is responsible for handling the day-to-day affairs of the French administration.

Powers and Position of the French Prime Minister

The foremost power of the French Prime Minister is that he recommends the individuals who the President appoints as Council of Ministers. These Ministers cannot be members of the National Assembly. Article 21 of the 1958 French Constitution provides that, 'The Prime Minister shall direct the conduct of government affairs. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to the provisions of Article 13, he shall exercise the power to make regulations and to make appointments to civil and military posts. He may delegate certain of his powers to Ministers. Should the occasions arise, he shall deputize for the President of the Republic as the Chairman of the councils and committees provided for under Article 15. On an exceptional basis, he may deputize for him as the chairman of a meeting of the Council of Ministers by explicit delegation and for a specific agenda.'

It is the duty of the French Prime Minister to defend the programs of their ministry, and make budgetary choices. The extent to which those decisions lie with the Prime Minister or President depends upon whether they are of the same party.

Historically it has been seen that if the President and the Prime Minister are from the same party, the PM acts like the deputy of the President. For example, all the Prime Ministers during Charles de Gaulle's tenure were mere deputies who regarded themselves as his appointees and were always at his beck and call. It was de Gaulle who dictated French policy, especially in regard to the Algerian crisis and

NOTES

foreign affairs. On the other hand, if there is a cohabitation, that is, if the President and the Prime Minister are from different parties then the responsibilities of the PM become akin to those of the British PM. However, even then, the PM is subordinate to the President. The Council of Ministers is presided over by the president and not the prime minister. The Prime Minister cannot shuffle his cabinet without the explicit permission of the President. Thus, the policy of the French Republic is actually determined by the president. In 1992, the then French PM Edith Cresson was forced to tender her resignation on the account of the defeat that the socialist party suffered in regional elections of that year. In her resignation speech, she expressed her bitterness at the restrictions placed on the Prime Minister. She was not allowed to change her cabinet to get rid of incompetent ministers despite many pleadings with the President.

Looking at the above quoted examples, it should be clear to everyone that the powers of the French Prime Minister pale into insignificance when one compares it to the powers given to his counterparts in Britain and India.

Check Your Progress

5. What is the main power provided to the Prime Minister of France?
6. Can the Prime Minister of France shuffle the cabinet of ministers without the permission of the President?

3.5 PARLIAMENT: COMPOSITION AND FUNCTIONS

France does not have a monarchy nor is there a system of election described in the French Constitution. The French Parliament, like other Parliaments of the top democracies, is a bicameral like its prototype in the Fourth Republic.

Composition of the French Parliament

The French Parliament comprises two houses:

(i) The Senate (The Upper Chamber)

(ii) The National Assembly (The Lower Chamber)

As laid down in the French Constitution, the deputes of the lower chamber are elected through direct suffrage while the deputies of the upper chamber are selected through indirect suffrage. The Organic Acts or laws (short, fixed list of statutes) lay down the specifications such as the number of members, their required qualifications, the perks they are entitled to and the functions of their office.

The lower chamber comprises over 465 Deputies who are appointed in keeping with these laws or acts. It consists of 577 members in total. The candidates have to go through two ballot systems in a single member constituency. They have to first gain an absolute majority in the first ballot followed by a simple majority in the second. The representation is based on one seat per 93,000 inhabitants. Although an

assembly lasts for five years, it can be dissolved earlier. Suffrage is secretive, universal and equal throughout. According to the law of France, French citizens are allowed to vote and enjoy all civil and political rights granted by the French Constitution.

NOTES

The Senate or upper chamber is inclusive of the representatives of the territorial entities of the Republic. Therefore, the 307 strong membership is distributed across the following:

- Metropolitan France
- Overseas departments
- Overseas territories
- French citizens living in foreign countries

225 seats are allotted to the metropolitan France. These are again distributed department-wise. Each department is like a municipal committee in our country. There is one seat per 1,50,000 residents and an additional seat for every additional 2,50,000 or fraction of the residents. The composition of each Electoral College is as follows:

- Local parliamentary deputies
- Members of the departmental councils
- Representatives of the municipalities depending on the size of the various municipal councils

In addition to these techniques, communes or small French territorial divisions, with more than 9,000 inhabitants select their delegates through proportional representation. The communes with low population make their selection through absolute majority (through three ballots). The Senators are then elected by the selected colleges. The seven largest departments, entitled to five or more seats follow proportional representation while members in the other department are elected by majority vote and the second ballot system. The Senate has a life span of nine years, with a third allowed to be renewed every third year. A Senate has to be at least 35 years old where a Deputy should be at least 27 years of age.

Members of Parliament: Their Rights and Advantages

The rights and benefits enjoyed by the members of Parliament are cited in the Article 26 of the Constitution. According to one such privilege, no member can be arrested, detained, interrogated or subjected to a trial based on opinions expressed or votes cast in the course of their duties. But, at the same time, they would be accountable for any statement made outside the Parliament or anything published externally. While the Parliament is in session, the members may not be questioned about anything they have done or said personally or in private .However, proceedings may be taken against them, if the House to which the member belongs, decides by vote, to suspend the immunity. The exceptions are certain petty offences for which the member need not forego his duties in the Parliament. Certain offences are considered serious and referred to as *flagrante delicto*. In case arrests are authorized in a session, the concerned members may be arrested in the subsequent session if

the bureau of the House authorizes the same. Meetings can be called even if the Parliament is not in session. There can be suspension of an order to detain or prosecute a member, if the Assembly (to which the member belongs) so demands. Therefore, mandatory orders to the Member of Parliament are void.

NOTES

Proxy is not allowed as per Article 27 of the Constitution. Proxy was popular and frequent under the Fourth Republic. There were times when only the participants would turn up for debates among the opposition parties. However, at the time of voting, significant number of votes were cast via proxy votes. Presently, members are allowed to delegate their votes only after taking written permission only for the following reasons:

- If they are ill
- If family circumstances do not allow the members to attend
- If the member(s) are away on government duty or military service
- If the member(s) is travelling out of France on some special session
- If the member(s) is representing the Senate or the Assembly at an international assembly meeting.

In addition, one member is allowed to vote proxy only once and not for more than one member.

According to the Constitution, the members are expected to vote in person and on a regular basis. Attendance here implies being present for voting and not for debating. Incentives such as attendance bonus are given to members with satisfactory attendance. Penalty is slapped on members with poor attendance. Those absent for three consecutive sittings of the commission, are asked to explain the reason for absence. In the absence of reasonable justification, not only does the member must forego the attendance bonus, he/she is expected to submit his resignation to the Commission. If the member has been absent without a satisfactory reason from more than one third of the votes by ballot in a month, he/she loses out on one third of the monthly attendance bonus. If the member is not present for over half the votes, two-thirds of the bonus is forfeited.

Sessions

The Parliaments meets two times in a year. Once on the 2nd of April, to discuss the budget and then again on the 2nd of October to discuss the legislative programme. If the prime minister ever puts in a request for a special session, the president of the Republic is authorized to conduct such a session. Such a session can also be conducted if a majority of the members of the National Assembly wish to discuss any agenda in particular. However, such a session should be closed the moment the agenda is completed, or within twelve days.

Once the second session commences, the bureau, comprising a president, ten vice presidents (six for the lower chamber and four for the upper chamber), twenty secretaries (twelve for the lower chamber and eight for the upper chamber), and three questeurs for each house, are elected and appointed by each house. The members of this bureau are collectively responsible for the following:

- Organizing the different services in the lower chamber
- Supervising the various services in the lower chamber
- Advising the President of the Assembly, particularly on the disciplinary matters and the admissibility of the Bills or resolutions

NOTES

The Presidents

The oldest member presides over the first meeting of the session. In this session, the President of the Assembly is elected. Earlier, the President was elected every year. However, the tenure has now been reduced to the duration of the Assembly. The President of the upper chamber, however, is elected for a three year tenure, which lasts till the next partial renewal period. Secret ballot is practised. Therefore, there is no chance of corruption. An absolute is mandatory in the first and second ballot while a relative majority suffices at the third ballot.

A president performs the same functions as that of a chairman, which are as follows:

(i) Regulating business in the House

(ii) Maintaining discipline

(iii) Putting up Bills to vote and declaring results

(iv) Interpreting the rules of the House

(v) Providing consultation or advice to the President of the Republic in situations of emergency (as laid down in Article 16).

A private member's Bill or amendment, which is perceived as constitutional by the president of the Assembly but is challenged by the government as unconstitutional, is required to be submitted to the Constitutional Council, or else ruled out of order. Despite Presidents possessing no unchallenged authority, they occupy a position of prestige.

French Parliament: Legislative and Executive Powers

Let us now look at the roles and responsibilities of the French Parliament, which is nothing but a legislature where law is made:

- **Legislative powers:** According to Article 34 of the Constitution, the Parliament shall:
  - o Establish rules for exercising the following:
    - (i) Public liberties
    - (ii) Civil and fundamental rights
    - (iii) National defence obligations imposed on citizens in respect of their persons and property
  - o Establish the rules for the following:
    - (i) Nationality
    - (ii) Status and legal capacity of persons
    - (iii) Property rights arising out of a matrimonial relationship
    - (iv) Inheritance and gifts

NOTES

- Establish rules to determine the following:
  - (i) Felonies and misdemeanours
  - (ii) Penalties for felonies and misdemeanours
  - (iii) Criminal procedure
  - (iv) Amnesty
  - (v) Creation of new jurisdictions
  - (vi) Status of judges
- Establish the rules for the following:
  - (i) Assessment bases
  - (ii) Rates and methods of collective taxes of all types
  - (iii) Issuance of currency

The Parliament determines the rules and regulations concerning the following:

- The electoral systems of the Parliamentary Assemblies and local Assemblies
- Categorization of public establishments
- Granting of fundamental guarantees to civil and military personnel employed by the state
- Nationalization of companies and transfers of company ownership from the public to the private sector

The Parliament lays down rules regarding the following:

- How the national defence should be organized
- The kind of powers and resource local authorities should have
- Education systems
- The manner in which property rights as well as civil and commercial obligations should be governed
- The law and social security provided by the labour and trade unions

- **Executive powers:** As per the Constitution of the Fourth Republic, the National Assembly had a say in the appointment of the prime minister and his ministers. The individual selected to be prime minister needs to acquire the confidence of the lower chamber or Assembly for whatever he wishes to pursue. If his programmes or policies are rejected by the Assembly, this is considered a vote of censure. In case of such rejection, the prime minister designate and his ministers are not appointed by the president. The 1958 Constitution does not allow the upper chamber any voice in the appointment of the Prime Minister and his ministers. The formal investiture ceremony is no longer followed. However, prime minister and his Council of ministers are accountable to the Assembly.

  The National Assembly may pass a motion of censure to challenge the responsibility of the Government. A minimum of one tenth of the members of the National Assembly need to put their signatures to give their consent for

NOTES

such a motion. After the motion has been tabled, 48 hours have to pass before the votes supporting the motion of censure can be counted. The adoption of the motion is subject to a majority of the membership of the Assembly. In case the motion of censure meets with rejection, it is not possible for the signatories to introduce another motion in the same session unless the case is as follows:

The Prime Minister may, after deliberation by the Council of Ministers, commit the Government's responsibility to the National Assembly on the passing of a bill. In this case, the text shall be regarded as carried unless a motion of censure, tabled within the succeeding twenty-four hours, is passed under the conditions laid down in the previous paragraph.

As per Article 49, the three ways in which the government's responsibility to the Parliament can be ensured are:

(i) The government commits itself before the lower chamber for its programme or a statement of general policy. If this meets with rejection (by a majority vote), the government resigns.

(ii) The Assembly can move a motion of censure and if that passes, the government needs to resign.

(iii) The Government commits itself with respect to a bill; the bill is thought to be carried unless a censure motion has been tabled within a specific time period (24 Hours).

The powers of the executive can also be checked by the Parliament using means like commissions, questions, resolutions, and debates over the government Bills. The Parliament may also threaten not to pass the budget. Although the President is not accountable to Parliament according to the French system, he can be impeached by it for acts of high treason. In such a situation, the President must be tried by High Court of Justice. The High Court of Justice comprises an equal number of members from the Senate and the National Assembly.

- **Financial powers:** The French Parliament controls the finances of the republic. This can be seen if one looks at the process of passing the budget in Parliament. After preparing the budget, the government tables it in the Assembly and then the Senate. Both houses must agree for the budget to be passed as both the Senate and the Assembly enjoy equal powers. If both houses do not agree, the government adopts a procedure underlined in Article 45 of the Constitution. The government may also use Article 47 in order to prevent the Assembly from using delaying tactics. According to Article 47, if the first reading of the Bill does not happen within forty days, then the government has to refer it to the Senate, which must come to a decision within a fortnight. The government may go in for an ordinance if the Budget bill is not voted for 70 days. If the budget is not going to be presented on time, the Parliament can be asked to authorize taxation by decree and authorize expenditure in the respect of any estimates previously accepted by the Assembly.

NOTES

At the same time it should be noted that no amendment can be introduced by the Parliament that proposes to increase the expenditure or decrease the revenue. However, the Parliament can propose cuts to the expenditure. Since the Parliament has the right to completely reject the bill, usually the government of the day grants concessions to the Parliament to help pass the bill. The Audit Court, also known as *Cour des Comptes*, assists the Parliament and the government in supervising the implementation of the finance acts.

- **Electoral powers:** The High Court of justice comprises an equal number of members from the Senate and the National Assembly. Moreover, three members each are appointed by the National Assembly and Senate's presidents towards the Constitutional Council. In addition, the Assemblies of Community states as well as the French parliament choose the members of the Senate of the Community.
- **Other powers:** The other powers of the Parliament are as follows:
  - The government requires the approval of Parliament to declare war.
  - The government can declare martial law unilaterally for a period of 12 days beyond which any extension requires the approval of Parliament.
  - Any sort of international treaty or obligation that implies a financial commitment on the part of the republic can only take effect after Parliamentary approval.
  - Moreover, any modification to legislation, or relating to the status of persons, or entailing a cession, exchange or adjunction of territory, may be ratified or approved only by acts of the Parliament.
  - The French Parliament has the right to create army territorial entities other than communes, departments and overseas territories.
  - Any Constitutional amendment can only take effect after the approval of Parliament.
  - The French Parliament also has the power to set up commissions of inquiry for investigation purposes.

Parliamentary Sovereignty and Some Limitations

The 1958 French Constitution distinguishes between the legislative powers of the Parliament and the regulatory powers of the Government. You have already studied the legislative powers of the parliament. The government's regulatory powers are provided under Article 37 of the Constitution. According to Article 37, 'matters other than those that fall within the sphere of legislation shall be determined by regulation.' This article has been the cause of disputes as to the purview of legislation and regulation. Whenever disputes arise, the opinion of the Constitutional Council is sought.

Article 38 of the French Constitution provides the government the right to ask Parliament to authorize its programme, for a limited period, to take by ordinance measures normally within the legislative sphere. This Article then gives the executive the power to legislate despite the fact that the legislative sphere is specified for the Parliament by the Constitution. One cannot object to the provisions of Article 38 as

the power to legislate on matters included in the legislative sphere is delegated to the government by the Parliament itself and because the government possessed the power of delegated legislation under the Third and Fourth Republics as well. However, the main point here is that till 1958, the rule of parliamentary sovereignty was maintained in principle and delegated legislation was exceptional. The Parliament was itself the final judge of the extent and duration of special powers accorded to the governments to legislate by decree. Under the 1958 Constitution, the legislative sphere for the Parliament has been constitutionally limited, leaving all matters outside this sphere for legislation by decree.

The ways in which the sovereignty of the Parliament is restricted are listed below:

- Article 59 and 60 bestows the Parliament with the right to supervise the regularity of elections and referenda and make decisions pertaining to irregularities.
- According to Article 61 of the 1958 Constitution, the Constitutional Council has the right to make sure that laws conform with the Constitution of Parliamentary Standing Orders. This removes from Parliament, its traditional right to control its procedures.
- The Constitutional Council has also been given the responsibility of resolving differences of opinion between Parliament and the executive and also to make sure both comply with the 1958 Constitution. This may result in the Parliament feeling that its rights to check the executive is being restricted.

Along with these, there are other reasons for the curbing of Parliamentary sovereignty. Like the present day political scenario of India, in the multi-party French system of elections, no party gets an absolute majority in Parliament. Another point to be noted here is that in an age of expansion of state activity, some degree of delegated legislation is extremely critical. Since time is short, the Parliament does not have time to meet throughout the year and deliberate issues concerning the republic; the French parliament's legislative time has been reduced to five-and-a-half months. Thus, many local issues are delegated to local legislative bodies. Moreover, when the Parliament is in session, the government can refuse to debate or vote on its policy statements. Since an absolute majority is required for passing a censure motion, it becomes very difficult. Due to these reasons many consider that the 1958 Constitution has made the Parliament hollow of its role as a forum of grievances, as a check on administrative abuses and as a defender of civil liberties.

Procedure for Legislation

The legislative and the budgetary process was altered by the 1958 Constitution, compared to the previous constitutions. According to the 1958 Constitution, the government and private members of the House have the right to introduce bills in Parliament. Other than financial bills, any other bill can be introduced in any of the two Houses. Before the bills are sent to the House, they are considered in meetings of the Council of Ministers. It is important to note that if the government finds the bill to be contrary to the Constitution or outside the domain of the law or contrary to the delegation of authority granted in Article 38, then government does not introduce the

NOTES

bill and refers the matter to the Constitutional Council if there is a dispute between the executive and the president of the Assembly about the issue of inadmissibility. The Council must respond with its opinion within eight days. The president of the Assembly can also refer the bill to the Constitutional council. Whatever the opinion is of the Council must be accepted by both sides. If there are no problems with inadmissibility, the Bill is forwarded to the Standing Committee when it gets introduced in the House. The Assembly or the government can also request that the bill be referred to a special committee. The membership of a special committee does not exceed 30 members. The Standing Committee of the French Parliament can be of the following nature:

- Committee on culture, family and social affairs
- Foreign affairs committee
- Committee on National Defence and Armed forces
- Committee on economic affairs and planning
- Committee on constitutions, laws and general administration
- Committee on trade and economic production

The number of members of a Standing Committee in Parliament can be between 60 and 120 people depending on the committee. The number of people from party in a committee depends on the strength of the party in the committee; hence, the character of the Standing Committee is similar in nature to the party composition in the House. Each committee elects its president, three or four vice-presidents and two to four secretaries. After that, the committee scrutinizes the bill in detail. The meetings of the committee are recorded for the ministers, but they can participate in the meeting of the committee. The committee can ask any person for his or her views. After deliberation and consideration, the committee prepares its report and submits it to the Assembly. After the bill is sent back to the Assembly, it is deliberated and debated upon by the house. The opposition can propose amendments to the bill, which the government can accept or reject. After the debate has concluded, the bill is voted upon by the assembly. If the bill is passed, it goes to the second house for a similar process. After the bill is passed by the second house, it is sent to the President

Organic Laws

Organic laws are the laws that the Constitution provided for in order to complete a number of its provisions, and which were promulgated as ordinances during the transitional period when the government has full powers; or else it is those laws that provided for under Article 34 'to develop in detail and amplify' the legislative powers of the Parliament. The passage of organic laws is provided under Article 46 of the 1958 Constitution. According to Article 46, 'A Government or private member's bill shall be submitted for discussion and to a vote in the first Assembly in which it has been tabled not less than fifteen days after that tabling. The procedure of the Article 45 shall be applicable. Nevertheless, in the absence of agreement between the two Assemblies, a bill may be adopted by the National Assembly on final reading only by an absolute majority of its members. Organic Acts relating to the Senate must be

passed in the same wording by the two Assemblies. Organic acts may be promulgated only after the Constitutional Council has declared them constitutional.'

Thus, it can be clearly seen that there are three critical differences between the passage of an organic law and an ordinary law:

NOTES

- An entire fortnight needs to pass from the time the bill is tabled in the house before it can be debated.
- If there is any disagreement between the two houses, the Assembly can override the objections of the Senate by voting for the organic law through a majority.
- Only if the Constitutional Council has declared that an organic law conforms with the Constitution can it be promulgated.

Organic laws basically deal with the following:

- The methodology to be employed for elections to the National Assembly and Senate
- The composition of the electoral college
- The length of Presidential term the the criteria for re-election
- The status of members of judiciary
- Composition of the High Council of judges
- The rules, procedures, as well as the composition of the Economic and Social Council
- Rules and operating procedure for the high court
- Organization and procedure of the Executive Council of the community

Finance Bill

The Budget of the French Republic, like in India, is prepared by the Minister of Finance. There are two parts to a budget, namely, revenue and expenditure. The Budget is placed before the National Assembly once the Finance Minister and the Council of Ministers have approved it. The budget is then sent to the Standing committee on finance, which discusses its provisions, and gives its decisions within 15 days. The Assembly has forty days to finish the reading of the first Bill. If the Assembly is not able to follow the deadline, then the government sends the Bill to the Senate to be read within fifteen days. If there is disagreement in the Houses, then Article 45 applies. In case even the Parliament fails to reach the decision within seventy days, then the government may apply its provisions by ordinance. If the government fails to introduce the Finance Bill in time for it to be promulgated by the beginning of the fiscal year, it may ask the Parliament for authority to collect taxes and make available the funds needed to provide for services already approved.

The Standing Committee on Finance plays the most important role during the procedure to pass the budget. Many consider it to be the strongest of the Committees as it approves the budget for every Ministry and provides for distribution of money. It can call any minister to justify the estimates for his ministry and may propose any

reduction therein. The discussion over the budget in the Assembly is done ministry-wise. As mentioned earlier, the members may not propose any amendment, which would reduce receipts or increase expenditure.

NOTES

Relations between the Two Houses

In accordance to the 1958 Constitution, the Senate is subordinate to the National Assembly. Although similar powers are provided both to the Assembly and to the Senate in the sense that both the houses are not permitted to override government bills, however, in case of disagreement between the two houses, it is the opinion of the National Assembly which goes through. This is because in case of disagreement, the government asks the National Assembly to make a final decision either on the Bill as returned by the Joint Committee, or on its own bill, with or without any amendments proposed by the Senate. The Senate is usually given fifteen days to announce a decision, whereas the National Assembly gets forty days. The senators do not have the right to convene the extraordinary session of Parliament, which is possessed by the members of the National Assembly. Perhaps the most important point here is that the government is not responsible to the Senate, but it is responsible to the National Assembly. A motion of censure can only be adopted by the National Assembly and not by the Senate. A Senate may give general policy statements disagreeing with the government. In such a situation, the government is under no obligation to listen to the Senate.

3.5.1 Comparative Study: US President and French President

In France, the President occupies the most prominent place in the system. In a lot of ways, the power of the President of France is similar to that of the Prime Minister of Britain and that of the American President. The President of France can be seen as someone who enjoys power and prestige similar to the Indian and American presidents and the British Prime Minister. He/she is a head of the state as well as of the entire government just like the American president. Further, the President of France, just like the American President can only be made to resign from his/her post by being impeached, which is not easy to do. Direct suffrage is the process to elect the President of France.

The American President is elected through Electoral College, which is similar to being directly elected. The terms of each of them is fixed and nobody has the power to remove them except through the impeachment process. The French President and the American President have the power to issue ordinances and preside over the meetings of council of ministers. There are a number of powers which are similar to both the French and American Presidents. However, there a few dissimilarities as well. A few special powers that are provided to the French President are not available to the American President. The National Assembly in France can be dissolved by the French President's order, but the American President has no such power in America. There are emergency powers, which can be used by the French President, however, no such powers are available to the American President.

The French President is free to appoint persons to civil or military posts without the need of any approval. The American President can make appointments but the

Senate's approval is required. Again, the French President is free to discuss and negotiate treaties with other countries, however, the American President cannot do so without the approval of the Senate. The French President also has the discretionary power to provide a referendum but his counterpart in the US does not have the liberty to do so.

NOTES

CHECK YOUR PROGRESS

7. What are the two Houses of the French Parliament?
8. What does Article 26 of the French Constitution state?
9. In France, how many times do the parliaments meet and on which dates?

3.6 SUMMARY

- The present constitution of France, called the 1958 Constitution, contains a Preamble and 92 Articles. It embodies both republican and presidential characteristics and is considered a hybrid of the two.
- The head of French state is the President. Now, in a parliamentary system of government, the President would be a nominal head (like in India); however, this is not the case in France. The 1958 French Constitution gives the President of France enormous powers. The former French President General de Gaulle, who was one of the main driving force of the new Constitution in 1958, considered the head of state as someone who represented the nation rather than parliament.
- The French Constitution of 1958 provides for the establishment of a Constitutional Council. The main objective behind the establishment of this council was to create a watchdog over the government and check the constitutionality of government and parliamentary acts.
- The Constitutional Council is entrusted the task of supervising the Presidential elections as well as declaring the winner. In case the presidency falls vacant, the President of the Senate becomes the temporary President until the President returns to office, or if the Constitutional Council declares the president to be permanently, until after the election of the new president.
- The French Council of Ministers or Executive Council (Conseils des Ministres) constitutes the most important administration members of the Prime Minister's Cabinet. The French term 'gouvernement' generally means the 'administration', but it also refers to the cabinet in the narrow sense of the term.
- The French Prime Minister is the head of the government in France as well as the head of the Council of Ministers. The 1958 French Constitution is partly Presidential and partly parliamentary. Thus, the position and prestige of the Prime Ministers lies someway in-between.

NOTES

- The foremost power of the French Prime Minister is that he recommends the individuals who the President appoints as Council of Ministers. These Ministers cannot be members of the National Assembly.
- It is the duty of the French Prime Minister to defend the programs of his/her ministry, and make budgetary choices. The extent to which those decisions lie with the Prime Minister or President depends upon whether they are of the same party.
- France does not have a monarchy nor is there a system of election described in the French Constitution. The French Parliament, like other Parliaments of the top democracies, is a bicameral like its prototype in the Fourth Republic.
- The French Parliament comprises of two houses: (a) The Senate (The Upper Chamber) (b) The National Assembly (The Lower Chamber). As laid down in the French Constitution, the deputes of the lower chamber are elected through direct suffrage while the deputies of the upper chamber are selected through indirect suffrage. The Organic Acts or laws (short, fixed list of statutes) lay down the specifications such as the number of members, their required qualifications, the perks they are entitled to and the functions of their office.
- The rights and benefits enjoyed by the members of Parliament are cited in the Article 26 of the Constitution. According to one such privilege, no member can be arrested, detained, interrogated or subjected to a trial based on opinions expressed or votes cast in the course of their duties.
- The Parliaments meets two times in a year. Once on the 2nd of April, to discuss the budget and then again on the 2nd of October to discuss the legislative programme. If the prime minister ever puts in a request for a special session, the president of the Republic is authorized to conduct such a session.
- Organic laws are the laws that the Constitution provided for in order to complete a number of its provisions, and which were promulgated as ordinances during the transitional period when the government has full powers; or else it is those laws that provided for under Article 34 'to develop in detail and amplify' the legislative powers of the Parliament. The passage of organic laws is provided under Article 46 of the 1958 Constitution.
- The Budget of the French Republic, like in India, is prepared by the Minister of Finance. There are two parts to a budget, namely, revenue and expenditure. The Budget is placed before the National Assembly once the Finance Minister and the Council of Ministers have approved it. The budget is then sent to the Standing committee on finance, which discusses its provisions, and gives its decisions within 15 days.
- In accordance to the 1958 Constitution, the Senate is subordinate to the National Assembly. Although similar powers are provided both to the Assembly and to the Senate in the sense that both the houses are not permitted to override government bills, however, in case of disagreement between the two houses, it is the opinion of the National Assembly which goes through.

3.7 KEY TERMS

NOTES

- **Preamble:** It is the introductory part of a statute or deed, stating its purpose, aims, and justification.
- **Senate:** It is the smaller upper assembly in the US, US states, France, and other countries.
- **Organic laws:** These are laws that the Constitution provided for in order to complete a number of its provisions, and which were promulgated as ordinances during the transitional period when the government has full powers.
- **Impeachment**: It refers to a charge of misconduct made against the holder of a public office.

3.8 ANSWERS TO 'CHECK YOUR PROGRESS'

1. The present constitution of France is called the 1958 Constitution and contains a Preamble and ninety-two Articles. It embodies both republican and presidential characteristics and is considered a hybrid of the two.
2. Many critics call the 1958 Constitution vague and ambiguous because the Constitution does not adequately describe the system of government, and also omits to mention other extremely critical areas and institutions like the organization of the judiciary, electoral laws, composition of the two houses of Parliament, and so on.
3. The French President appoints the Prime Minister and on the advice of the Prime Minister; nominates the other members of the government and also terminates their appointment.
4. The French President alone can decide when an emergency exists and what measures are to be taken; he only has to consult the Prime Minister, the Presidents of the Assemblies and the Constitutional Court.
5. The foremost power of the French Prime Minister is that he recommends the individuals who the President appoints as Council of Ministers.
6. No, the Prime Minister cannot shuffle his cabinet without the explicit permission of the President.
7. The French Parliament comprises two Houses:
   (i) The Senate (the upper chamber)
   (ii) The National Assembly (the lower chamber)
8. The rights and benefits enjoyed by the members of Parliament are stated in the Article 26 of the Constitution.
9. The Parliaments meets two times in a year. Once on the 2nd of April, to discuss the budget and then again on the 2nd of October to discuss the legislative programme.

NOTES

3.9 QUESTIONS AND EXERCISES

Short-Answer Questions

1. Why is it difficult to revise the Constitution of France?
2. What is a Constitutional Council and what is the objective behind its establishment?
3. What are the legislative powers of the French President?
4. What are the three categories of the French Council of Ministers?
5. What are the financial powers of the French Parliament?
6. What are organic laws? Which Article of the French Constitution talks about organic laws?

Long-Answer Questions

1. Discuss the various functions of the French Council of Ministers.
2. Describe the rights and advantages of the members of French Parliament.
3. Discuss some of the important powers of the French Parliament.
4. What is a Standing Committee of the French Parliament? Discuss the nature of the Standing Committee.
5. Compare the power and duties of the French President with that of the American President.

3.10 FURTHER READING

Witmer, Scott. 2013. *Political Systems.* London, UK: Raintree Publishers.

Krieg, Adrien. 2004. *Our Political Systems.* Oakland, USA: Elderberry Press Inc.

Andrain, Charles, F. 1994. *Comparative Political Systems.* New York, USA: M.E. Sharpe, Inc.

Website

http://www.studylecturenotes.com/constitutional-laws/comparison-between-the-french-president-vs-us-president

NOTES

UNIT 4 PEOPLE'S REPUBLIC OF CHINA (CONSTITUTION OF 1982)

Structure

4.0 INTRODUCTION

The National People's Congress (NPC) is the most significant legislative body in the People's Republic of China. It sits in the Great Hall of the People, Beijing. It is often touted to be the largest parliament in the world. All political decisions in China take place after political consultation from the various political groups. It is with the NPC

NOTES

that the main legislative powers of the Chinese states reside. It also serves as a mediator between the government and the political parties and other groups of the society.

Similarly, the State Council is the chief administrative body in China. The Premier of China is the chairman of the State Council, and this body comprises the heads of each governmental department and agency. It shares the power of the state with the Communist Party of China and the People's Liberation Army.

In this unit, you will study the features and principles of the constitution of China, fundamental rights and duties of the citizens of China, National People's Congress (NPC), composition, functions and role of the State Council and the role of the Communist Party. Towards the end of this unit, you will study unitary and federal form of government with reference to UK, US and People's Republic of China (PRC).

4.1 UNIT OBJECTIVES

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

- Describe the features and principles of the of the Constitution of China
- Discuss the fundamental rights and duties of the citizens of China
- Explain the composition, functions and role of the State Council and the role of the Communist Party of China
- Discuss unitary and federal form of government with reference to UK, US and People's Republic of China (PRC)

4.2 THE CHINESE REVOLUTION

The Chinese Revolution had a great impact on the history of China. Beginning with the White Lotus Rebellion (1796–1804), the entire nineteenth century was filled with revolutions for China. As the revolutions picked up their pace, power and influence of the imperial government waned. By the latter half of nineteenth century, military matters kept civilian officials most busy. The Ch'ing dynasty started ambling towards its end by the 1890s and revolutionary spirit was stretching its wings throughout China. This revolutionary spirit was an assorted mix of a nationalist fervour, determination to eradicate the foreign Ch'ing dynasty and other foreign powers who were trying to lull China under their 'spheres of influence'. One such revolution was a rural-peasant revolution whose objective was to renew traditional Chinese values by ushering in a new dynasty that was evolved out of peasantry. Han and Ming dynasties were established in a similar way. Revolution was also marked by a commercial-industrial spirit. In this, the wealthy people of China stood in favour of loose investments based on the actions of the government. Last and the most crucial components of the revolutionary forces in China pertained to the urban thinkers and scholars who felt the need for internalizing modernity and other values of the West.

NOTES

These forces believed that China needed to disregard the traditionally held approaches to society and administration; they espoused the Western style of thinking. The flag bearers of this revolution inspired reform in the latter part of the Ch'ing period. They ruled out the government. Followed by many years of disunity, this brought China together under the nationalist government.

4.2.1 Early Reforms of the 1900s

China was humiliated because of the imposition of the boxer protocols on it by the European powers. The Boxer Rebellion in 1900 proved a failure, but it urged the imperial government to implement reformatory measures and westernize China. The education system was reformed around the same time. Under this, girls were allowed to get admission in schools; curriculum adopted modern subjects like science, mathematics, engineering and geography, leaving behind classics and Confucian studies. Civil services exams also adopted the same curriculum and by 1905, old course structure was abandoned altogether. The Chinese people started sending their youth to Japan and Europe to study new and scientific subjects like economics, and a new era begun with new western modes of thinking like Marxism. Under Yüan Shih-k'ai (1859–1916), military was reorganized. He adopted the western and Japanese organizational models. Establishing military as a career was the key to this new set up. Now, the officer corps was established not on the basis of loyalty to the emperor, but on the basis of loyalty to one's commander. The last Hsüan-tung emperor, Pu Yi ascended the throne in 1909. In the same year, provincial assemblies which were originally suggested by K'ang Yu-wei were organized.

The consultative assembly was constituted in the year 1910. It was democratically elected and bound the whole nation. Though it meant to further the objectives of the imperial court, it ended up being an adversary for the imperial government. This led to an uprising in 1911 in Szechwan Province in the west. This took place because the government was planning on nationalizing the railways. What began as a small agitation soon took the form of a national revolution, which ended the imperial rule in China once and for all.

4.2.2 Sun Yat-Sen

The 1911 revolution took shape from an uprising that occurred in the south-western province of Szechwan. The revolution was motivated by the court's proposal to nationalize the railway. Before this uprising, the revolutionaries were divided into various groups: affluent businessmen, who feared losing money due to the revolution; military commanders desirous of achieving independence; and lastly, Sun Yat-Sen (Figure 4.1). He was a western revolutionary who made an attempt to disintegrate the Ch'ing Dynasty in 1895, but failed. He was the chief stakeholder in the Chinese Revolution. He is often referred to as the father of revolution. He received western education, and envisioned the revolution to be three-pronged in its objectives: to expel the foreign Machu Dynasty from China, to establish a democratic set up of republic China and to equalize land rights and wealth. Sun was responsible for unifying various movements of the Chinese Revolution in the form of the Chinese United League (Chung-kuo T'ung-meng hui, known as the T'ung-meng hui).

NOTES

Figure 4.1 Sun Yat-Sen

After this, Sun began planning the revolution. This was divided in three stages by him: a military government for three years, six-year duration during which democratic government was to be established in China, and ultimately, the time period taken to convert China into a constitutional democracy.

4.2.3 Yüan Shih-Kai

Yüan Shih-Kai was another very important player in the revolution of 1911. He was a conservative bureaucrat and monarchist. He was appointed by imperial government in 1911 to suppress the rebellion. Due to certain important steps taken by him, many deaths were caused, leading to the rise of other revolutions. When these revolutionaries continued, Yüan could clearly see that the overthrow of monarchy was inevitable. He chose to avoid getting in a real conflict with the revolutionaries. Later, the revolution turned him into a virtual dictator of China until his death in 1916.

4.2.4 Beginning of the Revolution of 1911

A revolution had been attempted at least ten times in the Chinese provinces. Most of them occurred in south west. An uprising in Szechwan was the actual beginning of the revolution. Agitated by the policy to nationalize the railways, students came on the streets on 24 August 1911, appealing for a delay in the proposed policy. With the arrest of leaders of the movement, thirty-two people were killed during the tug-of-war between troupes of government and protestors. After this, the people and government troupes began to fight among themselves. It should be related here that the original movement was started by wealthy and conservative people. They had no intention to affect the collapse of the imperial government; they just wanted to avoid any kind of financial loss due to the proposal of nationalization of railways. When this same government refused to negotiate, they started supporting the revolutionaries. Wangchuk was seized by the revolutionaries, after which many provinces, namely, Changsha, Yunnan, Kwangtung and Szechwan declared themselves as independent from the emperor in late October and November. Two-thirds of China was out of the rule of the Ch'ing Empire by the end of November. In December, provincial delegates came together from Central and North China and announced

NOTES

that the nation was now a republic. Sun Yat-Sen was chosen to be the provincial president of the Republic of China. They also set the date of 1 January 1912 to be the first day of the Republic. However, one final task of eliminating the Ch'ing was still left.

4.2.5 Ch'ing Abdication

The imperial court was running out of its last breaths. As a desperate measure towards their survival, Yüan Shih-Kai was chosen to serve as the governor-general of Hunan and Hupeh by the appointed Manchus. These two provinces had not given way to secession. Yüan Shih-Kai was also elected as the prime minister by the national assembly in Beijing. Yüan put forth the conditions to the Manchus that they would have to make a national assembly, forgive the insurrectionists, provide him with the complete control over the military and free political parties from the ban. The emperor, the regent Prince Chün, was only a boy at that time and he granted all these demands to Yüan. However, Yüan's most crucial demand was the command over military. He knew that the Manchu Dynasty will not survive for long, so he aimed at avoiding civil war and becoming the first president of the Republic of China.

The protestors and rebels considered Yüan to be an important leader, who contributed to their cause, for they knew that Yüan could cause the revolution to succeed and avoid civil war at the same time. Yüan announced on 3 January 1912 that he would put pressure on the Ch'ing to come down only if he would be made the president of the Chinese republic. The first voted President, Sun agreed to his conditions. The Mongol or Manchu nobility did not want to come down, so Yüan 'persuaded' them by stirring more than fifty generals to proclaim their allegiance for the republic.

Yüan was summoned by the Empress Dowager on 1 February 1912 to an audience and the government was officially handed over to him. The new government treated the former royals fairly well. It treated the emperor and his family as a foreign royalty and provided them with huge allowances. The emperor was officially abducted on February 12, followed by the official resignation of Sun as the president of the Republic on February 13. The United States was the first foreign country that acknowledged the nation as a republic on 5 April. Even though Yüan had announced himself to be an adherent of republicanism, his intentions against the fact was very clear when he assumed the presidency. All his cronies were given significant positions (War, Interior, Navy and Foreign Affairs) in his first cabinet and the least important positions were given to the revolutionaries. Despite his respect for the Tung meng-hui leaders, their precarious positions were evidently clear.

4.2.6 Kuomintang

Four new parties were absorbed by Sun Yat-Sen's Tung-Meng Hui party in the summer of 1912 to create a new party called the Kuomintang, or nationalist party. Another important insurrectionist, Sung Chaio-Jen controlled the party. He studied in Japan, where he demonstrated considerable interest in the parliamentary form of government. It was in the lines of provisional constitution that parliamentary elections

NOTES

were to be held within six months of the government's formation. The Kuomintang won the majority of seats in Parliament in December. In due process, Sung promised to check on the increasing power of Yüan with the help of responsible cabinet and parties. When Yüan was unable to win Sung with bribes, Yüan got him assassinated on 20 March 1913, when he was going to visit Peking to take charge of the new Parliament. This action resulted in the impeachment of Yüan. Provinces begun to start new revolution to make another republic, but Yüan brought them under control easily.

Yüan's dictatorship

By using threats, Yüan compelled the Parliament to choose him as the president in October, 1913. Later, the Parliament adopted the Tien-t'an Constitution, which favoured the cabinet system of parliament over the presidential system. Due to this, Yüan caused the permanent dissolution of the Parliament. So, Yüan Shih-Kai became the dictator of China by the beginning of 1914. Sun Yat-Sen ran away to Japan and the Kuomintang was eliminated as a political party. Yüan's desire was to become the emperor of China.

It was his ambition that drove him to bring first and second revolution to a halt. Prime Minister of Japan, Okuma, expressed his concern that it would be better for the Japanese and Chinese relations if China followed constitutional monarchy. Frank Good, who was Yüan's American advisor, wrote and published a series of articles explaining that the republican system was not suitable for a country like China. The National People's Representative Assembly voted for monarchy with overwhelming favours on 20 November 1915 and provincial delegates called on Yüan to become the official emperor of China. However in reality, Yüan had no idea of the intensity of anti-monarchical sentiments in China. Most passionate of these were provincial governors and military leaders. Military general Ts'ai Ao was the first one to direct the first revolution in Yunnan province. Slowly, more and more provinces started participating in the revolution and Yüan had to leave his dream of becoming the emperor in late March, 1916. However, provinces continue to advance and Yüan—alone and humiliated—died of uraemia in June. With his death ended the last dream of imperial China.

4.2.7 The Period of Warlordism (1916–1927)

The end of Kuomintang brought an end to the Chinese dream of republic. Due to the secession of provinces in the last year of Yüan's career as president, China was broken into a number of provinces or states. Most of them were under the control of military leaders. One big question was that who would succeed to the post of presidency. The political situation in China fell into a disarray. In the meantime, warlords started imposing aggressive policies against the neighbouring provinces. The reasons were generally trivial and illogical. With this, China suffered from a period of political chaos. At this time, Sun Yat-Sen started consolidating his forces in the south.

But his attempts were far from successful. Therefore, he retired for a certain period and started forming theories, which could result in the unification of China.

NOTES

He converted his party into the Chinese Nationalist Party (Chung-kuo Kuo-min-tang). He succeeded in taking the province of Canton under his seizure and there, he established a republican government. He then declared his government as the national government of China, standing in opposition with the warlord's government who were in power in Beijing at that time. In 1924, Sun Yat-Sen died thinking that his dream had failed since China was torn apart by anarchy and chaos. The republican revolution, to which he gave his life, pulled China into disunity and violence. However, his dream was not over yet. In 1926, Chiang Kai-Shek, a young general who was deeply devoted to Sun's vision continued with his attempts to bring the warlord's government down. In 1928, he succeeded in establishing a nationalist government in Nanking and finally, Sun's dream of unification was brought to reality.

Check Your Progress

1. What did the Boxer Rebellion urge the imperial government to implement?
2. When and why was Yüan Shih-Kai appointed by the imperial government?

4.3 FEATURES AND PRINCIPLES OF THE CONSTITUTION

The following are the important features of the Chinese Constitution:

- A brief document
- A socialist nature
- Supremacy of the Communist Party
- Sovereignty of people
- Unitary multinational state
- Personal property allowed
- Special role of the Liberation Army
- A Chapter on rights and duties
- Democratic centralism
- Unicameral legislature
- Preamble of the Constitution

4.3.1 Political Traditions in China

As one of the world's oldest continuous political systems, China has evolved an exceptionally advanced political culture, one that has guaranteed political change throughout the world. Although, initially under foreign rule, dramatic changes in Chinese life were predictable; it was a sign of the powerful inertial force of the Chinese civilization—the magnitude of the society and the survival power of both, its people and its culture. The following sections take a look at the history and political traditions in China.

NOTES

Confucianism

Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Although a few Chinese today would claim to be Confucian, his thinking, recorded in the 'Analects', serves as a guide to the Chinese political culture.

Confucius (Figure 4.2) believed in the significance of a well thought-out society and in standardizing relationships within that society. There are five types of relationships that shape the social structure: relationships that exist between rulers and subjects, between parents and children, between husband and wife, between elder and younger brothers and between friends. Each individual, regardless of rank, must fulfil his or her responsibilities within these relationships. The Confucian code of conduct includes loyalty, filial piety, benevolence, righteousness and sacrifice, along with ritual and virtue.

Fig. 4.2 *Confucius*

Loyalty guarantees that the people will support the ruler even during hard times and will provide the ruler with political stability and authority. Filial piety means that taking care of elderly parents is everyone's indisputable social responsibility. The Communist Party promoted different versions of this concept in order to assure social welfare for the elderly. Benevolence encourages sympathy for each other and more importantly, the ruler's awareness of the needs of the people. Righteous sacrifice entails a sense of justice and self-sacrifice, protecting the interest of the larger group by sacrificing one's family interest and risking one's life in order to bring down unjust rulers. Ritual is to be used as a means to safeguard and spread established values and moral principles. The ruler is responsible for restoring the moral order and hence should be the most righteous person of all.

Centuries later, Mao Zedong's communist revolution proposed to destroy the Confucian social hierarchy. Although today, few Chinese would claim to believe in Confucianism, political relations between rulers under the Communist Party paradoxically reflect Confucian values. Confucian values can play a two-fold role in political change. Confucianism can create numerous latent barriers to the development of civil society and democratic politics. The first likely barrier is group orientation. By emphasizing one's social responsibilities, individual interests become less important. Thus, the Confucian ideal of group interest can be used to justify superseding individual interest, an ideal that differs from the western concept of the preservation of the individual interests.

NOTES

The second possible barrier to civil society is the hierarchy politics. The state, under the righteous ruler, acts on behalf of the people; individual rights are neither guaranteed nor protected. In addition, government decision-making is not generally administered until a problem becomes a crisis. This authoritarian tradition is a barrier to the democratic administration of government. The third barrier is the propensity to look for righteous leaders while neglecting to build political institutions. The Maoist cult of personality in the 1960s and 1970s and Mao Zedong's efforts to destroy the party and government institutions are good examples of this tendency.

4.3.2 Other Political Ideologies

Confucianism explains only one part of the Chinese political culture. Without doubt, the Chinese Communist Party has never openly claimed to be a Confucian party. Rather, the party constitution states that Marxism, Leninism and Mao Zedong thoughts are the official party ideologies.

Karl Marx and Friedrich Engels are certainly the most familiar western writers in China. They argued that human history is driven by a combined tussle between the working class and the ruling class (historic materialism). The former stands for advanced knowledge and the desire to share political power, while the latter opposes any change that may threaten the status quo. Under capitalism, the working class is exploited by property owners through unfair distribution of wealth.

Marx and Engels called for a working class revolution to overthrow the capitalist system and create a communist society where the means of production are publicly owned and where equality replaces social division.

The theories of communism and socialist revolution inspired the Chinese communist leader, Mao Zedong, who was along the lines of Russian Revolution, trying to search for a visible path to China's modernization. Although Mao accepted the basic Marxist and Leninist ideas about capitalism, imperialism and social revolution, the Chinese Revolution differed from Marxism and Leninism in several ways. First, because of China's weak industrial base, the Chinese Revolution was mostly a rural revolution, which was fought by peasants, rather than being a working-class revolution. Secondly, the Chinese Revolution was a populist movement in which Mao and his comrades directly appealed to the vast majority of the poor.

These features of the Chinese Revolution were later reproduced in Mao's anti-establishment tendencies in the movement against rightists during the year 1957 and in the Great Leap Forward of 1958. Populism discourages the role played by civil servants, technology and intermediate institutions, such as elections, rule of law and necessary elements for a civil society.

The other difference between Maoism and Marxism-Leninism was the concept of 'continuing revolution under the proletarian dictatorship.' Mao reminded China to continue its revolution even after the communist victory. Without continuing the revolution, he warned that socialism would be worn by capitalist and feudal ideas. The Cultural Revolution (1966–76) was, therefore, Mao's last attempt to keep China on the socialist track by fighting against bureaucratic control.

NOTES

Today, at least 70 per cent of Mao's theories are officially portrayed as those of a great leader and 30 per cent are regarded as wrong in approach. These are measured by the social, economic and political costs of his radical campaigns. Post-Mao leaders have, by contrast, adapted a realistic approach to ideology. While still claiming Marxism, Leninism and Maoism as its official ideologies, the Communist Party has quietly shifted its focal point from ideological campaigns to encouraging economic development and implementing market mechanisms.

4.3.3 The Cultural Revolution

The Great Proletariat Cultural Revolution took place in China between 1966 and 1976. People all over the country, in response to the call by Mao and other radical leaders, participated in overthrowing party and state bureaucratic organizations at all levels. Workers, peasants, soldiers and radical college students (Red Guards) with working-class family backgrounds took control over political power. Intellectuals, managers, administrators and professionals were condemned and sent to re-education camps. Radical egalitarian reforms were executed in industrial management, agriculture production, wage distribution, education, medical care, family relations and marriage.

The Cultural Revolution ended in 1976, when Mao died and the radical leaders were arrested. Few other events in human history involved so many people and affected so many aspects of their lives. For Mao and his radical followers, the purpose of the Cultural Revolution was to refuse to go along with interference and keep China on the right track of socialist revolution. Mao saw that his socialist regime was threatened by at least three sources. These were as follows:

(i) **Feudalism:** This included beliefs in social hierarchy.

(ii) **Capitalism:** A threat from the West, which included individualism, a money culture, exploitation and so on.

(iii) **Revisionism:** A Soviet threat, which included Soviet-trained technocrats and their pro-Soviet and elitist attitude.

Some argue that the purpose of the Cultural Revolution was not to achieve ideological purity, but it was to fulfil Mao's ambition of gaining personal power. Ideological concerns and individual power, however, cannot be easily separated. Many have portrayed the Cultural Revolution as the 'dark age' in the modern Chinese history. The period was an economic disaster. Mao focussed on political struggle and overlooked economic growth. The re-education of professionals and administrators was also seen as a waste of talent. The Cultural Revolution was also a political disaster. It supported the worship of Mao and the development of a cult of personality. It also bestowed on China a mob mentality and a deep distrust of political order and political institutions. This not only threatened China's future political stability, but also the changeover from an authoritarian system, that was based on personal rule, to a democratic system in which institutions were more important than individual leaders.

The Cultural Revolution left an ideological void. It not only barred traditional Chinese values, Western liberal democratic ideas and Soviet-style socialism, but

also engendered cynicism with socialism itself. The future Chinese generations were left with little to believe in. The Cultural Revolution was a cultural disaster as well. The Red Guards destroyed many historical landmarks, while many works of traditional art and literature were banned.

The official Chinese government's view of the Cultural Revolution focusses on negative results. Yet others are reminiscent of some positive changes. One result of the Cultural Revolution, as expected, was that it did succeed in curbing the gap between the elites and the masses. The current leaders who have also worked in fields have a better understanding of what China is for the majority of people. Those workers, peasants and soldiers who participated in management during the Cultural Revolution did gain political skills and developed a sense of political efficiency. One has to realize that most of those, who express disapproval of the Cultural Revolution, come from a small group of intellectual and political elites. In fact, many ordinary people benefited from the Cultural Revolution.

Check Your Progress

3. According to Mao, his socialist regime was threatened by which three sources?
4. Why was the Cultural Revolution in China a cultural disaster?

4.4 FUNDAMENTAL RIGHTS AND DUTIES

Under this section, the fundamental rights and duties of the citizens of People's Republic of China will be discussed.

Article 33: Citizenship, Equality

1. All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.
2. All citizens of the People's Republic of China are equal before the law.
3. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 34: Electoral Rights and Equality

All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.

Article 35

Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.

NOTES

Article 36: Religion

1. Citizens of the People's Republic of China enjoy freedom of religious belief.
2. No state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.
3. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.
4. Religious bodies and religious affairs are not subject to any foreign domination.

Article 37: Personal Freedom

1. The personal freedom of citizens of the People's Republic of China is inviolable.
2. No citizen may be arrested except with the approval or by decision of a people's protectorate or by decision of a people's court, and arrests must be made by a public security organ.
3. Unlawful deprivation or restriction of citizens' personal freedom by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

Article 38: Personal Dignity

The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.

Article 39: Home

The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited.

Article 40: Correspondence

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence except in cases where, to meet the needs of state security or of investigation into criminal offenses, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

Article 41: Freedom of Speech

1. Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

NOTES

2. The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposure, or retaliate against the citizens making them.
3. Citizens who have suffered losses through infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

Article 42: Work

1. Citizens of the People's Republic of China have the right as well as the duty to work.
2. Using various channels, the state creates conditions for employment, strengthens labour protection, improves working conditions, and, on the basis of expanded production, increases remuneration for work and social benefits.
3. Work is the glorious duty of every able-bodied citizen. All working people in state enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The state promotes socialist labour emulation, and commends and rewards model and advanced workers. The state encourages citizens to take part in voluntary labour.
4. The state provides necessary vocational training to citizens before they are employed.

Article 43: Leisure

1. Working people in the People's Republic of China have the right to rest.
2. The state expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

Article 44: Retirement

The state prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. The livelihood of retired personnel is ensured by the state and society.

Article 45: Social Security

1. Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill, or disabled. The state develops the social insurance, social relief, and medical and health services that are required to enable citizens to enjoy this right.
2. The state and society ensure the livelihood of disabled members of the armed forces, provide pensions for the families of martyrs, and give preferential treatment to the families of military personnel.
3. The state and society help make arrangements for the work, livelihood and education of the blind, deaf, mutes and other handicapped citizens.

NOTES

Article 46: Education

1. Citizens of the People's Republic of China have the duty as well as the right to receive education.
2. The state promotes the all-round moral, intellectual, and physical development of children and young people.

Article 47: Research

Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation, and other cultural pursuits. The state encourages and assists creative endeavours conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art, and other cultural work.

Article 48: Gender Equality

1. Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural, and social, including family life.
2. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike, and trains and selects cadres from among women.

Article 49: Marriage, Family, Parentage

1. Marriage, the family, and mother and child are protected by the state.
2. Both husband and wife have the duty to practice family planning.
3. Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents.
4. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women, and children is prohibited.

Article 50: Nationals Abroad

The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

Article 51: Interest of the State

The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens.

Article 52: Unity

It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

Article 53: Obedience to the Constitution

Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property, and observe labour discipline and public order and respect social ethics.

NOTES

Article 54: Integrity of the Motherland

It is the duty of citizens of the People's Republic of China to safeguard the security, honour, and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.

Article 55: Defence

1. It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression.
2. It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

Article 56: Taxation

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

CHECK YOUR PROGRESS

5. What does Article 35 of the Chinese constitution state?
6. Which Article of the Chinese Constitution talks about gender equality and what does it state?

4.5 NATIONAL PEOPLE'S CONGRESS

The National People's Congress holds a significant position in the Chinese Government. Let us discuss it in detail.

4.5.1 The Organization of the National People's Congress

The National People's Congress (NPC) is an essential part of the central government's system of the People's Republic of China. Due to its exclusive nature and importance, it is treated among the organs of the Central People's Government. The Constitution of 1954 has rendered the National People's Congress with immense power, and it is the topmost form of state authority and the only legislative authority of China. According to Article 59, the National People's Congress is composed of deputies elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces.

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

NOTES

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

4.5.2 Functions of the National People's Congress

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

- To administer the enforcement of the Constitution and amend it
  - o To enact laws
  - o To elect the chairman and vice-chairman of the People's Republic of China, the president of the Supreme People's Court and the procurator general
  - o To choose the premier of the state council, vice-chairman and members of the council of national defence, on recommendation of the chairman of the People's Republic of China
  - o To decide upon the constituent members of the state council upon the premier's reference
  - o To remove the officials who are elected or appointed by the Congress from the office
  - o To study and give approval for the state budget and the financial report
  - o To suspend the responsible officials of the state council or of its ministries and commissions
  - o To decide on national economic plans, general amnesties and questions of war and peace
  - o To ratify the status and boundaries of provinces, autonomous regions and municipalities which are directly under the central authority
  - o To perform duties and responsibilities that are considered to be unnecessary by the Congress

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

4.5.3 The Standing Committee of the National People's Congress

The standing committee is a permanent body of the National People's Congress to which it is responsible and answerable. It comprises a chairman and a number of vice-chairmen and members, as well as a secretary general. They are elected by the Congress to perform its functions until election of a new committee by the succeeding Congress or their recall by the existing Congress. The Chairman supervises over the meetings of the standing committee. Resolutions may be adopted by a vote of simple majority.

NOTES

The standing committee, elected by the First National People's Congress on 27 September 1954, comprised a chairman, thirteen vice-chairmen and sixty-five members. Liu Shao-chi was the elected chairman. Political leaders of different parties and groups were represented at the Committee. The standing committee exercises the following authority and responsibilities:

- To elect deputies to the National People's Congress
- To assemble the next National People's Congress
- To construe laws and issue decrees
- To administer the tasks of the state council, the Supreme People's Court and the Supreme People's Procuratorate
- To repeal those decisions and orders given by the state council that are in conflict with the Constitution, laws or decrees
- To amend incongruous annual adjudications of the government authorities of provinces, autonomous regions and municipalities which fall directly under the central authority
- To ordain or eliminate vice-premiers, ministers, heads of commissions or secretary general of the state council, in case the Congress is not in session
- To ordain or dismiss vice-presidents, judges, deputy procurators general, procurators and other members of the judicial committee of the Supreme People's Court and the procuratorial committee of the Supreme People's Procuratorate
- To make a decision on the selection or to recall diplomatic representatives to foreign states
- To introduce military, diplomatic and other special titles and ranks
- To institute and choose the award of state orders, medals and titles of honour
- To make a decision relating to the granting of pardons
- To make decisions on behalf of and when the National People's Congress is in recess
- To decide on the proclamation of a state of war in the event of foreign invasion or due to treaty obligations for collective defence
- To decide on general or partial mobilization or enforcement of martial law
- To exercise such other functions and powers which are authorized by the National People's Congress

4.5.4 Other Committees and Commissions of Inquiry

Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees. The NPC can undertake the investigation of certain matters by instituting commissions of inquiry; if not in session, this task is performed by the standing committee. All state organs, people's organizations and citizens concerned are needed to offer the required information to these commissions, if requested. If

NOTES

the National People's Congress is not in session, the standing committee directs the nationalities committee and the bills committee. Each committee comprises a chairman and a certain number of vice-chairmen and other concerned members. Whereas the nature of the committees on bills, budgets and credentials are self-explanatory, the work of the nationalities committee requires additional embellishment. Two of the functions of the committees are as follows:

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

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

CHECK YOUR PROGRESS

7. Which is the only legislative authority in China?
8. State any two functions of the National People's Congress.

4.6 STATE COUNCIL: COMPOSITION, FUNCTIONS AND ROLE

The state council is the most important administrative authority of the People's Republic of China. Despite the fact that the general organization of the state council is similar to that of the government administrative council, there are certain differences between the two organs. The intermediary committees between the premier and ministers were abolished. Nor was there a provision for council members without portfolio. Differences can also be found in the number of vice-premiers, ministries and commissions. The state council resembles the Soviet council of the people's commissars in some respects, but the Chinese communist government chooses to retain the traditional pattern of ministries and commissions.

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

Authority and Responsibilities of the State Council

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

- To adopt measures pertaining to administration and to issue and implement decisions and orders

NOTES

- To propose and forward bills to the National People's Congress or its standing committee
- To organize and direct the work of the ministries and commissions under the council and that of local administrative bodies all over the country
- To amend or cancel improper directives and instructions issued by ministries, commissions as well as local administrative organs
- To implement the national economic policies and points of the state budget
- To direct the external affairs as well as international and national trade
- To monitor cultural, educational and public health work, as well as the affairs concerning national minorities and overseas Chinese people
- To secure the interests of the state, ensure law and order and protect the rights of the citizens
- To strengthen the national defence forces
- To sanction the stages and limits of independent prefectures, districts, autonomous districts and municipalities
- To hire or eliminate administrative staff according to the provisions of law
- To execute other authority and responsibilities that are vested in the state council by the National People's Congress or its standing committee

According to the Organic Law of State Council of 1954, the state council has the power to appoint and remove the administrative personnel under the following groupings:

- Deputy secretaries general of the state council, vice-ministers and assistants to the ministers, deputy heads and members and commissions, heads and deputy heads of departments and directors and deputy directors of bureaus under ministries and commissions
- Heads and deputy heads of boards, directors and deputy directors of bureaus under the people's councils of provinces and municipalities directly subject to the central authority
- Commissioners and special administrative offices
- Officials in autonomous regions with the rank corresponding to those listed under categories 2 and 3
- Counsellors of diplomatic missions and consul generals
- Presidents and vice-presidents of national universities and colleges
- Other officials corresponding to the above ranks

Even though the state council has the vast power of appointment and removal of officials, those on local levels are practically decided upon by the local government councils, which submit them to the state council for verification as a matter of procedural requirement. Table 4.1 shows the membership of previous National People's Congresses.

NOTES

Table 4.1 Membership of Previous National People's Congresses

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

CHECK YOUR PROGRESS

9. Which is the most important administrative authority of the People's Republic of China?
10. State any two authority and responsibilities of the State Council of China.

4.7 ROLE OF THE COMMUNIST PARTY

For modern democratic politics, the political party system is an essential constituent. The national conditions and social growth are the factors, which indicate the configuration of political governance that a country should adopt. The configuration of parties in countries around the world is a characteristic of their divergent cultures.

China's multi-party system is completely different from the kind that is followed in the West. The CPC (Communist Party of China) advocates multi-party cooperation and political consultation. The western political system is characterized by a power tussle between the two parties and it is also dissimilar to the order of a single party that is adopted by some countries. The implementation and growth of the practice of multi-party cooperation has been continuous throughout the struggle of the Chinese revolution, through formation and reformation. Political system in China is an elementary system of politics that is aimed at going with the stipulations in China. It thrives on the ideals of socialism, which has Chinese peculiarities and that is a vital constituent of Chinese socialist democratic politics. Figure 4.3 shows the symbol of the Communist Party of China.

Fig. 4.3 Symbol of the Communist Party of China

The Chinese Constitution contains that 'the existence and growth of the multi-party cooperation and political consultation system that is led by the Communist Party of China will go on for a long time.' All democratic parties and the Communist Party of China ought to perceive the constitution as the primary and elementary standard for their demeanour and should maintain the pride of the constitution and make its realization certain. The CPC and eight other political parties make up the multi-party cooperation system in China. The names of these eight political parties are as follows:

- Revolutionary Committee of the Chinese Kuomintang
- China Democratic League
- China National Democratic Construction Association
- China Association for Promoting Democracy
- Chinese Peasants and Workers Democratic Party
- China Zhi Gong Dang
- Jiu San Society
- Taiwan Democratic Self-Government League

The Chinese People's Political Consultative Conference (CPPCC) is an important organization within the CPC. The CPC along with other eight parties aims to further the goals of the Chinese socialism by mutual co-operation, supervision and teamwork. As a result, these parties promote the main factors of the 'multi-party cooperation system led by the CPC.'

Under the authority of CPC, the remaining eight parties exhibit active participation in all affairs of the state. The multi-party cooperation system has tremendous political benefits, strength of endurance and is remarkably active in the Chinese politics and society. This system recognizes the position and purposes of the Communist Party of China and the eight extra political parties. It regards them as part of China's basic political system that is essential for the political survival of the state and the association between parties.

The Communist Party of China embraces the foremost decision-making position. Its leadership position emerged from and was amalgamated through the extensive period of revolution, creation and reformation and due to the inclination of history and populace. All the way through its struggle for over eighty years, this party has led China from beginning to the end of a novel democratic revolution for

NOTES

achieving the country's independence and freedom of the people. It established the rule of the state where the country was run by the people, along with protecting the national unification and harmony of every cultural group. This party founded the socialist system together with completing the most altruistic social revolution in the history of China; in addition to commencing the Chinese-style socialist foundation and framed a truthful path towards the route of national opulence as well as a blissful life for the nation and its citizens.

The area of China comes to about 9.6 million sq km, comprising 1.3 billion people and fifty-six ethnic tribes. A powerful centre of control leads this huge and densely populated country. The expansion of China's highly developed resourceful forces, the course of China's sophisticated traditions and primary concerns of the vast majority of the Chinese people are symbolized by the CPC. The powerful leadership by the Communist Party of China is a deep-seated assurance for China's socialist transformation, national alliance, communal harmony and unity. This is desired by those belonging to all ethnicities, which emerged as a result of years of evolution and transformation.

There are eight democratic parties, who partake in state affairs. The definite role played by the eight democratic parties along with the intrinsic necessities of the people's democratic dictatorship in the Chinese politics, affirms their duties as participating groups. The Communist Party of China is an important trademark of people's democracy, due to the following factors:

- The political coalitions of socialist working people
- Engineers of socialism
- Loyalists who hold up socialism, with whom these parties uphold ties
- An array of the people with their contribution in state matters and leadership

The matters of the state chiefly take the following forms:

- Discussion on elementary state policies
- Contribution in the execution of power of the state and the election of leaders of the state
- Management of state affairs
- Preparation and execution of the state policy and course of actions, laws and guidelines

The position, rights and privileges of these parties are guarded by the Constitution. A novel association of unison and collaboration has been recognized amidst the CPC and the eight democratic parties. The CPC has made companions with these democratic parties in extensive periods of common struggle. Its elemental hypothesis, course and knowledge have been settled upon by democratic parties and hence, the structure of socialism in the company of Chinese traits has turned out to be the common aim of every party of China. In an open-minded, secure and harmonious political environment, the Communist Party of China upholds extensive political collaboration with democratic parties. It concentrates on their development in politics and material matters and directs them in unison towards their progression.

NOTES

The collaboration of the CPC, in addition to the democratic parties is rich in matter. First, the Communist Party of China seeks advice from democratic parties regarding core principles, laws, procedures and problems. Secondly, members of democratic parties have access to a fixed number of positions in the powerful hierarchy of the state. It is their responsibility to carry out their responsibilities in accordance with the law. Thirdly, besides judicial organs, members of political parties are appointed to critical offices within the central and local governments. The governments of the people at various hierarchies, communicates with democratic parties, through a number of means to utilize their participation and relate it to the affairs of the state. Fourthly, democratic parties participate actively in all debates related to significant issues of the state via the CPCC. Lastly, the CPC assists all political parties in activities related to nation's progress, transformation of the society and in improving the economy. These are the main purposes of democratic parties as participating parties and a classic feature of China's multi-party cooperation system.

All democratic parties as well as the Communist Party of China remain updated about each other's affairs and actions. This parameter in political management is affected through exchanging outlooks and conveying appreciations, criticisms and proposals. Irrespective of the fact that the Communist Party of China is the most important decision-making party, it surely requests for the most part, directs, advises and supervises the democratic parties and vice-versa.

The democratic administration largely covers the execution of laws contained in the Constitution, the preparation and execution of important laws and plans of the Communist Party of China and the state, the vocation of CPC committees at various grades, in addition to CPC-member officials' presentation of sense of duty and spotless administration. The organization of democratic parties is unique. Nevertheless, it is very important for escalation and improvement of the administration within the CPC and the betterment of the Chinese socialist system. The multi-party cooperation system has shaped a novel kind of political party system for humankind, a system which is one of its kind. Under the guidelines of this system, the CPC and the other eight parties work collectively and are aware of each other's activities. The Communist Party of China rules the country and other parties, which contribute in state affairs and are consistent with the law, as opposed to ruling the country sequentially. This kind of system works in harmony with the system of people's Congresses to make sure that its citizens feel empowered to decide in matters of the state. This type of democracy is enjoyed only by a few people.

The importance and roles of the Chinese multi-party cooperation system are enumerated in the following points:

- **Political participation:** The multi-party cooperation system:
  - Puts together a range of social forces within the system of politics
  - Provides a structured medium to facilitate the participation of political parties in the Chinese political system
  - Amalgamates and develops the groundwork for the people's democratic dictatorship
  - Channels the interest of every sector

NOTES

- Groups the understanding of the citizens
- Seeks suggestions extensively by promoting the decisions of the ruling party and the state, based on science and democracy
- Presses forward the constructive and enduring expansion of socialist democracy on the strength of upholding social solidity

- **Expression of interests:** The People's Republic of China is a large nation with a dense population, which consists of social classes, stratum and factions. The culture consists of a large number of dissimilarities and variances that are based on common fundamental welfare. In particular, seeing the growth of the socialist market economy, the differences within the economic system keep on increasing. The mixture within the society and the general welfare experience a large number of alterations in the people's ideas. The multi-party cooperation system is capable of proficiently reflecting the welfares, needs and burdens of the entire social segment. This system creates and expands channels for expressing interests and upholds social synchronization and solidity.
- **Social integration:** China's demanding and multifaceted mission of transformation needs a political system to facilitate a powerful role in social integration. Merging the prevalent cooperation with democratic parties along with the firm leadership of the CPC, the multi-party cooperation system has emerged as a significant symbol of social unity. Focussing on the final goal of structured socialism with Chinese attributes, the Communist Party of China (assisted by democratic parties) crafts strong political identification. It also streamlines the progress of optimum utilization of political assets, synergizes the interests of all sectors and guides and directs the entire social structure towards achieving progress and development.
- **Democratic supervision:** Shared management amid democratic parties and the Communist Party of China encourages the growth of administrative functions in the system and evades unusual inadequacies, which arise due to administrative discrepancies. Democratic parties cater to the most obvious interests and needs of the relevant groups of people and provide an all-round supervision separately from the self-supervision by the Communist Party of China. This helps in the advancement of the administration of the ruling party, based on the tenets of science and democracy. It is aimed at dispelling negative forces like bureaucracy and similar phenomena and consequently strengthening and improving every aspect of the functioning of the ruling party.
- **Maintenance of stability:** The multi-party cooperation system restores variations and debate in the midst of collaboration and discussion, thereby evading political insecurity because of recurrent changes of government, consequential from disagreement among political parties. Combining the extensive participation of democratic parties with the firm leadership of the Communist Party of China, this system is able to effectively determine a variety of social disagreements and differences, uphold political steadiness, and inculcate peace and synchronization within the society.

NOTES

The multi-party cooperation system in China gives an identity to the basic requirements of democracy within a society. It tries to ensure a democratic future for the people, supported by the exclusive singularities of the Chinese political system. In synchronization with the current scenario, the most important reason for advocating socialist democracy is adhering to and streamlining the multi-party cooperation system, led by the Communist Party of China. This involves increasing the contribution of the people to active politics, increasing the number of channels for expressing social interest and creating an amicable environment for the development of the society.

Check Your Progress

11. Name any two political parties of China.
12. What is CPPCC?

4.8 UNITARY AND FEDERAL FORM OF GOVERNMENT WITH REFERENCE TO UK, US AND PRC

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

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

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

The opposite of unitary government will be a federal government where governance powers are not centralized or where central government is a weak one. Political powers are actively decentralized and individual states have more sovereignty compared to those in a unitary state. Principally, a federal government holds some middle ground between the unitary and the federal system because powers are

NOTES

distributed between the central and local governments. The political system of the United States of America is an example of a federal system. One needs to also explore the nature of the state when the analysis of the form of government is being made. For instance, not every state will encourage social and political integration and some will monopolize force in their hands, thus encouraging one form of governance compared to the other.

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

4.8.1 Salient Features of Unitary Government

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

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

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

NOTES

governments exist but it is the centre which decides what powers will be given to them. Even these are carried out with central control or supervision.

- **Single and simple government:** The unitary system of government is a simple system. There exist no provincial assemblies, executives or upper chambers in the Centre. One exception to this is Britain. Yet, most unitary systems are defined by single central government where the popular voting is held for unicameral legislature. It is the central legislature that legislates and executes. The expenses of such a system are minor and a unified command is adopted in running the state. Democratic systems can be expensive; upper chambers demand finances and weak states cannot afford them. Thus, unitary system is simple and understandable. Its structures and powers also understood easily by the citizens.
- **Uniformity of laws:** Laws in unitary system are uniform laws unlike the ones in the federal state. This is one crucial characteristic of a unitary government. Laws are made and executed by the central government for the entire state. They are enforced without any distinction being made for any state. In contrast, in a federal system, the nature of a law can vary from state to state. But in the unitary system, the laws are made uniform on the principles of justice and nature of human beings. In a federation however, laws of similar nature can have sharp contrasts, thus complicating their understanding.
- **No distribution of powers:** As stated, within a federation powers are distributed among the federal and the state. In contrast, in the unitary system, no such distribution of powers is made. All powers rest with the centre. One of the advantages of this lack of distribution of power is that the government does not have to bother about delegating powers and instead concentrate on more welfare issues and development of the state and citizens.
- **Flexible Constitutions:** Flexibility is what defines the constitutions of unitary states. It is within federal systems that a rigid constitution is required so as to clearly define and maintain the relationship between the centre and the state. One of the advantages of a flexible constitution is that it can be altered as be the needs of the state amid the continuously changing circumstances. As said, a constitution is a document which is necessary to run a state according to the changing orientations. A flexible constitution ensures that the desires and changing demands of people are included in it accordingly and from time to time. It is crucial to the idea of progressiveness. Thus, constitutions in unitary systems are evolutionary and are strong to respond to contingency situations.
- **Despotism attributes a Unitary State:** A unitary state can turn totalitarian or despotic when its rulers do not follow rules or move away from the path of patriotism. Since powers are with the Centre and there is no check on the activities of the government, there are higher chances of misuse. Such a government can become absolute and abuse its powers mainly due to the absence of an internal check system.

NOTES

- **Responsibility:** In contrast to a federation, a unitary system is more responsible. Certain defined institutions have fixed responsibility and this is a significant characteristic of a unitary system. The central government is responsible for legislation, executive for implementation and judiciary for adjudication. Thus, it is these institutions that are responsible for their activities and therefore they try to operate within the law of the land.
- **Local government institutions:** Usually in a unitary form of government, the powers lie in the hands of urban bureaucracy. Such a government has also been found to be limited in the city areas and have no influence in remote towns and villages. Therefore, to maintain its influence in rural areas, the central governments manipulate their affairs through municipalities and other such local institutions. In one way or other, local governments also become important and effective in unitary systems. Such examples are found in states like China and Great Britain where local governments are very powerful. The central government maintains its influence through local governments and also gives them financial support to run their daily affairs. In fact, local representatives are elected for these institutions on the guidelines of the central government.

Advantages of Unitary Form of Government

Some advantages of unitary system include:

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

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

(iii) Unitary systems have greater unity and stability.

Disadvantages of Unitary Form of Government

Disadvantages of such a form of government include:

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

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

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

4.8.2 Federal Government

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

NOTES

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

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

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

Where states have more autonomy than others, such federations are called asymmetric. Malaysia is an example of one such federation wherein states of Sarawak and Sabah joined the federation on their own terms and conditions. Thus, a federation often appears after states reach an agreement about it. There can be many factors that could bring in states together. For instance, they might want to

NOTES

solve mutual problems, provide for mutual defence or to create a nation state for an ethnicity spread over several states. The former happened in the case of the United States and Switzerland and the latter with Germany. Just like the fact that the history of different countries may vary, similarly their federal system can also differ on several counts. One unique system is that of Australia's where it came into being after citizens of different states voted in the affirmative to a referendum to adopt the Australian Constitution. Brazil has experienced with both federal and unitary system in the past. Till date, some of the states in Brazil maintain the borders they had during Portuguese colonization. Its newest state, Tocantins, was created mainly for administrative reasons in the 1988 Constitution.

History of Federalism

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

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

Advantages of Federal Form of Government

Some advantages of a federal form of government are:

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

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

(iii) It is a participatory system and there are more opportunities to make decisions. For instance, what goes into school curriculums and ways in which highways

and other projects are to be carried out, can be decided through participation of local populace.

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

NOTES

Disadvantages of Federal Form of Government

Disadvantages of federal form of government include:

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

(ii) Duplication of services.

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

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

4.8.3 The US Federalism

The United States of America is a federal constitutional republic where powers reserved for the national government are shared by the President, the Congress and the judiciary. Additionally, the federal government shares its sovereignty with the state governments. The President heads the Executive Branch and is not under the control of the legislature. The power of this legislature is divided into two chambers—the Senate and the House of Representatives.

The Judicial Branch is comprised of the Supreme Court and lower federal courts; it is from here that the judicial powers are exercised. Their functions also pertain to interpretation of the Constitution, federal laws and regulations. Disputes between the executive and the legislature are also resolved by them. The layout of the federal government is detailed in the US Constitution.

Though other parties also exist, the history of the US politics is the history of two political parties—the Democratic and the Republican—since the time of the American Civil War. The political system of the country can be differentiated with that of other developed democracies on various counts, such as:

- Separation of power between the Legislature and Executive
- Enormous power to the Upper House of the Legislature
- Wider scope of power with the Supreme Court
- Domination of the political ground by two parties

There are a few developed democracies across the world where a third political party makes such negligible political influence. The United States is one of them. The American Constitution has created a federal entity. And this is one of the dominant features of the government system of the US. This does not mean that the states can be ignored. In fact, the state governments cater to people in significant ways. Citizens are divided as subjects to a variety of units of the local government

NOTES

such as the counties, municipalities and special districts, all of which are the units of the local government. We know by now that the history and character of the nature of governance of a country is reflected in the multiplicity of its jurisdictions.

Uniquely, in the US, the federal government originated from the coming together of different states. The states that presently comprise the United States of America were originally established as separate colonies with own, independent governments. Thereafter, the said colonies created local government units for the smooth conduct of their various functions. Over time, new states were admitted and were managed on the principles of the existing ones as the country expanded.

Interestingly, while the word 'federalism' is never mentioned in the Constitution of the US, it is its most innovative principles of governance. The Constitution of the US divided powers between the federal and the state governments. This is because, in the US, different states struggled to come under an umbrella and form a central government. The struggle is apparent in the Constitution and debates around the role of national versus state government are common. John Marshall, the longest serving chief justice of the US Supreme Court, once famously observed that this tension between the national and the state 'is perpetually arising and will probably continue to arise as long as our system shall exist'.

The debate around federalism started in the 1770s, with the introduction of the Articles of Confederation. Discontent marked this Article and a political movement started to scrap it since it constrained the powers of the federal government. For instance, the Article gave power to the Congress to sign treaties at its whims or even declare war. In practice, however, this would not have been possible since such decisions also required a unanimous vote. Despite being contradictory to the principles of federalism, this Article paved the way for the beginning of the US federalism. By 18th century, the United States of America became the first modern national federation in the world.

Thus, as mentioned above, a federal system or federalism can be referred to as primarily a government where political power as well as governance responsibilities are divided or shared between the central and state units. Together, they are called federation. The US' political system can be understood keeping this in mind. Put simply, it can be understood as a dynamic and evolving relationship between the states and the central government of the country.

Going back to the 18th century and the development of federalism, the movement against the Articles of Confederation found strength in the Shays' Rebellion of 1786–1787. The Shays' Rebellion was an armed movement of Yeoman farmers in Western Massachusetts, who led the uprising against the federal government which had put the economy in danger after the costly American Revolution. The then federal government had failed poorly in raising an army to crush the rebellion, forcing the Massachusetts government to do so on its own.

A defining moment came in the form of The Federalist Papers, which comprised 85 anonymous essays defending the new Constitution. These were published from the New York City to persuade citizens to vote for ratification. Authored by Alexander Hamilton and James Madison, with contributions by John

NOTES

Jay, the articles explored the advantages of the new Constitution and provided a detailed analysis of the various Articles of the Constitution using political theories. Till date, The Federalist Papers are considered the most significant documents of the American political science.

In the essay titled 'Federalist No 46', Madison had argued that the states and national government 'are, in fact, but different agents and trustees of the people, constituted with different powers'. Hamilton, in 'Federalist No 28', had asserted that both the state and the national government would benefit the people, since 'if their [the peoples'] rights are invaded by either, they can make use of the other as the instrument of redress'. It was evident that both Hamilton and Madison, despite in favour of federalism, had different views on its work in practice. Along with 'federalists' including Washington, Adams, and Marshall, Hamilton wanted to put in place regressive national powers at the cost of those of the state. On the other hand, Madison, along with other advocates of states' rights like Thomas Jefferson, sought to empower the states.

However, the movement for federalism was reverberating in other states too by this time. In 1787, fifty-five delegates deliberated on bicameral legislature (United States Congress), balanced representation of small and large states (Great Compromise), and checks and balances, at a Constitutional convention in Philadelphia. In a memorandum to the delegates before the convention, James Madison argued that a strong central government was required since 'one could hardly expect the state legislatures to take enlightened views on national affairs'. In a historic development that followed, the delegates at the convention dropped their original objectives and began framing a new constitution. It was released for the public following the conclusion of the convention and by then, the Federalist movement was the central objective to ratify the constitution.

The draft of the constitution was backed by none other than George Washington. This, along with the skillful crafting of its proponents, the constitution was finally ratified by all states. Under the Articles of Confederation, dates for fresh election were set. The outgoing Congress also set 4 March 1789, as the date for new government to take over the reins of the country. In 1789, the Congress put 12 Articles of the constitution under amendment. Of these, 10 Articles, drafted by James Madison, were passed on 15 December 1791, and are famously known as the Bill of Rights. In the final amendment, the guidelines for federalism in the US were laid down.

Interestingly, those against the new constitution were termed as 'anti-federalists'. Their opposition was influenced by local issues than material; they interests mainly laid in support of plantation and farm owners than commerce or finance. They believed that these interests could be saved by stronger state government. The criticism of the anti-federalist was focused on the absence of the Bill of Rights, which Federalists later promised to introduce.

The early days

As stated already, the federal system in the United States is a dynamic concept and has evolved ever since it found shape in the constitution. For this Unit, it would be

NOTES

impossible to provide in detail all factors of its political and constitutional legacy. Thus, the landmark events that led to its development and evolution since the 18th century are mentioned briefly below. As should be clear by now, it was the Articles of Confederation which lent the first spark amid states against the federal government. The focus was on limiting the powers of the federal government. By the 1790s, huge discount marked the discourse on federal government, especially after its failure to contain the farmers' rebellion in Massachusetts. After the Philadelphia conference, came the constitution in support of federalism and by 1791, federalism became a reality.

The Era of Marshall and Taney, and Dual Federalism

It was the then chief justice John Marshall who played the key role in deciding the sharing of power between the federal and the state government in the early 18th century. His role was important because by that time, there was no clear understanding of federalism. Hence, it came upon the Supreme Court to decide on the issues of both power and decision-making between the two entities. A few cases helped in specifically widening the scope of the power of the federal government. Marshall was succeeded by Roger B. Taney, who passed many verdicts that favoured equally the federal and state governments. These judgments sowed the seeds of dual federalism in the country.

Dual federalism provides for the federal government to act within its boundaries, i.e. within powers given to it and not go beyond them. The rest of the powers were allotted to the state governments. However, the sixteenth and the seventeenth amendment gave unprecedented powers to the federal government. Despite these contentions, dual federalism was practiced for at least a century following the judgments of Marshall and Taney. Later, however, the demarcation between the states became sharper and local governments also started playing an important role in governance. This forced another division of power. Thus, the federal government was allotted responsibilities of subjects like national defence, foreign policy, copyrights and currency patents. The state governments, on the other hand, were to deal with issues pertaining to civil service laws, property law, labour and union laws. Furthermore, the local governments were demarcated issues related to assessable improvements and basic public services. This caused a major shift in federalism in the US.

Students can read through the Articles of Confederation and the framing of the US Constitution, along with debates around the two issues, for an in-depth understanding of federalism in the US.

Great Depression and Abrupt Change

By the late 19th and early 20th century, the US economy underwent major overhaul. As a result of the Great Depression in 1929, the federal government once against came to assume major responsibility of the government. President Franklin Roosevelt introduced the New Deal policies, catching the pulse of the citizens who increasingly wanted the federal government to cooperate with other levels of government before implementing policies that had potential to make national impact. This was referred

NOTES

to as Cooperative Federalism wherein funds of federal government were distributed as grants in aid or categorical grants. The government was thus better able to control the usage of money. This was called devolution evolution. In fact, all later presidents till the time Bill Clinton came to power, used this method with the objective of restoring the lost autonomy and power to the states which the New Deal policies had led to.

The late 20th and the 21st centuries gave way to what is known as new federalism, in the US. This refers to the shift of power to the states from the centre and this movement was led by President Ronald Reagan (1981-1989). Under this, the federal government determined the foreign policy and had the exclusive power to make treaties, declare war, and control imports and exports. It also has the only authority to print the national currency. Other governance responsibilities are, however, shared between the federal and the state governments, including matters related to taxation, business regulation, environmental protection and civil rights. The states clearly enjoy more powers than before—they have independent legislative, executive and judicial branches and have the power to pass, enforce, and interpret laws but within the realm of the Constitution.

We can see that federalism has evolved significantly since it was first introduced. Students will also know by now the two kinds of federalism that define US political theory—dual federalism and cooperative federalism. The first refers to a system where the state governments enjoy unprecedented powers and the federal government has only those powers which are given to it by the Constitution. That is, the federal government could only exercise those powers which were mentioned for it in the constitution. In cooperative federalism, the national, state, and local governments work together for the welfare of the people as the national government was considered supreme over the states.

Most developed nations across the world are experiencing struggles over the sharing of power between the central and the state governments. One can now see that in the US, the federal system is one where the central and state governments exercise powers within their own boundaries. Other countries with such systems include Canada and Germany. This can be contrasted with the unitary systems of government where national governments hold all power in comparison to the state or local governments. The example of such a system is France.

Notwithstanding the kind of federalism being practiced, the US Constitution lays down specific powers for the state and the federal governments. These are:

- **Delegated powers:** Delegated powers are specifically referred within the realm of the federal government. These pertain to the regulation of interstate and international trade, coinage and currency, war, maintenance of armed forces, postal system, enforcement of copyrights and power to enter into treaties.
- **Reserved powers:** As the name suggests, under this not all powers are delegated to the federal government but are also reserved or saved for the state governments. These powers include the authority to establish schools, establish local governments and police powers.

NOTES

- **Implied powers:** These are those powers which are not clearly mentioned in the constitution but are understood to be necessary or allowed. The 'necessary and proper clause' of the constitution states that Congress has the power 'to make all laws which shall be necessary and proper for executing the foregoing powers'.
- **Concurrent powers**: The word concurrent is suggestive of 'two things at the same time'. Thus, these are those powers that both the federal and state governments share simultaneously. For instance, the power to tax, maintain courts and the ability to construct and maintain roads.

The US Constitution recognized the sovereignty of the state while at the same time promoting national powers in certain important spheres. In fact, the US Constitution has mentioned some key spheres of power for the states but at the same time sites many potential powers for the national government. These are also known as implied powers and are sited in, for instance, under Article I, Section 8 which empowers the Congress to implement laws 'necessary and proper'. They also designate the president as the 'commander in chief' of the country. This power has empowered presidents, including Abraham Lincoln, Franklin Roosevelt, and George Bush, to exercise powers in times of national emergencies.

Powers have also been granted to the Supreme Court. For instance, the apex court holds the power of judicial review, wherein it can reject those acts of the legislature and the executive, as well as those of the state, which it considers unconstitutional. Such powers of the judiciary were augmented during the hearing of the case of *Marbury vs Madison* in 1802, when the then chief justice John Marshall had spoken in favour of the court's powers. The specific powers given to the national and state governments are called delegated powers. However, Article VI mentions that powers of the national government are 'the supreme law of the land' and the states must obey them.

The above review of federalism in the US reveals that the division of power between the national and the state governments are not distinct and, in practice, are in constant contradiction with the other. Students will also be able to understand now that federalism is continuously evolving in the US and throughout the American history, has been associated with several different terms. We shall mention them once again below:

- **Dual federalism:** Also called 'layer cake federalism' refers to the obvious demarcation of powers between the national and state governments, as well as sovereignty in equal spheres. This federalism was dominant between the 1790s to 1930.
- **Cooperative federalism:** Also known as 'marble cake federalism', it is a phase where the national and state governments share their functions and collaborate on major national priorities. This relationship predominated between 1930 and 1960.
- **Creative federalism:** Also known as 'picket fence federalism' and was in practice during 1960 to 1980. It referred to increased cooperation and cross cutting regulations between the national and the state governments.

NOTES

- **New federalism:** Also called 'on your own federalism', it is characterized by empowering states as compared to the national governments and deregulation. It is in practice till date.

Many other concepts help in describing the complicated US federalism. For instance, judicial federalism refers to the tug of war between the national and state governments over constitutional powers. However, since the apex court holds the power of judicial review, only it can interpret answers to various questions, including federalism. In some cases, like the 1819 case of McCulloch v. Maryland, the Supreme Court had expanded the powers of the Congress. However, in a 1997 case of *Printz vs United States*, the court held that the national government could not force its directives on the state as these were against the principles of dual fundamentalism. Another concept is that of fiscal federalism wherein the national government can offer money to the states in the form of grants to promote national welfare activities such as public welfare, environmental standards, and educational improvements. Until 1911, such grants were only granted for agricultural research and education.

E. Pluribus Unum

E. Pluribus Unum appears on the coins of the United States. The phrase refers to 'out of many states, one nation'. In 1779 when the 13 states that form the United States of America gained independence, they had many difference and could not agree on many issues. The states that are known as united now were besieged in their historical, geographical, economical and political issues. In fact, they also varied in their population. Therefore, each of them wanted to have the power to decide its internal matters, make its own policies and even have their own currencies. However, they had to give up on many of these demands to stand united and survive the other world powers.

Thus, they agreed to practice the Articles of Confederation, which is the first constitution of the United States. This decision created bonhomie between the states; the existing legislature was given minimum powers. The central government then was a weak entity; it had the power to declare war as well as negotiate peace but could not raise taxes required for either decision. It was the time when each state had one vote in the Congress's decision and even changes to the Articles required a unanimous consent.

After the war in 1783, the states came to blows once again; it was the time when the 'united' states were at the risk of breaking apart. The states could not reach a consent on major decisions, like modes of payment to the soldiers. Many of these soldiers returned home after serving their country to debts and taxes. The Shays' Rebellion mentioned above was another such issue of discontent. In fact, the states did not even have the prerogative to obey a peace treaty that the country had signed with the Great Britain. This led George Washington to observe in 1786: 'If you tell the Legislatures they have violated the treaty of peace and invaded the prerogatives of the confederacy they will laugh at your face. What a triumph for the advocates of despotism to find that we are incapable of governing ourselves'. It was only after the Philadelphia convention that the states decided to amend the Articles of Confederation and consider a new form of government, where powers

were to be shared between the states and the centre. However, like George Washington said, even this Constitution was not perfect, and was, in the words of its Preamble, the next step in 'a more perfect union'. This is a union which stands dynamic in nature till now.

NOTES

Advantages and Disadvantages of Federalism

The pros and cons of federalism have been the subject of debate since the creation of the American republic. We discuss them briefly:

Advantages

The advantages of federalism are as follows:

- **Promotes state loyalties:** It is said that with federalism and more authority to the states, Americans feel close to their home states.
- **Encourages democracy:** Under federalism, one state can experiment with policies and other states, as well as the federal government, can learn from its successes and failures.
- **Promotes pragmatism:** It becomes easier to run countries the size of the US if power is shared between states. In turn, as can be understood, the local persons in power are more aware of their state's demands and problems and thus know better what policies will help address them.
- **Gives hope for political stability:** By keeping the national government from issues of contention, federalism allowed the US government in the earlier days to achieve and maintain stability.
- **Separation of powers prevents despotism:** Federalism, by its very nature, has it that the state governments function independently even if one person or party takes control of the branches of the federal government. Therefore, federalism ensures liberty.
- **Promotes pluralism:** Federal systems allow citizens to connect with their leaders and even give them opportunities to be involved in the issues of governance.

Disadvantages

The disadvantages of federalism are as follows:

- **No national policy:** The United States has no one policy on many issues. Instead, it has fifty-one policies, which often leads to confusion.
- **Lack of accountability:** The overlap of boundaries among national and state governments and sharing of powers makes it difficult to hold one authority responsible for failures to make concrete policies.

4.8.4 Comparative Federalism

As the students will understand by now, federalism has different meanings under different political systems despite some of its essential principles remaining the same. For instance, in Europe, the term federalists is used to refer to those people who want a federal system of government with powers being divided at the regional,

NOTES

national and supranational levels. European federalists argue in the favour of such federalism continuing throughout the European Union. European federalism found its grounding in the post-war Europe, the Winston Churchill's speech in Zurich in 1946 being one of its major initiators.

In the United States, on the other hand, federalism was originally identified with the belief in having a stronger government at the centre. During the time of the drafting of the US Constitution, a debate raged between the federalist and anti-federalists, who wanted a strong central government and stronger state governments respectively. As you can note, this is in contrast to the modern usage of the term federalism in both the United States and Europe. One can see a distinction since the term federalism is located in the middle of a confederacy and a unitary state. As mentioned earlier, the present US Constitution was a reaction to the Articles of Confederation, which brought the states together but gave them a very weak central government. Thus the American political history is laced with struggles in the favour of federalism and keeping the states together, with a strong central government. On the other hand, federalism refers to opposition to sovereign movements in Canada.

But federalism is not always about the divisions between two or three levels of government. It can also have more than two internal divisions, as in the case of countries like Belgium or Bosnia and Herzegovina. Therefore, students should be able to differentiate between two types of federalism in general: on the one hand, the strong federal state with few powers assigned to local governments and on the other, the national government which may be a federal state for reference but a confederation in practice. Europe, therefore, has a wider history of unitary states. Thus we can say that European federalism argues for a weaker central government. In the present America, debates are raging on following the European model of federalism and contain the powers of the federal government, especially the judiciary, especially since its powers and influence have increased over the years.

Check Your Progress

13. Name four countries that follow the unitary system of government.
14. Define Unitarianism.
15. State any one characteristic of the unitary form of government.

4.9 SUMMARY

- Some of the important features of the Chinese Constitution are: (a) A socialist nature (b) Supremacy of the Communist Party (c) Sovereignty of people (d) Unitary multinational state (e) Personal property allowed.
- As one of the world's oldest continuous political systems, China has evolved an exceptionally advanced political culture, one that has guaranteed political change throughout the world. Although, initially under foreign rule, dramatic changes in Chinese life were predictable; it was a sign of the powerful inertial

NOTES

force of the Chinese civilization—the magnitude of the society and the survival power of both, its people and its culture.

- Confucius (551–479 BC) was one of the most prominent philosophers in the Chinese political tradition. Although a few Chinese today would claim to be Confucian, his thinking, recorded in the 'Analects', serves as a guide to the Chinese political culture.
- Centuries later, Mao Zedong's communist revolution proposed to destroy the Confucian social hierarchy. Although today, few Chinese would claim to believe in Confucianism, political relations between rulers under the Communist Party paradoxically reflect Confucian values. Confucian values can play a two-fold role in political change.
- Confucianism explains only one part of the Chinese political culture. Without doubt, the Chinese Communist Party has never openly claimed to be a Confucian party. Rather, the party constitution states that Marxism, Leninism and Mao Zedong thoughts are the official party ideologies.
- The theories of communism and socialist revolution inspired the Chinese communist leader, Mao Zedong, who was along the lines of Russian Revolution, trying to search for a visible path to China's modernization. Although Mao accepted the basic Marxist and Leninist ideas about capitalism, imperialism and social revolution, the Chinese Revolution differed from Marxism and Leninism in several ways.
- The Great Proletariat Cultural Revolution took place in China between 1966 and 1976. People all over the country, in response to the call by Mao and other radical leaders, participated in overthrowing party and state bureaucratic organizations at all levels. Workers, peasants, soldiers and radical college students (Red Guards) with working-class family backgrounds took control over political power.
- The Cultural Revolution ended in 1976, when Mao died and the radical leaders were arrested. Few other events in human history involved so many people and affected so many aspects of their lives. For Mao and his radical followers, the purpose of the Cultural Revolution was to refuse to go along with interference and keep China on the right track of socialist revolution.
- The Cultural Revolution left an ideological void. It not only barred traditional Chinese values, western liberal democratic ideas and Soviet-style socialism, but also engendered cynicism with socialism itself. The future Chinese generations were left with little to believe in. The Cultural Revolution was a cultural disaster as well. The Red Guards destroyed many historical landmarks, while many works of traditional art and literature were banned.
- Some of the fundamental rights and duties of Chinese citizens include: All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge, or frame-up directed against citizens by any means is prohibited.

NOTES

- The National People's Congress (NCP) is an essential part of the central government's system of the People's Republic of China. Due to its exclusive nature and importance, it is treated among the organs of the Central People's Government. The Constitution of 1954 has rendered the National People's Congress with immense power, and it is the topmost form of state authority and the only legislative authority of China.
- The National People's Congress has a standing committee as well as other committees. The annual session of the Congress is to be convened by the standing committee, which may also call for special sessions of deputies. The meetings of the Congress are controlled by an executive chairman of the presidium, who is elected by the deputies at the beginning of the session. For each session, the Congress sets up a secretariat, under the direction of a secretary general. He conducts the routine business of the Congress.
- The standing committee is a permanent body of the National People's Congress to which it is responsible and answerable. It comprises a chairman and a number of vice-chairmen and members, as well as a secretary general. They are elected by the Congress to perform its functions until election of a new committee by the succeeding Congress or their recall by the existing Congress.
- The standing committee, elected by the First National People's Congress on 27 September 1954, comprised a chairman, thirteen vice-chairmen and sixty-five members. Liu Shao-chi was elected chairman. Political leaders of different parties and groups were represented at the Committee.
- Besides the standing committee, the National People's Congress has a nationalities committee, a bills committee, a budget committee, a credentials committee and other necessary committees. The NPC can undertake the investigation of certain matters by instituting commissions of inquiry; if not in session, this task is performed by the standing committee.
- The state council is the most important administrative authority of the People's Republic of China. Despite the fact that the general organization of the state council is similar to that of the government administrative council, there are certain differences between the two organs.
- Even though the premier looks after and supervises the working of the state council, any resolution has to be deliberated and adopted at the Council's plenary or executive meetings. Plenary meetings are usually held once a month. They are attended by the premier, vice-premiers, the secretary general, ministers and heads of commissions. The members who attend the executive meetings are limited to the premier, vice-premiers and the secretary general, who constitute a so-called 'inner cabinet'.
- China's multi-party system is completely different from the kind that is followed in the West. The CPC (Communist Party of China) advocates multi-party cooperation and political consultation. The western political system is characterized by a power tussle between the two parties and it is also dissimilar to the order of a single party that is adopted by some countries.

NOTES

- The Chinese Constitution contains that 'the existence and growth of the multi-party cooperation and political consultation system that is led by the Communist Party of China will go on for a long time.' All democratic parties and the Communist Party of China ought to perceive the constitution as the primary and elementary standard for their demeanour and should maintain the pride of the constitution and make its realization certain.
- The Chinese People's Political Consultative Conference (CPPCC) is an important organization within the CPC. The CPC along with other eight parties aims to further the goals of the Chinese socialism by mutual co-operation, supervision and teamwork. As a result, these parties promote the main factors of the 'multi-party cooperation system led by the CPC.'
- A unitary form of government is a single unit state where the central government is supreme. All the power rests with the central government and any divisions in governance, for instance, in the form of administrative or sub-national units, have only those powers that the central government gives them. Some countries that follow the unitary system of government are France, Italy, Japan and the United Kingdom.
- The opposite of unitary government will be a federal government where governance powers are not centralized or where central government is a weak one. Political powers are actively decentralized and individual states have more sovereignty compared to those in a unitary state. Principally, a federal government holds some middle ground between the unitary and the federal system because powers are distributed between the central and local governments.

4.10 KEY TERMS

- **Confucianism:** It is the ethical system of Confucius, the Chinese philosopher and teacher of ethics (551-479 BC), emphasizing moral order, the humanity and virtue of China's ancient rulers, and gentlemanly education**.**
- **Communism:** It is a theory or system of social organization in which all property is owned by the community and each person contributes and receives according to their ability and needs.
- **Status quo:** It refers to the existing condition or state of affairs.
- **Feudalism:** It was a European system flourishing between 800–1400 based upon fixed relations of lord to vassal and all lands held in fee (as from the king), and requiring of vassal-tenants homage and service.
- **Unitarianism:** It is the concentration of the strength of the state in the hands of one visible sovereign power, be that power parliament or czar.

4.11 ANSWERS TO 'CHECK YOUR PROGRESS'

NOTES

1. The Boxer Rebellion in 1900 proved a failure, but it urged the imperial government to implement reformatory measures and westernize China.
2. Yüan Shih-Kai was appointed by the imperial government in 1911 to suppress the rebellion.
3. Mao saw that his socialist regime was threatened by at least three sources. These were feudalism, capitalism and revisionism.
4. The Cultural Revolution was a cultural disaster because the Red Guards destroyed many historical landmarks, while many works of traditional art and literature were banned.
5. Article 35 states 'Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.'
6. Article 48 talks about gender equality and it states 'Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural, and social, including family life.' It also states that the state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike, and trains and selects cadres from among women.
7. The Constitution of 1954 has rendered the National People's Congress with immense power, and it is the topmost form of state authority and the only legislative authority of China.
8. Two functions of the National People's Congress are: (a) To administer the enforcement of the Constitution and amend it (b) To decide upon the constituent members of the state council upon the premier's reference.
9. The state council is the most important administrative authority of the People's Republic of China.
10. The two authority and responsibilities of the state council are as follows: (a) To adopt measures pertaining to administration and to issue and implement decisions and orders (b) To propose and forward bills to the National People's Congress or its standing committee.
11. Two political parties of China are Revolutionary Committee of the Chinese Kuomintang and China Democratic League.
12. The Chinese People's Political Consultative Conference (CPPCC) is an important organization within the CPC.
13. Four countries that follow the unitary system of government are France, Italy, Japan and the United Kingdom.
14. It can be defined as the concentration of the strength of the state in the hands of one visible sovereign power, be that power parliament or czar.

15. The centre is the reservoir of all powers in unitary system. There exist no province or provincial governments in such a system and the central government has the constitutional powers to legislate, execute and adjudicate with full might.

NOTES

4.12 QUESTIONS AND EXERCISES

Short-Answer Questions

1. What is Confucianism? Why was Confucianism popular in China?
2. Why does the National People's Congress (NPC) occupy such an important place in China?
3. What is the role of the Communist Party in China?
4. What is the importance and role of the Chinese multi-party cooperation system?
5. What is a Federal Government? Write down some of its advantages.
6. Write a short note on the Chinese Revolution.

Long-Answer Questions

1. Discuss the features of the Chinese Constitution.
2. Describe the various political ideologies of the Chinese political culture.
3. Discuss the importance of the Cultural Revolution in China.
4. Explain the composition, functions and role of the State Council of China.
5. Describe the salient features, advantages and the disadvantages of Unitary Government.
6. Critically analyse the features of US federalism.

4.13 FURTHER READING

Faust, John and Judith Kornberg. 2005. *China in World Politics: Policies, Processes, Prospects*. Vancouver, Canada: UBC Press.

Banerjee, S. *The Chinese Government and Politics.* Kolkata, India: K. P. Bagchi and Company.

Moore, Barringto. 1980. *Social Origins of Dictatorship and Democracy.* London, UK: Peregrine Books (Penguin Books).

Durverger, Maurice. 1963. *Political Parties: Their Organization and Activity in the Modern State.* Paris, France: Armand Colin.