

# Modern Governments

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# Unit I The United Kingdom

## Learning Objectives:

This unit devotes discussion on the constitution of United Kingdom, its salient features, powers and position of the British Monarch, composition and functions of the British Parliament, powers of British Cabinet and position of the Prime Minister. After studying this unit, you should be able to understand:

- Nature and Elements of the British Constitution
- Salient Features of the British Constitution
- Rule of Law
- Supremacy of Parliament or Parliamentary Sovereignty
- Composition and functions of the House of Commons and House of Lords
- Organisation of the British Cabinet System and Functions
- Powers and Position of the British Prime Minister

## Structure:

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### 1.1 INTRODUCTION

The Constitution of United Kingdoms or the British Constitution is the world's oldest constitution. Because the British Constitution has influenced the constitutions of all other democratic governments, it is known as the mother of constitutions. It was in Britain that the principles and institutions of representative government were first developed.

British Constitution is an unwritten constitution. This constitution is not found in a single document. It is also not enacted by a Constituent Assembly but it is the result of gradual evolution. Thus, it is not a creation but an evolution. As a result, the unwritten character of the British Constitution distinguishes it from other constitutions. It does not imply that the United Kingdom's constitution is wholly unwritten, as there are some characters, petitions, and legislation that make up the written component of the document.

As the constitution of United Kingdom is not prepared by a Constituent Assembly or a constitutional convention, it has been derived from various sources with the gradual passage of time. The sources of the constitution are great characters statutes, judicial decisions, common law and conventions. These sources are the basic elements of the British Constitution.

Monarchy in Great Britain is an indigenous institution. Monarchy continues to survive in England although the country has adopted the system of Parliamentary democracy. Because the King's powers have been passed to the Crown, which exercises authority in England, it has become conceivable. The King is a person, but the Crown is a legal entity. It is said that the "King is dead, long live the Crown." Thus King is temporary, but the Crown is permanent. The King is also one part of the Crown.

The Crown, however, enjoys vast powers as the real executive of England. Since the establishment of the parliamentary sovereignty the powers of the Crown have been continuously changing which has resulted in a decline in the powers of the King and an increase in the powers of the Cabinet.

In the British Parliamentary model Cabinet is the keystone of the Government. It is the most powerful institution. It has been described as the steering wheel of the ship of the state. Sir John Marriot described the Cabinet as the pivot round which the whole political machinery revolves. The Cabinet System of England is popularly known by the term the Westminster Model. The Cabinet is made up of members of the Parliament. The British Prime Minister is both the leader of the

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Cabinet and the Cabinet's founder. The Prime Minister serves as the cornerstone of the Cabinet's structure.

The British Parliament is the oldest, longest and most powerful modern legislature. It is known as the "mother of Parliament." The British Parliament has the authority to enact whatever law it sees fit. Any parliamentary act cannot be declared unconstitutional by the court. Thus, the sovereignty of the Parliament is the important feature of the British Constitution. Further, the Parliament is bicameral in structure. Its Upper House is known as House of Lords while the Lower one is called the House of Commons. Originally, the powers of both the Houses were co-equal. But gradually the Lower House acquired prominence and the House of Lords was reduced to sub-ordination.

## 1.2 BACKGROUND OF THE CONSTITUTION

State is a political institution. It consist of population, territory, government and sovereignty. To run the governmental machinery the land need some codified rules and regulation which is otherwise known as constitution. Every sovereign country's constitution is the supreme law of the land, explicitly written.

But British constitution is an exception. The British political system is the world's oldest, having evolved gradually and without interruption to its current state. Because of the significant contribution it has made to the field of government science. British constitution is in real sense the mother of constitution. It has had a significant impact on the constitutions of all democratic countries.

In spite of all those novelty it is unwritten in nature. That is why it is said that there is no constitution in England. In truth, the United Kingdom is a model of home democracy and Parliamentary government. There is no single document that contains the British constitution, as it is not drafted by a constituent assembly it is not drawn up under the supervising of ruling prince or dictator. It is not possible to fix any particular date on which British Constitution may be said to have been enacted or adopted. Hence it is growth and not a make.

The British people are very much conservation and traditional minded. They never like to take sudden leaps nor they like sudden changes. They rather strongly believe in compromise and consensus. Besides that the people of the land are very clever, intelligent and labourious. So there is no difficulty to create a constitution. It is said that an English man would prefer "a known devil instead of an unknown God? The national character of British people has been moulded by various influences from northern and southern Europe. From the geographical point of view Great Britain is protected by surrounding seas. It all helps the British Constitution a bride place among modern constitutional system."

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### 1.3 NATURE AND ELEMENTS OF THE CONSTITUTION

“The British Constitution” as observed by Munro, “is the mother of all constitutions.” It is one of the oldest living constitution of the world. It is an unwritten constitution and unlike the other countries, its constitution is not enacted by a Constituent Assembly. It is an evolutionary constitution and it may be said as “a child of chance and wisdom.” As it has been evolved gradually, so it is not to be found in any single written document. It has been derived not from a single source but from various sources. The sources are the basic elements of the British Constitution without which the constitution cannot be expressed. They are like the component parts of the British Constitution and instead of concentrating on a single document the scholars have to discover parts in a number of sources. The sources may be divided into following six groups.

#### Sources of the Constitution

- (1) **Historical Documents or Great Charters:** The first important source of the British Constitution is the important historical documents or great charters signed by the British Monarch with the people at different stages of history. These documents are great constitutional landmarks and have historic importance and a great impact on some of the fundamental aspects of the British Constitutional System. These agreements defined the powers of the Kings and the rights of the people and greatly contributed to the growth of democracy in England. Some of the important agreements thus concluded by the King with the federal lords or their subjects are:
  - (a) Magna Carta of 1215 signed by King John.
  - (b) Petition of Rights of 1628 signed by Charles-1.
  - (c) Bill of Rights of 1689.
  - (d) The Act of Settlement of 1701.
  - (e) The Act of Union with Scotland (1707).
  - (f) The Act of Union with Ireland (1800).
- (2) **Statutes or Parliamentary Laws:** The laws passed by the British Parliament from time to time in accordance with the changing requirements of the people are another important source of the British Constitution. Some of the important Statutes thus enacted by the Parliament which contributed to the growth of the British Constitution include the Habeas Corpus Act of 1679, Septennial Act of 1726, Reforms Acts of 1832, 1867 and 1884 the Parliament and Municipal Act 1911, the Representation of People’s Act 1918 and 1928, the House of Lords Act 1999, Constitutional Reform Act 2005 etc. Though these Statutes deal with specific aspects of Constitution only, they are of great significance because they greatly contributed to the development of Political democracy in Great Britain.

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- (3) **Judicial Decisions:** The Judicial decisions pronounced by the Judges from time to time have also contributed to the development of the British Constitution. These decisions not only defined the constitutional laws but also uphold the independence of the citizens. In England Judges have established several important principles through their decisions. Thus independence of Juries was established in England through the Somerset case, Judges were granted immunity through Howell Case. It is rightly said that British Constitution is a Judge-made Constitution.
- (4) **Legal Commentaries:** The Text-books and commentaries written by eminent lawyers and jurists form another important source of English Constitution. Some of the important works falling in this category include Anson's *Laws and Customs of Constitution*, Erskine's *May's Parliamentary Practice*, A.V. Dicey's *Law on Constitution*, Bagehat's *English Constitution* etc.
- (5) **Common Laws:** The Common laws which grew up in England in the course of time and eventually gained recognition throughout the realm, constitute yet another important source of the British Constitution. These rules and principles are based on long established customs and traditions are recognised by the English courts. The right to a jury trial in criminal laws, as well as the right to freedom of speech, are all based on common law.
- (6) **Conventions:** The conventions are the most important source of the British Constitution and are often described as the soul of the constitution. These are based on customs, practices, traditions etc. These are as sacred as laws of the constitution but not enforceable in the courts of the country. These conventions are observed because they are helpful in the smooth working of the government. For example, it is only through conventions that the Parliament is summoned at least once a year, the King does not attend the meetings of the Cabinet; the Speaker of the House of Commons becomes non-partisan after his elections, once a Speaker means always a Speaker, the leader of the majority party in the Parliament is invited by the Queen to form the Government, the Council of Ministers stays in office as long as it enjoys the confidence of majority of the members of Parliament. It is rightly said that British Constitutional garden is highly enriched with specific growth of conventions and with its sweet fragrance.

### 1.4 SALIENT FEATURES OF THE BRITISH CONSTITUTION

“The British Constitution” as observed by Munro, “is the mother of all constitutions.” It is one of the oldest living constitution of the world. It has left a deep impact on the constitution of other countries. The salient features of the British Constitution are given below:

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- (1) **Unwritten Constitution:** One of the important features of the British Constitution is its unwritten character. To a large extent, it is an unwritten constitution. There is no single document which can be said to contain all the principles of the constitution. Though it is predominately an unwritten constitution, still it possesses certain written elements like the Magna Carta of 1215, the Bill of Rights (1689), Parliamentary Act of 1911 and 1949 etc. However the major portion of the British Constitution is unwritten and is based on conventions.
- (2) **Evolved Constitution:** The British is an evolved constitution and was never enacted by a Constituent Assembly in a particular time. It does not possess a coherent and codified written constitution. It is an evolution and not a creation. It has evolved over time, much like a living thing, expressing itself through characters, statutes, usages, and norms in response to changing circumstances. This process of evolution of the British constitution is still on.
- (3) **Unitary Government:** A unitary government is established by the British constitution. As a result, the National government, based in London, wields full governmental authority. Of course, regional units such as countries, boroughs, and so forth exist for administrative purposes. They do not, however, have any unique or independent power. They report to the central government and have solely delegated and derivative authority.
- (4) **Flexible Constitution:** The British Constitution is flexible and can be changed through ordinary law passed by the Parliament. Due to the absence of written constitution, lack of veto power in the hands of Monarch and absence of judicial review, the British Parliament can make any kinds of amendment of the constitution. There has been no difficulty in effecting necessary changes in the constitution.
- (5) **Parliamentary form of Government:** The United Kingdom is the traditional home of Parliamentary government. The legislative and the executive branch work closely together. The Monarch serves as the nominal head of state, while the Prime Minister and his cabinet serve as the true executive. The Monarch follows the advise of ministers who are accountable to Parliament. The Cabinet remains in power as long as the House of Commons has faith in it. The close relationship between the legislature and the administration, ministerial collective responsibility, political homogeneity, and Prime Ministerial leadership are all fundamental characteristics of the British Parliamentary form of government.
- (6) **Supremacy of Parliament or Parliamentary Sovereignty:** The British Parliament is sovereign, omnipotent and omniscient. It can enact, amend or annul all types of laws and there is no limitation on its legislative powers. The theory of parliamentary sovereignty has following three implications:

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- (a) There is no law which Parliament cannot make or unmake.
- (b) There is no distinction between ordinary and constitutional law.
- (c) No law whether constitutional or ordinary passed by the Parliament can be declared Ultra-virus i.e, null and void by the British Courts.

According to be Lolme “Parliament can do everything except making a man to woman and vice-versa.”

- (7) **Gap between theory and practice:** There is wide gap between theory and practice in the British Political System. In all countries, the constitutional provisions reflect facts. But in England “nothing is what is seem, or seems what it is.” In theory, the Queen enjoys all executive, legislative and judicial powers of the country. All British officers including the Prime Minister and other ministers are appointed by the Queen and they hold office during her pleasure. But in practice, the Queen has no control over administration. All appointments are made by Queen on the advice of the Prime-minister and his Council of Ministers. According to constitutional provision Queen enjoys absolute powers but in reality she is a mere nominal head. This difference between the theory and practice of constitution is mainly due to conventions and customs of the constitution.
- (8) **Combination of Monarchy, Aristocracy and Democracy:** The British Constitution makes a strange combination of Monarchical, aristocratic, and democratic principles. The Queen, the House of Lords and the House of Commons are representatives of these three principles. However, the democratic element is strongest of all. Now Queen acts as a mere nominal head, the House of Lords acts as a delaying chamber but the real authority vests with the popularly elected House of Commons and the popular ministers. The other democratic features are periodical elections, effective opposition, increasing importance of public opinion etc.
- (9) **Rule of Law:** The concept of the rule of law is one of the most notable features of the British Constitution. It means in England there is supremacy or dominance of Law. The citadel of people’s liberties in Great Britain is the “Rule of Law.” According to Dicey Rule of Law implies three things. Firstly, no person can be punished unless he is guilty of breach of a law. Secondly, every body is equal before law and none is above it. Thirdly, in the United Kingdom, basic constitutional principles are the consequence of judicial rulings regulating the rights of private individuals in specific matters brought before the courts. In short, Rule of Law in Britain protects the British citizens against arbitrary rule.
- (10) **Independence of Judiciary:** Though the British Government is not based on the principles of separation of powers. Still judiciary in Britain is independent of the other two organs of government and imparts justice

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without fear or favour. Salary and service of judges is protected and they have acted as guardians of rights of British Citizens.

- (11) **Bi-party system:** Great Britain has enjoyed bi-party system for many centuries and the contest for power is generally between two major parties like Whigs and Tories, Conservatives and Liberals, Labour and Conservative etc.
- (12) **Convention Ridden Constitution:** The British Constitution is a convention ridden constitution and the government of the country is chiefly carried on the basis of these conventions. Conventions are so deeply rooted in the British Constitutional System that it would not work without them. They are the flesh and blood which cover the dry bones of constitution, and make it work.

### 1.5 RULE OF LAW

The concept of the “Rule of Law” is one of the most notable characteristics of the British Constitution. Individual dignity necessitates the exercise of certain rights and liberties. The Constitution guarantees and protects rights and freedoms in all democratic countries. The Constitutions of the United States of America and India serve as watchdogs for individual rights and freedoms. However, neither a codified constitution nor a Bill of Rights exist in England to protect individual liberty. Even so, England continues to tout itself as the “traditional home of democracy.” The people of England take pride in their liberties and rights. The “Rule of Law” is the bulwark of people’s liberty in the United Kingdom. The Parliament and the people are constantly willing to protect the people’s liberties by enforcing the “Rule of Law.”

The term “Rule of law” means that in British people are governed according to the principles of law and not according to the arbitrary will of the ruler. Lord Hewart defines the Rule of Law as “the supremacy or predominance of law as distinguished from mere arbitrariness.”

The concept of “Rule of Law” was given a classical formulation by A. V. Dicey in his book **“Introduction to the study of the law of the Constitution.”** He emphasised three principles of rule of law.

- (1) Except for the breaking of a law, no one can be punished or lawfully forced to suffer in body or property. Such a violation must be proven in the ordinary course of events in the ordinary courts of the land.
- (2) Not only is no man beyond the law, but every man, regardless of rank or circumstance, is subject to the realm’s arbitrary law and amendable to the ordinary tribunals’ jurisdiction. He says “With us every official, from Prime Minister down to a constable is under the same responsibility for every act done without legal justification of any other citizen.”
- (3) “Judicial decisions regulating the rights of private persons in particular situations brought before the courts have resulted in the general principles



of the constitution.” It indicates that the British people’s legal rights are protected by the rule of law rather than by any constitutional statute.

The Rule of Law, it should be noted, is the result of centuries of struggle by the British people for acknowledgment of their fundamental rights. It protects regular folks from undue interference with their rights by other people or government servants.

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### Limitations on Rule of Law

The concept of Rule of Law has undergone great change since it has advocated and a number of limitations appeared which have greatly undermined the Rule of Law. Some of the limitations are as follows:

- (1) The British Queen is above law and enjoys personal immunities from civil action and criminal prosecution. No proceedings can be instituted against the Queen before any court of law nor can she be asked to appear before any court of law.
- (2) The judges enjoy immunity from personal responsibility of all their official acts.
- (3) The justices of peace are immune from any proceedings for their official acts.
- (4) The rise of delegated legislation due to wide increase in the functions of the state has also greatly undermined rule of law. The Parliament passes only skeleton laws and the detailed rules are provided by the various departments. Violation of these rules is punishable. This is certainly contrary to the notions of rule of law.
- (5) The rise of administrative justice on account of delegation of certain judicial powers to the administrative officials to decide certain type of cases also constitutes a violation of the principles of rule of law in so far as their decisions cannot be challenged in any court of law.
- (6) The civil servants enjoy certain privileges and immunities in the discharge of their duties. Proceedings can be instituted against them only under special conditions. These privileges and immunities constitute a clear violation of the Rule of Law.
- (7) The foreign diplomats and rulers are not subject to British Law and no proceedings can be constituted against them.
- (8) During periods of emergencies also the rule of law is not fully operative and is suspended partially.

Despite these restrictions, the United Kingdom is regarded as a classic example of the Rule of Law. Despite the fact that its material has undergone some changes in recent years, it still appears to be the work of the British Liberty. Freedom is an integral aspect of the British way of life, and no one wants to lose it. The Rule of Law now means that an individual’s freedom should be limited only by the authority of the law. Everyone, regardless of their background, should have access to justice. The rule of law is still alive and well today. It is still a guiding

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principle in the British Constitutional System, inspiring not just the English but also the rest of the globe. Without a doubt, the Rule of Law is a “Prized” notion in the British Constitution, and the British people are extremely proud of it because it serves as a “Citadel of their Liberty.” If individuals do not stand up against arbitrary and discretionary legislation, the Rule of Law is meaningless.

### 1.6 SUPREMACY OF THE PARLIAMENT

The supremacy of Parliament is a fundamental component of the British constitution. The British Parliament is supremely powerful, almighty, and omniscient. It can enact, amend or annul all types of Laws and there is no limitation on its Legislative Powers. The theory of Parliamentary Sovereignty has following three complications:

- (a) Parliament has the authority to enact and repeal any law it sees fit. It means that no law may be enacted or repealed without the consent of parliament. There is no distinction between ordinary and constitutional Law.
- (b) The Law of England recognises no individual or body as having the authority to overturn or set aside Parliamentary legislation. No Law passed by the Parliament can be declared Ultra-Vires i.e. Null and void by the British Courts.
- (c) The power of Parliament extends to every part of the Queen’s dominions.

The Parliament of England is so sovereign that in the words of De Lolme, “it can do everything except making a man to woman and woman to man.”

The above discussion proves that the Laws of British Parliament cannot be declared illegal or unconstitutional by the British Judiciary as is the case in USA and India. The British Monarch has no power to exercise his/her veto on a bill passed by British Parliament. There is no separation between ordinary and constitutional law in the United Kingdom because the constitution is unwritten.

The fact that a court of law cannot overturn a legislative act is solid evidence of the power’s scope. Excessive legislative power could be a disagreement between legislators and voters.

But can British Parliament really do all this? Proof Dicey says that there are two limitations on the sovereignty of the Parliament, one external, constituting of the fear or public opinion revolting against it; the other internal, arising from the nature of sovereignty power itself, its composition character etc.

Thus, legally, there are no limitations upon the Parliament’s Law-making and Constituent Powers. British Parliament has the unique distinction of being a sovereign legislature. However, the British Parliament’s influence has waned in recent years. It has experienced a setback in its ability to exercise its powers. It does not have a particularly forceful or strong posture. It has relegated itself to a supporting role to the cabinet. Because of its majority support base, the cabinet is practically able to have its way in Parliament.

## 1.7 THE BRITISH MONARCHY: KING AND CROWN

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British is one of the very few countries which has retained Monarchy till this day. The ancient institution has existed for over a thousand years without any break in its country. The Queen is no longer enjoys autocrat powers and behave like a Constitutional ruler. The administration is still carried out in the name of the Queen. She is the chief executive and an inseparable component of the legislature, as well as the head of the judiciary and the commander in chief of all military forces. Monarchy is a dynastic institution. The chief difference between King and Crown are:

- (1) King is an individual who occupies the throne and can abandon it. He possess an individual will. The Crown is an institution which has no individual will of its own.
- (2) The King is mortal whereas Crown is immortal. The King is subject to death but the Crown is neither dies nor incarnates.
- (3) The King is person whereas the Crown is a legal fiction, a myth and an impersonal institution. The King is only an individual and as such a part of the Crown.
- (4) The powers of the Kings are decreasing where as the powers of the Crown are increasing. The Crown is the custodian of royal authority. The Crown's powers, functions, and prerogatives are not suspended even for a single instant when a King dies.

The transfer of powers from the King as a person to the Crown as an institution is a prominent aspect of the British Constitution. Whatever powers King as a person had exercised were transferred to Crown as an institution. That is called the "Institution of Kingship."

### 1.7.1 Powers of the King

The King in Britain enjoy very extensive powers. The powers are the outcome or royal prerogatives as well as Parliamentary status. The powers of the King may be studied under the following heads:

- (1) **Executive Power:** The entire administration of the State is carried in the name of the Crown. For the purpose the King employs a large number of civil and military officials, such as Prime Minister, the ministers, ambassadors, high officials of armed forces, judges, etc. He can also remove these officials. The King is also responsible for the enforcement of laws enacted by the Parliament and the money sanctioned by it. He can declare war and make peace. He conducts diplomatic relations with other countries and can appoints ambassadors and other diplomatic agents of the other countries. The powers to conduct international relations and conclude treaties with foreign powers also vests with the King. The Crown leads and supervises the work of administrative officers, judges, bishops, and army, navy, and air-force officers, regulates service

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conditions, oversees the implementation of all national legislation, and suspends and removes officers.

- (2) **Legislative Power:** The Crown is not only supreme executive authority, it also takes part in the process of law making. The King is the integral part of the legislative organs. No bill passed by Parliament can become an act unless he appends his signatures to it.

However, in actual practice the King accords assent to a bill a matter of routine. Since 1707 no ruler has refused to put signatures to a bill passed by the two houses of Parliament. Hence, this power is virtually become defunct. The King also enjoys the right to summon and prorogue the Parliament. He can dissolve the House of Commons before the expiry of its term. These powers, however, are only employed with the Prime Minister's approval. The first session of Parliament begins with a speech from the throne, which includes the government's programme for the coming years. This speech prepared by the Council of Ministers. Finally the King can issue Order-in-Council which possesses the same force as the laws enacted by the Parliament.

- (3) **Judicial Powers:** The King is the fountain of justice in Britain. The entire judicial administration is carried on his name. All the judges are appointed by the King. However, he cannot remove these judges. They can be removed only if the two Houses of Parliament make a recommendation to this effect. The King also reserves the right to grant pardon or reduce the sentence of a convict. The King is the final authority to hear appeals on the colonies and dominions and decides these appeals on the advice of the Judicial Committee of the Privy Council.

- (4) **Head of the Church:** The King is the head of the established church of England. He appoints all archbishops, bishops, deans etc. The King also convenes different ecclesiastical convocations and accords approval to the rules framed by these convocations.

- (5) **Fountain of Honour:** Finally the King is the fountain of honours. He bestows titles and honours on persons who have rendered outstanding and meritorious services to the nation or distinguished themselves in the field of art, science, literature etc. He can make any person a peer member of the House of Lords. It may be noted that these honours and titles are bestowed by the King on the recommendation of the Prime Minister.

It is clear from the above that the King enjoys very extensive powers and there is hardly anything which he cannot do. However, these are not personal powers of the King but that of the Crown. It is actually exercised by the Cabinet and the King is only nominal ruler. Therefore, it has been said that the King reigns but does not rule. Though formally all the powers are exercised by the King in reality these powers are exercised by the Cabinet which is accountable to the Parliament. The King cannot do anything in his personal capacity and therefore cannot commit any wrong. On this account it is said that "the King can do no wrong".

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The Constitutional position of the British King was summed up by Gladstone thus, there is not a moment in a King's life from his accession to Parliament for his public conduct and there can be no exercise of Crown's authority for which is must not find some minister willing to make himself responsible.

The purely Constitutional position of the British King should lead us to the conclusion that he exercise no influence on the British Political system. The King can play an effective role under certain circumstance. For example, the King can use his discretion on the appointment of the Prime Minister if in case of sudden vacancy due to death or resignation. Similarly, if no single political party is able to get a clear-cut majority on the House, King can play an effective role in the appointment of the Prime Minister.

Further, the King exercise tremendous influence on the British politics through his right to be consulted, right to encourage and right to warn. As the King stands above party affiliations he can promote general welfare. His long experience in office also gives him great weightage and Prime Minister cannot lightly ignore his evidence. He can also encourage the minister to undertake certain policies which are conducive to general welfare.

In conclusion it can be said that it would be wrong to say that the King wields no influence on the Political System of Britain. Even today the King performs important functions. In fact of his office is no significant that it cannot be ignored.

### **1.7.2 Position of the Crown**

The Queen of England is a constitutional ruler, in a Parliamentary model the powers of the Queen have been limited by the constitution. It is clarified from the statement of Maine, "the King reigns but does not govern." The powers that the Crown are exercised in the name of the Crown by the minister responsible to the Parliament. The royal prerogatives are exercised by the Cabinet. The Monarch is hereditary, he lives in exquisite palaces, and on certain occasions, he wears a sparkling Crown and resplendent robes. The Crown is surrounded with a mystical glory. The Queen commands the subjects' respect and is the focus of popular allegiance. However, when it comes to exercising powers, the Monarch must follow the advise of the minister. Since the days of royal absolutism, when the ministers and the King decided, a lot of water has flowed down the Thomas. Today, however, the Queen advises and the government make decisions. If she tries to act on his behalf, the Monarch will be in trouble. The Monarch even can not marry a woman of his choice unless the ministers agree. King Edward VII had to abdicate the throne in 1935 to marry a woman of his choice.

Thus, the Monarch has been powerless and he is jut like a rubber- stamp in the hands of the ministers. Even the Queen today can not refuse to sign her death warrant if the ministers ask her to do so. The Monarch has no power neither any responsibility. For every act done in the name of the Monarch the responsibility goes to the ministers. There is a popular saying that, the King can do no wrong. The King or the Queen can not be held responsible for any thing done by her Ministers. As she can not do any right why can she do wrong. Everything done in the name of

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the Crown is done, by the Ministers or the Cabinet. The Queen does not assent any bill unless it is countersigned by any Minister.

Thus, from the above analysis it can be concluded that the Monarch is not an active force in the constitutional system of England. He has lost effective authority but he can exercise considerable influence in the working of government. Queen Victoria interfered constantly in the business of the government King Edward VII did play an active role in the controversy over Lloyd George and reform of the House of Lords. The position of the Monarch depends upon his personality. He has the right to be heard, the right to be encouraged, and the right to be warned. He serves as a government critic, adviser, and friend. The sovereign's high position and extensive understanding of public affairs enable him to advise, encourage, and warn his ministers. He stands above party politics and takes an impartial view on public matters.

The Monarch can in certain extra ordinary circumstances exert influence on the government. He may exercise influence in the selection of the Prime Minister when there is no recognised leader, In 1922 Prime Minister Bonar Law resigned and King George V selected Stanley Baldwin instead of Lord Curzon. He established a convention that the Prime Minister must belong to the House of Commons.

The Monarch is the guardian of the constitution. He has the right to assert royal prerogatives in grave national crisis. He may create new peers and on the advice of the Prime Minister he can dissolve the House of Commons. The Monarch however powerful may be can not avoid or go against the advice of the Cabinet or the Prime Minister. The Monarch has been given a dignified security and neutrality and he is not expected to come out of that and create problems for the ministry and get himself blamed.

Thus, the British Monarch has been a powerless director.

### 1.7.3 Reasons for the Existence of Monarchy in Great Britain

Britain is a democratic country with an unwritten constitution. But astonishingly there is a Monarch, hereditary in character, with no real power and authority in the sphere of administration. The Queen of England is a constitutional figure head who is no more than a rubber-stamp. Then what is the reason for the retention of Monarchy with an annual expenditure of 4,10,000 pound. During the regime of Queen Victoria there was a demand for the abolition of Monarchy but since then no attempt has been made in that direction. The general tendency is in favour of continuation of Monarchy.

The institution of Monarchy has proved its utility in many ways and also popularised himself with the people by doing many things which aim at the betterment of the mass of the people. The King or the Queen is considered as a part of the administration of the country. It is difficult to conceive of British Administration without the Queen. The main news paper of the Trade Union Congress devotes more space to royal family news and photographs than to

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anything else. Earnest Barker while appreciating British Monarchy has said “Kingship has survived because our sovereigns have been wise enough to forget past pretensions, to learn new lessons, to change their position with the changing times, and to join with their subjects in bringing about changes in other institutions”. Monarchy is popular in Britain because the people feel that the Monarch is one among them who shares the wealth and woe and helps them in their dangers and difficulties. The Monarch has become a part of the British heritage and culture. There are various other reasons for which Monarchy is retained which may be discussed below:

- (1) **Conservative nature of the Britishers:** Conservatism of the British people is one of the grounds for which Monarchy still exists in Britain. The people of England have not yet thought of abolition of dearly cherished institution. The Britishers have transformed Monarchy from an absolute one to a limited constitutional institution but hardly have they thought of parting with it.
- (2) **Monarch as the symbol of national unity and stability:** The British King or Queen is the symbol of national unity and stability. She gives leadership to the British people. Monarchy gives the people psychological sense of anchorage and stability. With the King in the Buckingham Palace, the people of England sleep more quietly in their beds. As long as Monarchy is safe the people feel secure. During war and national crisis the Britishers gather strength with the visit of the Monarch. The National Anthem of England ‘God save the King’ represents the lost spirit of the people and prompts them to act for heroism and patriotism.
- (3) **The Monarch has to perform certain personal Acts:** Monarchy is not an useless institution. It receives ambassadors, summons the leader of the majority party of the House of Commons and appoint him as the Prime Minister, dissolves the House on the advice of the Prime Minister, over and above the Monarch has the right to warn, inform and encourage. During the intervals, when one ministry resigns and another is yet to assume office, the Monarch exercises executive authority of the state. This period is very short but the Monarch has to perform his duty.
- (4) **Monarch as the head of Commonwealth:** The British Monarch is the head of the British Commonwealth. He acts as a link that binds Britain with the other Commonwealth nations. The Commonwealth nations recognise the Queen as the head of the Commonwealth. The Monarch gives appointment to the Governor Generals of the dominions. Churchill has said “the Monarch is a mysterious link which united our loosely bound but strongly interwoven Commonwealth of nations, status and races.”
- (5) **As a mediator in British Politics:** The Monarch in Britain acts as a mediator in British Politics. The Queen acts as a mediator or an umpire and uses her prestige and popularity to settle political conflicts and counter acts the evils of party politics. During national crisis the Monarch

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acts as a safety valve. She maintains solidarity and promotes welfare of the nation.

- (6) **As a social figure:** The British Monarch is a great social figure. He is considered to be the leader of the society in a sense that his behaviour and manner has tremendous influence on the common people. The Queen and the royal family sets morality, fashion and aptitude in art and Literature. The Britishers accept the King as their moral leader with pride and respect. The presence of the Monarch help people forget their differences; therefore, Monarchy is retained in England.
- (7) **As a nominal head of state:** In Britain, we have a Parliamentary form of government. The Queen acts as a nominal head of state. The powers of the Monarch have been restricted so there is no need of an elective head. If Monarchy is abolished then it would create problems for the election of the head of state. As a result, monarchy aids Parliamentary democracy and serves as a guarantor of liberty and representative governance.

The British Monarch behaves as a non-partisan. He belongs to no political party nor any class. He is everybody's King. People blame the government for its failure but cheer the King. That is why people prefer Monarchy to an elective King. Monarchy is retained in England due to its practical utility. The Monarch receives foreign diplomats, signs bills creates peers and summits and dissolves the Parliament.

Thus the institution of Monarchy has taken a deep root in the British mind for which it is difficult to either assail or abolish it. Insult to the Monarch means the insult to the nation. Monarchy is the living symbol of British history. It has stood the test of time in Britain. The British people find no reasons for the abolition of Monarchy. Sir John Eliot in appreciation of Monarchy has said, "Parliament is the body, the King is spirit". The Kings will has a special charm for the people. The British nation respects the King not out of fear but out of love. Monarchy has never been an obstacle in the progress of the nation. Why then the question of abolition of Monarchy arises?

## 1.8 THE BRITISH PARLIAMENT

The United Kingdom was the first country to have a parliamentary government. The British Parliament is the mother of all world parliaments. It is the state's sovereign legislative branch. The structure of the Parliament is bi-camera. The House of Lords is the upper chamber, while the House of Commons is the lower chamber. The House of Lords is a hereditary redundant chamber with no main functions, whereas the House of Commons is the genuine and effective legislative, with complete power over finance, administration, and foreign policy. The Parliament consists of the House of Lords, the House of Commons and the Queen of England.



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## 1.9 THE HOUSE OF COMMONS

In bicameral British Parliament House of Commons is the lower popular chamber. It is the oldest representative chamber which came into existence by chance and accident. But in course of time it has become legally omnipotent. The sovereignty of the British Parliament implies the supremacy exercised by the House of Commons. After the passage of Parliamentary Acts of 1911 and 1949 the House of Lords has lost all its importance. "When a minister consults Parliament, he actually consults the House of Commons," Walpole observed, "and when the Queen dissolves Parliament, she dissolves the House of Commons." A new House of Commons is all that is required for a new Parliament.

### Composition

The House of Commons represents the British nation as a whole. The House of Commons is a huge legislative body with 650 members elected directly from single-member constituencies. The members are elected for a five-year term by the state's adult citizens. If the house is dissolved earlier, there may be a new house before the terms are completed. The house's term is generally limited to five years, however it can be prolonged in times of national catastrophe, such as war or emergency. The house continued from 1910-1918 during the First World War and from 1935-1945 during second World War.

The House of Commons begins its sessions soon after the general election. The Queen summoned both the House of Commons and the House of Lords. The members then elect their Speaker and Deputy Speaker and convene in the House of Lords, where the Queen addresses both houses jointly. The Commons is summoned to the House of Lords when the House is prorogued, and the Lord Chancellor reads the prorogation address. The House's sitting is governed by its standing orders. The House normally convenes around 2 p.m. and meets until 10.30 p.m. On the Prime Minister's advice, the Queen can dissolve the House.

### Power and Function

The House of Commons was originated in bare needs of the King to raise revenue. But in course of time the House has acquired more powers with its gradual democratisation. The powers the House of Commons can be discussed below.

- (a) **Legislative Powers:** The House of Commons enjoys extensive law making agency of Britain. There is no law in Britain which the House cannot make or change. The House enjoys so vast powers that the law passed by it cannot be declared illegal by the British judiciary. Through the House of Lords and the Queen share in its law-making function yet, the sovereignty in this sphere lies with the House of Commons. The Lords can only detain a bill for at best one year, not beyond that. The Parliamentary Acts of 1911 and 1949 have curtailed the powers of the House of Lords. Thus, in the legislative sphere, the decision of the House of Commons is termed as law.

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- (b) **Executive Control:** The House of Commons as a popularly elected chamber exercises control over the Cabinet and the Council of Ministry, it also sees whether administration is carried on in the interest of the people or not. The Cabinet remains accountable to the House of Commons for everything which ministers do, for every advice they give to the Queen they are answerable to the House of Commons. The Cabinet remains in power so long as it is backed by the majority in the House of Commons. The House of Commons can dismiss the ministry by passing a vote of no-confidence against it. The House of Commons may by rejecting a money bill or by a token cut compel the Cabinet to resign.

The House of Commons exercises control over the ministry through debates and discussions in the Parliament and by criticising government politics. The House may ask for any information from the government.

- (c) **Financial Powers:** The House of Commons is the guardian of national finance. All financial questions are decided by the House of Commons. Money bills can only be introduced into the House of Commons. All proposals for raising of funds, all grants to different departments, and all heads of income and expenditure are voted by the House of Commons. The Annual Budget of England is introduced in the House and finalised after discussion. Without the approval of the House of Commons, no new taxes can be imposed. Without the approval of Parliament, no money from the Consolidated Fund can be used. When the House of Commons passes a money bill, it is submitted to the House of Lords for approval. However, the House of Lords can only postpone it for a month unless the bill is considered to have passed. Thus the House of Commons has complete control over National finance.

- (d) **Ventilation of Grievances:** The House Commons acts as a chamber for the ventilation of public grievances. The members can ask questions and point out the defects of government to the public grievances. There is a question hour reserved every day for the members to ask for informations from the government regardul public policies. The members are allowed to point out the defects in the administration and the government is bound to redress their grievances. The House sees to it that the public officials perform their duties honestly and efficiently in the interest of the general people.

- (e) **Educative functions:** Certain educational functions are carried out by the House. Its debates and discussions provide essential political education to the public, and the House of Commons debates receive widespread coverage in the media. It helps in the organisation of public opinion. The House of Commons is the mirror of the nation. The great political figures assemble here and hold discussion on important issues by which public consciousness is created.

- (f) **Trains leadership:** The House also performs certain 'selective functions' like training the future Parliamentarians and the leaders of the nation. All

important leaders in Britain are the members of the House of Commons. In this House, men of talent, sincerity and industrious can make their mark and prove their fitness.

- (g) **Miscellaneous Functions:** The House of Commons protects the rights and liberties of the its members. The House is the legal sovereign, and its role is to support the administration in carrying out its responsibilities, not to pass laws or to run the country.

With the growth of Cabinet dictatorship the role and importance of the House of Commons has been reduced. Now almost all the bills are introduced and passed by the Cabinet. Whether in finance or policy making it is the Cabinet that decides. So the importance of the House has to some extent been lost. Yet it is the most powerful lower chamber in the world

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### 1.10 THE HOUSE OF LORDS

House of Lords is the second chamber of the British Parliament. It is the oldest upper house and has been existing in England for more than one thousand years. In a progressive democratic state like England the existence of hereditary second chamber is controversial. The House of Lords is one of the crown jewels of British government and a symbol of the country's greatest traditions. The House of Lords had been enjoying powers upto 1910 but the Parliamentary Acts of 1911 and 1949 have clipped its wings and the House of Commons has assumed all powers.

#### Composition

The House of Lords consists of more than one thousand members to be specific some 1200 members. There are 7 categories of peers as:

- (1) **Princess of royal blood:** This type of peer include all the male members of the royal family. Their membership is merely symbolic, and they rarely attend House proceedings. They don't become involved in contentious matters.
- (2) **Hereditary Peers:** This group of peers has the greatest number of members. This group accounts for roughly 90% of the peers. They are either peer descendants or newly formed peers. This type of peers are increasing day by day.
- (3) **Representative Peers of Scotland:** These are known as Scottish peers. The peerage Act of 1963 has given to all Scottish Peer the right to sit in the House of Lords.
- (4) **Representative Peers of Ireland:** There were 28 representative Peers of Ireland who were elected for life. Their number is steadily declined and they may within a few years be completely extinguished.
- (5) **Lords of Appeal or Law Lords:** These Lords are otherwise known as Law Lords. They are nine in number. They hold their office for whole life and are eminent jurists appointed to administer justice. As the House of

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Lords acts as the highest judiciary of England the presence of the Lords of Appeal is highly essential. They do not assume office on the ground of heredity. They are paid for their job.

- (6) **Spiritual Lords:** These Spiritual Peers are known as Ecclesiastic Peers. They are 26 in number and represent the Archbishop of Canterbury and York, as well as the Bishops of London, Durham, and Winchester. The Archbishop of Canterbury and York and the Bishops of London, Durham, and Winchester, hold their seats in the House by virtue of their offices, while the remaining 21 peers are chosen based on seniority.
- (7) **Life Peers:** This type of peers are created by the Peerage Acts of 1658 and 1663. They hold office during their life time but there is no provision for succession. There are some women peers in this category.

Thus, from the composition of the House of Lords it is clear that the House is partly democratic and hereditary. It is a conservative chamber which represents men of wealth and privilege. The House represents nobody and pay no respect to public opinion.

The sessions of the House of Lords are held simultaneously with that of the House of Commons. The Lord Chancellor is the presiding officer of the House but he does not get any respect for the members.

### Powers

House of Lords has been enjoying equal powers with the House of Commons until 1909. However, as the House of Commons has become more democratic, many of the House of Lords' functions have been passed to it. The powers and prestige of the second chamber were diminished by the Parliamentary Acts of 1911 and 1949. As a result, it has been designated as a Secondary Chamber.

At present, House of Lords has been enjoying the following power:

- (a) **Legislative Powers:** As the Second Chamber of the British Parliament, House of Lords plays an important role in the process of legislation. The House of Lords may initiate and introduce ordinary non-controversial bills. It will have to revise and approve all ordinary bills passed by the House of Commons. House of Lords can delay an ordinary bill passed in the lower house for a maximum period of one year. It can not reject any bill or proposal of the House of Commons. Thus, in matters of legislation House of Lords has no significance at all.
- (b) **Financial Powers:** No money bill can be introduced into the House of Lords. In matters of finance the lower House enjoys full powers, the House of Lords has only suspensory veto powers. When a money bill is passed in the lower house it is sent to the upper chamber and the House will have to approve it within one month unless the bill will be presumed to be passed. Thus the House of Lords cannot cancel a money bill. It cannot make changes in money bills of budgetary grants.

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- (c) **Deliberative Powers:** The House of Lords is a deliberative chamber. Its debates are of high standard and nonpartisan in character. A Lord usually speaks when he has something valuable to speak. The House of Lords is not subject to dissolution. The Lords can draw the attention of the government to its lapses and faults.
- (d) **Executive Powers:** The House of Lords have no power to pass a vote of no confidence against the ministry. But they can keep a vigilant eye on the government by asking questions and have a full right to debate its policies. Some of the Lords are included into the Cabinet. The Cabinet is not responsible to the House of Lords. But still then, it remains one of the most distinguished forums of public debate in the world.
- (e) **Judicial Powers:** The House of Lords sits as the highest court of appeal in England. The nine Law Lords remain present when it sits as a court of law. The house has power to try peers in case they are involved in treason persons impeached by the House of Commons for high crimes are tried in this House it also decides disputed claims to the peerage and punished for breach of privileges. This is the most important function of the House of Lords.
- (f) **Constitutional:** The House of Lords works for the smooth working of the government. It gives scope to the elderly statesmen of high calibre to utilise their ability and experience in strengthening democracy and administration. It acts as a check on the lower house's irresponsibility.

As a result, the House of Lords has a lower status than the House of Commons. It can suggest improvements on the bills passed in the lower chamber. It can also relieve the burden of the House by discussing non-controversial bills. The conservative nature of the Lords is found to be beneficial as well as detrimental. The Lords like to make slow progress and oppose revolution. Due to lack of interest of the Lords in the business of the state, the House has lost all its significance.

### Position of the House of Lords

The existence of a hereditary second chamber in British Parliament has been a controversial issue. Conservatives see it as one of the British Constitution's greatest achievements and a symbol of the country's finest traditions. But some others regard it as a useless chamber with no significance at all. We have to examine in from both sides to arrive at a conclusion.

#### (a) Arguments against the existence of House of Lords

The criticisms levelled against the House of Lords are enough proof of its superfluity which can be discussed below:

- (1) **Hereditary Chamber:** The House of Lords has been criticised for its hereditary character. It represents mostly the interest of the higher classes society. It has no elected members. About 90% of its members are hereditary peers, in a democratic country, the existence of a hereditary chamber is certainly unthinkable. The members of the House of Lords

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represent none but a class of vested interests. It is dominated by Aristocratic elements.

- (2) **A Citadel of Wealth:** The House of Lords is said to be a citadel of wealth. It represents mostly the landlords, businessmen, industrialists, bankers, ship owners and other men of wealth. It represents men of wealth and privilege for which it is criticised as a political anachronism in modern democracy.
- (3) **A Conservative Chamber:** The House of Lords is predominantly a Conservative House. The nature and composition of the House of Lords tends to make it conservative. Most of its members lend support to the conservative party. Its members have placed obstructions in the way of legislative measures of the non-conservative governments. When the conservative party comes to power the House Lords rarely obstruct its bills. The House takes least interest towards legislative measures involving social and economic reforms.
- (4) **An unrepresentative and irresponsible chamber:** The House of Lords represents none. Even the representative peers do not represent the people. Every Lords represents himself alone. They have a permanent seat in the House for which they do not pay regard even to public opinion. The House is responsible to none and none is responsible to the House.
- (5) **Absenteeism:** Majority of its members are indifferent and apathetic to politics. They have no interest in day to day activities of the government and so out of 1200 members very few attend its meeting regularly. That is why the Quorum is fixed at 3 and generally 100 to 150 members attend its session. Some of its members have not taken the oath of office as yet. It has been a tradition for the Lords not to attend its meetings.
- (6) **Impotent House:** The House of Lords has no use of all in Britain. After the passage of Parliamentary Acts of 1911 and 1949, the House has lost all its glory and become a superfluous. The Act of 1911 has deprived the House of Lords from interfering in money bills while the Act of 1949 has curtailed its power of suspensive veto over an ordinary bill. Thus, it exists as a delaying chamber. With the consequent increase in the powers of the House of Commons it has become a powerless chamber. It is not only a Second Chamber but a secondary one which can only delay not detain or cancel any bill against the will of the lower House.

### (b) Argument in favour of House of Lords

The House of Lords has lost much of its former power and glory but it is not entirely useless. Its role in the constitutional system of Great Britain is by no means meaningless. The powerlessness of the chamber is not a ground for its extinction, because it has some justifications:

- (1) **A Revising Chamber:** The House of Lords today performs some useful functions. Being the upper chamber it revises the bills passed in the Lower House. Today the House of Commons has become over-burdened,

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so the law passed by the house are proved to be defective. The Upper House can give the much needed revision if it is permitted to. It is represented by men of experience, sincerity who can contribute towards revision and rectification of laws.

- (2) **Represents British Political Culture:** The House of Lords has a history of its own. It represents the British Political Culture. Although it is undemocratic in composition yet it has its value for which since then no revolution has been made to abolish it.
- (3) **A House of Elders:** The House of Lords consists of elderly statesmen possessing high calibre and intelligence. Its debates are of high standard. It can utilise the knowledge and experience of these statesmen for the betterment of the nation.
- (4) **Highest Court of Appeal:** The House of Lords is the highest court of appeal in Britain. There are nine law Lords in this House who participate in its session when the House sits as a court of law.
- (5) **A Delaying Chamber:** The House of Lords serves as a crucial delaying chamber. Its job is to add some time to the enactment of laws so that the Lower House does not have to make decisions quickly. The delay is being implemented to give British citizens time to consider their options. When a bill is sent to the House of Lords after being passed in the Lower House, the House of Lords puts a brake on the bill and organise public opinion by interposing delay.
- (6) **Initiation of non-controversial bills and reduction of burden of the Lower House:** The House of Lords has proved its usefulness by lessening the legislative burden of the House of Commons. Because, when the Lower House finds no time to discuss important issues, the House of Lords can initiate and discuss non-controversial bills thereby reducing the workload on the House of Commons.
- (7) **As a Ventilating Chamber:** The House of Lords performs useful work as a ventilating chamber. Its members can put questions to the government and may discuss on any issue freely on matters of public interests. The House should discuss on issue involving foreign policy and socio-economic reforms. The House of Commons can not properly discuss it due to shortages of time and rigidity of party interest. But, the second chamber can have an impartial discussion above party lines. Thus, the Upper House can educate people and organise public opinion and make democracy real.
- (8) **Other utilities:** Besides the above reasons House of Lords has been justified as a house of honour and prestige. When any one attains distinction, he is given a peerage in the House. The Lords also minimises the chances of revolution in Britain. As its members are opposed to progressive views it opposes all kinds of revolution and political upheaval.

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Its members do not feel interested in the affairs of the state but they express their view point from all angles. Its debates are of high quality and have an importance of its own. It is not completely an unrepresentative body as it represents the best man of British National Life in industry, commerce, finance, law, religion, agriculture etc.

The existence of the House of Lords is deep rooted in the instincts of the British people. "The King of England may make peers, but he cannot make a House of Lords," Disraeli states. The ages are created by the order of men who assemble such an assembly. It has its own personality that can't be replicated in any artificially manufactured second chamber. It is due to love of traditions and antiquity the people of England do not want to do away with this institution. Again, as we find second chamber in almost all the democratic states, why shall it be abolished from Britain ? Now it can not stand in the way of progressive legislation of the House of Commons, then there is no use of abolishing it.

Thus, no question of abolition of second chamber arises, but there are suggestions for its improvements. But no improvements have been made to its composition and functions. It still exists as a hereditary second chamber of British political system. Though it has no use, yet it cannot be called as a superfluous chamber. The people of England very much feel attached to their age old traditions and it is one of such tradition for which no revolution has ever been made to end it.

### 1.11 SPEAKER OF THE HOUSE OF COMMONS

The Speaker is the most conspicuous figure in the House of Commons. He is the presiding officer of the British Parliament's Lower House. He is the ceremonial head of the House and represents the commons before the king at the House of Lords bar. The first Speaker of the House of Commons, Sir Thomas Hungerford, was elected to this distinguished position in 1377.

The office of the Speaker implies the person who speaks the least in the House. Initially the Speaker had the rights to speak to the Monarch on behalf of the House of Commons. The House was a petitioning body at the period, and one of its tasks was to present the Monarch with the House's petitions and resolutions. The Speaker, on the other hand, now rarely speaks. He speaks for the House but does not participate in its debates.

#### Election

The Speaker of the House of Commons is elected by the House of Commons. When the new house meets for the first time. The majority party nominates the candidate for Speakership after consulting the leader of opposition. Actually, the Speaker is elected unanimously and continues in office so long as he desires. Thus, by tradition the Speaker is re-elected again and again even if his party loses in election. It is normal for the Speaker to go unopposed in his home district. In 1945 and 1950, the Labour Party defied precedent by fielding candidates against the



Speaker, but they were soundly beaten. Thus the convention is established that in Britain, 'once a Speaker is always a Speaker'.

The Speaker of British House of Commons is known for his political neutrality. The moment he occupies the office, he quits his party and becomes a non-party man. He rises above party politics and cuts off his party affiliation. After election, the Speaker declares himself as an impartial servant of the House of Commons and takes all necessary steps to safeguard its rights and liberties.

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### Functions

The office of the British Speaker is an office of great responsibility, dignity, honour and prestige. His powers are partly regulated by custom and partly by the rules of the House and the rest by the laws of the country. The functions of the Speaker may be discussed below.

- (a) **Presides over the meetings of the House:** The Speaker of the House of Commons preside over and conducts the proceedings of the House of Commons. He puts motions and questions before the House and announces the result when a motion is put to vote. He regulates the debate through his power to select amendments. All speeches in the House are addressed to the Speaker. He maintains decorum in the House. The members pay due respect to the Speaker and bow down before his decisions. He may suspend any member for the remaining part of the session or can get an unruly member removed from the house through the sergeant-at-Arms.
- (b) **Defends the House:** The Speaker defends the House of Commons and maintains the tradition of smooth conduct of its proceedings. His decision within the House is final and none can oppose his rulings.
- (c) **Interprets the rules of business:** The Speaker interprets the rules of business of the House and regulates the procedure of the House. He decides as to who will speak first and what questions can be asked by the members of the House. He rules on motions to suspend the rules, asks questions, and announces the results of actual voting on various legislative bills filed in the House.
- (d) **Decides whether a bill is money bill or not:** According to the Parliamentary Act of 1911, the Speaker has the authority to decide whether a bill is a money bill or not. He gives a certificate to all money bills and his decisions in this regard is final.
- (e) **Safeguards the dignity and privileges of its members:** The Speaker is the protector of the dignity and privileges of its members from encroachments. He protects the dignity and grace of the House. He serves as the House of Commons' dignity guardian, ensuring that the members' rights and privileges are not violated by the government. When the Cabinet ministers refuse to answer questions or encroach upon the freedom of members or do not supply sufficient information on important

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national problems. The Speaker can safeguard and enforce the rights of members against the government. The Speaker protects the House against its contempt. He is the custodian of its privileges and saviour of its dignity.

- (f) **Spokesman of the House:** The Speaker is the chief spokesman of the House of Commons. He communicates the House to the Queen. The Speaker puts questions and announces the results of actual voting unless a member is satisfied he must be given full scope to express his opinion.
- (g) **Casting vote:** The Speaker does not participate in the debates of house. In the event of a tie, he has the authority to cast the deciding vote when the House is split evenly. He doesn't impose his choice on the House. By his casting vote, he gives the House an opportunity to decide the question.
- (h) **Convenes special sessions:** A special session of the House of Commons can be called by the Speaker. If a national or international crisis develops while Parliament is not in session, the Speaker can call a special session of the House on the Prime Minister's, opposition leader's, or 100 members' request.

### Position of the Speaker

The Speaker occupies a unique position in the British Political System. He is a neutral umpire in British Politics. The Speaker enjoys an office of great prestige and honour. He is elected unopposed to the house from his constituency. His non-political in character and after his election he quits all political affiliation. He is the ceremonial head of the house.

The Speaker is the most visible member of the House. He is infallible like the Pope. The Speaker's job is to protect the rights and privileges of members of the House of Commons, not just against the Crown and Lords, but also among themselves. In comparison to the Speaker of the American House of Representatives, the British Speaker enjoys a position of far more importance. The American Speaker is a party-member and he is elected on party lines. He has to contest in election. Even after assuming office he works as an active political figure in the house and rarely remains neutral. He participates in the debates and uses his position in favour of his party. That is why the British Speaker is said to enjoy a position of more importance than the American Speaker. He maintains the tradition of neutrality and impartiality for which the British people regard him as the prestigious person next to the Queen.

## 1.12 LORD CHANCELLOR

Lord Chancellor is the presiding officer of the House of Lords. His office is unique in Britain. The office of the Lord Chancellor has a history of its own. In the 11th century A.D. the Lord Chancellor was used to be the King's scribe and did his work behind the screen. The word Chancellor has been derived from the Cancelli

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“Cancelli in the King’s Chapel”. But in course of time he became an adviser to the monarch in matters of royal grace.

Now he presides over the House of Lords while sitting on a wool sack. Usually, he is a peer, unless he is to be appointed as a peer. His powers as the presiding officer are insignificant. He participate in the debates but without a casting vote”. The members of the House do not address him but it is the House that decides who will speak, first. The Lord Chancellor is a partisan and he takes part in debates on party lines.

The Lord Chancellor is the head of the British judiciary, and he proposes judges for the High Courts to the Queen for appointment. He is the Chairman of the House of Lords’ judicial committee as well as the Privy Council’s. He appoints the country’s judges and justices of the peace. He is in charge of the United Kingdom’s judicial system. He presides over the session of nine Law Lords when they act as the final court of appeal.

The Lord Chancellor is the legal adviser of the cabinet. He is a member of the British Cabinet without any executive portfolio. He advises the Queen on administration. He is in charge of great seal which is stamped on all proclamations, writs and treaties. He exercises extensive powers in regard to bestowing ecclesiastical patronage upon the church. He reads out the Queen’s speech at the opening session of the Parliament in the absence of the sovereign. He visits hospitals, orphanage, lunatic asylum patronised by the Royal family.

Though he is not invested with any task, he combines in him the executive functions of the British Government, he plays the role of an important personage in the judicial framework of Great Britain.

### 1.13 THE CABINET SYSTEM IN GREAT BRITAIN

The British constitutional system’s most powerful organ is the Cabinet. It is the government’s supreme guiding authority and the true ruler of the United Kingdom. It’s the fulcrum around which the entire political apparatus revolves. It is a combining committee, a hyphen that unites, a buckle that fastens the legislative component of the state to the executive part of the state, according to Bagehot..

The Cabinet system in England has history of its own. It is a product of convention. Links the British constitution itself, over the course of three centuries, the Cabinet has evolved into its current shape, which is largely the result of luck rather than wisdom. The origin and evolution of the Cabinet is never followed a planned procedure. It is a product of gradual development. There is no Act of Parliament authorising its formation. The Cabinet emerged as a committee from the Privy Council.

#### Evolution

The word ‘Cabinet’ was used by Bacon in 1640. Calendren first of all used it to mean a small body of privy councillors consulted by the King. The Cabinet became active after 1660. As the membership of the Privy Council gradually

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increased the King found it difficult and inconvenient to call a meeting of all members to make crucial decisions. During his reign, Charles II did not trust the Privy Council as a whole and began to rely on the counsel of a small informal committee of five of his closest friends. From the first letter of these five members the word 'Cabal' is derived from which the word Cabinet has come from. Thus the Cabinet is derived from the privy council which has been developed out of the Curia Regis or the Kings Council.

The members of the Cabinet were initially not popular. The immediate advisers to the King suspected these members because, they were not responsible to the Parliament. So Parliament made an attempt to do away with the Cabinet system but in vain. The use of the term 'Cabal' set the traditions for the growth of real Cabinet in Britain.

- (i) **Ministerial responsibility:** The Cabinet members thus became the Principal advisers to the Monarch. After the Glorious Revolution of 1688 the powers of the Parliament increased considerably. The first thing became necessary for a true Cabinet was the ministerial responsibility to the Parliament. The impeachment proceeding against Mr. Dauby during the reign of Charles-II set the tradition that the Ministers should be responsible to the Parliament for every acts done by them. The practise of ministers' collective duty to the House of Commons was considerably later.
- (ii) **Political homogeneity:** William III after the Glorious Revolution formed a ministry by selecting members from both the parties, the Whigs and the Tories. But in course of time he realised that it was impossible to run the administration. Therefore, he dismissed all the Tories from his Ministry and formed the Cabinet only with the Whigs. The Cabinet was formed on the principle that all the members should possess the confidence of the dominant party in parliament. Thus, the Cabinet became a homogeneous body.
- (iii) **Leadership of the Prime Minister:** It was another stage of evolution and growth of the Cabinet system. Initially, the Monarch was the Chairman of the Cabinet and he was attending it regularly. The practice continued upto the time of Queen Anne. But after Anne, George I succeeded to the throne. He did not know English, nor had he any interest in the affairs of the state. So he abstained from the Cabinet meeting and left this charge in the hands of one of his principal minister. Robert Walpole was the lucky minister to preside over the Cabinet and to carry the discussion on behalf of the Monarch. Thus, he became the first Prime Minister of Britain and continued for twenty years. He was a man of ability and competence and he ruled the country with a majority support in the House of Commons. In 1742, he failed to prove his support and resigned. Thus, he set the convention of Cabinet responsibility although George III tried to restore his authority but in vain.

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Walpole during these years established a tradition that the Monarch after giving appointment to the Prime Minister should leave the Prime Minister to select other members of the Cabinet. He made himself the sole medium of communication on all important matters. Thus, by the end of 18th century, all important features of Cabinet system has been continuing without making substantial changes. Still today it is developing slowly and slowly.

### Salient features of Cabinet system of Great Britain

Cabinet in Great Britain is the most powerful organ of state power. It is an extralegal device and born out of convention. It consists of some ministers not exceeding 24. It exercises sovereign authority in the name of the Queen. It remains responsible to the House of Commons for everything done in its name.

#### The basic features of the Cabinet system can be discussed below:

- (a) **The Queen remains outside:** The first and the most surprising feature of the British Cabinet is that the Queen is not a member of the Cabinet. She stands outside the Cabinet. She does not attend the meetings nor did she preside over it. The Queen being a non-party woman did not take interest in it. She is totally detached from the Cabinet. As she is excluded from the Cabinet she remains responsible for no decisions of the Cabinet. The tradition was set by King George I who did not know English. He had no interest in the affairs of the state. So he remained outside and left it to a minister who gradually became the Prime Minister of Britain. Now, all the decisions are taken by the Cabinet and the Queen has no responsibility in this regard.
- (b) **No Separation of executive from legislature:** In the Cabinet system, there is close co-operation between the executive and the legislature. All the ministers are Parliament members and the Prime Minister belongs to the House of Commons. The members of the Cabinet control the Parliament and the executive. The ministers are members of the Parliament and they are representative and responsible. They bring close co-operation between the two that there seems to be no difference between the two those who make laws and those who enforce it. The Parliament controls the Cabinet on the other hand it controls the Parliament. The Cabinet members attend the meetings of the Parliament, introduce bills, take part in debates and protect the policies of the government. It decides what Parliament will discuss and approve. The Cabinet is responsible to the House of Commons which can dismiss it. Similarly, the Cabinet can advise the Monarch to dissolve the House of Commons. Thus, the House of Commons can not destroy the Cabinet without destroying itself. The executive and the legislature can not have different interests. "The whole life of British Politics" Wrote Bagehot, "is the action and reaction between Cabinet and Parliament. This action and

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reaction is not a battle for cross purposes, but a game of give and take, a balance between initiative and control.”

- (c) **Collective Responsibility:** Collective responsibility is the principal feature of British Cabinet System. Walpole during his Prime Minister ship has stressed upon it. All ministers belong to the same political party under the leadership of the Prime Minister. All of them sink or swim together. For the mistake of government the entire Cabinet is held responsible. No minister can repudiate in Parliament or in public for the policies and actions of his colleagues. Collective responsibility of the Cabinet members implies that, when a decision is made, it becomes binding on all members including its opponents. The members of the Cabinet remain in office till they enjoy the confidence of the House. The House can express its dismay through a vote of no-confidence or by rejecting a money bill, in both the cases the Cabinet members will have to resign.
- (d) **Political Homogeneity:** Political Homogeneity of the Cabinet is an essential feature of British Cabinet. The members of the Cabinet belong to only one Political Party. It is essential to maintain unity and cohesion among the Cabinet members. Unless the members of the Cabinet are like minded they can not work efficiently with more vigour and greater determination. Therefore, the Cabinet is formed from the party which secures absolute majority in the House of Commons. In British bi-party system coalition ministry is rarely found. So Political homogeneity is maintained.
- (e) **Leadership of the Prime Minister:** The Prime Minister is the Cabinet’s leader. Despite the fact that all ministers in the Cabinet are on an equal footing, speak with the same voice, and only divide on rare occasions, the Prime Minister is the Cabinet’s leader. The Prime Minister is in charge of presiding over Cabinet meetings and appointing ministers. He has the authority to ask any minister to resign. He is the Cabinet’s most important figure and wields actual power. The Prime Minister is the most important member of the Cabinet. The Cabinet must also resign as a result of his resignation. He is said to be the keystone of the Cabinet arch. The leadership of the Prime Minister gives solidarity to the Cabinet. So long as the Prime Minister has backing in his party he is all powerful dictator in British politics.
- (f) **Secrecy:** Secrecy of the Cabinet is another characteristic of the British Cabinet. The contents of Cabinet meetings are kept under wraps. The Cabinet’s secrecy is protected by law and tradition. No outsider is permitted to attend the meeting of the Cabinet. Sometimes non-members are invited to express views on special issues but are not allowed to disclose its proceeding. The decision of the Cabinet are announced only by the authorised ministers. Cabinet members are expected to keep the Cabinet’s proceedings and policy completely confidential. According to

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the Official Secrets Act, they swear an oath of secrecy. Cabinet confidentiality contributes to collective accountability and Cabinet solidarity. The members of the Cabinet have right to differ but they can not disclose it before the people.

- (g) **Solidarity:** The Cabinet members maintain solidarity of the Cabinet at all cost. The Cabinet works as a whole. All the ministers express the same view before the Parliament. No minister can vote against the stand taken by the Cabinet. Thus, the members maintain solidarity of the Cabinet.
- (h) **No fixed tenure:** The British Cabinet has no fixed tenure. The Cabinet will remain in power only as long as the House of Commons has faith in it. The leader of the House of Commons majority party is invited to form the government and he selects his colleagues only from his own Political Party. When it loses the support of the majority of the House of Commons it has to resign. Thus the Cabinet has no fixed tenure.

Thus, the British Cabinet is a unique institution which has been exercising tremendous influence in the British Constitutional System.

### Composition and Powers of the British Cabinet

In the British Parliamentary model Cabinet is the key-stone of the government. It is the core of the British Political System. Sir John Marriot described it as the Pivot round which the whole political machinery revolves". "It is the steering wheel of the ship of the state." The organisation and working of the Cabinet in Britain is based upon conventions.

### Cabinet and Ministry

Cabinet is not what we mean by the council of ministers. Although both seem to be equal in structure and importance, there are a great number of differences between the two. Cabinet is a wheel within the council of ministers is a large body of which the Cabinet is a part. It is the cream of the ministry. The key persons of the ministry composed the Cabinet. The Ministry is composed of three categories of the ministers while the Cabinet consists of only Cabinet Ministers faithful to the Prime Minister. Each Minister is concerned with his own department but the Cabinet is busy in the affairs of the whole state. Thus, Cabinet is a powerful and integrated unit which either directly or indirectly runs the administration.

### Organisations

There is no hard and fast rule regarding the organisation of the Cabinet. But as a matter of practice the minister in charge of important departments of the state like,

- (a) the Chancellor of Ex-chequer,
- (b) the Secretary of State for Foreign Affairs,
- (c) the Secretary of State for Home Affairs,
- (d) Lord Chancellor,
- (e) the President of Board of Trade,

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- (f) the Ministers of Defence, Agriculture and Fisheries,
- (g) the Lord President of the Council, and
- (h) the Lord Privy seal.

These Cabinet members are senior statesmen and prominent politicians whose schedules are freed up for committee work, policy integration, and departmental coordination. Thus, the Cabinet consists of some 16 to 20 members with the Prime Minister as the Chairman. The Prime Minister is central to the formation of the Cabinet and central to its death. The Queen appoints him as the leader of the House of Commons majority party. The Cabinet members are appointed from both the Houses. In the formation of the Cabinet the Prime Minister's decision is final. The Cabinet is an extra-Constitutional body and the Prime Minister is under no compulsion to do this or that. He has power to dismiss a Cabinet member and to reappoint a new one. The members of Cabinet work as a team and they sink and swim together.

During war and national crisis war-Cabinets are formed. During the First and Second World Wars the Prime Minister Lord George and Winston Churchill have created War-Cabinets to plan and prosecute war. There is a Cabinet within Cabinet known as the 'inner Cabinet'. These members are consulted by the Prime Minister every time before taking a decision. These Cabinets do not exceed the Cabinet in power but they are responsible to the same.

### Powers

The Cabinet is the most important single piece of machinery in the British government's structure. It has a major function in the governmental system and occupies a central position in politics. The powers and functions performed by the government may be discussed below:

- (a) **Determination of National Policy:** The Cabinet takes all major decisions regarding the determination of national and international policies. All important issues and problems are discussed in the Cabinet. Being the real executive wing of England it settles all major issues involving administration of the state. The Cabinet is in charge of administration and must monitor every facet of the huge administrative machine's operations. Individual ministers follow the Cabinet's recommendations.
- (b) **Administrative Functions:** Cabinet is the supreme executive authority in Britain. The Cabinet is responsible for the execution of national policies and for the smooth administration of the state. Ministers, whether or not they are members of the Cabinet, are responsible for carrying out the Cabinet's policies and enacting the laws passed by Parliament. The Cabinet members will have to see that all the department of the government works well. The ministers supervise the work of senior civil servants working under and gives appointments to all the important



offices of the state. Because the Queen acts on the advice tendered by the Cabinet.

- (c) **Legislative Functions:** The Cabinet directs and oversees the legislative action of the Parliament to a great extent. It shoulders the responsibility of enactment of laws. Legislative proposals are initiated and introduced into the Parliament under the direction of the Cabinet and are passed in the same under its guidance. All legislative proposals can be passed by the Cabinet if it has a majority in the House of Commons. No legislative measure that is opposed by the Cabinet has a chance of becoming law. The Parliament is summoned, prorogued and dissolved on the direction of the Cabinet. Thus, it is the Cabinet that controls the Parliament.
- (d) **Financial Functions:** The Cabinet is in charge of the country's finances. It is in charge of the state's whole expenditure. The Cabinet accepts and presents the estimates generated by the various departments to the House of Commons. The Chancellor of the Exchequer is a Cabinet member who is in charge of preparing the annual budget. The proposal for imposition of new taxes comes from the Chancellor of Ex-chequer who does not reveal it to the Parliament.
- (e) **Co-ordination Function:** Departmental Co-operation is essential for the success of government. The government has been divided into several departments and so co-ordination among the departments is very much essential. The Cabinet co-ordinates the working of the various departments. Any conflict or controversy arising between two or more departments is to be settled by the Cabinet. The Cabinet keeps departmental policies and programmes from colliding, overlapping, and wasting resources.

As a result, the Cabinet's powers have greatly expanded in recent years. The House of Lords has been relegated to a purely ceremonial role, while the House of Commons has become a tool of the Cabinet. The Parliament has no time nor competence to go through the details of any legislation. Therefore, it now passes the broad outlines of the laws and left it to the Cabinet to fill up the details. This is known as delegated legislation for which the Cabinet has become the virtual dictator of the nation.

The bi-party system in the Britain has also contributed to the omnipotence of the Cabinet. Again, the government will have to promote the welfare of the people for which Parliament members have no competence to make law. Again it sits for a limited period which makes executive, the Cabinet real powerful. The Parliament has become a rubber- stamp of the Cabinet. The entire system of government revolves round the Cabinet in Britain.

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### 1.14 FACTORS RESPONSIBLE FOR THE RISE OF CABINET DICTATORSHIP IN GREAT BRITAIN

Cabinet dictatorship in Great Britain has become a subject of discussion all over the world. The dictatorship of the British Cabinet is one of the most remarkable constitutional development of the present day. The Cabinet is in a position of power, and even the House of Commons has devolved into a submissive position to it. Whether in the sphere of legislation, administration or in finance, it is the Cabinet which exercises complete control over government. Now, the entire system of government revolves round the Cabinet. The Cabinet has become the physical embodiment of the abstract concept of the Crown. The Cabinet is in a position of power, and even the House of Commons has devolved into a submissive position to it.

The Sovereignty of the British Parliament has been transformed into the dictatorship of the Cabinet. In the present set up, the British Cabinet has become omnipotent. The People of England imagine that they are ruled by the King in Parliament, but in fact, they are governed by the Cabinet.

There are various factors responsible for the growth of Cabinet dictatorship which may be discussed below:

- (1) **Organised Party System:** The most important factor contributed to the growth of Cabinet dictatorship in Britain is the well-organised bi-party system in UK. Due to the existence of only two organised political parties in the election to the House of Commons one party always wins clear-cut majority. When the government commands majority in Parliament, no member can raise its voice against their party-high-command. The presence of party whip, the extension of franchise and the tremendous increase in the cost of fighting election have increased the control of the party over its members in the House of Commons. No Parliamentarian thinks of fighting election without party tickets and financial help. The Cabinet can dissolve the House of Commons and thereby compels the members to face the risk of another election. So no body dares to violate party discipline which has strengthened the Cabinet.
- (2) **Delegated Legislation:** Due to the growth of delegated legislation the powers and importance of the Cabinet has increased. In a modern welfare state the functionary of the Cabinet have increased so much that the Parliament has too little time to look to them. The members of the Parliament are not competent to go into the technicalities of modern legislation. That is why, the Parliament passes the law in skeleton form and the Cabinet fills up the rest. The amount of delegated legislation is growing by the day, and Parliament has become a tool in the Cabinet's hands. Today, it is not the House of Commons which controls the Cabinet, but the Cabinet which controls the House of Commons.
- (3) **Growth of Administrative Justice:** The emergence of Cabinet dictatorship has been aided by the expansion of administrative justice.

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The various executive departments are given the power to decide cases concerning their departments. Previously, these disputes are settled by the court of law. But now, these are under the purview of the executive departments. This has added to the prestige and powers of the Cabinet. The Parliament has thus clothed the Cabinet with extra ordinary powers to meet an emergency.

- (4) **Force of Public Opinion:** An organised and constructive public opinion is a ground for the growth of Cabinet dictatorship. Cabinet always remains sensitive to public opinion, because it seeks to maintain itself in power and it cannot do so unless it respects public opinion. If the Cabinet behaves in an autocratic manner then it will have to face the criticism of the public. No government would like to endanger its stand and face the prospect of another election uncertainly. The Parliament and the people criticise the Cabinet for its failure which contributed to the growth of Cabinet dictatorship. Therefore, the Cabinet always tries to satisfy as much people as possible to strengthen its hold.
- (5) **Collective Responsibility:** The collective responsibility of the Cabinet to the Parliament and people, is another cause of Cabinet dictatorship. It is due to collective responsibility that the members work as a team and none commits mistake. Because each member of the Cabinet knows that the whole Cabinet will have to resign for the mistake of any one member. That is why, the members act more cordially with proper co- operation and co-ordination, which contributed to the rise of Cabinet omnipotency.
- (6) **Bi-Party system:** The bi-party system prevailing in England has been responsible for the growth of Cabinet dictatorship. The difference in ideology and temperament between the Conservative and Labour Party has prevented one member of the party to join the other causing the down fall of the government That is why, the party which forms the government remains in power for the full term, and wields supreme authority.

Besides the above reasons the dictatorship of the Cabinet is also depends upon many other factors. The condition of the British Parliamentary life and the influence of the Cabinet members and the threat of dissolution of the House of Commons.

However, the dictatorship of the Cabinet is never absolute. The Cabinet has still to woo its party members to avoid split. The confidence of the Parliament implies the support of the people. No Cabinet shall act in any way to make the people angry and revolting. The Prime Minister is the head of the Cabinet and the leader of the nation. So the Prime Minister and his Cabinet should work in the direction of satisfying the desire of the masses. Then only the Cabinet can be powerful.

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### 1.15 THE BRITISH PRIME MINISTER

The office of the British Prime Minister carries so much weight that no other office can stand parallel to it. He is the working head of the government. He is the true ruler in the British Parliamentary system. The Prime Minister is the fulcrum of the entire government system. He occupies a distinctly superior position and stands on a pedestal above his colleagues. "All routes in the constitution lead to the Prime Minister from Prime Ministers to the Queen, the Parliament to the Ministers, the other members of the Commons wealth, even the Church of England and the courts of law," according to Jennings. As a result, he holds the country's most essential and influential position.

Despite its enormous powers and prominence, the British Prime Minister's office has no legal foundation. It is the result of a British convention. The office was not known to the laws of Britain till 1905. The name Prime Minister was first used in the Parliamentary Act of 1906. The Prime Minister has formal legal recognition under the Ministers of the Crown Act of 1937. However, he continues to be paid as the First Lord of the Treasury. Thus, the office of the Prime Minister has no legal stand for which Gladstone remarks, "If it is true to a great substance, cast so small a shadow, nowhere is there a man who has no much power, with so little to show for it in the way of formal title or prerogative."

The Prime Minister is appointed by the Monarch. But the Monarch has no discretion in the appointment of the Prime Minister, because according to a well established convention, the Monarch has to appoint the leader of the House of Commons as Prime Minister of Britain. Thus, the Queen has no personal choice to make. However in extra-ordinary circumstances for the death or resignation of a Prime Minister the Queen has to appoint a man of his own choice who should command leadership over the party in the House of Commons. The Prime Minister must be necessarily a member of the House of Commons.

#### Powers and Functions

The British Prime Minister exercises so much authority which no other political office can think of. The powers and authority of the Prime Minister may be discussed below.

- (a) **Creator of the Cabinet:** The Prime Minister of the United Kingdom is the ultimate creator of the Cabinet. He is a key figure in its demise. He is the cornerstone of the Cabinet's structure. The Prime Minister appoints Cabinet members, and they serve for the duration of his pleasure. He can dismiss any Cabinet member. His resignation implies the downfall of Cabinet.

The Prime Minister serves as the Chairman of the Cabinet and preside over Cabinet meetings. He calls Cabinet sessions, sets the agenda, and participates in the debate. The decision of the Prime Minister is considered to be the decision of the Cabinet. A Minister who does not see eye with the Prime Minister has to resign or to submit to the Prime

Minister. The position of the British Prime Minister in the Cabinet is so strong that a powerful Ministers can not affect his integrity and position.

- (b) **Role in the formation of Ministry:** The Prime Minister is a key figure in the establishment of the Ministry; after his appointment, the Monarch appoints all other ministers on the Prime Minister's advice. The Prime Minister compiles a list of ministers and presents it to the Queen, who then formally appoints them. He receives no direct orders from the Parliament or any of his party's leaders. The total membership of the ministry depends upon his personal will. He is leader of the ministry and his death or resignation implies the fall of the ministry.

However, in the formation of the ministry the Prime Minister is guided by political pressure and regional influences. He has the power to reshuffle the ministry.

- (c) **Distributes the Portfolios:** The Prime Minister also allocates portfolios among the ministers. He has to select the right person having calibre and competency to hold a particular ministry. Nobody can ask him for any portfolio without endangering his ministership. In the distribution of portfolios he has to satisfy all senior members of the party. He will have to decide who would be ministers of Cabinet rank, state ministers on the distribution of portfolio.
- (d) **Role as the Leader of the House of Commons:** The Prime Minister of the United Kingdom is always the Speaker of the House of Commons. He is the Prime Minister of the United Kingdom and the Speaker of the House of Commons. He makes all key announcements about major issues of government policy in the House. In the House, he serves as the government's chief spokesman and he has to answer all the questions raised by the opposition. On all official matters his decisions is final. He guides and influences all the bills in the House. Referring to the leadership of the Prime Minister in the House Commons Sir Ivor Jennings has said, "All roads in the constitution lead to the Prime Minister and from the Prime Minister leads the road to the Queen to the Parliament, to the ministers and to the other members of Commons Wealth Nations even to the Church of England and to the Court of law.
- (e) **Adviser to the Queen:** He is the principal adviser to the British Queen. If the Queen does not listen to his advice then he may resign. Then his resignation would create problems for the Queen to find out an alternative. The Queen cannot fire the Prime Minister as long as a majority of the House of Commons has expressed confidence in him. As a result, the Queen invariably follows the Prime Minister's counsel.
- (f) **Link between the Ministry and the Queen:** The British Prime Minister is the vital link between the Cabinet and the Queen. He is the mouth piece of the Cabinet. He conveys the views and decisions of the ministry to the Queen and the messages of the Queen to the ministers. He is the only source of communication between the Queen and the Ministry. Although

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every Cabinet Minister has a direct right to access to the Queen, yet, no loyal colleague would ever think of visiting the Queen without the consultation of the Prime Minister.

(g) **Co-ordination over Administration:** The Prime Minister is the manager-in-chief of the British Government. He stands distinctly above his colleagues as a coordinator of policies. He supervises over the working of all the departments and takes special interest in foreign affairs. He settles disputes arising between two departments Whenever he finds any one of his colleagues in trouble or short of idea he immediately comes in to his help. Thus he exercises control over the whole departments of Government.

(h) **Controls Finance and Foreign Relations:** The Prime Minister exercises control over the national finance and foreign affairs. He exercises supervision over the preparation of budget. Although the budget is prepared by the Chancellor of Exchequer yet the Prime Minister is kept informed about the fiscal condition of the state. No financial issue can be raised in the Parliament without his knowledge.

He also looks after the foreign relations of England with other countries. He shapes and determines the foreign policy of UK with other countries. He always guides and influences the minister in charge of Foreign Affairs. He keeps touch with international problems and issues. He represents England in international forums and meetings. Thus, his control over finance and foreign affairs is complete

(i) **Leader of the Nation:** The Prime Minister of the United Kingdom is also the country's leader. He is the party's leader as well as the Speaker of the House of Commons. The election to the House of Commons is significant because the Prime Minister's position is decided during the election. During times of national crises, he represents the country. People look to the Prime Minister for advice and assistance.

(j) **Dissolution of the House of Commons:** The Prime Minister has the authority to request that the House of Commons be dissolved. As a result, members of the House remain in office at the Prime Minister's will. No member wants to put themselves in the position of having to run for another election in which they must be subordinate to the Prime Minister. The Prime Minister's advice is not rejected by the Queen.

(k) **Miscellaneous:** The Prime Minister is the leader of his party and all the members of his party listen to his commands. He gives order for taking disciplinary to actions against any member of his party. He seeks to fulfill the election pledges of his party and decides on party policies and programmes. Till he commands leadership of his party he is the undisputed leader of the government and the nation.

During emergencies he plays an important role. He is the fountain of honour and exercises patronage. The Queen makes all significant

appointments on the Prime Minister's proposal. On the Prime Minister's advice, the Queen bestows titles and honours and establishes new peers.

*The United Kingdom*

## Position

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The Prime Minister is in a position of immense power. He is the 'Primus inter pares,' or 'first among equals,' in Lord Morley's words. Despite the fact that Cabinet members are on an equal footing with the Prime Minister, even the most powerful ministers cannot resist his authority without jeopardising his political future. Not only does he have effective influence over the Cabinet, but he also has control over the House of Commons. In a bipartisan system, he can get his legislative and administrative policies adopted by Parliament if he has a stable majority in the House of Commons. That is why he is considered to enjoy a position more than that of 'primus inter pares'. He is the state's operational leader, with powers that no other constitutional ruler in the world, not even the President of the United States, has.

"Inter-stellas luna minors," or "a moon among lesser stars," was how Sir Willam Harcourt described the Prime Minister. He is comparable to a Sun around which other planets orbit. The other ministries would not exist if the Prime Minister did not exist. The Prime Minister is the most important person in the Govt the nothing happens against his will. His office is more powerful and influential than that of the US Presidency.

The office of the Prime Minister is after all, what the man who holds it makes of it. During emergency, he exercises the powers as a virtual dictator. But he can not behave in a dictatorial manner due to the existence of opposition party, a free press and a system of free elections. Again the British tradition of democracy has reduced the Prime Minister to a dictator by compromise and consent. Thus, he is not a dictator in any sense his powers have considerably increased for which it is said that, Britain had seen the final transformation of Cabinet government into Prime Ministerial government. He plays the role of an executive chairman He is more powerful than any other minister but not more than the Cabinet as whole. He can exercise his powers only if he carries his Cabinet with him. He occupies the top-most position in the political administration of the country.

### Check Your Progress

#### Multiple Choice Questions

##### I. Fill in the blanks:

- \_\_\_\_\_ of the following is not a source of the British Constitution.  
(a) Convention (b) Constituent Assembly  
(c) Statutes (d) Common Laws
- \_\_\_\_\_ of the following is not a features of British Constitution.  
(a) Unwritten Constitution  
(b) Parliamentary Form of Government  
(c) Unitary Government  
(d) Rigid Constitution

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3. \_\_\_\_\_ of the following is not correct.
- (a) British Queen is not a part of Parliament
  - (b) British Queen is the supreme executive authority
  - (c) British Queen is the head of the Church
  - (d) British Monarch resigns but does not rule.
4. \_\_\_\_\_ of the following is not a part of the Parliament.
- (a) British Monarch
  - (b) House of Commons
  - (c) House of Lords
  - (d) British Prime Minister
5. \_\_\_\_\_ of the following is not a member of the Council of Ministers.
- (a) Council of Ministers
  - (b) Minister of State
  - (c) Deputy Ministers
  - (d) British Monarch

### II. True or False:

- 1. The Constitution of U.K. is flexible in nature.
- 2. British monarch is the head of the Government.
- 3. Prime Minister is not a member of Parliament.
- 4. British Queen exercises veto on a Bill passed by Parliament.
- 5. There is Parliamentary Sovereignty in Great Britain.

### III. Match the following:

- | (A)                       | (B)                                     |
|---------------------------|---|
| 1. British Monarch        | (a) Lower House of Parliament           |
| 2. British Prime Minister | (b) Presiding Officer of House of Lords |
| 3. House of Commons       | (c) Upper House of Parliament           |
| 4. House of Lords         | (d) Head of the Executive               |
| 5. Lord Chancellor        | (e) Head of the Government              |

## 1.16 ANSWERS TO 'CHECK YOUR PROGRESS'

### Multiple Choice Questions

- 1. (b)
- 2. (d)
- 3. (a)
- 4. (d)
- 5. (d)

### True and False

- 1. True
- 2. False
- 3. False
- 4. False
- 5. True



## NOTES

**Match the following**

1. (d)
2. (e)
3. (a)
4. (c)
5. (b)

**1.17 SUMMARY**

The British Constitution is a product of historical evolution, the consequence of centuries of steady and ongoing development. It was the consequence of “growing” rather than “making.” The majority of British political institutions are natural rather than man-made. The study of their development’s history is a fascinating and enjoyable experience. It emphasises the fact that both accidents and design have influenced the evolution’s route. In fact, all experts believe that two elements influenced the growth of the British Constitution: accidents and design. While analysing its nature, Munro has observed, “It is not a complete thing, but a process of growth. It is a child of wisdom and of chance, whose course has been sometimes by high design.”

**1.18 KEY TERMS**

- **Monarchy:** Rule by the King/Queen.
- **Statutes:** Laws made by the Parliament.
- **Magna Carta:** A great charter signed by King John on 15<sup>th</sup> June 1215.
- **Rule of Law:** Equality before Law.

**1.19 SELF-ASSESSMENT QUESTIONS AND EXERCISES****Short Answer Questions**

1. British Monarch.
2. Parliamentary Supremacy in Great Britain.
3. Importance of Rule of Law.
4. House of Lords?

**Long Answer Questions**

1. Discuss the importance of Rule of Law in U.K.
2. Discuss the powers and position of British Queen.
3. Discuss the composition and Functions of the British Cabinet.
4. Explain the role of the British Prime Minister.
5. Discuss the composition and powers of British Parliament.

## NOTES

### ACTIVITY

**Provide two real-life examples to prove how:**

1. "British King can do no wrong." Justify.
2. "Supremacy of Parliament is an essential feature of British Constitution." Justify.

### CASE STUDY

#### **Supremacy of British Parliament is declining day by day**

Parliamentary sovereignty is a key characteristic of the British political system. Any Law on any subject can be made, amended, or repealed by the British Parliament. There is no one or entity that has the authority to reject or overturn the laws passed by Parliament. Its current position is quite powerful and strong. It has relegated itself to a supporting role to the Cabinet. The strong position of the Cabinet in the House of Commons, the changed relationship with the electorate, the bi-party system, the technical nature of legislation, the Parliament's lack of time, and other factors are all contributing to the British Parliament's loss of authority. The Decline of Parliament argument is correct, but only to a certain extent..

#### **Question:**

1. Is House of Lords a Useless Chamber?

### 1.20 REFERENCES

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## NOTES

## Unit II United States of America-I

### Learning Objectives:

After studying this unit, you should be able to understand:

- Nature and Basic Features of the American Political System
- The theory of separation of powers and checks and balances
- Basic Features of Federalism in America and causes of the growth of strong centre.
- Powers and position of the American President

### Structure:

- 2.1 Introduction
- 2.2 Nature and Salient Features of the American Political System
- 2.3 Separation Powers, Checks and Balances
- 2.4 American Federal System
- 2.5 Growth of Strong Centre
- 2.6 The President of the USA
  - 2.6.1 Procedure of Election of the American President
- 2.7 Powers and Position of the American President
- 2.8 Answers to 'Check Your Progress'
- 2.9 Summary
- 2.10 Key Terms
- 2.11 Self-Assessment Questions and Exercises
- 2.12 References

## 2.1 INTRODUCTION

The United States of America, which declared its independence in 1776 and worked out its present form of government in 1789 was in a very real sense the first 'emerging nation of modern times and the first 'underdeveloped area' to throw off its colonial status and became an independent country. The United States of America is Federal State having 50 states. It is the greatest super power in the world. The constitution of USA was prepared by the 'Philadelphia Convention' held in the year 1787. This convention was composed of 55 members who were termed as the 'Demi Gods' by Jefferson, the constitution framed by this convention

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came into force in 1789 after ratification by a requisite number of states. The constitution of America was the first written constitution in the world.

Thus the American Constitution unlike its British Counterparts is a written constitution. It is also a rigid constitution. But rigidity of the constitution does not imply its static nature. American constitution is dynamic and it has been changing developing and expanding itself to new conditions as per the change of time and requirements of the nation.

The Constitution of America is Federal in form and spirit. America is the first Federation of the world. The United States of America's constitution establishes a clear separation of power between the Federation and the States. The federal government's powers were limited and specified at the time the constitution was written. However, since then, the trend has been for it to gain more power. The federal government's powers have grown in recent years, and state governments have taken a back seat in the American political system. The US Federal Government, sometimes known as the Central Government, has grown in power.

Similarly, the United States Constitution establishes a presidential system of government. The President of the United States is both the head of state and the head of government. The US Presidency has risen to become the most powerful office in the world, from Washington to the current President.

## 2.2 NATURE AND SALIENT FEATURES OF THE AMERICAN POLITICAL SYSTEM

The American Political System in sharp contrast to the British Constitutional System was the result of Philadelphia Convention held in 1787. Those colonies which achieved independence on 4<sup>th</sup> July, 1776 were determined to have a free and independent state. The constitution of the newly born state of America was framed by the Philadelphia Convention specially convened for the purpose. It was an assembly of wisemen of great repute, trained in law, versed in finance, skilled in administration and learned in the political philosophy of their own and all earlier times. The constitution thus framed is the most useful and debated constitution ever written in the world. It represents the elements of stability with continuity and has withstood great stresses during these 200 years. The Americans for the first time enacted a federal constitution with an elected President which has successfully stood the test of time.

The salient features of the American Constitution can be discussed below :

- (1) **A brief written document:** The Constitution of United States of America is the shortest written constitution in the world. Unlike the British Constitution, it is framed by the Philadelphia Convention of 1787 with seven original Articles. Within these 200 years the constitution has been amended 27 times. The briefness of the constitution has made it simple and elastic. The original constitution is only a skeleton which in course of time has been developed and its working smooth, Art-1 of the

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constitution deals with the Congress, Art-2 with the President and Vice-President, Art-3 with the Supreme Court and Federal Judiciary and Art-4 with the admission of new states into the federation, Art-5 with the procedure of amendment, Art-6 with the supremacy of the constitution and Art-7 provides the requirement of ratification of the constitution. Within these seven articles the framers have put all their wisdom and excellence and have proved their calibre which is testified from the worth and inherent value of the constitution.

- (2) **Rigid Constitution:** The American Constitution is the rigid constitution of the world. The procedures of amendment of the constitution is very much cumbersome. There are two different means through which the constitution can be amended.

A proposal of amendment can be initiated either by a resolution passed in both the House of Congress with two-thirds majority or by the legislature of two-third states similarly, the proposal of amendments must be ratified by at least three-fourth state legislatures or by special convention held in these states for the purpose. Thus, the mode of amendment is not so easy for which within 205 years of working the constitution has only been amended for 27 times including the first 10 amendments made for the inclusion of Bill of rights.

The constitution is made rigid to safeguard the interests of the federation.

- (3) **Popular Sovereignty:** The principle of popular sovereignty has been taken as the corner stone of the US constitution. The preamble of the US constitution has reposed faith on popular sovereignty. Madison has said, the American Constitution is truly republican in that all powers under it were derived directly or indirectly from the great body of people. The American people are the source of the constitution.
- (4) **Limited Government:** The theory of limited government has been the pillar of American constitution. The constitution has set up a limited government with bill of rights for the citizens separation of powers and checks and balances have put limitation upon the arbitrary and absolute powers of the government. Written and rigid constitution with judicial review have checked the government from being arbitrary. The authority of the government has been defined and written. None can be autocratic without violating the principles of the constitution.
- (5) **A Federal Constitution:** The American constitution is federal in form and spirit. American Constitution Federation is the first of its type in the World which was created in 1787. For the vast state, federal system has been considered more democratic than any other form and the Americans decided in favour of federalism. America became a federation of 13 states which is at present a federation of 50 states. The central government wields supreme control, although the states have been given local authority. The powers of the two governments have been divided under

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the constitution so that the power of the centre have been clearly stated and the rest are assigned to the States.

(6) **Presidential form of government:** In contrast to the British Parliamentary System, USA has preferred Presidential form of government. The President is the head of the state as well as the government and he is elected by the people. He is the real executive head who does not sit in the Congress nor he is responsible to the Congress. He forms his own Cabinet not from the Congress but outside, The President and his Cabinet remain outside the Congress. The Congress can't dismiss the President nor can he dissolve the Congress. The constitution revolves round the office of the President for which the government is named after the President.

(7) **Bill of Rights:** The Constitution of America has provided for ten fundamental rights which are modified under the Chapter Bill of Rights. The original draft of the Bill of Rights subsequently incorporated into constitution through the first ten amendments in the shape of Bills for which it is known as Bill of Rights. These rights aim at the establishment of a limited government and a free society. The constitution has granted the right to freedom of religion and worship, right to speech and expression, association, right to property and residence, right to keep and bear arms, trial by jury, right to petition the government and right to equal protection of laws.

These rights are absolute and cannot be suspended or withdrawn even during emergency. These are enforceable in the courts of law and the courts in USA do protect these rights.

(8) **Separation of Powers:** The separation of powers idea underpins the United States Constitution. The executive, legislative, and judicial branches of government have been divided from one another. The Congress makes laws, the President enforces them and the Supreme Court interprets them. The President does not belong to the Congress neither he is responsible to it. Similarly, the Congress can not remove the President out of power. The President can't dissolve the Congress. The Supreme Court is independent of the Congress and the President. But complete separation of powers is neither possible nor practicable. So it is supplemented by checks and balances. This is followed with a view to curing the despotic tendency of the government.

(9) **Checks and Balances:** The framers of the constitution were well aware of the fact that strict separation of powers can not be adhered to therefore they supplemented it by checks and balances. With a view to promoting harmony and equilibrium to avoid deadlocks and break downs and to prevent one branch from encroaching upon the other the system of checks and balances has been provided. The lawmaking powers have been assigned to the Congress but it is subjected to the veto power of the President and judicial review of the Supreme Court. Executive powers

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have been granted to the President but all federal appointments made by the President and the treaties signed with foreign states can not be valid without the approval of the senate. The president can be impeached up the congress and his activities are subject to judicial review. The President appoints Supreme Court judges with Senate approval, but Congress has the power to dismiss them. Thus, all the organs are made free but not absolutely free.

- (10) **Supremacy of the Constitution:** The United States of America's Constitution is the supreme law of the land. The constitution and the laws of the United States which shall be made in pursuance thereof, as well as the treaties made or to be made, under the authority of the United States, shall be bound thereby, notwithstanding anything in the constitution or laws of any state of the country. The constitution is respected for it represents the collected wisdom of the people.

- (11) **Judicial Review and legal supremacy:** Judicial review is the most original contribution of Americano the other constitutions of the world. Judicial review implies the judicial scrutiny of the legislative enactments and executive orders. The constitution has given supremacy to the judiciary to exercise its power in determining the constitutionality of the executive and legislature. The Supreme Court of the United States serves as the constitution's watchdog. It is the constitution's last interpreter and defender. The Supreme Court decides all the disputes arising between the federation and states and protects the liberties and rights of the citizens. The Supreme Court is the most powerful court which can declare any act of legislature and executive as unconstitutional on the ground of violation of the constitution.

The Supreme Court gained this jurisdiction in the case of Marbury v. Madison in 1803 in which Chief Justice John Marshall fought for judicial review in his judgement.

- (12) **Dual Citizenship:** Dual citizenship is one of the uniqueness of the American constitution. It implies that every American is a citizen of American federation and besides that a citizen of the state to which he belongs. The state in USA have the right to bestow citizenship. As a true federal state the constitutional framers have granted the authority to grant citizenship to the federation and to all the states.
- (13) **Bicameralism:** The US federal legislature known as Congress, is bicameral in structure. The House of Representatives is the lower chamber, and the Senate is the upper chamber. The Senate in spite of being the second chamber, is more powerful than the lower chamber. In Congress, the Senate represents the states, while the lower house represents the people.
- (14) **Republicanism:** The American constitution has established republicanism both at the federal and state level. The President, as the head of the federal government is elected by the people and the Governors

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at the state level are also elected. The Federal Govt and the Supreme Court is there to protect the republican character of the constitution.

- (15) More powerful second chamber:** The second chamber of the federal government, Congress, is more powerful and influenced than the lower popular assembly, which is a unique characteristic of the American constitution. There is no other second chamber in the world which exercises so much authority as the American Senate. In the law-making sphere it shares equal powers with the Lower House. In monetary matters it can amend or object to the money bills passed by the House of Representatives. It can check the dictatorial tendency of the President. Thus, in the enjoyment of powers the Senate has surpassed the lower house which is an uncommon thing today.

From the above discussion, it can be concluded that American constitution is certainly the best democratic constitution in the world which has been fruitful since 1787 and even today needs no modification.

### 2.3 SEPARATION POWERS, CHECKS AND BALANCES

The founders of the American constitution intended for a system of limited and accountable government to be established. They desired to protect individual liberty from the encroachment of the Govt and to check the dictatorial tendency of its organs. So the framers followed the theory of separation of powers of Montesquieu, to avoid concentration of authority. But they were equally aware of the fact that complete separation of powers among the organs of the government can be neither possible nor practicable. Hence, with a view to achieving objectives of separation of powers they followed the principle of checks and balances. The main intention was to promote harmony and to avoid deadlocks.

The idea of separation of powers was not new to the Americans. But it was popularised by John Locke, Montesquieu and Blackstone. The notion of separation of powers did not originally have a place in the constitution's articles. However, the framers felt it was vital to make the separation of powers idea a cornerstone of the new constitution. Their goal was to establish a government based on laws rather than personalities. They wished to prevent aspirations and unscrupulous men from abusing power to the disadvantage of the common people.

The essence of this theory is that, the three branches of government namely, the legislature, executive and the judiciary should be separated and made independent. Thus, the constitution under Article I vested all legislative powers in the Congress, under Art II all executive powers remain concentrated in the hands of the President and The supreme Court and such lesser courts as the Congress may prescribe and establish from time to time were given judicial powers by Art. III. Thus the constitution not only separates the three branches from one another, but also makes them largely independent of one another. The President is independent of the Congress. He is not answerable to the Congress. The only way for Congress to remove Trump from office before the conclusion of his term is through



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impeachment, which is a near-impossible process. The President appoints Supreme Court judges on the Senate's recommendation, although once confirmed, they can rarely be removed before they reach the age of 70. As a result, the Congress, the President, and the Supreme Court are all independent of one another. The constitution wants the Congress to enact laws, the President to enforce them and the Supreme Court to interpret the actions of the Congress and the President. Such a separation is made to safeguard against the tyranny of a president, or a judge, or majority in the Congress.

The makers of the constitution were certainly aware of the fact that, if the principle of separation of powers will be followed strictly, then the constitutional system would be unworkable. Madison has said, "The principle of separation of powers did not require that the legislature, the executive and the Judiciary should be wholly unconnected. "Strict separation of powers would lead to troublesome, deadlock and inaction. It may bring government activities to a stand-still. The principles of checks and balances was added to counteract against the water-tight compartmentalisation and autocratic tendency and disharmony under and balances is designed to promote unity and equilibrium." It enable each departments to exercise, partial control on the other so that no organ can be autocratic in its working. The framers thought it better that, if power is not to be abused then it is necessary that power be made a check to power.

The Congress is the law-making organ of the state, but its authority has been checked by the President and the Supreme Court. No legislation can become an act without the Presidential assent. The President can exercise his veto power over the bills passed in the Congress by killing the bill. He may return the bill back to the Congress for reconsideration in case of which the Bill is to be passed by both the Houses by 2/3rds majority which is not possible. So, if the President disagrees no law can be made by the Congress.

The President has been vested with all executive powers but there are certain limitations on his powers. All executive appointments made by the President and treaties signed by him with foreign states cannot be effective without the approval of the Senate. Financial powers have been entrusted to the Congress without which the President cannot act. The Congress can impeach the President and the Supreme Court can declare any executive order or decree as unconstitutional, if they are repugnant to the Constitution.

Similarly, the Supreme Court has been entrusted with all the judicial powers but it is kept under check. The President appoints the judges with Senate confirmation, and they can be impeached by Congress. The Congress can limit the appealable jurisdiction of federal courts.

Thus, the constitution has successfully implemented the twin-principles of separation of powers with checks and balances. But, there are complaints against it.

- (a) Despite the separation of powers and checks and balances, the President has been able to exercise excessive influence on judicial judgments by dominating Congress. The Congress is interfering in administration and

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the Supreme Court has encroached upon the authority of the President and the Congress.

- (b) Separation of powers has impeded action and frustrated leadership by preventing unity, encouraging conflict, and dividing responsibility.
- (c) In spite of introduction of the system of checks and balances no equilibrium has been achieved. It has been a source of deadlock between the legislature and executive.
- (d) In an era of co-operation separation of powers does not seem to be right.

However, the Americans are not willing to give up the system. The political parties have bridged the gap between the executive and legislature. When the President and the Congress will pull on together, they can persuade the Supreme Court to accommodate to it. In this way the system has been working in America.

## 2.4 AMERICAN FEDERAL SYSTEM

### Salient Features of the American Federal system

America is the classic home of Federalism. Because Federalism is the cornerstone of US political system. It is the first modern state to be organised on Federal basis. It was a centripetal federation of 13 states which now increases up to 50. After the inauguration of independence, these states decided to form a federation with a strong centre and independent states. As a vast country it was natural and inevitable for them to have a Federal Union of states. Then geographical, historical and ethnic factors also contributed towards the creation of a Federal State. Thus, taking all these into account the framers decided in favour of a federation mainly because it advocates division of powers among the centre and states and a democratic constitutional system.

The features of American Federal system may be explained below:

- (1) **Division of Powers:** Division or distribution of powers is one of the most important features of a Federal system. In American constitution administrative authority has been divided between the federation and the states. The states in America were not ready to surrender their sovereignty states. So the framers were in a fix. The principal issue for the framers was to create a national government Powerful enough to maintain its integrity but not so powerful as to suppress the states. As a result, the Federal government enjoyed vast but not unlimited powers and the states were left free. The Federal government enjoyed limited authority while the residuary powers have been given to the states.

- (a) **Power of the Federal Govt:** The powers of the Federal government have been provided under Art. 1 Sec 8 of the constitution. These include the authority to levy and collect taxes and duties, international trade, interstate commerce, naturalisation, the United States' common defence and general welfare, weights and measures, and coinage. Promotion of science and other useful arts,

establishment of lesser tribunals, declarations of war, arming and maintaining the fleet, admission of new states, naturalisation, and post-offices, and so on.

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(b) **Powers prohibited to the National government:** The constitution under Art. 1 sec 9 has enlisted some powers which the Federal government can not exercise. The Federal government cannot suspend the writ of habeas corpus, cant make laws with retrospective effect, can't grant titles of nobility; cant make laws establishing supremacy of a religion, can't interfere in the freedom of religion, speech and expression and craft alter the boundaries of states without their consent etc.

(c) **Power prohibited to the states:** Some powers have also been prohibited to the states; for they cannot make alliance or treaty with a foreign state can maintain armies during peace; declare war nor can interfere in the rights of the citizens.

(d) **Concurrent Powers:** There are certain powers in the constitution which are shared by the Federal government and that of the states. Both the union and the states have the authority to tax and borrow, charter banks and corporations, establish and maintain courts, establish and maintain standards of weight and measure, occupy property for public purposes, and incur expenditure for the common welfare and general happiness, according to the constitution.

Thus, from the distribution of powers it is clearly understood that those powers not mentioned in the constitution are reserved for the states. It was the design of the framers to create a weak centre with limited authority. However, throughout time, the federal government's powers have grown.

The constitution empowers Congress to enact all laws necessary and proper for carrying out the foregoing functions, as well as all other powers vested in the United States government or any of its offices or departments, by the constitution. These implied powers, clause has been upheld by the Supreme Court for which the centre has become stronger than the states,

(2) **Written and rigid constitution:** The American constitution is a typical Federal constitution. It is written in form and rigid in nature. It is not at all easy to amend and it can not be amended unless the states agree to the proposal. Thus, the Federal government cannot encroach upon the authority of the states nor can change the distribution of powers.

(3) **Independent Supreme Court:** The Supreme Court of America as the Federal judiciary interprets the Constitution. It acts as the guardian of the constitution. If any law of the congress or of the states violates the constitution, then the supreme court through judicial review can declare

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those unconstitutional. It settles all disputes arising between the federation and the states.

- (4) **Supremacy of the Constitution:** The United States Constitution is the supreme law of the land, and neither the federal government nor the states have the power to overturn it. The top court has upheld the constitution's primacy. There can be no law in the United States that contradicts the constitution. Constitution is sacred and inviolable.
- (5) **Bicameralism:** The bicameral structure of the Congress is another feature in support of federalism. The Congress is bicameral. Its lower house is known as the House of Representative which represents the people while the Senate being the second chamber represents the states.
- (6) **Two sets of Government:** In USA, there are two sets of government one at the national level and the other at the state level. The two sets of government act independently of the other.
- (7) **States have their own constitution:** In America besides the Federal constitution, each state has a separate constitution.
- (8) **Dual Citizenship:** In America, there is double citizenship or dual citizenship. Every citizen is a citizen of America and a citizen of his own state of residence. Besides the Federal government the states have the right to confer citizenship.

The Federal Supreme Court and state courts are two types of courts. The state courts are organised and maintained by state laws. The regional units in America have no right to demand for secession. They once joined the federation means they cannot withdraw from it.

Thus, the American constitution is considered to be a constitution of a federation. The government has been able to restore national unity and strength along with the maintenance of state rights. In course of time it has become centralised but the states do maintain their independent identity.

## 2.5 GROWTH OF STRONG CENTRE

Federal system. Or What are the factors responsible for the increase of the powers of the Federal government in USA ? Or Examine the autonomy of the states in US Federal system. Or The existence of Federalism in America is doubtful ?

America was the first country to have a federal structure of government. Before independence there are 13 independent colonies who desired to form a Federal union for protection and self-defence, because a federal form of government ensures stability and strength to the union government side by side grants autonomy to the states. Both the centre and the states derived authority from the constitution. In comparison to other federation the states are given more powers. The Federal government is prohibited to encroach upon state's authority. The supreme court is created to settle the Federal issues. That is why, it is said to be the classic example of a true federation.

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But in spite of all these arrangements the American Federal system has shown symptoms of centralisation. The federation as found today, is quite different from that designed by the framers. The Federal system has undergone profound changes, the most significant of these changes being the steady growth of the powers and activities of the national government. The founding fathers have created a weak centre with independent states. But today, it has become the most powerful. The factors contributed to the enormous increase in the powers of the Federal government may be discussed below:

- (1) **Large scale socio-economic changes:** The unprecedent growth of the powers and functions of the national government can be due to the expansion of territory, growth of population and increasing complexities of socio-economic organisation. Since 1789 America has advanced from the position of a small and isolated nation with a simple and agricultural economy to that of the most highly industrialised and most powerful nation of the world. The changes brought about by industrial revolution, development of transport and communication and the technological advances. The changes in social and economic conditions have been reflected in Political institutions for which the central government has grown stronger.
- (2) **Civil War:** The Civil War of 1861-65 gave supremacy to the Federal government. It gave a negative verdict on state-separatism, state-autonomy and state loyalty. It urged upon the supremacy of the Federal government and decided for ever that the states are to remain subordinate to the centre.
- (3) **The doctrine of implied powers:** The role played by the Supreme Court as the interpret of the constitution has been responsible for the growth of powers of the Federal government. It is the guardian of the constitution and the saviour of the federation. It is the final authority to interpret the constitution. As an organ of the Federal Government it has cleverly used the doctrine of implied powers as a mighty never for raising Federal powers. The Supreme Court has given much powers to the Federal government which had not been specifically given to it by the framers of the constitution. The Federal Govt can legislate on all such subjects which are essential for implementing the powers specifically given to it. The court has liberally interpreted the 'commerce' and the 'general welfare' Clauses so as to add to the powers of the national government.
- (4) **Federal-grants-in-aid:** The Federal Govt in USA gives financial assistance in the shape of grants-in-aid to the states and to the local bodies in America. The financial Supremacy of the central Govt has resulted in forcing the states to seek federal help for financing some of their social services. The scope of Federal grants has increased. The federal government can help states with highway development, agricultural education, extension, and research, forest and fire protection, social security, low-cost housing, and air-post construction, as well as

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civil defence. These are conditional grants. The states are subjected to the following conditions:

- (a) that, the state shall spend money for the specific purpose for which it is granted,
- (b) that the state incurs expenditures from its revenues for the purpose,
- (c) that the state establishes appropriate administrative agencies, and
- (d) that in exchange for the assistance received, the state acknowledges the Federal Government's right to impose Federal standards and regulations, as well as Federal inspection and audit of accounts,
- (e) that the grants can be withhold if the state fails to meet national standards.

Thus, by giving grants-in-aid to the states the Federal government encroaches upon the autonomy of the states. Because there is power where there is money. Where there is a lot of money, there is a lot of power. The Federal government with fiscal supremacy has made the states dependent on the centre.

- (5) **International Situation:** After the Second World War USA came to the fore-front of World Politics. It began to play the role of a super power. The invention of thermo-nuclear weapons and long range air crafts made USA most powerful. The central government gave primacy to military preparedness for which the Federal government has been provided with much powers. The cold war and the super power rivalry in the world forced the Federal government to assume extraordinarily powerful.
- (6) **Amendments:** The various constitutional amendments have made the Federal government more powerful. The 16th amendment authorised the Federal government to levy income-tax whereby the centre has grown strong.
- (7) **Laws of the Congress:** The laws made by Congress from time to time have strengthened the authority of the Federal government. The US Congress has made several laws on Agriculture, Labour, Trade, social security and social welfare and extended jurisdiction of the Federal government. The 'New Deal Policy of President Roosevelt has also empowered the Federal Governments'.
- (8) **Political Parties:** The organisation and growth of Political Parties on national lines has strengthened the bid to centralisation. It has given a death blow to parochialism and people now feel for the Federal Government instead of their own state. The Parties have created national consciousness.
- (9) **National Press:** The Press and news papers being organised on national level have inculcated common ideas and spirit of unity and nationhood among the American. That is why the people demand for the increase in power of the centre.

- (10) **Growing tendency towards centralisation:** Now, there is a general tendency towards centralisation all over the world and USA is no exception to it. The people of America have reposed faith upon the Federal government for solving all major problems. The rise in population, the development of science and technology, growing concern for warfare military preparedness; world leadership and economic sufficiency all pressed the people to think that only the Federal Government can successfully direct the control all these problems. That is why, the Federal Government has grown strong.

But, in spite of all these, the states in America have not been finished. The federal government's powers have grown dramatically, yet it has rarely encroached on state autonomy. In key areas where the federal government exercises advice, supervision, and control, the federal government and the states are now cooperating. The states' autonomy is still intact. The states are now important entities in USA and will continue to be so. The Federal government can not manage everything all by itself. Again, there are strong emotional attachments of the citizens with their states. The federal government's authority has grown in tandem with the states' power. As a result, the states continue to serve as the pivot around which the American political system revolves.

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## 2.6 THE PRESIDENT OF THE USA

The US constitution establishes a presidential system of government, with the President of the United States serving as both the head of state and the head of government. Article - II of the American Constitution declares "All the executive powers shall be vested in the President of the United States of America."

### 2.6.1 Procedure of Election of the American President

US Presidency is the highest elective office in the world. That means the President is elected by the people America as a symbol of republicanism. But the procedure of election of the President was controversial at the time of framing of the constitution. But, in the end, it was decided that the President would be elected indirectly by an electoral college made up of as many presidential electors as the combined membership of the House of Representatives and the Senate. Each state has to send equal number of electors as it has in the Senate and in the House of Representatives. These electors then cast votes in favour of President and Vice-Chairman.

### Qualifications

The constitution has prescribed the same qualifications for the office of President as well as Vice-president. A candidate seeking election,

- (i) Must be a natural born citizen of America.
- (ii) Must have attained 35 years of age, and
- (iii) Must be living in America for at least 14 years.

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Besides these, he must have made his work in public life and should be a man of doubtless integrity and personality. He is entitled to get an annual salary of 200,000 dollars and an allowance of 50,000 dollars in addition to it. He lives in a magnificent residence called White House with other necessary facilities. His official expenses are given by the government.

The President serves a four-year term and is eligible for re-election. But no President can contest for the third term, in case of his death resignation or removal the Vice President succeed to his office for the remaining period.

### Election

The farmers opted indirect election of the President to make it a calm and quite affair, to elect the President with a small number of wise and conscious elections who could make their best choice for the highest political office in the country. They wanted to keep the President away from popular passions, but in effect it has turned into a direct election. Now the Presidential electors are chosen from party nominees by the people. The involvement of political parties has made it a direct election in practice.

There are various stages in which the President is elected :

- (a) **Nomination of the candidates:** It is the first step in the presidential election process. Both political parties in America have national conventions well in advance of election day to nominate candidates for the offices of President and Vice-President. Delegates to the convention are chosen democratically by the party's state sections. Over a thousand people are sent to the convention, with an equivalent number of alternates. They gather in a huge assembly lavishly decorated with flags and huntings and portraits, Media men are adequately spaced. Crowded galleries with restless spectators and brass bands fill the air in excitement. In this convention the party nominates the names of the candidates for the office of President and Vice President; then the delegates cast votes in favour and those who win become the nominee of the party. Care is taken so that the candidate for the office of the party. Care is taken so that the candidate for the office of President and Vice President should not belong to the same state.
- (b) **Campaigning:** Campaigning starts just after nomination. The parties set up nation wide state wise committees and open party head quarters in big cities. Each party issues its election manifesto and campaign text-book containing party platform, biographies of candidates. Party-men and professionals assist in election propaganda. Candidates campaign door to door and posters, pamphlets are pasted. The parties speak through the radio and television. Candidate move from place to palace and try to convince the voters.
- (c) **The Electoral College:** The electoral college election takes place in the month of November each election year. Every American citizen above 21st years is entitled to vote. In this election, the voters vote not for the



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candidates, but for the party electors, the voters vote not for the candidates but for the party electors. The electors are chosen as a group rather than as individuals. All of the nominees of the party with the most votes in a state are considered elected. The electoral college has a total of 538 members (435 + 100 + 3). So, the candidate which won the support of 269 electors is declared elected. As a result, a candidate can win a majority of electoral college votes without winning a majority of the popular vote in this system.

Thus, after the election to the electoral college, the fate of the next President is decided. But the process does not end there. Five weeks following the national election, the elected members of the electoral college assemble in their respective state capitals to vote for the President and Vice President. This voting is more formality because rarely any party elector votes for the other.

- (d) **Counting of votes:** The votes of the electors are then sealed and sent to the Chairman of the Senate. Who acts as the election officer. The sealed covers containing votes are opened by the Chairman in the presence of the members of Congress and counted. The candidate who receives the greatest number of electoral votes is proclaimed the winner. If no candidate receives the required majority of votes (more than half), the House of Representatives chooses the President, while the Senate decides on the Vice-President.

The President shall be chosen by the House of Representatives from among the three candidates who receive the most votes. Members of the House vote by state, with each state receiving one vote regardless of population or size. The candidate who receives 26 out of 50 votes is considered the winner.

In the event of Vice President, the Senate must choose between the two leading candidates who received the most votes. The Senators vote individually and the candidate securing 51 votes out of 100 is declared elected.

The newly elected President assumes office on 20<sup>th</sup> of January of the next year. Thus, the election of the American President is a longer process which continues for 4 months. The framers have wanted to make the process indirect and easier but in course of time due to involvement of political parties it has become direct. The people of America as a whole take part in this election and people all over world look to it eagerly waiting for result.

## 2.7 POWERS AND POSITION OF THE AMERICAN PRESIDENT

The President of America holds one of the most powerful and spectacular political offices of the world. The framers intended to make him a constitutional ruler, however, in actuality, the office has amassed such a vast array of powers that the President has become the world's most powerful monarch. He derives his authority from the constitution. He is the focus of the Federal government and in

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times of crisis he is the right person to guide the nation. In view of the President's wide authority at home and his influence abroad Laski says, there is no comparable foreign institution. All executive powers have been vested in the President by the constitution, with the requisite checks. The framers wanted to create a powerful President but not a dictator. They combined in him strength with safety so as to maintain law and order enforce Federal laws but not to behave in a despotic manner.

The constitution gave him wide authority but made him function within a system of checks and balances. The restraints imposed on his authority forced the critics to remark that the President is a colossus with a feet of clay. The powers conferred on him make him a colossus but the checks prevent him from exercising those powers for which his position becomes unstable. The President is definitely a colossus but it is too much to imagine in case of US President. The following are the President's powers and responsibilities:

- (a) **Executive Powers:** All executive powers are vested in the President under Article-11 of the American Constitution. He is the state's true executive chief. The administration of the state is run in his name and he exercise all those powers with the advice of his Cabinet. He maintains law and order and sees to it that the laws of the Federal Govt are faithfully observed. He swears to uphold, protect, and defend the United States Constitution. He is required to secure the faithful execution of all laws passed by the Congress and treaties signed by him with the approval of Senate. He is there to protect the republican character of the constitution and to safeguard them against foreign invasion and domestic violence.

President is the head of his Cabinet. The Cabinet is but his creation. He is the virtual dictator of the Cabinet and the member loyal to him and act on his direction. He is the be all and end all of the Cabinet.

- (i) **Power of appointments:** The President gives appointment to a large number of public officials and heads of executive departments. The President now gives appointment to all important Federal officers like, Ambassadors, Judges, heads of the departments, collectors of customs and Post-Masters etc. Actually, the President nominates and the Senate confirms them, as a result favouritism is avoided. In case of appointment to subordinate posts the President consults the two Senators of the state to which the officer is appointed and gives appointment.

The President can remove those officers of the Federal Government appointed under his hand and seal-excepting the judges of the Supreme Court and those appointed under Civil Service Rules.

- (ii) **Commander-in-Chief of Army:** The President is the chief of the Armed forces and all officers of the armed forces are commissioned by him. He can made use of the armed force for maintenance of law

and order and enforcement of laws. He can compel the Congress to declare war by creating such a situation.

**(iii) Maintenance of foreign relations:** The President has the power to negotiate treaties with foreign nations with the consent of Senate. He appoints Ambassadors and Diplomats to the UN and to other countries. He is the representative of US government in the international events and issues. He may enter into executive agreements which need so Senatorial confirmation.

**(iv) Head of national administration:** The US President is the chief administrator of the nation. He issues executive orders and regulations. But the President's authority is not unfettered. He directs the administration but the Congress decides as to what will be done.

**(b) Legislative Powers:** In terms of legislation, the President of the United States plays a significant role. The President does not make law, nor he is a member of the Congress but he influences law-making. He can initiate legislation by sending messages to the Congress which can not be ignored. Thus, the President may press the Congress to enact any law or to pass any proposal.

The President's most important legislative power is to use his veto power to influence legislation. All bills passed by the Congress become law only after presidential assent. When both Houses of Congress agree on a bill or proposal, it is presented to the President. He has 10 days to sign it or return it for reconsideration if he has any objections. This is suspensive in a sense that, the Congress can by 2/3rds majority in each house again pass it when the President can not withhold his signature. But if the President takes no action on the bill and the Congress adjourns within 10 days, then the bill is said to be killed and nothing can be done. If the Congress remains in session, then the President can not exercise such types of veto as are absolute in character. The President can't exercise veto on proposal of constitutional amendments. This veto power is sparingly used.

The US President can summon special sessions of US Congress during exceptional circumstances. He may convene either house separately. He has the power to issue executive orders. He issues directions to the officials as to how to discharge their duties. In most circumstances, Congress enacts legislation in broad strokes, leaving the details to the executive branch. When Congress is not in session, it cedes its legislative authority to the executive branch, which is referred to as delegated legislation. So, the President has become the Chief Legislature. The President as the leader of his party may influence his party members to initiate or approve any proposal in the Congress.

**(c) Financial Powers:** The President exercises control over national finance. The annual budget of USA is prepared by the Bureau of Budget under his

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direction and guidance. The budget is passed in the Congress but, in practice the budget is passed without much alternations. Very few legislators understand the technicalities of the budget for which the decisions of the executive prevails.

- (d) **Judicial Powers:** The US President exercises certain judicial powers. He gives appointment to the judges of the Supreme Court with Senatorial assent. He has the power to grant pardons and reprieves. In this sphere he is exclusively free to grant pardon. But, he can't pardon a person convicted by impeachment. He can grant no pardon against offences committed for the breach of state laws. He is immune from judicial scrutiny in any court of USA.

Besides, during emergency or national crisis the whole administration of the country comes under his control.

- (e) **Leader of Nation:** The President of USA is the leader of his country, his party and is the voice of the nation. He represents America as a whole. He is the tallest figure in American Political arena. He speaks for the people and for the country not for himself. His shadow falls on the Congress and the Supreme Court. He enjoys such undisputed leadership that he is called the uncrowned Monarch of United States. His leadership in the international sphere is still of more importance. The foreign policy of America which is designed by the President is eagerly awaited by other states of the world. Thus, he has been the leader of the whole world.

### Position of the President

From the above analysis it is clear that, the office of the American President is the most powerful office in the world. He represents the people of America. Within and outside in international sphere. He formulates public policies and moulds public opinion. He is the Chief executive and combines in him the powers of the Prime Minister and the Monarch. The framers have given him substantial powers but with necessary checks to prevent him from becoming a dictator. But, the Presidency has undergone a steady accumulation of power, almost from the day the first President entered into office. From Washington to Clinton it has become the most powerful office in the World.

In the words of Sir Henry Maine, "The America President rules but does not reign. The fathers of the American Constitution took all the powers of the British King and gave them to the President only restraining them where they seemed to be excessive". He is the elected representative of the people of America. His powers are extensive and it depends on the personality and ability of the President to use them to further his dignity and prestige. The judiciary has interpreted the constitution helping the expansion of his authority. In the present age his role and importance has further increased. Due to economic sufficiency and industrial know how countries look to the President for US assistance. With a strong leadership over his party and with a dignified personality he has become the ruler of the whole world.

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The American Presidency has become an office of great importance for its unique character. He is the only office bearer who has to face the total electors in the country. His powers are derived from the constitution, but more than that the office has accumulated in course of time. He commands leadership over his party and the government. He exercises all his powers by himself and he is accountable only to the people of America and to none else. He can rule even without the support of a majority in the Congress. Unlike the British Prime Minister, he does not carry the Cabinet with him, rather the Cabinet follows him. That is why, as Laski correctly points out, the President is both more and less than a King and a Prime Minister. But, as Brogan pointed out in response to Laski's assertion, the President combines the roles of British King and Prime Minister in his person. A comparison of the powers of the King and President, as well as the Prime Minister and President, should be made to support it.

### US President and King of England

If we compare the powers and position of the US President with that of the King of Britain we will find only one thing in common that is, both are the heads of their respective states. Both perform a series of ceremonial functions like giving appointment to official, sending and receiving diplomats, making formal speeches, etc. But they differ in many respects.

- (a) The US President is elected by the people of America who remains in office for four years or 8 years. He can be removed from office through impeachment but it is too difficult to pass.

But the British King or Queen is hereditary in character and remains office till death. His/her office has no democratic basic. He/she represents tradition.

- (b) The President of the United States is both the head of state and the head of government. He is in charge of the national government and directs it. But the British Monarch is only a ceremonial figure head. The administration is run in his name but he never governs. It is the Prime Minister who rules the nation. The King acts on the advice of his ministers. But the US President advises his Cabinet and run the administration.
- (c) US President is the creator of the Cabinet. The members are appointed by him and remain in office during his pleasure. He is not one among the Cabinet members but above it. The members of his Cabinet are subordinates not colleagues. But, the King of England is a rubber stamp in the hands of the Cabinet.
- (d) The King of Britain Summons the Parliament and signs the bills passed in the Parliament with no power to withhold assent. But the President of USA does not Summon the Congress but influence legislation by sending message and by exercising veto. He can kill a bill completely.
- (e) The President of USA is not a Monarch but his powers are absolute. He is not a rubber-stamp. He can exercise his veto powers and is the chief

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manager of his country. He plays a leading role in national and international politics in civil and military sphere. He is assisted by the Cabinet. But the King of Britain is only a constitutional figure head who reigns on the advice of ministers.

### US President and British Prime Minister

The President of USA and the Prime Minister of Britain both are two powerful and influential offices of two different systems of government. A comparative study of his powers may be made in the following direction:

- (a) The President of American and the Prime Minister of Britain both are elected by the people. The President is elected indirectly by an electoral college, however he is elected by the citizen voter of USA. But the Prime Minister is elected directly from his own electoral constituency. The King appoints the Prime Minister from the party securing majority seats in the House of Commons.
- (b) The term of office of the US President is fixed at 11 years within which he can rarely be removed by impeachment. He is not answerable to the Congress nor can the Congress remove him by simple majority.

The British Prime Minister, on the other hand, has a 5-year tenure in office during which he must maintain the confidence of the House of Commons majority. By voting a no-confidence resolution with a simple majority of votes, the House can dismiss the ministry. In this respect the President is more assured of his position.

- (c) In the sphere of relationship with the Cabinet, the US President has a clear advantage over the British Prime Minister. The President is the master of his Cabinet has a free-hand in the formation of Cabinet. He is not bound by the advice of the Cabinet. He may decide against the Cabinet decision and the Cabinet follows the President.

However, when it comes to dealing with his Cabinet, the British Prime Minister is not so free and independent. Despite the fact that he appoints the Cabinet members, they are his colleagues. He is the leader of the Cabinet not above it. The Prime Minister sinks and swims with the Cabinet. On important issues he has to consult the Cabinet and carry it with him. The members of the Cabinet as a whole can not be avoided.

- (d) The British Prime Minister belongs to the Parliament. The Prime Minister and members of his cabinet are jointly responsible to the House of Commons for all acts of omission and commission. A vote of no confidence in the ministry can be used by the House to bring it down. As a result, the Prime Minister has a direct relationship with Parliament and is a member of the lower house.

But, the President of USA does not belong to the Congress nor he is answerable to the same. He enjoys a fixed term and the Congress can't

remove him within his term except without the procedure of impeachment. He stands outside the Congress.

- (e) In the administrative sphere the President seems to be more powerful than the British Prime Minister. He is the chief executive and the commander-in-chief of the army. He negotiates foreign relations with foreign countries and gives appointments to the Federal officer, But his powers of appointment and treaty-making are subject to the approval of the Senate. But, the Prime Minister of the UK performs his executive responsibility under the searching criticism of the Parliament. When he commands a clear-cut majority in the House of Commons he became the absolute ruler of the nation.
- (f) In the law-making sphere, the Prime Minister is certainly more powerful than the President of USA. The President cannot initiate bills but influences legislation through 'messages'. He cannot exercises direct control over it. But the British Prime Minister is the leader of the Parliament and his party. So he can initiate proposals and with the support of his party men can get it passed. All the bills are passed under his persuasion on controversial issues, he gets the bill passed by declaring party whips.
- (g) In terms of finance, the Prime Minister of the United Kingdom is more powerful than the President of the United States. In England, the Prime Minister is in charge of preparing and passing the budget. He can pass all of his money measures without amendments because he has a strong majority in the House of Commons. But, the President directs the preparation of budget but is not sure enough to get it passed through the Congress. The Congress can make necessary change in the budget.
- (h) Besides these things, the president gives appointment to a large number of Federal officers and can remove them. But this power of appointment is subject to senatorial confirmation. But, the British Prime Minister has no power to give appointment. He only advises the Queen on the matter. The US President being the Supreme Commander of the armed forces can make use of it according to his will. But the Prime Minister enjoys no such power. The US Presidency is constitutional while the Prime Ministership of British is conventional.

As a result of the foregoing analysis, it may be inferred that the American President is the most powerful man in the world politically, and that a Prime Minister with a majority in the House of Commons can be more powerful than the US President. That is why, Lakhi rightly says, "The President of USA is both more or less than the King; he is both more or less than the Prime Minister of Britain.

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### Check Your Progress

#### Multiple Choice Questions

##### I. Fill in the blanks:

- There are \_\_\_\_\_ Articles in the Constitution.  
(a) 5 (b) 6  
(c) 7 (d) 8
- \_\_\_\_\_ of the following is not a features of American Constitution.  
(a) Written and rigid constitution  
(b) Separation of powers with checks and balances  
(c) Presidential form of Government  
(d) Quasi Federal State
- There are \_\_\_\_\_ states in American Federation  
(a) 30 (b) 30  
(c) 50 (d) 60
- The tenure of the American President is \_\_\_\_\_ years.  
(a) 3 (b) 4  
(c) 5 (d) 6
- \_\_\_\_\_ of the following is not applicable to the President of USA.  
(a) He is the head of the State not the head of the government  
(b) Enforcement of Laws and Maintenance of Order  
(c) Functions as Director of Administration  
(d) Commander-in-Chief

##### II. True or False:

- The constitution of America is one of the oldest written constitution of the World.
- There are only 10 Articles in Constitution of America.
- In America, is a Parliamentary form of Government.
- The Constitution of America is Federal in form but unitary in spirit.
- The President of America is elected for a period of 4 years.

##### III. Match the following:

- | (A)                           |     | (B)   |
|-------------------------------|-----|---|
| 1. Separation of Powers       | (a) | President is head of the State and Government                             |
| 2. Rigid Constitution         | (b) | Division of powers between Union and States                               |
| 3. Presidential Form of Govt. | (c) | Head of the State is elected  |
| 4. Federation                 | (d) | Difficult to amend the Constitution                                       |
| 5. Republic                   | (e) | No organ of the government can interfere in the areas of other two organs |



## 2.8 ANSWERS TO 'CHECK YOUR PROGRESS'

### Multiple Choice Questions

1. (c)
2. (d)
3. (c)
4. (b)
5. (a)

### True and False

1. True
2. False
3. False
4. False
5. True

### Match the following

1. (e)
2. (d)
3. (a)
4. (b)
5. (c)

## 2.9 SUMMARY

The Constitution of America is the shortest written constitution in the world. The United States Constitution is the supreme law of the land. It establishes a presidential system of government with the Congress and the President having separate powers. The notion of separation of powers with check and balance is fully accepted and included into the US constitution.

The United States of America is a 50-state confederation. All necessary features of Federation like, division of powers, dual government, written and rigid constitution, independent judiciary, supremacy of the constitution, dual citizenship, Bi-commercialism are found in constitution. The Federal System of the United States is known as a Standard Federal System.

The presidency of the United States is one of the most powerful democratic offices in the world. It is one of the most powerful positions that a democratic country has ever produced. The President of the United States wields the most power of any anyone in a democracy. The President of the United States is an elected official who serves for a four-year term. So, the USA is a Republic.

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### 2.10 KEY TERMS

- **Sovereignty:** Supreme Power of the State.
- **Separation of Powers:** The branches of the Government should perform their functions independently.
- **Republic:** Head of the State should be elected.

### 2.11 SELF-ASSESSMENT QUESTIONS AND EXERCISES

#### Short Answer Questions

1. Separation of powers in USA.
2. Check and Balance in USA.
3. Election of the American President.
4. Impeachment of the President of America.

#### Long Answer Questions

1. Discuss salient features of American Constitution.
2. Discuss the Federal features of American Constitution.
3. Analyse the powers and position of American President.

### ACTIVITY

#### Provide two real-life examples to prove how :

1. "Separation of power in America."
2. "Growth of Strong Centre in American Federation."

### CASE STUDY

Between the federal government and the states, there is a separation of powers. The federal government has 18 powers under Article 1: Section 8 of the constitution. Article 1: Section 9 enumerates the authorities that the federal government is not allowed to exercise. The states have been given powers that are not vested in the federal government and are not banned by the federal government. Both the Federation and the states have been given some powers. As a result, the US Constitution establishes a clear separation of powers between the federal government and state governments.

#### Question:

1. Is USA a true Federation?

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## Unit III United States of America-II

### Learning Objectives:

After studying this unit, you should be able to understand:

- Composition and Functions of the Congress
- Composition and Functions of the House of Representative and the Senate
- Relationship between the House of Representative and Senate
- Composition and Jurisdiction of the Supreme Court of America
- Nature, organisation and working of political parties in America
- Role of Pressure Groups and Lobbies in America

### Structure:

- 3.1 Introduction
- 3.2 The Congress of America
- 3.3 The House of the Representatives
- 3.4 The Senate in America
  - 3.4.1 The Senate is the Strongest Second Chamber of the World
- 3.5 The Committee System in American Congress
- 3.6 Law-making Process in the American Congress
- 3.7 The Supreme Court of America
  - 3.7.1 Role of Supreme Court
  - 3.7.2 Working of Judicial Review in USA
- 3.8 Political Parties in USA
  - 3.8.1 Organisation of Political Parties in USA
- 3.9 Pressure Groups and Lobbies in USA
- 3.10 Answers to 'Check Your Progress'
- 3.11 Summary
- 3.12 Key Terms
- 3.13 Self-Assessment Questions and Exercises
- 3.14 References

### 3.1 INTRODUCTION

Article I of the US Constitution states "All Legislative Powers herein given shall be vested in a Congress of the United States, which shall consist of a Senate

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and a House of Representatives.” The House of Representatives is the US Congress’s Lower and Directly Elected House, and it not only gives it the law-making powers of the Federation, but it also establishes its bi-commercial nature. The Senate is the US Congress’s upper house, and it represents the US Federation’s states.

The United States Constitution also establishes an independent and powerful judiciary to serve as the constitution’s guardian and dispenser of justice. The Supreme Court of the United States is at the pinnacle of the Federal Judicial System. It is the Land’s highest court.

The emergence and growth of political parties and pressure organisations in the United States has occurred as a natural result of the country’s transformation into a liberal, democratic political system.

### 3.2 THE CONGRESS OF AMERICA

The congress is the name given to the United States’ federal legislature. The legislature is divided into two chambers. The Senate is the Congress’s higher chamber, while the House of Representatives is the lower house. Art I of the constitution has vested the legislative powers in the Congress. The Senate represents the states under a federal system, whereas the House of Representatives represents the people as a whole. The framers intended for the Senate to act as a conservative check on the House of Representatives, which is elected by the people.

#### Composition

Senate is the upper house of US Congress. It consists of 100 members, each state sending 2 representatives irrespective of size and population. The selection of these members is decided by the respective states, however, they are elected by the people. Their term is six years, and every two years, one-third of them retires. In order to become a member of Senate a person must be above 30 years of age and must be a permanent house and the Vice President is the ex-officio Chairman of the house.

The House of Representatives is the lower chamber of Congress, and it is a popular chamber with a two-year tenure. It consist of 435 members. Every state sends its representative basing on the population of must be above 25 years of age and must be resident of USA for at least 7 years. The Speaker is the chairman of the House.

#### Powers and functions

The powers of the Congress have been clearly defined.

**(a) Legislative Powers:** The legislative powers of the Congress can be classified into; (i) Delegated powers, (ii) Implied powers, (iii) Concurrent powers:

- (i) The delegated powers are clearly mentioned in the constitution Art I Sec. 8 of According to the constitution, Congress has the authority

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to impose and collect taxes, duties on export and import, and provide money for the common defence and general welfare of the United States; to borrow and coin money, establish post offices and roads to regulate commerce and trade, fix standards of weights and measures, establish inferior courts, raise and support armies, declare war and conduct foreign relations, to regulate the rules of naturalisation and bankruptcy, to promote the progress of science and fine arts, and to make all laws which may be necessary and proper for the execution of these powers.

- (ii) The congress also has some implied powers that are derived from the delegated powers. In the case of *McCulloch v. Maryland* in 1819, the idea of implied powers was accorded judicial approval. The Supreme Court based its decision on Article I, Section 8 of the Constitution, which states that Congress “shall have power to make all laws necessary and proper for carrying into effect the foregoing powers and all other powers vested by the constitution in the United States government or in any department thereof.” As a result, Congress has the authority to establish and supervise national banks, Federal reserve banks, and other banking institutions, as well as the authority to regulate commerce. The authority to establish military and naval academies has been implied by the delegated authority to raise and support the army and navy. On the grounds that such activities are inherent in the delegated power to create and post roads, to care for the public welfare, national defence, and to regulate commerce, the Congress must adopt laws authorising expenditure for roads, schools, health and insurance, and so on. These implied powers have broadened the Congress’s authority, but they are not absolute. The Supreme Court is the final arbiter of whether these powers are constitutional.
- (iii) The concurrent powers are those that Congress and state legislatures can use to pass legislation. But in case of conflict between Federal laws and state laws the former prevails. These abilities include the ability to implement bankruptcy laws, the ability to fix weights and measures standards, the ability to borrow money, the ability to licence banks, the ability to promote agriculture, and the ability to improve education, among others.

Thus, the Congress cannot make laws on items not assigned to it. It is not permitted to meddle with the authorities delegated to the states. The constitution forbids Congress from enacting legislation that imposes taxes or levies on goods exported from any state. It cannot abridge the Bill of Rights, alter state borders, bestow noble titles, or eliminate any federal unit.

- (b) **Emergency Powers:** During national crises the Congress can enact laws on some special matters. These are called emergency powers. Emergency

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does create powers not abolished them, it just encourages Congress to utilise its powers even more zealously. It isn't allowed to go beyond the capabilities that have been explicitly delegated to it.

### Non-legislative powers

Although Congress is essentially a legislative body, it spends a significant amount of time and energy on non-legislative activities. These can be divided into; (a) Constituent, (b) Electoral, (c) Executives, (d) Directive and supervisory, (e) Investigative, (f) Judicial and (g) Financial.

- (a) **Constituent Powers:** The US Congress has the authority to amend the constitution. Both Houses of Congress, with a two-thirds majority, can propose a constitutional amendment or convene a constitutional convention at the request of two-thirds of the states legislatures. Again Congress has to determine the mode of ratification. So without Congress no amendment can be made. Since 1789 all except the 21st amendments have been proposed by the Congress.
- (b) **Electoral Powers:** The counting of votes for the election of the President and Vice President is made in the joint session of the Congress. If no candidate for President or Vice President receives a clear majority of electoral votes, the President is elected by the House of Representatives, and Vice Presidential candidates are decided by the Senate. The President is chosen by the House of Representatives from among the three candidates who receive the most votes, with each state's members having only one vote. Similarly, the Senate elects the Vice-President by a majority vote among the top two candidates.
- (c) **Executive Powers:** In spite of being the Federal legislature the Congress shares some of the executive powers with the President. All major appointments are made by the President and confirmed by the Senate by a majority of members present and voting. The treaties negotiated by the President with foreign state cannot valid without the approval of the Senate by two thirds majority. It can only declare war and grants money for meeting international obligations and thus exercises control over the President.
- (d) **Directive and Supervisory Powers:** The US Congress enjoys certain directive and supervisory functions. It exercises control over the executive by controlling the purse. It grants money without which the executive cannot work. It also exercises general direction and supervision by calling for reports and information from various departments and agencies. It can create administrative agencies and services, prescribe their functions and the standards to be maintained by them. The Congressional Committees may exercise supervision over the execution of laws. It also acts as Board of Directors of big business concerns.
- (e) **Investigative:** As the the Federal legislature it has to watch and investigate the working of government. It is the eyes and voice of people

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of the people. As it has no opportunity to ask questions to the government it has no opportunity to ask questions to the Government it appoints regular or special committee to investigate the working of Administration. The Senate conducts such investigations more actively than the lower house. Such investigation have proved to be useful in curbing corruption from public life and government The Congress has thus, curtailed abuses of office in efficiency and mis-application of powers.

- (f) **Judicial Powers:** The Congress exercises certain judicial powers. Both the house can judge the qualification of any member and can expel him from the House by two-thirds vote. It can impeach the President, Vice President, Supreme Court justices, and other high officials through contempt procedures. The charge is framed by the House of Representatives, and the Senate makes the final decision.
- (g) **Financial Powers:** The Congress being the Federal legislature is the custodian of national finance. It approves the annual budget and can change it. It uses its financial might to exert direct influence over the working executive.

Thus, from the above powers the framers clearly intended the Congress to be the most powerful and influential of the three branches and conferred upon it more powers covering all areas of national life. The control over President's authority, impeachment, supervisory and investigate powers are tremendous. But, in spite of all the powers it has suffered a decline in prestige and powers. The President and the Supreme Court have ascendancy and it is reduced to the third position. It is not at all a sovereign legislature like the British Parliament nor an effective controlling wheel as that of Indian Parliament.

### 3.3 THE HOUSE OF THE REPRESENTATIVES

The House of Representatives is the lower popular chamber of the American Congress. The House is national, not Federal, in structure. Each state sends representatives in proportion to its population. It was designed as the popular branch of government and the framers wanted the house to serve as the direct reflector of popular opinion.

#### Composition

The House of Representatives is made up of 435 members who are chosen every two years by the people of various states. To become a member of the House, a candidate must meet the following requirements.

- (a) He must be an American citizen.
- (b) He must be at least 25 years old.
- (c) He must have lived in the United States for at least 7 years.
- (d) He must be a resident of the state where he is running for office.
- (e) He must be living in the congressional district in which he is elected.

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The term of the House is two years and in every alternate year election to this house is held in the first Tuesday after the first Monday of November. The new House begins its term on the 3rd of January every alternate year. The sessions of the House are held simultaneously with that of Senate on the 3rd of January and continues upto 31st July. A majority membership of the House constitutes its quorum.

The Speaker of the House is the presiding officer of the House, and he is elected by the members of the House. In actuality, the Speaker is the leader of the House's majority party. The members of the House enjoy certain immunities and privileges. Every member gets an annual salary of 30,000 dollars along with Travelling Allowances.

### Powers and Functions

The House of Representatives in spite of being the lower popular chamber does not play an important role in the sphere of legislation. Unlike the British House of Commons it is not the sovereign and Supreme law making origin. Its powers and functions may be discussed below.

- (a) **Legislative Powers:** The House enjoys co-equal and co-ordination powers with the upper chamber in the legislative sphere. All types of bills can be originated in this house and without its approval no bill can become an Act. In case of conflict between the two Houses on the passage of an ordinary bill, the matter is decided by a joint committee representing both the Houses.
- (b) **Financial Powers:** In financial sphere the lower House can only initiate money bills, not the Senate. But a money bill passed in the house can summarily be rejected by the Senate.
- (c) **Others Powers:** Besides these, the House of Representatives along with the concurrence of Senate may declare war. It shares equal powers with the Senate in matters of impeachment of the President, Vice President, Judges of the Supreme Court and other Federal officers. It frames the charges and the Senate decides. If no candidate receives the required majority of votes in the presidential election, the President is chosen by the House of Representatives from among the three candidates who receive the most votes. In this situation, members vote by state, with each state receiving one vote.

The House also appoints investigating committees to look into the executive departments' operations and reveal administrative flaws. The House of Representatives also establishes its own procedural rules and is the final arbiter of its members' election and qualifications. Election disputes of its own members are decided by the House itself. The House takes part in constitutional amendments and also elects its Speaker.



## Weakest Lower House

From the Powers and functions performed by the House of Representative, it can be said that the House is the House of Congress. The framers of the constitution have given much more powers to the Senate for which it can easily over ride the lower House. In the legislative sphere it enjoys equality with the Senate, but Senate enjoys predominance in the sphere of finance of and executive control. The weakness of the House may be ascribed to the following reasons:

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- (1) The House of Representative in contrast to the Senate is a vast assembly with 435 members who rarely deliberate on vital issues. The discussion in the House is not of high standard because its members are not men of experience. The members of the House regard it as a training ground. The tenure of the House is two years which is very short. It hardly gives any opportunity to the members to know everything about administration. In the first year the members get them acquainted with the business of the House and in the second get prepared for election for which they cannot contribute to the efficiency of the House. In contrast, the Senators remain for the six years, so men of expertise and efficiency feel interested to sit in the Senate.
- (2) Secondly, the Representative represent their district but the senators represent the state. That is why the Senators are given more powers and prestige and the members of the lower House are given least importance.
- (3) In the legislative sphere, the Senate enjoys equal authority with the House of Representatives which is a factor the weakness of the lower House. Generally, the lower House is given more importance in the financial sphere, but in USA the House of Representatives only introduces money bills but the Senate is given power to amend or even reject a money bill passed by the lower House.
- (4) The Senate in USA has been armed with the power to control the executive actions but not the House of Representative. This has been a major causes for the weakness of Lower House.
- (5) The Senators enjoy comparatively more freedom of speech but the members of the Lower house do not. They have a limited time to speak for which the discussion in the House can not be lively. The Press men and media people give priority to the debate in the Senate not of the House of the Representatives.
- (6) The President and his Cabinet remains outside the Congress. So the House can have no recognised leader excepting the Speaker who leads the majority party in the floor of the House.
- (7) In all other countries the members of the lower House are elected directly and the members of the upper House are either elected or nominated indirectly, but in USA, the Senators are also elected directly. So no room is left for the lower chamber to exercise supremacy.

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Thus, it is evident that the powers enjoyed by the House of Representatives are not imposing. It stands no comparison with the British House of Commons and the Indian Parliament. The Senate being the second chamber enjoys precedence over It, both in the legislative and financial field. The Presidential system has further reduced its importance. That is why, it is called the weakest lower house in the world.

### 3.4 THE SENATE IN AMERICA

The Senate is the second house of the Congress of the United States of America. The Senate is named first in the constitution, followed by the House of Representatives. The framers gave the Senate co-equal and coordination powers with the House of Representatives and besides those assigned some special powers to it for which its importance is felt all over the world.

Senate is the backbone of American Political system it represents the states in the Federal government. It consists of 100 members, each state sending two members to it. The states irrespective of size and population are given equal representation in it with a view to protecting the smaller states against the domination of large ones. The Senators are elected directly by the people of their respective states (17th Amendment). Each Senator elected for six years. But one third of its members retire every two years and the same number of Senator are elected.

A person must possess the following qualifications to be a senator.

- (a) He must be a citizen of USA for not less than nine years.
- (b) He must be above 30 years of age.
- (c) He must be a resident of the state from which he is seeking election.

The Senate is a permanent second chamber which can't be dissolved. The Senate's sessions run concurrently with those of the House of Representatives. The Quorum of the House is 50. The Vice President happens to be the Presiding Officer of the Senate. The Senators enjoy certain immunities and privileges and they enjoy considerable freedom of speech.

#### Powers of Senate

The Senate is the federal government's focal point. It checks the lower House's democratic irresponsibility and the President's monarchical ambition. The framers of the constitution have conferred upon it legislative, executive, judicial, financial powers along with some special powers which make it the most powerful second chamber in the world.

- (a) **Legislative Powers:** The Constitution in the legislative sphere has created the Senate as a co-ordinate, not a subordinate branch of the Congress. It enjoys equal powers with the House of Representatives. An ordinary bill may originate in either house and cannot become law unless passed by both of them. In case of disagreement between the two Houses,

the matter is referred to a joint committee with equal representation. But mostly, the decision of Senate is taken for granted.

**(b) Financial Powers:** In the sphere of finance, the constitution has conferred upon the House of Representative the exclusive power to introduce money bills. So many bills cannot originate in the Senate. But Senate can propose amendments and if necessary can reject it completely and can reshape it. Thus, in the financial sphere also, the Senate enjoys greater power and prestige than the House of Representatives. No other second chamber in the world enjoys such financial powers.

**(c) Special Powers of executive control:** In American Presidential System, the legislature can not exercise control over executive either by asking questions or by passing a vote of no confidence motion. But the Senate has been given some special powers relating to appointment of high officials and conclusion of the treaties with foreign states which enhance the powers, position and prestige of the Senate.

The US President gives appointments to all important officers of the Federal government. But these appointments can not be valid without senatorial confirmation. That is why while making appointments the President acts on the advice and consent of the Senate. Similarly, the treaties concluded by the President with foreign states need senatorial approval. No treaty negotiated by the President and appointments made by him becomes effective until it is approved by the Senate with two thirds majority. The Senate can even reject the presidential appointments. The special powers of the Senate enabled it to over-shadow the House of Representatives and supersede all other second chambers in comparison.

**(d) Judicial Powers:** The Senate also performs certain judicial functions. It sits as a court for the trial of impeachment proceedings framed by the House of Representatives, Impeachment to a form of legislative trial of higher public officials for gross misconduct or arbitrariness. Such charges are framed by the lower House and the Senate gives the final verdict. It can only remove the concerned official out of office. Senate will have to approve such a proposal of impeachment by two thirds majority.

**(e) Investigative Powers:** The Senate performs certain investigations and exposes the dishonesty and corruption involved. The senatorial investigation in the past had brought the oil scandal to light during the Harding regime when three Cabinet members had to resign. At present this power is most often abused. If such investigations are carried on in a responsible manner it can keep the administration its toes.

**(f) Other Powers:** The Senate plays an important role in constitutional amendments. It can along with the lower House propose constitutional amendments. When no Vice Presidential candidate receives a majority of votes, it also elects the Vice President.

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As a result of the Senate's aforementioned powers, it is possible to conclude that it is more powerful than any other second chamber in the globe.

### 3.4.1 The Senate is the Strongest Second Chamber of the World

There are various reasons for which it has surpassed the lower House in power and prestige.

- (1) **A compact House with longer tenure:** The first reason for the superiority of the Senate over the Lower house is its small membership and long tenure. The Senate consists of only 100 members who are intelligent and efficient and seasoned statesman with vast experience. They make use of their talent and experience to reap the best form the government.

Again, the Senators enjoy a six years term in comparison to a two years term of the lower House, So the senators are not bothered about elections and men of experience feel interested to come to this chamber.

- (2) **A chamber of seasoned politicians:** Senate is not only a chamber of the elders but also a chamber of talent, ability and experience. The most celebrated political leaders find the seat in the Senate. Senators are the influential men of the state who are popular and wise. These men of experience with freedom of speech fearlessly debate on important issues and criticise the government and Supreme Court. That is why pressmen and media people give weight to its debates and deliberations.
- (3) **Direct election of the senators:** The Senators are elected directly as the members of the Lower House. When a member of the lower house represents his district a Senator represents his state which is another cause of its superiority.
- (4) **Solidarity:** The members of the senate irrespective of their political affiliations have solidarity and unity. The Senate acts as a whole and the members guard their privileges. When President Roosevelt tried to bypass senatorial courtesy in 1938 the Senate solidly stood against him. This solidarity has increased the prestige of the Senate.
- (5) **Equal legislative and financial powers:** Being the second chamber it enjoys equal authority in legislative and financial sphere which is an exception. In no other country the upper house enjoys so much authority. In the financial sphere it is given more importance than the lower House for which it can amend a money bill or budget proposal. In case of conflict over an ordinary bill usually, the Senate wins.

Because of the particular powers given on it by the constitution, the Senate has grown in significance over the lower House. The Senate plays a critical role in the administration and foreign affairs of the United States, in which the lower house has no say. It has the power to confirm presidential appointees and to approve treaties negotiated by the President. Thus, it has completely over shadowed the House of Representatives.

The Senate is described as the most successful political institution in America. It acts as a check on the development of Presidential dictatorship. The freedom of debate gives opportunity to the minorities to express their views. Senators have longer time than members of the lower house to gather experience, develop parliamentary skills, and make an impact on the country. It is no exaggeration to suggest that the Senate is the most powerful second chamber in the world for the reasons stated above. The House of Lords and the Indian Rajya Sabha stand in no comparison to the Senate

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### 3.5 THE COMMITTEE SYSTEM IN AMERICAN CONGRESS

Legislation through committees has been a practice all over the world. The legislative organs due to lack of time and adequate technical efficiency have to assign law-making functions to the committees by the House itself. The American House of Representatives and the Senate both set up committees to increase legislative efficiency and to achieve the desired goal. Committees are ordinarily divided into, the standing committees and other special committees.

#### Standing Committees

These are by far the most important legislative committees. There is no hard and fast rule as to how many committees shall be there. In 1927, there were 61 such committees in the House of Representatives and 33 in the Senate. In 1946, it came down to 20 and 15. At present there are 22 standing committees in the House of Representative and 15 in the Senate.

These committees are constituted at the beginning of every new Congress. The committees of the lower House are organised in every two years but the Senatorial standing committees are permanent in which a few members are changed every two years.

In the beginning of the first session of the Congress the selection committees of the parties select the napes of the members in proportion to their strength in the House. When the selection committees of each party finalised its list, all those names as in the list are put together in a resolution which is approved in the House. Members having still and special expertise are selected for different committees. The seniority principle is taken into account during selection of members so no new members can think of being placed in important committee. The Chairman is always the senior most member of the majority party. He influences the working of the committees variously.

#### Working of the Standing Committees

The standing committees meet regularly once in every week to handle its own business. The House Committee on rules meet regularly but all other standing committees meet with the permission of the House during its session. These committees hold discussion either secretly or in open on important bill and report to

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the House. The committee may propose amendments to the bill. At times these committees delegate their responsibilities to sub committees. The sub committees are formed by the chairman of the committee and the individual members can contribute their talent in shaping the legislative business.

### House Committees on Rules

It is the most, important standing committee of the House of Representatives. This committee acts a kind of traffic manager in the House most of the bills introduced into the lower House are referred to this committee. The committees elects that bills on merit on those receive the approval of the house. The committee on Rules can check legislations recommended by other committees. It gets all bills that have been favourably reported out by subject area committees and has the option of keeping or burying them. Regardless of the traditional order of proceedings, the committee can propose a measure in the House. It may set a time limit for debate and highlight areas that cannot be changed. It has the authority to develop a bill, introduce it in the House, and vote on it without sending it to a standing committee.

In 1980, the rule committee was established. The dominant party has a majority of seats on the Committee, which is bipartisan. This committee assists the House in dealing with its massive workload.

Besides the standing committees there are other special committee like, (1) Temporary special committee, (2) Investigating Committees, (3) Joint Conference Committee, and (4) Committee of the House.

- (1) **Temporary Special Committee:** In every session the Congress appoints a number of selected or special committees. These committees are formed to address any specific issues that are not addressed by the topic matter committees. The Speaker appoints the members of these committees, which are formed by a House resolution.
- (2) **Investigating Committees:** It is one of the most important select committee. These investigating committees are entrusted with special privileges and powers. They meet even after the Congress adjourns. These committees were first created in 1792 and their number has gone up. During the Presidentship of Roosevelt in first four year no less than 165 investigating committees were set up. They expose inefficiency and corruption in administration.
- (3) **Joint Conference Committees:** This committee is composed of three representatives from each House of Congress. The senior most members represent this committee. Joint Conference Committee is set up to bring about an agreement when there is a deadlock between the two.
- (4) **Committee of the House:** The committee of the House means the house itself sits as a committee. But the Speaker does not preside over it when it sits as a committee. The rules of this committee are relaxed. Each member is given five minutes to deliver his speech. Decision is taken

through voice vote or by tellers. This Committee is mostly formed in the House of Representatives.

These committees in USA work effectively helping the process of legislation. In every two years around 10 to 15 thousand bills are introduced into the Congress and the Congress finds it difficult almost impossible in dealing with these bills. That is why the committees come to the picture. Every bill is referred to a committee and some of the bills are dropped in the process and others are paused after proper examination and scrutiny.

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### 3.6 LAW-MAKING PROCESS IN THE AMERICAN CONGRESS

Congress being the law-making organ of American makes laws and repeals bad laws necessary and expedient for the purpose. The President and his Cabinet are excluded from it. So there is no difference as to Government and private bills. As members of the executive do not sit in the Congress all the bills are introduced by the members and rarely any distinction is made between bills introduced on behalf of the administration and those by members on their own. About 12000 to 15000 bills are presented to the Congress within two years. Most of the bills never reach the floor of the Congress nor their sponsors hope that they will reach this state, but they are introduced to convince the voters of their districts that they are doing something for them.

**The legislative process can be divided into following stages :**

- (a) **Introduction of the Bill:** When all the formalities before the introduction of a bill is completed, the member sponsoring the bill will have to drop a copy of the bill in his name into the box known as the hopper. Thus, it is introduced and remains alive till it is passed. Unless passed in that session it will have to be introduced again. The bills introduced into the House are given a serial number and they are printed and referred to a standing committee by the presiding officer. The fate of the bill is then decided by the committee. The sponsor always persuade the bill in the committee.
- (b) **The committee stage:** The committee makes a detail examination and scrutiny of the bills. It collects informations from various sources and sometimes handover important portions to sub committees for more closer study. Officials may remain present or appear before the committee to give favourable opinions. The committee holds public hearings on controversial issues or proposals, during which interested persons and representatives of interested organisations may appear and offer testimony. Finally, the committee convenes in executive session to vote on the bill. It may report the bill without amendments or with them or can modify it completely. It may not report at all.
- (c) **The Bill on the Calendar:** A bill after being reported by the committee is placed in any one of the three lists or calendars. The first calendar is

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known as the Union calendar, and it contains all measures that have been approved by the committee. Revenue, appropriations, and public property are all included. The second is the House calendar, which includes public bills that do not fall under the first category. The third is a private calendar, which contains all of your personal bills. Bills can be moved from the Senate's and House's calendars to the consent and discharge calendars.

The clerk reads the titles of measures included on the consent calendar for three legislative days every first and third Monday of each month. If no objection is raised the bill is passed immediately. If any objection is raised, then the bills remains on the calendar until reached a second time.

The bills in the discharge calendar are considered by the house but not in order. Important bills are first of all discussed and some of the bills of some privileged committees are passed quickly. The House Committee can bring a bill from outside by a special order passed by majority and gets it passed.

- (d) **The Three Readings:** All bills in the House are passed after three readings. The first reading is merely a formality that ends when the measure is published in the Journal.

The second reading takes place in the House's committee on public measures relating to revenue and appropriations, as well as the remainder of the chamber. It is the crucial stage in the Life of bill. In this stage the bill is discussed and amendments are made. At the end of the second reading it is put to a question. Shall the bill be printed as amended?

The bill in the third reading is read and put to vote. After approval it is signed by the Speaker and transmitted to the other house.

- (e) **The bill in the Senate:** The bill in the Senate has to pass through the same procedure. It is referred to a standing committee, and it reported it is placed on its calendar of business and discussed in detail. If finally approved in the Senate it is submitted before the President for signature. If objected it is referred to a joint conference committee of both the house.
- (f) **Joint Conference Committee:** In case of conflict between the two Houses, the bill is referred to a joint conference committee of both the Houses. The committee is represented equally by both the Houses. Usually three, five or nine members from the both Houses are appointed to the committee by the presiding officer of each House. The members meet and discuss on various issues and try to arrive at a solution. Unless agreed upon by both the Houses the bill is dropped. If passed it is sent to the President for assent.
- (g) **Presidential Assent:** The President is given a maximum time of 10 days within which he has to approve it, back to the Congress or may take no action on it. If he signs then it becomes a law. If he takes no action and 10 days lapses and the Congress is in session, then it becomes a law without



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the signature of the President. If the bill is returned back to Congress, then both the Houses will have to approve the bill for the second time by two-thirds majority after which the President signs on it. If the President takes no action on the bill and the Congress adjourns within 10 days, then the bill is considered to be vetoed and finally killed.

However, after the enactment of law it remains to be seen whether the law is constitutional or not, unless constitutional, it will be declared void by the Supreme Court. Thus, law-making in USA is a long process involving a lot of delay. But, in practice all important bills are passed quickly without much delay.

### 3.7 THE SUPREME COURT OF AMERICA

Art II of the American Constitution has vested all the judicial powers in the Federal Supreme Court. It is regarded as the third organ of the governmental trinity. In American Federal system the Supreme Court has occupied an important place as an independent and impartial judiciary. It is the top most Federal judiciary in United States.

**Organisations:** The Supreme Court came into existence in 1789 under a mandatory provision of the constitution. The provision has never fixed the number of judges to be there in the constitution. To begin with, it was made up of a Chief Justice and five additional judges. However, omitting the Chief Justice, there are currently nine judges. The President of the United States appoints Supreme Court judges with the Senate's approval. The constitution has not prescribed any qualifications for the judges. So sometimes the president gives appointment to persons without legal experience and competence. Mostly the judges are appointed on political considerations.

Judges are only removed from office through impeachment if they are behaving badly. They may resign or retire after reaching 70 years of age. They enjoy life-tenure of service and continue in office as they desire. The Chief Justice gets an annual salary of 62,500 dollars and the judges get 60,000 dollars per annum. The salaries of the judges cannot be reduced to their disadvantage during their term of office. Those who retire after crossing 70 years of age continue to receive full salary upto death.

Every year on the first Monday in October, the Supreme Court convenes for its ordinary session, which lasts until June. When the Chief Justice deems it necessary, he may call special sessions in which six judges form the quorum and the Chief Justice preside. Cases are held on Tuesday, Thursday and Friday. On Saturday the judges discuss among themselves and on Monday judgements are announced.

**Powers and Jurisdiction:** Article III, section 2 of the Federal constitution defines the powers and jurisdiction of the Supreme Court. The jurisdiction of the court can be original or appellate.

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**Original Jurisdiction:** The original jurisdiction of the Supreme Court extends to the following cases:

- (a) It has the authority to consider cases involving ambassadors, public ministers, and consuls accredited to the United States.
- (b) The Supreme Court has the authority to hear admiralty and maintenance matters involving American vessels on the high seas or in US navigable waters. It hears all issues involving freight charges, seamen's pay, collusion-related damages, and situations involving maritime insurance. It covers cases involving prize vessels captured in sea.
- (c) The Supreme Court under original jurisdiction hears those cases in which states are parties. Its authority extends to all cases in which USA is a party. Controversy between two or more states, cases involving citizens of various states, citizens of the same state claiming territories under concessions from other states, and disputes between a state or its citizens and foreign states, citizens, or subjects. Even the companies and corporations are deemed as citizens of the state in which they are incorporated.
- (d) It decides cases arising under the treaties, laws and the constitution. The court does not decide executive or legislative questions unless they involve the interpretation of constitution, a Federal law or treaty in which USA is a party. As Munro says "The jurisdiction of the court is properly commensurate with every right and duty created, declared or necessarily inspired by and under the constitution and laws of the United States. The Supreme Court can issue writs and habeas corpus, Mandamus, injunction and certiorari in the exercise of nation's judicial power vested with it by the constitution."

## Appellate Jurisdiction

Besides the cases tried by original jurisdiction all other cases are referred to it by appellate jurisdiction. The Supreme Court of the United States is the country's highest court of appeal. It refers to cases that have already been decided in lower Federal or state courts. The Supreme Court's appeal authority has been expanded further by the 14th Amendment Act. Because the Supreme Court's appellate jurisdiction is so broad, only a small number of cases are brought before it under original jurisdiction. The cases which come to it are in the nature of appeals which have started somewhere else in the lower Federal courts.

The vast amount of appeals that are made to the Supreme Court are scrutinised and only some of them are received and heard. The court receives appeals, where a Federal law is declared against the constitution, or a state law is anti-Federal or unconstitutional, or where the case involves an important question as to the interpretation of the constitutions.

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**Acts as the guardian of the Constitution**

The Supreme Court of America by exercising the power of judicial review acts as the guardian of the constitution. It is the saviour of the Federal system. It decides all cases involving the states and the Federal government of USA. No organ of the government can encroach upon or violate any provision of the constitution. The Congress and the President cannot violate the provisions of the constitution.

The Supreme Court is the final arbiter of constitutional interpretation and the defender of citizens' rights in the United States. It interprets the constitution in such a way that it is called a continuous convention in America. It has aided in the formation of the constitution.

**3.7.1 Role of Supreme Court**

The Supreme Court of America is the top most Federal judiciary which is invested with limited jurisdiction. But the role and importance of the Supreme Court can not be estimated by going through its limited jurisdiction. The Supreme Court occupies so important position in United States, that it's hard to imagine the American Constitutional System without the Supreme Court, just as it's difficult to imagine the Solar System without the sun. It's a crucial part of the governmental trifecta. It is regarded as the most prestigious tribunal on the planet, and the people of America are proud to refer to it as such. It is the final arbiter of constitutional interpretation. It acts as an empire of constitutional conflicts and protects the rights of the citizens. The Supreme Court has in course of time assumed more powers than contemplated by the constitutional framers. By exercising the doctrine of judicial review it has become the most powerful judiciary in the world. It acts as the saviour of the federation and Munro has said "without the Supreme Court, the American Constitutional system would have been a hydra-headed monster of 50 sovereign entities."

**Role and Importance of the Supreme Court**

The role and importance of the Supreme Court can be discussed below:

- (i) **Guardian of the Constitution:** The American constitution is guarded by the Supreme Court. It has taken on the role of the constitution's final interpreter. "We are under a constitution, but the constitution is what the judges say it is," Supreme Court Chief Justice Hughes remarked of the judiciary. The Supreme Court has ruled that the United States Constitution is the supreme law of the land, and that no government organ can violate or contradict it. Whenever any organ of the government or any law of the state violates the provision of the constitution, the Supreme Court through judicial review can declare such laws as ultra vires or unconstitutional.
- (ii) **Judicial Review:** The Supreme Court's most essential function is judicial review. Judicial review refers to the Supreme Court's and lower courts' ability to analyse laws passed by the federal and state legislatures to see if

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they are constitutional. If the Supreme Court feels that any law of the Congress or of any state or the decrees issued by the President contravenes any provision of the constitution, then the Supreme Court declares the law unconstitutional.

This power was not originally given to the Supreme Court by the constitution but the historic judgement of the Supreme Court in 1803 by Chief Justice John Marshall in the Marbury Vs Madison case, has given this power to the Supreme Court. The Supreme Court by exercising this power has assured upon the power of the Congress and the President, and it has become a policy making organ. The Supreme Court is therefore, called as the third chamber of the legislature. Thus, judicial review has made the Supreme Court stands above the President and Congress.

- (iii) **As the Protector of Federal system:** The Supreme Court of the United States is the highest federal court in the country. In the federal system, authorities are apportioned between the centre and the states by the constitution, and conflicts between the federation and the states are decided by the Supreme Court, which has original jurisdiction. It prevents the Federal government from encroaching upon the powers of the states. It has interpreted the constitution in such a way as to save the federation and to strengthen it.
- (iv) **Protector of individual rights:** The Supreme Court of the United States of America protects people rights and liberties. For the preservation of individual rights, the Supreme Court has the authority to grant writs such as habeas corpus, Mandamus, certiorari, and injunction, among others. The constitution has forbidden the states to make laws encroaching upon individual rights, if at all such right are violated, then the Supreme Court declares such laws ultra vires. The constitution has said that, no body can be deprived of his life, liberty and property except according to “due process of law”. This doctrine has upheld the judicial supremacy and the inviolability of the rights of the citizens.
- (v) **Role in the development of the constitution:** The Supreme Court has made significant contributions to the development and growth of the constitution. The supreme Court by interpreting the constitution liberally has enabled the constitution to adopt itself to the changing conditions and needs of a growing society. By the application of the doctrine of judicial review it has played a significant role in the development of the constitution. “The Supreme Court is not simply a court of justice, but, in a qualified sense, a continuing constitutional convention,” says James M. Beck. The constitution of USA was framed in 1787 when it was an Agricultural country, but the constitution, has still remained unchanged except 27 amendments and no new constitution was ever framed to cater to the needs of the strongest industrial military super power in the world. The Supreme Court is responsible for softening the constitution’s rigidity

by allowing it to develop without official revision. As a result, it has aided in the formation of the constitution.

- (vi) **As the highest court of appeal:** The Supreme Court of the United States is the country's highest court of appeal. It has the authority to hear appeals from state high courts and subordinate federal courts.

As a result, the Supreme Court plays a prominent role in the functioning of the constitution. It has served as an arbiter of constitutional disputes as well as a defender of individual rights. The doctrine of judicial review applied by the court has upheld judicial supremacy over the Congress and the President. It has restored strength to the federation and kept the Federal government and the states in their respective spheres. The power of judicial review has made the Supreme Court the third chamber of US Congress. It gives actual meaning to a law and instructs the legislature to frame right laws. In this capacity it acts not as a judicial organ but as a law making body. The Supreme Court has ensured continuity and stability to the constitution but never blocked its progress. The constitution of USA is never static but growing in response to the changes in the social and economic system and it has transformed America from a agrarian economy to the most advanced industrial nation in the world, only due to the Supreme Court.

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### 3.7.2 Working of Judicial Review in USA

The doctrine of judicial review is one of the most vital element of American judicial system. The doctrine does not find a place in the constitution. The framers did not contemplate of this power. But the Supreme Court has in course of its working assumed it and since then exercising it successfully which has tremendously increased the importance of the Supreme Court.

The doctrine of judicial review was first of all enunciated in 1803 by the then Chief Justice of American Supreme Court John Marshall in delivering his judgement in the famous Marbury in Madison case. He held that, constitution is the Supreme law of the land and the judges are appointed to uphold it. If any congressional law or any order of the President conflicts with the law and spirit of the constitution, then the Court would uphold the constitution. Since then, the US Supreme Court has asserted to itself the power of judicial review and has been exercising it as a matter of right.

The Supreme Court's ability to conduct judicial review is an essential feature. It refers to the Supreme Court's authority to examine the constitutionality of any statute approved by Congress or a state legislature. The court considers whether the statute is in violation of the constitution's provisions and spirit. The Supreme Court can declare a statute null and unconstitutional if it believes it contradicts the spirit of the constitution.

**NOTES****Scope**

The scope of judicial review is wide and comprehensive. It is not limited to federal and state legislation. It includes state constitutions, treaties signed by the federal government, and executive orders issued by the federal and state governments. The Supreme Court has regularly refused to apply judicial review to political issues that it believes should be handled by the legislative and executive branches of government. Non-interference of the court in political questions has enabled the court to win public confidence. But the court can interfere in those question without causing any problem to the constitution.

The Supreme Court of America does not take up a case for judicial review all by itself. It takes up an issue only when any private agency or a state questions about the legality of an act. So when a law is challenged the court reviews its validity. The Supreme Court does not in advance advise the Congress or the President to pass or oppose a law.

**Working of Judicial Review**

The US Supreme Court has successfully applied the doctrine of judicial review in various cases.

- (a) The Supreme Court exercising the right of judicial review rules that, Congress could not regulate the production of commodities that flow in inter-state commerce. Thus, it crippled the national government's attempt to eradicate the evils of child labour and other unhealthy and inhuman labour practice.
- (b) In the case of *McCulloch in Maryland*, 1819, the Supreme Court declared an act of legislature of Maryland invalid on the ground that it imposed a tax on the notes issued by the Bank of USA. The Supreme Court argued that the Congress had an implicit right under the Constitution to establish banks in any region of the country, and that any state statute restricting this power was unconstitutional.
- (c) In the case of *Gibbons Vs Ogden*, C.J. Marshall made use of the commerce clause and declare a law of the New York state legislature invalid, which sought to give the exclusive right of navigation in New York waters in steam-boats. This case is the economic history of USA. It facilitated inter-state communication and extended the economic integration of the country.
- (d) The Supreme Court has applied it to struck down the 'New Deal' laws of President Roosevelt in 1930s.
- (e) In 1952, the Court has declared a law of the congress authorising the Federal government to take over steel mills as void as it interferes on the right to property.

Thus, the court has exercised it on various issues and the public opinion and the people of USA feel that the exercise of judicial review by the Supreme Court has been useful and beneficial for the country. In a federal state like the United

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States, where there is a clear separation of powers, an impartial judiciary is clearly needed to protect the constitution's system of checks and balances and settle jurisdictional problems when they arise. Munro expressing appreciation in favour of judicial review has said, "the American constitutional system would have become a hydra-headed monstrosity of 50 rival states". According to Justice Holmes, the Supreme Court has operated as a balancing wheel in the governmental system by applying the doctrine of judicial review.

Laski has said that, the Supreme Court's judicial review power has effectively made it a third chamber of the US Congress. The Supreme Court in this capacity acts as a quasi-political body. While reviewing a law the court not only examines its constitutionality but also determine the actual meaning and its operation. When it declares a law void it tells the legislature not to enact laws. The court does not have legislative authority, but it establishes the framework within which legislators must operate.

The Supreme Court has aided the evolution of the constitution by exercising its judicial review power and enabled the constitution to cater to the needs of the changing system.

**Criticisms**

The Supreme Court's power to exercise judicial review has been severely criticised.

- (a) It is said that, when Congress makes a law, it represents the views of the majority people which is the reflection of the philosophy of an age. A court consisting of nine judges should not challenge it or cancel it. Supreme Court being a legal house should not interfere in political issues.
- (b) The Supreme Court exercising the power of judicial review often determines the scope of public policy. That is why the court is criticised as a robbed oligarchy.
- (c) Judicial review has adversely affected the competence of the Congress. The Congress proposes laws and the Supreme Court disposes them.
- (d) The judges are conservative in nature and while exercising judicial review they retard social progress.
- (e) The exercise of judicial review by the Supreme Court has affected the popular sovereignty of the Congress. The Congress and the President enact laws as they are elected representatives and it is illegal on the part of the court to declare those law unconstitutional.

Despite, all criticisms, the Supreme Court has been playing a crucial role in exercising the power of judicial review. In a Federal state having faith in separation of powers and believing in checks and balances, there is no other workable alternative in USA.

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### 3.8 POLITICAL PARTIES IN USA

Political parties are an essential element of a democratic process. In indirect democracy they are indispensable. They provide leadership and direction and give oil for the driving force required to keep democratic government machinery running. However, the American constitution's founders were unaware of these parties. They thought that any deviation on major national issues would be detrimental to national solidarity. But, in spite of that, party system has crept into the American body politics after the enactment of the constitution. The growing conflict between the Federalists and anti-federalists gradually led to the emergence of two distinct political parties led by Hamilton and Jefferson. These two groups are known as Republican and Democratic Party.

#### Feature of Party system

The main features of American party system can be discussed below.

- (a) **Extra-constitutional:** The American party system is a sanction or recognition that exists outside of the Constitution. The delegates in the Philadelphia convention were adamant about establishing a system of government devoid of faction violence. That is why the federal constitution does not say a word about parties. But the parties have crept into American politics. During the Presidency of Thomas Jefferson in 1800 the nation seemed to be divided into two political groups. The federalists came to be known as the Republicans and the anti-federalists were known as the Democrats. For long 100 years these parties were not well organised. The first federal law affecting parties was passed in 1907 and thereafter, laws relating to their membership, organisation, finance and activities were passed. Thus, the parties in America have an extralegal growth. They still remain voluntary organisation, autonomous and self sufficient.
- (b) **Bi-party system:** America has a bi-party system where only major organised political parties fight in elections to become the determinant of government. Throughout the history of USA, only two major parties have dominated the political stage. There are some minor parties as well but they have failed to put any influence in its political set-up. In American national politics, third parties have served as policymakers rather than officeholders. Third-party political parties lack the required leadership and funding to gain a firm foothold. No third party that they champion is quickly absorbed into the major parties' own programmes. The Americans believe more in co-operation and compromise than conflict and dissension. The Americans are not divided on religious or nationality sentiments. Thus, there are only two major parties in American politics.
- (c) **No-ideological difference:** The American political parties are non-ideological and less doctrinaire. The political and economic policies of the two major parties are nearly identical. There are no major subjects on which they are sharply divided. There is no difference between the



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principles and policies of both the parties. “America has only one party, the Republican cum-Democratic, separated into two almost equal halves by habits, the battle for office, the Republican one-half and the Democratic half of the party,” Herman Finer has said. The two parties in America have been compared to two rival state coaches spattering each other with mud going along the same road to the same destination. The two parties are not exactly identical but in times of political tension both of them until leaving the differences outside.

- (d) **Geographical and Traditional differences:** Both the parties in America differ on geographical and traditional differences. Each is distinguished from the other not by theory, but by pedigree and geographic strength distribution. An American is associated with a political party since his father and grandfather were supporters or he resides in the area where the party has great support. “The main group of party-difference is to be found, not in its interests, psychology, or constitutional doctrines, but rather in economic and sectional interests and reactions,” according to Ogg. But, these difference have been considerably reduced.
- (e) **Localism:** Political Parties in USA are based on local feelings. Local issues and problems draw greater attention of the parties and the regional issues and ideologies may not dominate during elections. Even no national issues the opinions of people of different locality differs. Laski has said, “American party is much like a block of interests than a system of principles.” Local interests can not be neglected as it may after the prospects of the parties in the locality. “Park barrel” and “Log rolling” are the typical examples of localism that is found in US Congress.
- (f) **Party-decentralisation:** Another prominent feature of American party system is the decentralisation of power. The political parties exist at the national level but much of the power in party system is concentrated in state capitals, districts, counties and precincts. The National Units of the parties are less powerful than the state and local organisations. To nomination for Presidentship and Vice-Presidentship is made by the delegates of the local party units, the state and focal party units conduct the election campaign and elect candidates for local offices. Local office bearers of the the party largely control the party organisations at the base. There is no rigid party discipline within the American party system. A sense of loyalty to higher authorities is almost unknown. Due to the decentralisation of party power the US party system acts as an effective check on the dictatorial tendency of the party.

Thus, the features of American Party System distinguish itself from British bi-party System.

### 3.8.1 Organisation of Political Parties in USA

Before delving into the structure and policies of the two major American political parties, the Republicans and the Democrats, it's important to note that the

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two are strikingly similar. “The fact that all Republicans claim to be Democrats and all Democrats claim to be Republicans, makes the misunderstanding of party identities practically total,” D.W. Brogan observes. The parallels between the two political parties, as well as their lack of strong ideological basis, prompted Lord Bryce to make a pointed remark. According to him, the American parties are “two bottles, each with a label indicating the type of liquor it holds, but both were empty.” These two findings, however, should not lead us to believe that the two parties are actually two halves of a single whole. The two parties are fiercely competing organisations, and each is always attempting to dominate the other in a power struggle. They’re similar, but they’re not identical. Their support systems differ slightly, as do their internal working approaches. The United Kingdom and the United States of America both have two-party systems. India is governed by a multi-party system. All three have lived in well-organized political regimes. The United States of America has a well-functioning bipartisan system. The Republicans have a strong base of support among the wealthy, educated, and elderly. Low-income folks, those with less education, African-Americans, and Catholics all support the Democrats.

The Republican and Democratic parties are very similar in structure. We can discuss both of their organisations under one title. Both political parties are organised on comparable characteristics. The following is a list of them:

- (1) **Almost Self-contained Party Units.** The American political parties are organised hierarchically, but the top level, i.e. national level organisations, have less authority over the lower level, i.e. state and local level organisations! “State organisations have been formed up largely of representatives from local units, and national committees have been made up of state delegates,” Griffith says. However, each level of the party structure—national, state, and local—is more or less self-contained, and part)1 organisations at higher levels have little power over those below them. National committees have no authority over state committees, and state committees have no authority over county and city committees. “There is no movement of authority either up or down the scale—no integration,” Ogg and Ray find while analysing this aspect of the party structure.
- (2) **Local Party Organisations are more powerful than National Party Organisations.** Both parties are national parties, although their organisational centres of gravity are in the states, cities, and counties, respectively. Ogg and Ray point out, “It is in the states that the basis of political power is supplied by the electorates. It is there that political leaders are developed and that professional politicians commonly find their livelihood in public office. It is there, most often, in cities that bosses and machines arise and flourish. And it is there, especially in counties and cities, that party organisation usually attain a maximum MI and efficiency.” The federal nature of the system, as well as the notion of states controlling and conducting elections, are the reasons for this trait.

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- (3) **Heterogeneity and Representative character.** The two major parties, according to Austin Ranney and Will Moore Kendale, do not represent distinct socioeconomic or class groups. Both parties have support from various segments of society, but the distinction is one of degree rather than kind. The Republicans have more support from the wealthy than from the poor, while the Democrats have more support from the poor than from the wealthy. The amount of support each social class gives to a certain political party changes throughout time. Each political party professes to represent all citizens of the country and all points of view. As a result, their organisations have no socioeconomic or ideological diversity.
- (4) **Decentralisation:** Both main parties are relatively decentralised in terms of organisation. In nominations and elections, there is decentralisation. Candidates for major positions are chosen by voters directly through party primaries, rather than by party bosses. Dr. O. P. Goyal has well observed: “The most distinguishing aspect of party organisation in the United States is the amount of decentralisation and dispersal of political authority. The national organisation is nothing more than a loose confederation of state and local organisations. The National Committee is merely a delegate body and does not possess any executive or compulsive authority. The organisational wing of the party has no control over the legislative wing and is in fact controlled by the President, if the party has occupied the presidency or by the presidential nominee who appoints the chairman of the National Committee.”
- (5) **Three Tier Party Organisation.** In the United States, there are three levels of party organisation. Local, state, and national party organisations exist for each political party. Each level is self-contained, and the connection between them is guided by the federal spirit.

### 3.9 PRESSURE GROUPS AND LOBBIES IN USA

Political parties, pressure groups, interest groups, etc. are the fellow actors in democratic societies. They are vital to the functioning of the American political system. These groups exercise much more powers in American Politics.

A pressure group is an organised group that aims to influence the context of government decisions without aiming to place its members in formal government positions. They are special interest groups that try to sway legislation and the implementation of administrative policies in their favour by putting pressure on legislators.

#### Pressure Groups in USA

In USA there are a large number of pressure groups which operate with in the political system. The American have a tendency to join organised groups. There are various reasons for the growth of so many pressure groups in USA.

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- (a) The tremendous technological development, increasing specialisation of function, increasing inter-dependence and ease of communication have lot these groups to grow.
- (b) The division of political, power from the centre to the states and from the state to the local units affords chances to these groups to influence public policy.
- (c) The diffusion of power in government
- (d) The decentralised and undisciplined parties in USA and the weakness of party system has helped the interest groups to grow.
- (e) These groups provide creative energy and specialised techniques for which they have been considered indispensable for American Political System.

There are about 500 pressure groups and Interest groups found in America in the capital. Besides them, there are a large number of other groups who are active in politics whose number will not be less than 1,50,000. And every day some groups are formed while some other vanished away. Some of the major groups are; (a) Business groups, (b) Labour groups, (c) Firm groups, and (d) Other, groups.

- (a) **Business groups:** The important business groups are, the Chamber of Commerce of USA, which includes the local chambers of commerce, firms and individuals merchants, manufacturing establishments and financial institutions. It represents a cross-section of the business interest of the country.

The National Association of Manufacturers (NAM) is another business group which is composed of manufacturing firms. Its mission is to inject the power and influence of organised labour. It is associated with trade association like cotton manufactures association, News Papers Publishers Association, Iron and Steel Institute, Automobile Manufactures Association etc.

- (b) **Labour groups:** The most important labour group is the American Federation of Labour and Congress of Industrial Organisation, (AFCLCIO). It opposed the use of governmental power in regulating many aspects of the economy.
- (c) **Firm Groups:** The most powerful group representing farmers interest in the American Farm Bureau Federation. It always demands for the price supports, parity, increased agricultural research and extension and holds against high property taxes, governmental production, controls and trade regulation. It is a critic of Commercial Farm and organised labour. The National Farmer's Union is another reform-minded group which represent the marginal farmers of the plains.
- (d) **Other groups:** Besides these groups, there are a variety of other groups like; American medical Association, the Farmers Educational and co-

operative union, the National Association for the advancement of coloured people etc. play an important role in American Politics.

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### Role of Pressure Groups

These groups seek to influence public policy to preserve and protect the interest of these groups. The pressure groups with a view to achieving their group interests resort to various methods. The best known method is lobbying before the Congress men. However, their claims are not confined to the legislature alone. They also try to influence the executive administrators and judges.

These groups also seek to influence the policies and personnel of political parties. In these days the pressure groups have gone beyond the traditional methods and on a private and personnel basis they try to cultivate a favourable attitude on the part of the great mass of citizens. These groups have tried to build a broadly based support, a favourably climate of opinion which legislatures and executives will be obliged to respect. Every known medium of communication is used by groups like, news paper readers, radio broadcasts.' These pressure groups are sound in finance. They have paid employees to carry on their propaganda. These groups try to control every unit of government and even try to influence upon political parties.

Thus, pressure groups play an important role in American politics. They are more numerous and better organised and more open In their operation than in any other country. Because, there is no rigidity of party system and the complex socio economic structure give rise to such a large number of pressure groups in America.

### Check Your Progress

#### Multiple Choice Questions

##### I. Fill in the blanks:

1. The Federal Legislative USA is known as \_\_\_\_\_.  
(a) Parliament (b) Congress  
(c) Federal Assembly (d) Senate
2. The Upper House of Congress is known as \_\_\_\_\_.  
(a) House of the People  
(b) Senate  
(c) House of the Representatives  
(d) Council of States
3. The strength of the American Senate is \_\_\_\_\_.  
(a) 100 (b) 130  
(c) 140 (d) 150
4. The strength of the House of Representatives is \_\_\_\_\_.  
(a) 250 (b) 350  
(c) 435 (d) 525
5. The Supreme Court of America acts as:  
(a) Interpreter of the constitution  
(b) Guardian of the constitution

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- (c) Protector of Fundamental Rights
- (d) All these

### II. True or False:

1. The Lower House of American Congress is known as Senate.
2. The Senate represents the states of American Federation.
3. All treaties signed by American President become operative only when ratified by Senate.
4. Article - 4 of the American Constitution explains about Supreme Court.

### III. Match the following:

- | (A)                         | (B)                     |
|-----------------------------|-------------------------|
| 1. USA Congress             | (a) Lower House         |
| 2. Senate                   | (b) Apex Court          |
| 3. House of Representatives | (c) Federal Legislature |
| 4. Supreme Court            | (d) Upper House         |

## 3.10 ANSWERS TO 'CHECK YOUR PROGRESS'

### Multiple Choice Questions

1. (b)
2. (b)
3. (a)
4. (c)
5. (d)

### True and False

1. False
2. True
3. True
4. False

### Match the following

1. (c)
2. (d)
3. (a)
4. (b)

## 3.11 SUMMARY

In the American political system, the Congress plays a crucial role. The constitution places it in a strong position as the nation's custodian of legislative powers and financial resources. The Senate's Upper House has been assigned a distinctive position and is widely recognised as the world's most powerful second house.

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The Supreme Court of the United States is an extremely powerful instrument of the American political system. It occupies a unique location. The Supreme Court's most distinguishing feature and function has come to be known as judicial review.

Pressure organisations are quite active in the American political system. These organisations function autonomously, both through their activities and through political parties.

### 3.12 KEY TERMS

1. **Congress:** Federal Legislature of America.
2. **Senate:** Upper House of American Congress.
3. **Judicial Review:** Power of the Supreme Court to examine the Laws regarding constitutional validity.
4. **Quorum:** No. of members required to be present in the meeting.

### 3.13 SELF-ASSESSMENT QUESTIONS AND EXERCISES

#### Short Answer Questions

1. Senate of America.
2. Composition of American Supreme Court.
3. Judicial Review in America.
4. Pressure Groups in America.

#### Long Answer Questions

1. Discuss the composition and powers of the American Congress.
2. "Senate of America is the strongest second chamber in the world" Examine.
3. Discuss the organisation and jurisdiction of American Supreme Court
4. Write an essay on American Party System.

### ACTIVITY

**Provide two real-life examples to prove how:**

1. Senate is the strongest chamber in the world.
2. The Supreme Court of America acts as guardian of the Constitution.

### CASE STUDY

#### Supreme Court of USA as a Law-making

The concepts of judicial review and concurrent powers have transformed the Supreme Court into a law-making body rather than just a court of law. The ability

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to interpret and invalidate a law implies the ability to change the meaning of the law, which is equivalent to changing or creating a law. This is something the Supreme Court has done numerous times. The Supreme Court has no legislative authority, but by acting in a negative manner, it establishes the parameters within which legislation must operate. As a result, the Supreme Court has become a Super Legislative body. It's been described as Congress's third chamber with negative powers.

### 3.14 REFERENCES

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## Unit IV France

### Learning Objectives:

This unit devotes discussion on the constitution of France. After studying this unit, you should be able to understand:

- Salient Features of the Constitution
- Written and Unitary Nature of the France Constitution
- A Mixture of Parliamentary and Presidential System of Government
- Procedure of amendment of the constitution
- Composition and Functions of the France National Assembly and the Senate.
- Powers and Position of the President of France
- Powers and Position of the Cabinet and the Prime Minister

### Structure:

- 4.1 Introduction
- 4.2 Salient Features of Constitution
- 4.3 The Legislative (Parliament)
  - 4.3.1 The National Assembly
  - 4.3.2 The Senate
- 4.4 The Executive: The President
- 4.5 The Cabinet and The Prime Minister
- 4.6 The Prime Minister of France
- 4.7 Answers to 'Check Your Progress'
- 4.8 Summary
- 4.9 Key Terms
- 4.10 Self-Assessment Questions and Exercises
- 4.11 References

### 4.1 INTRODUCTION

The current constitution of France's Fifth Republic was drafted with the help of its Chief Patron, General de Gaulle, and based on previous constitutional experience. Since October 4, 1958, this constitution has been in effect. It has been successful in determining the constitutional stability of the country. It has served as a source of France's continuing development. The government in this constitution is a hybrid of presidential and parliamentary. It balances the necessity for a strong

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and stable executive with the republican and democratic values of Enlightenment Philosophy (Liberalism).

## 4.2 SALIENT FEATURES OF CONSTITUTION

- (a) **Written Constitution:** Like the constitution of the United States of America and India, the constitution of the Fifth Republic is a written and enacted constitution. Initially, the constitution of the 5<sup>th</sup> Republic consisted of a Preamble and 92 Articles. However, after Algerian independence and dropping of the provision regarding French community, the total number of Articles came down to 89. These Articles stand divided into XVII Titles (Chapters) and each title contains provisions covering a particular features of the constitutional system. The details are as follows:

Title - I	Article 2 to 4	Provisions regarding sovereignty
Title - II	Article 5 to 19	The President of Republic
Title - III	Article 20 to 23	The Government
Title - IV	Article 24 to 33	Parliament
Title - V	Article 34 to 51	Relations between the Parliament and Government
Title - VI	Article 52 to 55	Treaties and International Agreements
Title - VII	Article 56 to 63	The Constitutional Council
Title - VIII	Article 64 to 66	Judicial Authority
Title - IX	Article 67 to 68	The High Court of Justice
Title - X	Article 68(1) to 68(3)	Criminal Liability of the members of Government
Title - XI	Article 69 to 71	The Economic and Social Council
Title - XII	Article 72 to 75	Territorial Units
Title - XIII	Repealed	---
Title - XIV	Article 88	Association Agreements
Title - XV	Article 88 (1) of 88 (4)	European Communities and European Union
Title - XVI	Article 89	Amendment of the Constitution
Title - XVII	Repealed	---

The constitution of the Fifth Republic is a written, adopted and enacted constitution. It was made by the constituent Assembly of France and approved by the people of France in a referendum. Like other written constitution, the constitution of France opens with a Preamble which projects the objectives and ideals underlying the enactment of the constitution.

- (b) **Unitary Constitution:** France, like the United Kingdom, is a unitary state. All administrative functions in France have been vested in the Central Government, which exercises them on behalf of the entire French

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population and over the entire French territory. Local governments in France receive their authority from the French Central Government, not the constitution. An requisite features of a Unitary State like Centralization of Power, one state one Government, uniformity in Law, single citizenship are found in French Constitution.

- (c) **Combination of Parliamentary and Presidential System:** The Fifth Republic of France's Constitution establishes a hybrid form of governance in France, including elements of both parliamentary and presidential rule. The President of the French Republic is the head of state, but unlike the Indian President, he is neither a purely nominal head of state nor an all-powerful executive like the US President. In France, however, executive functions are shared between the President and the Prime Minister. The President has some actual executive authority. He has been appointed as a mediator between the Parliament and the Executive (Ministry). In an emergency, he becomes extremely powerful. He usually appoints the Prime Minister as well. He also preside over the Council of Ministers' meetings.

The Prime Minister is also in charge of the work of the government and directs its operations, according to Article 21 of the French Constitution. The Prime Minister is also in charge of the country's defence. He ensures that laws are followed. He fills in for the President of the Republic whenever necessary. He can delegate some of his responsibilities to the Ministers.

The Prime Minister and other ministers are not members of Parliament, according to Article 23. Article 49, on the other hand, holds it accountable to the Parliament. As stated in Article-50, the Parliament can adopt a vote of no confidence or a motion of censure against the Prime Minister or the Government, forcing the Prime Minister to resign immediately. The Prime Minister can also suggest to the President that the Parliament be dissolved.

Ministers are also not members of Parliament, although they can participate in its work in any way they want, except when it comes time for the Parliament to vote on a motion. As a result, the French administration is made up of both Parliamentary and Presidential officials.

France's constitution has a Parliamentary version under the Fifth Republic. However, the system has some characteristics that make it a semi-presidential government based on the separation of powers principle. To begin with, the President is now directly elected by the people and has executive authority. Second, the Prime Minister and other ministers are not elected to the House of Commons. Finally, the President is the state's chief executive and active leader. Finally, the President has the authority to dissolve Parliament and call new elections. Finally, the constitution empowers the President to take dramatic emergency measures if a threat

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to the Republic's institutions, the nation's independence, the integrity of its territory, or the country's international responsibilities arises.

C.F. Strong notes that the nature of the Parliamentary executive in the Fifth Republic of France has two key traits of the Parliamentary form. To begin, the President should pick the Prime Minister, after which he should appoint other members of the Government based on their recommendations. Secondly, the Ministers should be responsible to the Parliament.

Brogan correctly observed, "The French Constitution is neither an American-style presidential constitution nor an English-style parliamentary constitution; it is a hybrid of the two." All of this highlights the reality that the French political system is neither entirely parliamentary nor purely presidential.

- (d) Rigidity of the Constitution:** The Constitution of France, like The American constitution has always been a pretty strict document. The constitutional amendment process has been a challenging one. The mechanism of amending the French Constitution is clearly out in Title XVI and Article 89. President, the Prime Minister, and members of Parliament have the authority to propose amendments.

According to Article 89, the initiative for amending the constitution belongs to both the President of the Republic and the members of Parliament on the recommendation of the prime minister. The Government or Parliamentary Bill for Amendment must be passed in similar wording by the two assemblies. After a referendum, the amendment will become legally binding.

However, when the President of the Republic decides to send the proposed amendment to the Congress, it will not be put to a referendum; in this case, the proposal amendment will be passed only if it receives a three-fifths majority of the votes cast.

As a result, we discover that in order to modify the constitution, the proposed amendment must be approved by both chambers of Parliament in identical words, and then it must be offered to the public for approval in a referendum. Another technique of amendment is spelled out in this article. It states that if the President proposes a Government Bill in the joint bill setting of the two Houses and it is passed by a 3/5th majority, the proposed bill becomes an amendment even if it is not accepted by the people in a referendum.

The mechanism for amending the French constitution is inherently ambiguous. "Article 89 contains an inbuilt ambiguity," says Maurice Duverger. It is vague in that it is unclear whether the President's choice not to submit a proposed amendment to a referendum eliminates the need for the first stage or if it is taken only after it has been completed. The article is also insufficient because it does not indicate how the proposal

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for amendment would be approved by Parliament. The term “same terms” is particularly unclear because it does not indicate how to resolve a disagreement between the two Houses on an amendment proposal.

The alteration of the French Constitution is subject to two constraints. These are —

- (i) The amendment cannot be introduced at a time when the nation’s integrity is being threatened; and
- (ii) The Republican form of the constitution cannot be modified.

As a result, the French Constitution is a strict document. Both the nature and content of the amending techniques are rigorous.

- (e) **Administrative Law:** The Administrative Law system is one of the most essential components of the French Constitution. Administrative Law is the sum total of the principles that govern the activities of the services associated with the implementation of law that are not judicial. It’s one of two types of public law; the other is constitutional law. Constitutional Law establishes the structure and powers of the government apparatus. Administrative law, in its broadest meaning, is concerned with the structure and powers of the administrative apparatus. Administrative law, in its broadest meaning, concerns the organisation, powers, procedures, staff, finances, and accountability of all public agencies. Administrative law, according to the Encyclopedia of Social Sciences, is a law governing official powers and responsibilities, or a law governing the degree of discretion granted to administrative offices and agencies.

In the French system, administrative law is defined as the law that provides for citizens’ actions against officials for illegal conduct committed in their official position to be heard by special administrative courts staffed by civil servants rather than ordinary courts of law. A.V. Dicey, an English jurist, articulated and explained such a theory of *French Droit Administratif*. *Droit Administratif* has three distinct characteristics, according to him.

- (i) The rights of the state are governed by a separate body of law and laws that do not apply to ordinary persons under this law.
- (ii) Ordinary courts lack jurisdiction over cases involving the state or state officials acting in their official capacities. Administrative courts, which are made up of state officials rather than judges, hear such cases.
- (iii) Dicey deduced that officials in France are afforded additional protection for activities undertaken in their official position.

The Administrative Law of France, according to Dicey, differed from the British concept of the Rule of Law, which stood for:

- (i) Regular Law has the upper hand in all situations.

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- (ii) It rejects the system of special administrative courts by ensuring equality of all citizens, whether officials or non-officials, before the ordinary law of the land as administered by ordinary courts.
- (iii) Individual rights, as defined and enforced by regular courts of the Land, have precedence.

**Scope of the French System of Administrative Law:**

- (i) It has to do with the role and responsibilities of government employees.
- (ii) It establishes the relationship between citizens and government officials, as well as their rights and responsibilities.
- (iii) It establishes the means through which government personnel can exercise their rights and carry out their responsibilities.
- (iv) Administrative law, as it is applied by administrative tribunals, governs state authorities. Administrative law does not apply to ordinary citizens.
- (v) Administrative tribunals adjudicate issues involving official indiscipline or misconduct.
- (vi) The Court of Conflicts has the authority to address any disputes concerning the jurisdiction of ordinary and administrative courts. The President of the Court of Conflicts is the Minister of Justice.

The preceding debate demonstrates that in France, there is a distinction made between officials and ordinary citizens when it comes to the protection of their rights and responsibilities.

The other features of the French Constitution are as follows:

- (i) A secular State
- (ii) Republican Constitution
- (iii) Democratic Constitution
- (iv) Bicameralism
- (v) Multi-party System
- (vi) Constitutional Council
- (vii) Rights of the French People

### 4.3 THE LEGISLATIVE (PARLIAMENT)

The Legislative of France under the constitution of Fifth Republic is known as Parliament. Article 24 declares that “The Parliament is composed of the National Assembly and the Senate.” Thus, French Parliament is a bicameral Legislative. The National Assembly is the Lower, popular and directly elected House as French Parliament. The upper House of the Parliament is the Senate. The National Assembly is similar to India’s Lok Sabha, and the Senate is similar to India’s Rajya Sabha. The French Parliament’s two Houses have roughly equal powers.

### 4.3.1 The National Assembly

The National Assembly of France is the French Parliament's lower and most popular house. It has equal powers to the Senate in theory, but in practise, it has proven to be stronger than the upper chamber because the French government reports to the National Assembly rather than the Senate. At present, the National Assembly of France consists of 577 members (Deputies). The Deputies are directly chosen by the population of France. The principles of Universal Adult Franchise operates in France. Every French citizen above the age of 18 has the right to vote. On average, one representative is elected for every 100,000 people.

In the election to the National Assembly, the second ballot system is used. To win an election, a candidate must receive an absolute majority of the valid votes cast. If no candidate receives a majority of the votes, all candidates are declared defeated, with the exception of those who received at least a quarter of the total votes. After then, a second ballot is held. The candidate who receives the most votes in the second ballot is elected. As per the provision of the French Constitution, every contesting candidate nominates a substitute. If an elected member (Deputy) dies or becomes permanently disabled, his substitute takes his position. As a result, the substitute is referred to as Optional Deputy.

The tenure of the National Assembly is 5 years. However, it can be dissolved earlier. The new National Assembly elects its own President after each general election. The National Assembly's meetings are presided over by the President of the Assembly.

### 4.3.2 The Senate

The French Senate, which is similar to the Rajya Sabha in India, is the upper house of the French Parliament. Article 24 of the French Constitution states, "Indirect suffrage is used to elect the Senate. It represents the Republic's territorial entities. In the Senate, French citizens living abroad are represented." The Elders' House is the name given to this Chamber. The present strength of the Senate is 321. Out of which 309 members are elected by departmental electoral colleges and the High Council of French Citizens Living Abroad elects 12 members.

It is a semi-permanent residence. Its members are elected for a nine-year term, with one-third of the members retiring every three years. The Senate is presided over by the President of the House.

The French Parliament holds two sessions each year. Special sessions of Parliament are also provided for in Article 29 of the constitution.

**Powers of the French Parliament:** The French Parliament, like other legislatures around the world, has legislative, financial, constituent, and judicial powers.

- (1) **Legislative Powers:** The legislative functions of the French Parliament are defined by Title V and a group of five Articles (34–38) in the French constitution. The Parliament votes on laws, according to Article 34. This article states the Parliament can pass two types of Laws, i.e. —

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**(a) The Laws which determines Rules:**

- (i) Citizens' Civil Rights and Fundamental Liberties,
- (ii) Persons' Nationality, States, and Legal Capacity, Property in Marriage, Inheritance, and Gifts,
- (iii) Crime Definitions,
- (iv) The Basis of Assessment, Rates, and Methods of Collection of All Taxes, The Currency System,
- (v) The Electoral System for Parliamentary and Local Assemblies,
- (vi) Nationalism and Property Transfer from the Public to the Private Sector

**(b) The Laws which determine the Fundamental Principles:**

- (i) These laws deal with the overall structure of national defence.
- (ii) Education.
- (iii) Law of Property.
- (iv) Social Security, Labor Law, and Trade Union Law.

Apart from these two categories, the Parliament also passes Finance Laws governing the state's resources and liabilities, as well as Programme Laws governing the state's social economic goals.

From the preceding discussion, it is evident that the French Parliament has extensive legislative powers. The French Parliament's legislative powers, on the other hand, are severely curtailed in the following respects.

- (i) The Constitutional Council has the power to review the laws passed by Parliament.
- (ii) In France, the Executive also has legislative authority. Even without the permission of Parliament, the government can promulgate an ordinance.

**(2) Executive Powers:** The French Parliament, like the Parliament of a Parliamentary system of government, has the power to control the executive. The French executive is accountable to the Lower House of the French Parliament. "The Prime Minister, after deliberations in the Council of Ministers, pledges the Government's duty before the National Assembly, on its programme or, if so agreed, on a broad declaration of policy," says Article 49. The Government is closely supervised by the National Assembly. Under Article 35 of the Constitution, the Parliament's executive powers include the authority to authorise the declaration of war. Peace treaties, economic treaties, and international organisation agreements must be approved by Parliament.

**(3) Financial Powers:** The national finances are under the control of Parliament. The Government prepares money bills, which are then approved by Parliament. Every year, Parliament approves the government's budget for the following fiscal year. The National



Assembly, the Parliament's Lower House, can only initiate money bills. A money bill can only be delayed for 15 days by the Senate.

- (4) **Constituent Powers:** The Article-44 of the French Constitution empowers the members of the Parliament and the Government to amend the constitution. A constitutional amendment bill can be introduced in either House of Parliament. Both Houses should pass the bill in the same way. The measure can be put to a referendum by the President of the Republic. The outcome of the referendum will determine the ultimate decision. Furthermore, the constitutional council has the authority to rule on the proposed amendment's constitutionality.
- (5) **Electoral Powers:** The French Parliament has some electoral powers. Half of the Senate's deputies are chosen by the Parliament. The members of the High Court of Justice are chosen by both Houses of Parliament. The Presidents of the National Assembly and the Senate each appoint six members to the Constitutional Council.

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### Position of the French Parliament

The following assessment of the Parliament's powers and functions demonstrates that the Parliament's position is not as strong as that of a democratic state with a Parliamentary form of government. The French Parliament enacts laws in accordance with the constitution's requirements. The executive has the authority to set rules on matters that do not fall under the purview of Parliament. Any proposal passed by the French Parliament can be put to a referendum by the President of the French Republic. Furthermore, the Constitutional Council has the authority to review the laws passed by Parliament. An Article-61 of Constitution has given the Constitutional Council superior power over the Parliament. Parliament's powers have been constrained not just in the legislative but also in the financial and executive sectors. Parliament's oversight over the executive branch has been weakened. The President of the Republic has true executive powers and is not subject to Parliament's oversight. The French constitution mandates that the Parliament prioritise government proposals and measures. As a result, the French Parliament does not have a strong position in relation to the President of the Republic and the French Government.

## 4.4 THE EXECUTIVE: THE PRESIDENT

The President of the French Republic is in charge of the executive branch. Prior to the founding of the 5th Republic, the President's office was merely a ceremonial one. The French President was a constitutional figure who followed the cabinet's and Prime Minister's advice. However, the new constitution has increased the prominence of the Presidential Office, making the President both the actual and nominal head of state.

The President's office is established by Title II (Articles 5 to 9). Article 5 states that the President of the Republic is responsible for ensuring that the

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constitution is followed and that he is the guarantee of national independence, territorial integrity, and treaty observance.

**Election Procedure:** Article 6 states that the President will be elected by direct universal suffrage for a period of seven years. According to Article 7, a candidate must receive an absolute majority of votes in either the first or second round of voting to win. According to Article 7 of the constitution, the new President must be elected no less than 20 days and no more than 35 days before the current President's tenure expires. Article-7 also provides, "If, for whatever reason, the Presidency of the Republic falls vacant or if the incapacity of the President has been certified by an absolute majority of the constitutional council's members, the functions of the President, except those provided by Articles-11 and 12 are performed temporarily by the President of the Senate and if he is also not in a position, the functions are performed by the Government." Articles 49, 50, and 89 of the constitution are suspended and inactive during the vacancy period. The Constitutional Council decides on all subjects pertaining to the election of the President of the Republic.

The only way to remove the President of France is to impeach him for a very good reason. Article 68 of the Constitution specifies the procedure for impeachment. The French President can be impeached for high crimes if both houses of Parliament pass a motion with an absolute majority of their respective memberships. The President is tried by the High Court of Justice after being indicted by Parliament. It means that the President can be impeached and removed only by the High Court of Justice. A person will be eligible to serve as President of France for a maximum of two terms.

**Powers and Functions:** The President of France performs following powers and functions as per the provision of the Constitution of 5<sup>th</sup> Republic:

- (i) **As Head of the State:** The President of France wields enormous power as the country's leader. He is the chairman of the community's executive council, the council of ministers, the National Defense Council, the Higher Council of Judiciary, and the council of ministers. He has the authority to grant pardon, reprieve, and amnesty to those who have broken the law. In conjunction with the Prime Minister, he appoints members of the Higher Council of Judiciary. All laws, treaties, executive orders, and ordinances are signed by him. He selects French ambassadors to other countries and accepts the credentials of other countries' ambassadors to France. He represents France's sovereignty. As a result, he performs all of the ceremonial functions that his counterparts in other countries perform.
- (ii) **Executive Powers:** The President of France appoints the Prime Minister as the leader of the executive branch. On the suggestion of the Prime Minister, he chooses and dismisses all other members of the Government. He only picks a Prime Minister who he believes can command the confidence of the National Assembly. When he is certain of the people's

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unwavering support, he installs a Prime Minister of his choosing. Article 13 of the French Constitution empowers the President to select high-ranking civil and military personnel. All important appointments made by the President require the consent of the French Parliament, and when the Prime Minister submits his resignation, the President assumes administrative responsibility. Three members of the Constitutional Council are also nominated by him. He also becomes an ex-officio member after his retirement.

After the Reforms Act of 2008, the President's decision to declare war or order the deployment of French troops abroad must be approved by the French Parliament. He is a significant figure in the formulation of French foreign policy and the management of French foreign relations.

- (iii) **Legislative Powers:** Articles ten, eleven, twelve, and thirteen provide legislative powers to the President of the Republic. After the final passage of a law by Parliament, it is delivered to the Government, as required by the Constitution. Within 15 days of the law's submission to the government, the President promulgates it. If he is dissatisfied with the Law, he may request that it be reconsidered by Parliament. The bill cannot be refused consideration by Parliament.

The President of the Republic of France can submit a government measure to a referendum dealing with the organisation of public authorities or reforms relevant to the nation's economic or social policies under Article-11 of the French Constitution. The President, after consulting the Prime Minister and the Presidents of the two chambers, can dissolve the National Assembly under Article-12 of the constitution. In addition, the President has been granted the ability to connect with two Houses of Parliament via messaging. There can be no discussion about the message he communicated. If Parliament is not in session, it can be convened on a special basis for this purpose.

- (iv) **Judicial Powers:** "The President of the Republic is the guarantor of judicial independence," says Article 64 of the French Constitution. He is aided by the Judiciary's Higher Council. The President is in charge of this council. He appoints nine of the members of this council. He can also award pardons, reprieves, and amnesties.
- (v) **Emergency Powers:** Under Article-16 of the Constitution, the President of the French Republic has emergency powers. When there is a serious and immediate threat to: (i) the Republic's institution, (ii) the Nation's independence, (iii) the integrity of its territory, or the fulfilment of its international obligations, or when the regular functioning of the constitutional public authorities is disrupted, the President, after officially consulting the Prime Minister, the Presidents of the Assemblies, and the Constitutional Council, can take appropriate measures. The President sends a message to the nation about these issues. He has the authority to take any action judged necessary for a meeting in an emergency.

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Furthermore, the Parliament meets by right during an emergency, and the National Assembly cannot be dissolved during an emergency.

**Position of the French President**

The position of the President of France under the 5<sup>th</sup> Republic is like the President of India. He is the President of the Republic. He also possesses real powers, as if he were the President of the United States, the Prime Minister of India, and the Prime Minister of the United Kingdom all wrapped into one. He represents France's sovereignty as a country. He is the cornerstone of France's constitutional framework. As the President of the Council of Ministers, he has the power to directly influence the policies and operations of the government, as provided by the constitution. The French government's policies show a strong imprint of his thought and personality. As head of the State, he determines the Foreign Policy of France. Emergency Powers enable him to play a vigorous role as a Leader of the nation and his powers assume new dimensions. His active association with two constitutional bodies, i.e., The constitutional council and the Higher Council of Judiciary makes him powerful.

In the words of Herman Finer, "The President is the Keystone of the arch of the new Republic, he is both the symbol and the instrument of reinforced executive authority." Michael Stewart says, "As the Constitution stands, a President could either make himself an effective head of the government as well as the Head of the State with the Prime Minister as little more than a senior members of his cabinet or he could be content with nominal and advisory powers leaving the main work to the Prime Minister."

Without a doubt, the President of France is the national leader in whom the French people have entrusted the task of guiding the country's destiny. The President must provide leadership and initiative to the people at all times and in all circumstances, normal or extraordinary, and in peace or war. His office has more authority than any other office established by the constitution. In many ways, the French President, like the Indian President, the British Prime Minister, and the American President, blends the functions and prestige of all of these into one office.

**4.5 THE CABINET AND THE PRIME MINISTER**

Article-20 of the the 5<sup>th</sup> Republic of France lays down that the Government is responsible to the Parliament and determines the nation's policy. The Prime Minister and the Council of Ministers, who are in charge of the State's administration, are referred to as the Government in France. The President and the Government are clearly separated in France's New Constitution. Thus, the cabinet and the Prime Minister constitute the Government of France.

**Salient Features of the Government:**

- (a) **Distinction between the Cabinet and Council of Ministers:** The French constitution distinguishes between the Cabinet and the Council of Ministers. The Council of Ministers is a section of the French Cabinet,

which is a larger organisation. The President, Prime Minister, and all Cabinet Ministers make up the Cabinet. The Prime Minister and the other members of the Council of Ministers make up the Council of Ministers.

Meetings of the Council of Ministers are presided over by the President, and the Prime Minister can only do so at the President's request. The Prime Minister, on the other hand, has the right to preside over the Cabinet meeting. The Cabinet has less power than the Council of Ministers in actual government practise. The Council of Ministers, not the Cabinet, debates national policy and makes decisions on whether to seek a vote of confidence or dissolve the National Assembly.

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- (b) **Mixture of Parliamentary and Presidential Features:** The French government is organised in a style that is halfway between parliamentary and presidential government. The Prime Minister's Office and the Council of Ministers have been established, and both have been made accountable to Parliament, similar to the Parliamentary System. The President has been given genuine powers, a definite term, and independence from Parliamentary control, similar to the Presidential System. A vote of no-confidence in the government, similar to the Parliamentary System, can be used to dismiss the government. However, the Government's membership has been declared incompatible with that of the Parliament. Ministers have been allowed to participate in Parliamentary debates at the same time. "Members of Government have access to both assemblies," according to Article 31 of the French Constitution. When they desire it, they are heard. This is in contrast to the Parliamentary form of government, in which the Prime Minister and other Ministers are effectively Parliamentarians. Furthermore, unlike the Presidential System, the Government can ask the President to dissolve the National Assembly, just as it might in the parliamentary system.
- (c) **Organisation of the French Government:** Article-8 of the French Constitution states, "The President of the Republic appoints the Prime Minister. The other members of the Government are appointed by the President on the proposal of the Prime Minister." However, the French President is not required to select the leader of the majority party in Parliament as Prime Minister. The President has the authority to select anyone as Prime Minister who he believes has the confidence of the Parliament. The Prime Minister and other Ministers must relinquish their seats in the House of Commons.
- (d) **Removal of the Government:** "When the National Assembly adopts a vote of censure or rejects the Government's Programme or a general declaration of Government Policy, the Prime Minister shall propose the Government's resignation to the President of the Republic," according to Article 50. As a result, the President can only remove the government if the Prime Minister resigns or his government resigns to the President.

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The fall of the Government is inevitable when the Parliament passes a no Confidence Motion against the Government.

- (e) **Tenure of the Government:** The French Constitution does not specify the length of a government's term. The French government retains power as long as the National Assembly has confidence in it. However, because the National Assembly has a five-year term, a government remains in power for five years. Every new National Assembly usually results in the formation of a new government.

As a result, the French government, officially known as the Government of the French Republic, is in charge of the country's executive branch. The Prime Minister is the government's leader. The Council of Ministers is the Government's principal executive organ. The constitution establishes the Council of Ministers. Only senior ministers make up the council, though some secretaries of state may attend meetings.

The majority of government work, on the other hand, is done elsewhere. Much of it is handled by each individual Ministry, which is led by the Minister in charge of that Ministry. Ministers have their own staff, which is referred to as the 'Ministerial Cabinet.' Each ministerial cabinet is made up of between 10 to 20 political appointees. Cabinet members support the Minister in the administration of his or her ministry. Ministerial Cabinet members are influential persons in the government who work in both the political and administrative realms.

### Powers and Functions of the Government

The following is a summary of the French government's powers and functions:

- (a) **Executive Powers:** Article-20 of the 5<sup>th</sup> Republic of France declares, "The Government decides and directs the policy of the nation, It has its disposal the administration of armed forces." It demonstrates that the French government is the policy-making entity. It is in charge of putting policy into action. The President of the Republic can delegate any power to the Government. Under Article-13, some important appointments are made by the Council of Minister. In France, the government has the authority to declare martial law.
- (b) **Legislative Powers:** Members of the Government are not members of Parliament, according to Article 23. They can, however, participate in Parliamentary debates and other activities. Legislative initiative is vested in the government under Article 39. Government Bills can be introduced in Parliament by members of the government. Ministers also have the authority to introduce money legislation in the National Assembly. Despite the fact that Ministers are not members of Parliament, they participate actively in its debates.
- (c) **Financial Powers:** The government introduces money bills in the National Assembly of France., "If the Parliament has reached no decision within a seventy days, the provisions of the Bill (Finance Bill) may be put

into force by an ordinance.” The government’s hand in the financial sphere is strengthened by this article..

- (d) **Delegated Legislation Power:** Article 38 of the French Constitution grants the government delegated legislative authority. The French Government, like the British Cabinet, has legislative authority granted to it by the Parliament. The Government can ask the Parliament not to debate a particular bill or amendment if it believes the bill or amendment is outside the Parliament’s law-making jurisdiction.

As a result, the French government has executive powers, participates actively in the legislative process, and is responsible for the programmes and policies presented to the National Assembly.

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### Position of the Government

In both the executive and legislative spheres, the government of the Fifth Republic of France has been given sufficient authority. The powers of Parliament have been reduced under the current constitution. Although the members of the Government are not members of Parliament, they do participate actively in its debates. The Prime Minister and other Ministers were also given legislative powers by the constitution. The Prime Minister has the authority to request that Parliament be dissolved by the President. This is a powerful weapon in the Government’s arsenal, which it can employ to compel Parliamentarians to accept its viewpoints. It demonstrates the Government’s strong position in relation to the Parliament.

However, constitutional restrictions have been enacted to prevent the government from acting arbitrarily. The French government is accountable to Parliament, which has the right to oust the government by passing a no-confidence motion. Apart from that, the Parliament exerts control over the government through its legislative authority and the right of members of Parliament to question ministers.

As a result, the 5th Republic of France’s constitution strengthened the government’s position vis-à-vis the Parliament while weakening the government’s position vis-à-vis the President.

## 4.6 THE PRIME MINISTER OF FRANCE

The French Prime Minister, also known as the Prime Minister of the French Republic, is the head of the French government. He is also the Council of Ministers’ Leader. He is France’s second-highest official, after the President. While the President is the President of the United States, the Prime Minister is the Prime Minister of the United Kingdom. According to Article-21 of the French Constitution, “the Prime Minister directs the operation of the Government. He can delegate certain of his powers to the Ministers.”

### Procedure of Appointment

Under Article 8 of the Constitution, the President of the Republic appoints the Prime Minister of France. However, unlike in India, the President is not required to

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select the dominant party's leader as Prime Minister. The President appoints the Prime Minister only if he considers such person can command the confidence of the National Assembly. When the President is confident in the people's support, he appoints a Prime Minister of his choosing. Even the Prime Minister is not a member of Parliament, and if a member of Parliament is nominated as Prime Minister, he must immediately resign from the House of Commons. "Membership of the Government is incompatible with that of the Parliament," states Article 23. It means that even if the Prime Minister is not a member of Parliament, he or she is expected to command the confidence of the House of Commons. He will remain in office as long as the Parliament, in general, and the National Assembly, in particular, have faith in him. The President of France can remove the Prime Minister only when the latter loses his confidence in the House. According to Article 50, the National Assembly can vote to condemn the Prime Minister at any moment. Once this occurs, the Prime Minister must submit the Government's resignation to the President.

**Powers and Functions**

Articles-19, 21 and 21 of the French Constitution explain about the powers and functions of the French Prime Minister. Article-19 states that "with the exception of the acts the President under Articles-8 (Para -1), 11, 12, 16, 18, 54, 56 and 61, all other acts of the President are countersigned by the Prime Minister and where necessary by the appropriate Ministers."

As per Article-21 the Prime Minister performs following functions:

- (a) He is in charge of the work of the Government.
- (b) He directs the operation of the Government.
- (c) He ensures the execution of Laws.
- (d) He is responsible for national defence.
- (e) Except for the nominations made by the President, he exercises rule-making authority and appoints to Civil and Military posts.
- (f) He has the ability to delegate some of his authority to the Ministers.
- (g) The President of the French Republic deposes the Prime Minister as the Chairman of the Council and Committees.
- (h) In some extreme circumstances, the Prime Minister can act as Chairman of the Council of Ministers in the absence of the President.

"The acts of the Prime Minister are countersigned by the Ministers responsible for their execution if necessary," according to Article-22.

On the Prime Minister's advice, the President of France selects and dismisses other members of the Government (Article 8).

As a result, the Prime Minister plays a crucial role in the organisation and operation of the French government.



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According to Article 39, the Prime Minister of France has the authority to initiate legislative action in the French Parliament. Article-49 declares that, “the Prime Minister may, after deliberations in the Council of Ministers pledge the responsibility of the Government before the National Assembly on the passing of all or part of a bill or a motion. In this case, the bill or part of the bill or motion is regraded as having been passed unless a censure motion, moved within the following 24 hours, is passed in the conditions provided for.” He also has the right to submit a general statement of policy to the Senate for approval.

When the National Assembly of the Parliament votes a motion of censure or rejects the government’s programme or general statement of governmental policy, the Prime Minister of France offers the government’s resignation to the President.

### Position of the Prime Minister

In the French Constitutional system, the Prime Minister of France occupies an important position, which comes next to the President of France. He is the Leader of the Government of France and directs the operation of the Government.

However, the position of the French Prime Minister is not so strong as it was under the 4<sup>th</sup> Republic. The Prime Minister was the most powerful person in the 4<sup>th</sup> Republic constitution since he was the Leader of the Nation, the Leader of the Parliament, and the Leader of the Cabinet, whereas the President of France was only a constitutional head of state. The executive functions, however, are divided between the President and the Prime Minister under the 5<sup>th</sup> Republic’s constitution. At the expense of the Prime Minister’s powers, the President has been given some real executive powers. Now the Prime Minister only executes the Laws passed by the Parliament and signed by the President. The nation’s leader is the President, not the Prime Minister. Even so, the Prime Minister’s relationship with the other members of the Government is not particularly happy. The President now preside over meetings of the Council of Ministers, and the Prime Minister has just a few opportunities to do so. Similarly, he is not a member of the Parliament, but he has to keep the confidence of the Parliament. He serves as a vital link between the legislative and executive branches of government. In practise, the French government is now led by a partnership between the President and the Prime Minister. One partner’s vulnerability might be a source of strength for the other.

Finally, we can claim that the position of French Prime Minister has a lot of power potential. Apart from the President’s office, his is the most significant office. But in comparison to the offices of the Indian and British Prime Minister, his office is found to be quite weak.

### Check Your Progress

#### Multiple Choice Questions

##### I. Fill in the blanks:

- The constitution of the 5<sup>th</sup> Republic of France came to operation on \_\_\_\_\_.  
 (a) May 13, 1958 (b) October 4, 1958  
 (c) November 26, 1960 (d) December 14, 1961

**NOTES**

2. The Motto of the 5<sup>th</sup> Republic of France is \_\_\_\_\_.
  - (a) Justice, Economic, Political and Social
  - (b) Liberty, Equality and Justice
  - (c) Liberty, Equality and Fraternity
  - (d) None of the above
3. \_\_\_\_\_ of the following is not a basic feature of the French Constitution.
  - (a) A rigid constitution
  - (b) Supremacy of the Constitutional Law
  - (c) Democratic and Republican Constitution
  - (d) Parliamentary System of Government
4. The Lower House of the French Parliament is known as \_\_\_\_\_.
  - (a) House of Representatives
  - (b) National Assembly
  - (c) House of the People
  - (d) House of Commons
5. The French Council of Minister is presided by \_\_\_\_\_.
  - (a) The President of France
  - (b) The Prime Minister of France
  - (c) The Chairman of the National Assembly
  - (d) The Chairman of the Senate

**II. True or False:**

1. The French Constitution is a mixture of Presidential and Parliamentary System.
2. The French Constitution is a Flexible Constitution.
3. The Constitution of France is a Republican Constitution.
4. In France, there is a bi-party system.
5. France is a Federal State.

**III. Match the following:**

- | (A)                         | (B)                                      |
|-----------------------------|--|
| 1. National Assembly        | (a) Head of the State                    |
| 2. Senate                   | (b) Head of the Government               |
| 3. The President of France  | (c) Lower House of the French Parliament |
| 4. Prime Minister of France | (d) Upper House of the French Parliament |

**4.7 ANSWERS TO 'CHECK YOUR PROGRESS'****Multiple Choice Questions**

1. (b)
2. (c)
3. (d)
4. (b)
5. (a)

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**True and False**

1. True
2. False
3. True
4. False
5. False

**Match the following**

1. (c)
2. (d)
3. (a)
4. (b)

**4.8 SUMMARY**

Since October 4, 1958, the Constitution of the Fifth Republic has been in effect. Securing constitutional stability has proven to be a success. The government of this country is based on a Presidential-Parliamentary model. It balances the requirement for a strong and stable executive with the Republican and Democratic Principles of Enlightenment Philosophy (Liberalism). It is a constitution that has been written and enacted. It was drafted by the French Constituent Assembly and adopted by the French people in a referendum.

A Bicameral Legislative is established under the Constitution. The National Assembly and the Senate make up the French Parliament. The National Assembly is the Parliament's Lower House, which is more popular and powerful. The Senate is the upper, less popular and powerful quasi-permanent House.

The French President's control is the most distinguishing aspect of the Fifth Republic's Constitution. He is not just the state's and administration's leader, but also its director. His is a one-of-a-kind, powerful, and prestigious office, as well as one of the most powerful in a democracy. The President and the Government are separated in the constitution. The President is the President of the United States, and he or she has significant and genuine administrative powers. The government, which includes the Prime Minister and the Council of Ministers, is in charge of the state's administration. It signifies that the President's responsibility is to secure the constitution's guardianship, while the Government's role is to rule. In the French constitutional system, the Prime Minister holds a significant position. Only the President of the Republic holds a higher position. He plays a key role in the French government's operations. In reality, the French government is led by a partnership between the President and the Prime Minister.

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**4.9 KEY TERMS**

1. **Republic:** Head of the State is elected.
2. **Secular State:** State Patronises no specific Religion.
3. **Unitary State:** Centralisation of powers in the hands of Central Govt.
4. **Pardon:** Forgiveness of an offence.

**4.10 SELF-ASSESSMENT QUESTIONS AND EXERCISES****Short Answer Questions**

1. 5<sup>th</sup> Republic of French Constitution.
2. Rigid Constitution of France.
3. Preamble of the French Constitution.
4. Unitary Features of the French Constitution.
5. Distinction between French Cabinet and Council of Ministers.

**Long Answer Questions**

1. Discuss the salient Features of the French Constitution under 5<sup>th</sup> Republic.
2. Discuss the composition and functions of the French Parliament.
3. Explain the powers and position of the President of France.
4. Discuss the powers and position of the Prime Minister of France.

**ACTIVITY****Provide two real life examples to prove how :**

1. “There is a popular sovereignty in France.”
2. “France is a Secular State.”

**CASE STUDY****“Democratic Republican Constitution”.**

The Fifth Republic’s constitution establishes a democratic state in the genuine sense. All of the necessary elements are present. The French Constitution includes all democratic elements such as popular sovereignty, universal adult franchise, periodic and free elections, the right to form political associations, regular elections, direct elections, secret voting, responsible and accountable governance, and so on. In this way French Constitution is a Liberal democratic Constitution. Furthermore, the French Constitution, like the Indian and American Constitutions, is a Republican Constitution. The President of France, who is directly elected by the French people, is the country’s leader. The President of the Republic is chosen for seven years by direct universal suffrage, according to Article 6.

**Question:**

Is France a Republican State?

## 4.11 REFERENCES

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France

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## Unit V Switzerland

### Learning Objectives:

After studying this unit, you should be able to understand:

- Salient Features of the Constitution of Switzerland (1999)
- Working of Federation in Switzerland
- Working of Direct Democracy in Switzerland
- Composition and Functions of the Federal Council (Federal Government)
- Composition and Functions of Federal Legislature (Federal Parliament)
- Composition and Functions of the Council of States (Senate)
- Composition and Functions of the National Council (House of Representatives)

### Structure:

- 5.1 Introduction
- 5.2 Nature of the Swiss Constitution
- 5.3 Basic Features of the Swiss Constitution
- 5.4 Federalism in Switzerland
- 5.5 Direct Democracy in Switzerland
  - 5.5.1 Factors Responsible for the Success of Direct Democracy in Switzerland
- 5.6 The Federal Council
- 5.7 The Federal Legislature
- 5.8 Answers to 'Check Your Progress'
- 5.9 Summary
- 5.10 Key Terms
- 5.11 Self-Assessment Questions and Exercises
- 5.12 References

### 5.1 INTRODUCTION

Constitution of Switzerland presents a classic example of a direct democracy in operation. It was the result of a steady evolution and two total modifications, as well as the work of the Constituent Assembly (1874 and 1999). The evolution of this small and attractive European country has been critical to the smooth operation of Federalism, plural administration, and direct democracy.

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The first written constitution was drafted by the Diet Committee and came to force in the year 1948. A comprehensive revision of the constitution was made in 1874, after 26 years of operation of the previous constitution. After 1874, the Swiss constitutional system operated on the basis of a completely rewritten constitution until 2000, when it was completely revised again. The new, completely rewritten constitution went into effect on January 1, 2000.

The word Swiss Federation replaces the name Swiss Confederation in the completely updated new constitution. The Swiss Federation is made up of the Swiss people and cantons, according to Article 1 of the constitution.

Old Terms		New Terms
Swiss Confederation	→	Swiss Federation
Federal Assembly (Federal Legislature)	→	Federal Parliament
National Council (Lower House)	→	House of Representatives
Council of States (Upper House)	→	Senate
Federal Council (Federal Executive)	→	Federal Government
Federal Tribunal (Judiciary)	→	Federal Court

In a culturally pluralist Swiss society, the completely renovated Swiss Constitution continues to steer the process of governance smoothly and effectively.

## 5.2 NATURE OF THE SWISS CONSTITUTION

Switzerland is a small country in Western Europe that is located in the heart of the continent. Despite her smallness, she has played a conspicuous role in international politics. It holds the distinction of being one of the world's oldest republics. In Switzerland, more than anywhere else, the republican spirit is strongly established.

The Swiss people have no faith in Monarchical tradition. Switzerland is an excellent example of a constitutional system that has successfully integrated a people with diverse racial, linguistic, and religious backgrounds into the United Nations. The importance of the Swiss Constitutional system should be discussed below.

- (a) **A Model democracy:** Switzerland offers to the International politics a Model democracy. Democracy is unique in Switzerland as the people take part in the affairs of the state directly. Switzerland is the classic home of direct democracy. The elements of direct democracy like, referendums initiative have been used in widest possible scale.
- (b) **No opposition party:** In Switzerland, there is democracy in the absence of a strong and organised opposition. There are different political parties but they are not at war with one another. No confrontation takes place

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between the ruling party and opposition. In the Federal Council, all major political parties are represented. The Federal Government of Switzerland works on a non-party basis. Since the final verdict is given by the people there is less chance of conflict between the ruling party and opposition.

- (c) **Collegial Executive:** Swiss executive is another unique political institution which is plural in structure. The Swiss Federal Council (Federal Government) consists of seven members, all of whom have equal powers. It is a class by itself. The Swiss executive differs from the parliamentary executive of UK and presidential executive of USA. It combines the stability of the presidential system with responsibility of the parliamentary one. The Swiss Federal Council is so unique that no other country has adopted it in exactly the same form.
- (d) **Economic prosperity despite poverty in natural resources:** Switzerland is a small country with limited natural resources. Two-thirds of Switzerland's terrain is mountainous, while one-fourth of the country's overall area is unproductive. So the country has to import a large portion of its food grains from outside. She is deficient in coal and oil, but despite this adversity, Switzerland has established an economy that is fairly stable and affluent. It is highly industrialised with fifty percent of her people working in industry. She is well-known for the manufacture of textiles, chemical and pharmaceutical products, watches and other precious instruments agriculture, forestry, dairy farming, stock breeding and tourism, etc, are the sources of Swiss prosperity. It is a small country with a well-balanced population and rich inhabitants.
- (e) **Unity in diversity:** Switzerland is a land of diversity which has successfully maintained its unity over all these years. She does not possess a homogeneous population, there is diversity of religions and language but, in spite of them, she has achieved strong national unity. The Swiss citizens are more closely bound by a sense of national unity and patriotic devotion than any other in Europe.
- (f) **Neutrality:** It is another Swiss principle which can be found in very Swiss political institution. Neutrality has successfully safeguarded the national existence since ages. The principal European nations recognised neutrality in the Treaty of Vienna of 1815, and it was reaffirmed in 1919 with the Treaty of Versailles and the London Declaration. Neutrality has been made a formal constitutional law in Switzerland, requiring the Federal Assembly and Federal Council to defend the country's independence and neutrality. In order to safeguard her neutrality she has not joined the UNO, till 2002.

Switzerland has maintained neutrality with a splendid military tradition. It is a nation of soldiers with great reputation. It has an army and 500 fighter planes in its air force. All men between the ages of 20 and 60 must undergo military training. Thus, its neutrality is armed neutrality. Despite its neutrality it plays an important role in international sphere. A number



of international organisations have been set up in Switzerland which contributed towards the creation of a climate of peace in Switzerland.

Switzerland

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### 5.3 BASIC FEATURES OF THE SWISS CONSTITUTION

Swiss political system is known to the world for its unique features. It is a small country with a moderate population situated amidst the three major powers of Europe and has successfully maintained her neutrality with national unity. It is the oldest republic with the tradition of direct democracy and lack of opposition. Most of its features combines the best elements of parliamentary and presidential system, which are discussed below.

**(1) Republican Character:** The Swiss constitution is republican in character. It has been the oldest republic in Western Europe. Republicanism has been mentioned in the constitution for which the government at the Federal level and at the states is republican in character. Republicanism is bred in the very bones of the Swiss people. The Swiss people are eager and jealous of their republican tradition to such an extent that they do not allow often one elected officer to hold an important post for more than one year. In Switzerland, all political institutions are democratically elected, and republicanism is woven throughout the constitution..

**(2) Written and rigid constitution:** The constitution of Switzerland is written and rigid which is a mark of every federation. As per new constitution it consists of 196 Articles and 6 Titles. The constitution was drafted by the Federal Assembly and approved by majority of the cantons and the electors participating in the referendum. The framers of the constitution with a view to preventing internal friction and possibility of civil strife, have written many things which normally fall in the sphere of ordinary legislation.

The constitution's rigidity is largely related to the country's federal system. The procedure for amending the Swiss constitution is lengthy and difficult. A push for modification might come from the Federal Assembly or a petition signed by 50,000 people. It will not be effective unless it is accepted by a majority of Swiss voters and a majority of Swiss cantons in a referendum. Thus, the participation of the voters has made it rigid.

**(3) Federal form of government:** Switzerland is organised on the principle of a true federation. The Swiss confederation as defined in the constitution, actually possesses all the attributes of a Federal state. The government's powers have been split between the federal and cantonal governments. The Federal Government has been given powers of national importance, whereas the cantons have been given residuary authorities. The Federal government and the cantons enjoy independent status. The powers of the Federal Government have increased these days, but the spirit of cantonal autonomy still pervades in the constitution. There are separate constitutions for the cantons they have separate officials. The

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Federal constitution has no restrictions on cantonal sovereignty. The cantons have autonomy in their own sphere, but they must adhere to the republican model; their constitutions must not contradict the Federal Constitution, and they must be subject to popular referendum. Thus, the Swiss cantons enjoy autonomy by remaining under the Federal system.

- (4) **Direct democracy:** This has been the most outstanding feature of the Swiss Constitution. The Swiss people are nature democrats and their love for democracy and democratic tradition forced Zurcher to remark that democracy and Switzerland have become synonymous. The constitution has ensured equality before law and introduced universal suffrage. Initiative and referendum are used extensively which gives sovereignty to the people. There is an institution like, Landsge Minde in some cantons which makes democracy direct. The Swiss bureaucracy appears to be democratically more responsive than that of other states. Swiss people have born in democratic tradition and in course of time the roots of democracy have gone deep into the ground. The smallness of the nation with love for democracy have made it the home of direct democracy.

Direct democracy has worked well in Switzerland because of the country's modest size, absence of economic disparity, high rate of literacy, the character of the Swiss people, and absence of political rivalry, etc. The Swiss people do not consider democracy as a form of government but as a way of life. As a result, democracy in Switzerland remains direct, and the Swiss people do not relinquish their powers by delegating them.

- (5) **Bill of Rights:** The inclusion of a complete bill of rights in the new Swiss Constitution (2000) was a significant move. The Swiss people's basic, civil, social, and political rights are presently described in Title 2 Chapters 1 and 2 and Articles 7 to 40 of the Constitution. The Constitution recognises, grants, and protects 34 human rights. Human Dignity, Equality, Religion and Customs, Freedom of Expression, and other rights
- (6) **Collegial Executive:** The Swiss Federal executive is a class by itself. The constitution has vested executive powers in the hands of a seven member committee or Council called Federal Council (Federal Government). The Federal Assembly (Federal Parliament) elects these members for a four-year term. The members enjoy co-equal authority and decisions are taken by majority votes. Each year, one of the seven members is chosen to serve as President and he remains in office one year after which the next one succeeds. The President enjoys no special authority excepting the ceremonial ones as performed by the head of a state. They enjoy a stability of tenure with being responsible to the Assembly.

Thus, the Federal Council is an unique institution in Swiss constitution which combines the merits of both parliamentary and presidential executive.

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- (7) **Insignificant Judiciary:** The only weakness of the Swiss Political System is the weak position of the judiciary. The Swiss Federal Tribunal (Federal Court) being the highest court does not play a significant role in the constitutional system. The judges are elected by the Federal Assembly and the Federal Tribunal has no power of judicial review. It is not the final interpreter of the constitution. The Swiss people do not want to hand over a portion of their sovereignty to the judiciary so as to hinder the wheel the progress. They have full faith and confidence in which they do not want to part with. The Federal Tribunal neither acts as the guardian of the constitution nor as the custodian of rights of the people.
- (8) **Bicameralism:** The Swiss Federal legislature is bicameral in structure. The National Council or the House of Representatives is the lower chamber while the Council of States or Senate is the upper chamber.
- The National Council represents the people while the upper represents the states. In the upper chamber, all states are represented equally, regardless of population or size. But both of them enjoy equal authority which is a unique feature of the Swiss political system.
- (9) **A dynamic constitution:** The Swiss Constitution is a living document that changes over time. It is like a living organism which has successfully adapted itself to the changing circumstances of the country. The constitution has adapted to changing socioeconomic conditions and reflects the aspirations of the people. The constitution has been helpful in the development of the nation. It contains the liberal philosophy of 19th century, it believes in the policy of neutrality and kept herself away from the the dangers of world politics. The constitution has been secular in character allowing freedom of religion to the people.
- Thus, the Swiss Constitution is a unique document which has won the appreciation all the people in the world.

## 5.4 FEDERALISM IN SWITZERLAND

Switzerland is a true federation although the constitution formally describes it as a confederation. The preamble of the constitution envisages a true picture of federation. The constitutional framers with a view to strengthening the alliance of the cantons, and to maintain and increase the unit, strength and honour of the nation, have opted for a Federal system. The cantons have sacrificed their sovereignty to create a strong centre endowed with adequate powers for national purposes. The powers of the federation and cantons have been constitutionally divided. The Swiss Federal Tribunal is empowered to declare the Federal constitution. The cantonal autonomy is duly protected and the Federal and cantonal governments work in their own sphere.

Switzerland is Federal union of 23 cantons of which 20 are full cantons and six half cantons. The Swiss constitution possesses all the necessary characteristics of a

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true federation. All the cantons enjoy equal status in the Federal set up. The features of Swiss federation can be explained in the following manner:

- (a) **Division of powers:** Division of power is the most important element of the Swiss federation. The powers of the government have been divided between the Federal and canton governments under the constitution. The Federal government is empowered to deal with foreign affairs, war and peace, railways, conclusion of treaties, Federal roads and bridges, aerial navigation Post and telegraphs, wireless, banking and commerce, coinage, paper money, higher education, settlement of inter cantonal disputes, manufacture and sale of gun powder, regulation and production of alcohol, marriage, naturalisation and extradition, etc. The Federal government has exclusive authority over these items.

Besides these, the constitution has granted some powers to the Federal government and to the cantons jointly under concurrent jurisdiction of both. Those items are regulation of industry and insurance, construction and maintenance of high ways, control of press and encouragement to education Both the federate and the cantons can make laws on those items but increase of conflict between Federal and cantonal laws, the federal law will prevail.

All the powers not conferred to the Federal government, not mentioned under concurrent jurisdiction are reserved for the cantons. The cantons enjoy residuary powers and executive unrestrained authority in dealing with those. The canton have their own constitutions. They can make changes according to their desire. However, the cantons can not destroy its republican character and the constitutions of the cantons should conform to the constitution of the federation.

- (b) **Independent Judiciary:** The Swiss Federal Tribunal (Federal Court) is empowered to keep both the sets of governments under restraint. Swiss Federal Tribunal is empowered to determine the constitutionality of the cantonal laws. If any cantonal law goes against the Federal laws then the Tribunal can declare them unconstitutional or illegal. But, it can not determine the constitutional validity of Federal laws. As the verdict of the people is required on every issue, the Federal legislature can't venture to encroach upon the authority of the cantons.

- (c) **Supremacy of the constitution:** Like ail other Federal systems, Swiss constitution is the Supreme law of the land. The Federal structure has been derived from the constitution. The powers of the federation and cantons have been divided -under the constitution. The cantons have their own constitutions but the Federal and cantonal government will have to function in conformity with the constitution. Neither the centre nor the cantons can unilaterally amend the constitution. Thus, due to supremacy of the constitution the cantons and the Federal government work in their own sphere independently without interfering in the freedom of other.

- (d) **Bicameralism:** The Swiss Federal Assembly is bicameral in structure. The National Council, which represents the people, is the lower house, while the Council of States, which represents the states, is the upper chamber. It represents the cantons in the Federal Assembly. Each canton, regardless of its size or population, sends two representatives to the Council while the half cantons send a member each.

Thus, from the above features it is clear the Switzerland is a federation. But it remains to be seen whether it is a true federation like USA or a weak one. In order to arrive at the conclusion it is essential to examine the working of Federalism in Switzerland.

### States Autonomy in Era of Centralisation

Although in the distribution of powers the Federal government has been invested with much more authority, yet the autonomy and independence of the cantons is duly preserved. The cantons are given equal representation in the Council of states. In the amendment to the Federal constitution the cantons have been given with some sort of authority. The cantons in Switzerland enjoy autonomy but they are not sovereign in their own sphere. A Federal law can supersede cantonal laws. The federal Government exercises supervision over the working of cantons.

The cantons have a significant role in enforcing Federal laws. The federal bureaucracy is fairly tiny, and the canton authorities handle the majority of the federal government's tasks. The Federal Tribunal has no subordinate courts in cantons. So the decision of the Federal Tribunal are executed by the officials of the cantonal governments. Thus, the two sets of govt work in co-operation.

Almost all the federations are now being influenced by centralisation. The Swiss federation is no exception to the trend. In course of time, the desire for national solidarity has forced the Federal government to enhance its powers and prestige even at the cost of the cantons. The influence of European nationalism, rapid growth in technology, trade and industry's transportation and communication needs, economic interconnectedness, and the need for a consistent and effective policy during national crises, etc. have contributed to the increase of powers of the Federal government. The Federal Government's powers have grown since the 1874 constitutional change, and the center's financial position has improved.

Despite world-wide centralisation, Swiss cantons have maintained some sort of autonomy. Federalism has now been elevated to the status of honorary member of our political system. The cantons remain key aspects of the Swiss constitutional structure, despite the growth of Federal authority. After becoming a canton citizen, a person can apply for Federal citizenship. The rules and regulations of the cantons still determine the civil rights of the citizens in Switzerland. No alteration to the constitution can take effect unless it is approved by a majority of the cantons. Thus, in an era of cooperative Federalism, the Swiss principle is to be communal before being cantonal and cantonal before being Federal. Although the Federal model has been modified to suit the emerging need, yet it is not out of existence in Switzerland.

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## 5.5 DIRECT DEMOCRACY IN SWITZERLAND

Direct democracy is the catch-word of the Swiss political system. Of all the uniqueness of Swiss political system direct democracy has been the originally Swiss. It has been successfully used in Switzerland and through the devices of direct democracy the sovereignty of the Swiss citizens is expressed. The people of Switzerland exercise their sovereign power through the devices of referendum and initiative. So in Switzerland neither the legislature of the federation or of cantons exercise sovereign power but the people in general. The Swiss people actively participate in the political life of the nation. They not only vote but also decide. No decision, proposal or bill can not be effective from the commune to the canton upto the federation unless the Swiss citizens affirm it.

The Swiss citizen is really his own master, taken as the sum total of all the citizens. He is in short the sovereign. All important matters are referred to the people for final approval. As a result, democracy remains direct, and the Swiss people do not relinquish their powers by delegating them. They always reserve the right to have the final say in a referendum and, in some cases, the first say in a popular initiative.

### Working of Direct Democracy

Direct democracy has been working in Switzerland through the devices like referendum, initiative, recall and landsgermingle. The working of these institutions may be discussed below:

- (i) **Referendum:** Referendum is a method that allows the people to be consulted before a law is implemented; it is a negative action instrument since it allows the voters to accept or reject any proposed or passed legislative measure. Referendum is simply a tool that allows people to veto or support measures passed by representative assemblies.

Referendums might be voluntary or mandatory. A measure passed by the legislature cannot become law unless and until it is adopted by the people in a forced referendum. A measure can, however, be sent to the people in an optional referendum. If a specific member of the electorate makes a demand to that effect.

- (a) **Compulsory/Mandatory Referendum:** Compulsory referendum applies to all constitutional amendments both in Federal and cantonal constitutions. Compulsory referendum was introduced in 1848. According to Article 114 of the constitution, a constitutional modification becomes effective only after it has been approved by a majority of the cantons. Article 140 of the new constitution establishes requirements for required referendums. Each full canton has one vote and each half canton has a half vote in the referendum. A canton's vote is decided by a majority of the electors voting.

When both the houses of Federal Assembly agree to have a revision of the constitution, the draft is put to the people and cantons for

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approval. The modification is made if a majority of voters and a majority of cantons approve it. If both the houses deferred to the people to discover whether amendment is required or not. If majority approve it, then the Federal Assembly is dissolved, new Assembly is elected and drafts the proposed revision which is finally submitted for popular vote. If majority of the voters and the cantons approve it, then the said amendment is effected.

- (b) **Optional Referendum:** In 1874, the possibility of a referendum was added to the Constitution. For the adoption of federal laws and the ratification of international treaties, an optional referendum is employed. Federal measures that are not designated urgent by the Federal Assembly will be put to a referendum if 50,000 people or eight cantons demand it. After the 11th of November, 1949, the constitution was altered to allow 30,000 voters or eight cantons to convene a referendum on any measure declared as urgent by the Federal Assembly. Now, a law needs to be approved by referendum within one year of its enforcement. In optional referendum only a majority of the voters participating must assent to the proposal.

**Referendum in Canton:** All cantons must hold a constitutional referendum, whereas 10 full cantons and one half canton must hold a legislative referendum. A referendum is optional in eight full cantons and one half canton. On the request of a certain number of voters, an optional referendum can be convened. There is no need for a referendum in the remaining one canton and four half cantons. Because all laws in these cantons are passed directly by the people through the landsgemeinde mechanism.

Besides, there is provision for administrative and financial referendum.

**Advantages of Referendum:** The merits of referendum may be discussed below :

- (a) The referendum serves as a check on the majority party's dictatorship. In democracy majority verdict is accepted and minorities are often ignored. But through the devices of referendum the minorities get scope to prove their strength.
- (b) It protects the people's sovereignty. It is a device through which public opinion is measured which gives an opportunity to the people to express their views on the matters which concern them the most. It serves as a great indicator of the current political climate.
- (c) By the extensive use of referendum the importance political parties is curtailed. As the final authority rests with the people neither the majority nor the minority parties can dominate the scene,
- (d) Referendums provide political education to the general public. It is an effective means of providing political education to Swiss residents. It serves as a means of unification and education for the people.

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- (e) The laws passed by the majority people through a referendum carries greater moral authority and it is more willingly obeyed by them than passed by the legislature.
- (f) It aids in the resolution of disagreements between the two chambers of the legislature. It is the most effective means of resolving deadlocks between the two houses of the Federal Assembly, which have equal authority.
- (g) Referendum acts as a veto power of the people over the decision of the legislature. The last word of the government rests on the people.
- (h) Referendum has been a factor in ensuring stability to Swiss politics. The conservative nature of the Swiss people has prevented the government from making radical sweeping changes.

Thus, referendum checks the designs of a corrupt legislature and keeps a healthy contact between the people and the representatives. No law can be passed which is detrimental to public interests.

**Disadvantages:** Despite all the above merits, referendum has been severely criticised.

- (a) Through the device of referendum the participation of the people is purely negative. They cannot amend the bill in part if they so desire. They are given the right to accept or reject the bill as a whole. Thus, the democratic right of the people is minimised.
- (b) The legislature's status and prestige are harmed by referendums. When the bills passed by the Federation Assembly is cancelled by the people, the legislatures feel dismissed. Thus, the legislature merely acts as a consultation committee and It no longer makes any decisions since the people say the last word.
- (c) Referendum arms the people with a responsibility for which they are least qualified. Modern legislation is a complicated process which an ordinary man can not perform effectively.
- (d) It retards social, economic and political progress of the state. When given the opportunity to express his view on such initiatives, the average citizen is likely to obstruct the country's social, economic, and political advancement. People in Switzerland have occasionally protested progressive legislation passed by the Federal Assembly.
- (e) As every time people are called to cast their votes, they feel a pathetic towards expressing opinion on major issues. Majority of the voters feel disinterested as they do not understand the complexities of a bill.
- (f) Referendum interposes unnecessary delay on matters of national importance. While obtaining signatures, finalisation of date of poll, propaganda and counting, if the process of legislation is delayed, Strong has said, "If a referendum is implemented in a large state, it is likely to cause such delays in the passage of legislation that



deprive society of the benefits they were intended to provide or allow the continuance of the evils they were intended to eliminate.”

- (g) Instead of minimising the negative effects of the party system, it hastens them. The use of the vote on a regular basis promotes party function and rivalries. Evils of political parties cannot be neglected even in direct democracies
- (h) It cannot express the opinion of the people. The people may capture votes by high sounding words and speeches. The opinion of the people can't be the true expression of public opinion.
- (i) Referendum is also an expensive process. Elections and propaganda waste a lot of money.

However, referendum has not be useless in Switzerland. The illiterate and ignorant ones may not exercise their right rightly, However, the system is so deeply rooted in Swiss soil and so well suited to the Swiss environment that no efforts to remove it have been presented at the national or cantonal levels. The people as a whole like it as it provides a safety value for discontent of the voters.

- (ii) **Initiative:** Initiative means the process through which a definite number of voters can propose an amendment to the constitution. It is the right of a prescribed number of citizens to propose the passing of an enactment by popular vote. It is a positive device to rectify the acts of omission of the legislature. It was for the first time introduced in 1892. It may be formulate or unformulative. A formulative initiative proposes an amendment in the form of a regularly drafted bill, an unformulative initiative on the other hand, makes only a general proposal of a desired amendment.

Total or partial revision of the constitution can be made through initiative. A proposal for the total revision of the constitution may be made by popular initiative on the demand of 50,000 Swiss voters. Then the proposal is submitted to a referendum to decide whether an amendment is required or not. If majority accept it, then the Federal Assembly is dissolved and the new Assembly is elected. This newly elected Federal Assembly drafts the new constitution and then it is submitted for approval. If majority of the voters and cantons approve the proposal, the revision is effected.

In case of partial revision of the constitution people may demand through an unformulated initiative. They may lay down only the general proposal for a desired amendment. This proposal is examined by both chambers of the Federal Assembly, and if they agree, the proposal is fashioned into a bill and sent to the people and cantons for approval. The amendment becomes legitimate if a majority of the people and cantons adopt it.

If both the houses do not agree, then the plan is presented to the public for comment. If a majority of the people support the revision, the Federal Assembly will develop an amendment in accordance with the popular

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initiative and present it for approval to the people and cantons, if it is approved, then the amendment becomes effective.

The Swiss constitution does not allow for non-constitutional legislation to be initiated.

**Initiative in cantons:** All the cantons in Switzerland except Geneva, provide for legislative and constitutional initiative. For a legislative initiative fewer signatures are required than that of a constitutional initiative. In Berne a constitutional initiative requires the support of at least 15,000 voters while in legislative initiative only 12,000 votes are required.

### Merits of Initiative

- (a) Initiative gives approximately to the people to initiate or propose an amendment to the constitution or any legislative proposals left out by the legislators. It is a positive device which recognises the sovereign rights of the electorate.
- (b) It removes legislative apathy of the legislatures to the needs of the people. The legislators sometimes do not pay heed to the public grievances and it is by initiative the people reminds the legislators about their need.
- (c) The legislative proposals initiated by the people are more sacred than proposals introduced by the legislators. People feel respected in obeying a law initiated by themselves.
- (d) Initiative avoids all possibility of a conflict between the people and the government. Public resentment is minimum in such a regime.

### Demerits:

Despite all those merits, the plan has been criticised on the following grounds:

- (a) That it weakens the legislative branch's authority and duty. The representatives feel that all major issues will be legislated by the people through initiative and they lose interest in everything which is not a good sign of democracy.
- (b) Most people are ignorant of legislative technicalities and proposals initiated by them will be marked by obscurities and omission. The language of the bill is defective which leads to controversial interpretation.
- (c) Initiatives can not be useful for bringing reforms. It is faulty because it vests ultimate authority in illiterate people, stifling the nation's political, social, and economic growth and progress.

But, initiative is not all useless. It has been an instrument with the people against the legislative lapses of the representatives. It has been shown to be effective in limiting the undue power of any party with a majority in the legislature. Thus, referendum and initiative

have been used as the warp and woof of the constitutional fabric in Switzerland.

- (iii) **Recall:** “Recall” is another device of direct democracy through which the majority of voters of a constituency can withdraw or call-back their representative from power. If people feel displeased with the activities of the said representative, then they can withdraw him from the Assembly and they exercise control over the elected representatives even though his term of office is not over. The fear of recall makes the representatives responsive to public demands.
- (iv) **Landsgemeinde:** It’s yet another example of direct democracy in action. It is described in books as the most picturesque and colourful of Switzerland’s political institutions, if not the entire world. Landsgemeinde is a type of town meeting that includes all adult residents of the area and meets once a year under the presidency of a leader who is elected every year. It is vested with all political authority of the city or town. The meetings of this Assembly are held on Sundays and holidays and attendance is compulsory. It possesses all the powers of a legislature. It makes laws, passes resolutions, elects officials, revises the constitution, levies taxes, creates new positions, and determines their salary.

But such institutions exist only in some small cantons of Switzerland.

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### Evaluation

In Switzerland, the functioning of direct democracy has been free of flaws. The people are satisfied with these devices of direct democracy and guard them against all odds. The growing usage of devices like referendums and initiatives demonstrates the success of direct democracy.. Referendum has been more successful than initiative.

The success has been more due to the conservative nature of the people. They are adamant about their fundamental liberalism and are always wary of ideas seeking to extend government intervention on individual liberty. Referendum and initiative have been useful in protecting the people against legislative omission and commission. It serves as a school for training the citizens on citizenship. Rappard has remarked that, “if one were to ask a man in the street in Switzerland whether his country was on the whole satisfied with the results of her experiments with direct democracy, the answer would be undoubtedly be in the affirmative.” Thus direct democracy has been working in Switzerland more successfully than in any other state.

### 5.5.1 Factors Responsible for the Success of Direct Democracy in Switzerland

Democracy has been the order of the day. And there are a few countries where direct democracy has been working, but no where have the means of direct democracy, which are employed so broadly and so effectively in Switzerland. Direct democracy has become the most cardinal principle of the Swiss political system. No other country relies so heavily upon the modern instruments of direct

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democracy. According to Bryce, one of the main elements of Swiss political life is direct democracy, which “opens a window into the soul of the crowd.”

There ascertain valid reasons for the success of direct democracy in Switzerland which may be discussed below:

- (1) **Small size of the country:** The fact that Switzerland is a tiny country allows citizens to participate directly in the activities of the state is the first and most important aspect contributing to direct democracy’s success. The country has a moderate population which is distinctly an advantage for the Swiss people and direct democracy has been a success there.
- (2) **Inherent nature of Swiss People:** Direct democracy has been successful due to the inherent nature of the Swiss citizens. The people of Switzerland are well acquainted with the practice of self-government in small communities, with social equality and in the spirit of patriotism and public duty. Democracy in Switzerland is a natural growth and all its institutions flourish on their own hill-side and under their own sun shine. The people of Switzerland accept democracy as a fundamental principle. Democracy in Switzerland is not a form of government but a way of life. The flexibility of the Swiss people is further a condition which contributes to the success of direct democracy.
- (3) **No gap between rich and poor:** Another reason for the successful working of direct democracy is the small gap between the rich and the poor. In Switzerland there is no socio-economic disparity among the people and every citizen is free and able to play an active role in the politics of the country.
- (4) **Absence of organised Political Parties:** Switzerland has no organised political parties which indirectly contributes to the success of direct democracy. As people participate in the affairs of the state directly, Political parties can not play an important role. The Swiss citizens are least influenced by party politics and rivalry. They always vote independently which contributes towards the success of direct democracy.
- (5) **High rate of literacy:** The Swiss people are educated and conscious. The rate of literacy is quite high which is a point factor for the success of direct democracy in Switzerland. Due to spread of education the citizens are honest and vigilant who make full use of their rights and duties and democracy becomes real.
- (6) **Independent Press:** The mass media play an important role in a democratic set up. Elections are the gate way of democracy and it must be conducted in a clean and impartial manner. Press and news papers makes the voters free and unbiased to take an important view of public affairs. People are not motivated by party interests. The independent press exercises a strong influence over the working of direct democracy.

- (7) **Swiss Neutrality:** The neutrality of the Swiss nation has been responsible for the success of direct democracy. Neutrality has helped it restore its integrity and strength which makes democracy real.

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Thus, direct democracy has been working successfully in Switzerland. The decisions of the government are subject to the final authority of the sovereign people. Rather than being parliamentary, Swiss democracy is plebiscitary. In Switzerland, democracy is direct, and the Swiss people do not abandon their powers when they delegate them. They always reserve the right to have the final say in referendums and, in some cases, the first say in initiatives. "If one were to ask a citizen on the street in Switzerland if his country was on the whole content with the results of her experiments with direct democracy, the answer would surely be in the yes," Rapport remarked of direct democracy's success.

## 5.6 THE FEDERAL COUNCIL

The Swiss Federal Council, sometimes known as the Federal Government, is the most distinctively Swiss of all political institutions. Executive power is delegated to a Council rather than a man in no other modern republic. No other free country's working executive has as little to do with party politics as the United States. The Swiss Federal executive is a class by itself. It can not be compared either with the Parliamentary executive of Britain or the Presidential executive of America but surprisingly, it combines the features of both the systems. The Swiss Federal Council is the symbol of plural executive consisting of seven members elected by the Federal Assembly. The executive power is not concentrated in a man but it is diffused among the seven members. The Swiss people have a natural aversion for one man rule and it is not due to their fear of tyranny but mostly due to, love of equality.

The peculiarities of the Federal executive may be discussed below :

- (1) **Plural or Collegial executive:** The Swiss Federal Council's most distinguishing feature is that it is made up of seven members, all of whom have equal power. "In no other modern republic is executive power entrusted to a Council instead of to a man" says Bryce. The founders of the constitution purposefully chose this system because it followed a long-standing tradition in the cantons and was well suited to the Swiss people's deep-seated and austere republicanism, which is opposed to personal eminence and attached to rule by councils. The Swiss democratic feeling revolts against any executive personal pre-eminence.
- (2) **Stability of Tenure:** The Federal Council is comparatively a stable executive than the parliamentary and presidential one. The Federal Assembly elects the members of the Council for a four-year term. However, they remain in office for a significantly longer amount of time. Councillors serve for an average of eight to twelve years. Some of them continue in office for more than 25 years. The members are not politicians but administrators and their non-partisan characters helps them

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to enjoy a stable and longer tenure. The choice of the Federal Assembly is limited as only one Councillor is elected from one canton.

- (3) **Non-Partisan:** The Federal Council has no political colour. Though the Councillors are elected from different groups, yet they are non- partisan in character. The Federal Council constitutes a heterogamous politicians who are selected for their capacity as administrators, for their mental grasp, good sense, tact and temper. The members of the Federal Council work as a term of administrators in the public interest. Four of them, are drawn from German speaking, two from Italian speaking and one from French speaking cantons. Referring to the non-partisan character of the Federal Council Bryce says, "The Federal Council stands outside party, is not chosen to do party work does not determine party policy, yet is not wholly without party colour." They work together as a team, demonstrating a spirit of compromise and mutual collaboration for the greater benefit.
- (4) **Relationship with Federal Assembly:** The relationship between Federal Council and Federal Assembly is something unique which is not found any where else in the World. The Federal Council is neither dependent upon the Federal Assembly as in case of a Parliamentary model nor non independent of the legislature as in case of American presidential form of executive. They are elected by the Federal Assembly either from the Assembly or from outside. After election, they have to tender resignation from the Assembly, but they sit in the Assembly and participate in its deliberations without right to vote. The Assembly can not remove the Councillors, but they remain answerable to the Assembly. The Councillors may initiate legislation on the request of the Assembly and place before it. Councillors simply pocket the pride if a bill they introduced is rejected. Thus the Federal Council is expected to carry out the orders of the Assembly and thus, the Council acts as a glorified drafting bureau. In case of conflict between the Assembly and the Council, the latter has to be subservient to the former. But as the Councillors are men of intelligence, experience and ability, they guide the Assembly in practice.
- (5) **Nither Parliamentary nor Presidential but combines the merits of both:** The Swiss Federal Council is a unique institution which is neither Parliamentary as British Cabinet, nor Presidential as the US Cabinet. But it is a curious blend of both the system. It combines the merits of both system avoiding the defects.

In a Parliamentary form of executive, individual and collective accountability, political homogeneity, and Prime Ministerial leadership are all present. In Switzerland the Federal Councillors are elected by the Federal Assembly, sit in the Assembly, participates in debates but not responsible to the Assembly. The Councillors do not come from one party they work in co-operation but not homogeneous. If a bill introduced by them is rejected in the Assembly, the do not

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tender resignation. The Chairman of the Council does not have the same powers as the Prime Minister of the United Kingdom. The Chairman is simply first among equals but not moon among lesser stars. There are no two political executives. Thus it is not analogous to Parliamentary form of government.

The Federal Council is also not Presidential in form. In a Presidential form of govt there is separation of powers between legislature and executive, the President is the virtual dictator who wields much more authority. However, the administration and legislature in Switzerland work closely together, and the executive Councillor takes part in legislative debates. None of the Swiss Councillors have the same power as the President of the United States of America. The President of Federal Council simply performs ceremonial functions. The US President can deny the legislative proposal of the Congress, but the Swiss President can't.

As a result, the Council is neither Parliamentary nor Presidential, but rather combines the advantages of both systems. It is Parliamentary in the sense that all of its members are elected by the Assembly from among its members or from outside, they participate in the deliberations of the house. It carries out the policies of the Federal government. The executive and legislature work closely together, and the legislature has power over the executive. It retains the stability of tenure of presidential form of executive. The members of the Council like the US Cabinet are all men of experience and expertise in administration. It can not dissolve the Federal Assembly, nor the Assembly can dissolve the Council.

Thus, the Swiss Federal Council is an unique institution which represents the synthesis of British and American pattern and to some extent differs from them. It is mostly due to the political climate of Switzerland and the natural instinct of the citizens that the Federal Council has been one of the peculiar institution in Switzerland.

### **Composition of Federal Government**

The Federal Council consist of seven members who are elected by the Federal Assembly in the combined session of both the house. The Councillors are elected from the Assembly, though some of them can be elected from outside. After election to the Council the members will have to quit their sets in the Assembly. The Federal Council can be elected by any Swiss citizen who is entitled to vote in the National Council. According to Article 175(3), no two members can be elected from the same canton. However, Berne and Zurich, the two big cantons are always represented in the Council. Out of the seven members four belong to the German speaking people, two from Italian and one from French speaking people.

Members of the Federal Council are traditionally elected for a four-year term, and they can be re-elected multiple times. There are some who continue in office for 25 to 30 years. The Federal Councillor elect one President and Vice-President from among themselves for one year under Article 176(2). The President after one year vacates his office and the Vice-President succeeds to the same. In this process Presidentship is held by rotation. Each one holds presidency in order of seniority.

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The President of Switzerland is the President of the Council. But he exercises only ceremonial powers as the head of state. He is in no way superior to the other Councillors, except that he is paid 90,000 francs each year, whereas the others are paid 80,000 francs each. He preside over the Federal Council meetings, however he is not the Council's master. The Council makes decisions by a majority vote.

### Power and Functions

The powers and functions of the Federal Council has been discussed under Art. 177 of the new constitution which can be discussed in the following way.

- (a) **Executive and Administrative Powers:** The Federal Council has been vested with all the executive powers of the Federal government. The executive powers of the Council have been mentioned in art 174 of the constitution. The Federal Council carries on the administration of Federal affairs, enforces the Federal laws and ordinance and executive the decisions of the Federal Tribunal. It decides all cantonal disputes and makes all such administrative appointments which are left to it. The Council safeguards the observances of cantonal constitutions, conducts, foreign relations of the country with other states. Treaties are signed and diplomatic agents are sent and received by the Federal Council. It controls the army and is responsible for the safety, security and independence of the country. It is the responsibility of the Federal Council to maintain internal peace and order. When the Federal Assembly is not in session, the Council may ask the Swiss army to defend its boarder. During war the Army functions under the supervision of the Federal Council. It supervises the manner of enforcement of Federal Council. It supervises the manner of enforcement of Federal laws by the cantons exercises supervision over the activities of all permanent officials of the Federal government. The Council regularly submits a report to the Federal Assembly on its activities in the sphere of domestic and foreign affairs.
- (b) **Legislative Powers:** The Federal Council plays an important role in the legislative sphere. The Council today prepares and introduces most of the important legislative measures either on its own initiative or at the request of the Federal Assembly. The members of the Council are not members of the Federal Assembly, but they can sit in either house and participate in the debates and answer questions. The Councillors attend meetings of parliamentary committees and examines the bills by virtue of their expert knowledge and intelligence. Thus the Council influences legislation in various ways.
- (c) **Financial Powers:** The Federal Council performs certain financial functions. It is responsible for preparing the Federal budget, presenting it to the Federal Assembly, and obtaining approval. The Council is in charge of collecting funds and overseeing expenditures authorised by the legislature.



- (d) **Judicial Powers:** The Federal Council performs certain judicial powers. Some of the Council's judicial powers were reduced after 1914. Even so, it has the authority to deal with some types of administrative cases involving the acts of federal employees. It has appellate jurisdiction over cantonal governments' judgments in situations involving discrimination in elementary schools, as well as disagreements originating from commerce, military, taxation, customs, and cantonal elections treaties. The Council's judgement on this matter is final, and no appeal may be filed against it.

The Federal Councillors are assigned with seven departments. Each Councillor heads on department. The Councillors remain answerable to the Assembly for the working of their departments. Actually the Councillors exercises administrative functions freely and influence over legislation and finance. The Councillors act in close cooperation as a homogeneous team. Differences among them are settled easily and rarely they work on party lines, which is the secret of its efficiency and stability.

## 5.7 THE FEDERAL LEGISLATURE

The Federal Assembly is the Federal legislature of the Swiss government. The Supreme authority of the confederation is exercised by the Federal Assembly.

### Organisation

The Swiss Federal Assembly is the federal government's bicameral legislature. The bicameral system was adopted in 1848 to address the challenge of achieving a balance between Federalism and Centralism, as well as a just balance between large and minor cantons. The National Council and the Senate are the two chambers of the Federal Assembly or the House of Representatives and Council of States or Senate.

### National Council (House of Representatives)

The National Council is the Federal Assembly's lowest popular chamber. It is a symbol of the Swiss people. It is made up of 200 members that are elected by Swiss citizens. A member of the National Council represents 24,000 population and the half-cantons below 24,000 population have been assigned one seat each. Members of the National Council are directly elected by secret vote by Swiss residents. Voters who are over the age of 20 are eligible to vote. In seven cantons, members are elected by proportional representation, while the remainder are elected by direct election.

Members of the National Council are directly elected by secret vote by Swiss residents. Voters who are over the age of 20 are eligible to vote. In seven cantons, members are elected by proportional representation, while the remainder are elected by direct election.

The National Council is elected for a term of four years. It cannot be dissolved earlier except in accordance with the Art 120, when both the houses differ on a proposal for total revision of the constitution. In the months of March, June,

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September, and December, both houses hold concurrent sessions. On the request of one-fourth of the members of the National Council or cantons, the Federal Council can convene an extra-ordinary session.

For a year, the National Council elects its own President and Vice-President. The President's role is limited to presiding over Council meetings and regulating House business. He also has a casting vote in the event of a tie. His office is neither powerful nor influential but an office of dignity which carries no salary.

**Council of States (Senate)**

It is the second chamber of the Federal Assembly. It is a typical Federal chamber which gives equal representation to the cantons irrespective of size and population. The total membership of the house is 46. Each canton sends two delegates to the house, whereas each half canton sends one. There are 20 full cantons from which 40 members are sent and the rest six from the six half cantons. The method of selection of the members from each canton is decided by the canton itself. They are chosen by the voters in some cantons and elected by the legislature in others.

The criteria and procedure of election of members are not specified in the Swiss constitution. Their tenure also differs from canton to canton. Thus, there is no uniformity in regard to the method of election, qualifications and term of office of the members of the Council of States. The Swiss constitution does not specify the criteria or mechanism for electing members.

The members of the Council of States are paid by their respective cantons. Thus, the Council of States is composed of in the same process as that of American Senate. The Council of States is tasked with protecting cantonal interests. The framers of the constitution did not want to make it the guardian of the cantonal interests but required to represent the general interest of the whole nation.

The members of the Council of States elect a President and Vice-President from among its members for one year. The Council's President and Vice-President should not be from the same canton, and no one should be elected a second time. No President can be elected from the canton immediately to which the outgoing President belongs. The President presides over the meetings of the Council of States and regulates rules of business of the house. He has a vote in case of a tie.

**Relationship between the two Houses**

It is one of the uniqueness of the Swiss constitution that, both the houses of the Federal Assembly enjoys equal status and authority which is rarely found anywhere else in the world. Both the chambers exercise co- equal and co-ordinate authority in all respects. Any bill can be introduced into either house of the Federal Assembly. Even money bills can be introduced into the upper Chamber. The members of the Federal Council remain responsible to both the chambers.

The constitution reads that, no bill can become an Act without the approval of both the houses of the Federal Assembly. But there is no provision for the settlement of conflicts and deadlocks. If the secretion chamber differs from the

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decision of the first, the bill is sent to the second chamber for reconsideration. During reconsideration only points of difference are discussed. Unless the change are of a serious nature, no debate takes place. But the method continues till an agreement is reached. If such an attempt fails, then both the houses appoint separate committee and the two committees make effort to bring about a compromise. If all these efforts fail then the matter is dropped.

Absence of any specific provision for settlement of conflicts between the two houses is a serious weakness but in actual practice, it causes little difficulty as deadlocks are extremely rare in Switzerland and they have never been pushed to the point of a constitutional crisis. The Swiss Council of States unlike other second chamber is not a conservative chamber and the final control over legislation lies in the hands of the people. Despite the legal equality of both the houses, the Council of States has let the National Council assume supremacy. Thus in actual working the National Council has been more influential than the Council of States.

### **Powers and Functions of the Federal Assembly (Parliament)**

The Federal Assembly is the most powerful organ of the Swiss government, and it wields considerable power in the Federal administration. The powers of the Federal Assembly may be legislative, executive, judicial, financial and constituent functions, which are discussed below :

- (a) **Legislative Powers:** The Federal Assembly has been vested with all legislative powers under Art. 164 of the constitution. Article 163 says, "The Federal Parliament shall in act rules of law in the form of Federal Statutes or ordinances." The constitution states that, the Federal Assembly is competent to deliberate on all matters which this constitution places within competence of the confederation and which are not assigned to any other Federal authority. The Federal Assembly makes laws on the organisation and the mode of election of the Federal authorities, such as, Federal Council, Federal Tribunal, the Chancellor and General at the time of emergency. It also makes laws dealing with the safety, independence and neutrality of the country, on fixation of salaries and allowances of Federal authorities. The Assembly enacts laws to ensure the due observance of the Federal Constitution and the treaties signed with foreign states.

The Federal Assembly has the right to dispose over the Federal army, conflict of competence between Federal authorities. It enacts necessary measures to guarantee the territorial integrity of the cantons and their constitutions and for the maintenance of peace and order at home.

The decision of the Federal Assembly is not subject to Presidential veto or judicial scrutiny but subject to the ratification of the people through a referendum. Thus, every law or proposal of the Assembly is subject to popular veto.

- (b) **Executive Powers:** The Federal Assembly also has some executive powers. The Assembly in a joint sitting elects the members of the Federal

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Council judges of the Federal Tribunal, members of the Federal Insurance Court, the General Secretary of the Federal Council and During a conflict, the Army's Commander-in-Chief. It has command of the Federal army and has the power to declare war and peace. The Federal Civil Service and the Federal Tribunal are under its supervision. It resolves administrative disputes and jurisdictional disagreements between federal agencies. The Assembly sets the wages and allowances of Federal department members and the Federal chancellor, as well as the establishment of Federal offices. It ratifies treaties and supervises the Federal administration of justice even including the Federal tribunal.

The Federal Assembly can not remove the member of the Federal Council, however, it can control the Councillors by as King questions. The Federal Council also submits an annual report to the Assembly regarding its working.

- (c) **Judicial Powers:** The constitutional revision of 1874 has considerably reduced the judicial powers of the Assembly. However, the Federal Assembly elects the judges of the Federal Tribunal in a joint- session of both the chambers. The Assembly supervises the activities of the Federal Tribunal and determines the salaries of the judges. It appears that there are appeals pending against the Federal Tribunal's administrative dispute judgments. It also deals with jurisdictional problems between several federal agencies. The Federal Assembly grants pardon and amnesty in a joint session of both the houses. It is the final interpreter of the constitution.
- (d) **Financial Powers:** The Federal legislature exercises complete control over optional finance. The Assembly approves the annual budget and the proposal of taxation. No foreign loans can be received or paid without the approval of the Assembly. Thus, the Assembly's control over national finance is complete.
- (e) **Constituent Powers:** The Federal Assembly plays an important role in the amendment of the constitution. When both the houses agree on a proposal of amendment either partial or total it is referred to the cantons for ratification. If the two houses differ on a proposal for amendment, then the matter is placed before the people through a referendum, whether to amend or reject it. If majority of voters and cantons favour a revision then the Assembly is dissolved and fresh election is ordered. The newly elected houses draft the new constitution which is then placed before the people and the cantons for approval. The constitution can be amended through initiative where the Assembly plays an important role too.
- (f) **Other Powers:** Article 173 of the new Swiss Constitution specifies the Federal Parliament's many responsibilities and powers. These are the following:
  - (1) To take measures to protect Switzerland's foreign security, independence, and neutrality.

- (2) To take steps to protect internal security.
- (3) Order active military service, mobilise the army, and demobilise the army.
- (4) To participate in the critical planning process.
- (5) To resolve jurisdictional conflicts between the highest federal authorities.
- (6) To make decisions on pardons and amnesty declarations.
- (7) To enact legislation delegating additional obligations and authorities to the federal government.

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### Position of the Assembly

From the analysis of the above powers of the Federal Assembly it is found that the Assembly plays an important role in the Swiss political system. The framers of the constitution have given pivotal position to it but not over riding powers. The Federal Assembly is empowered to enact laws on those items which have been specifically assigned to it by the constitution, whatever is passed is turned into law because the President can not veto nor has the judiciary authority to declare them unconstitutional. The Assembly controls the Federal Council and the judiciary acts under its supervision. It grants pardon and amnesty to the accused. That is why Zurcher has rightly said, "The makers of the Swiss constitution did not pay much attention to the orthodox theory of separation of powers in establishing Federal assembly since they conferred upon it all kinds of authority, legislative, executive and even judicial. There are few parliaments which exercise more miscellaneous duties."

The working and discussions in the Federal Assembly, is mostly business like. The members do not waste much time. It is averse to the idea of hitting the headlines. Party-feeling does not generate so much heat and excitement. The members maintain the decorum and dignity of the chamber. They perform their duties quietly and think of nothing else.

But, now the powers of the Federal Assembly have gradually been transferred to the Federal Council. The complexities of modern legislation has forced the Council to initiate bills and the devices of direct democracy have strengthened the hands of the Federal Council at the expense of the Federal Assembly. The Assembly has lost the initiative to the executive and supreme authority to the people. The Swiss people, on the other hand, are pleased with the Federal Assembly's performance.

Despite the fact that the Federal Parliament is described in the constitution as the Federation's supreme authority, it is a very weak body. The executive (the Federal Government) has become stronger than the legislative in Switzerland, as it has in other democratic countries (the Federal Parliament). Because of their extensive expertise and unified approach, the Federal Councilors (seven members of the Federal Government) play a larger role in the Swiss political system.

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## Check Your Progress

## Multiple Choice Questions

## I. Fill in the blanks:

- The totally Revised Constitution of Switzerland 1999 was implemented on \_\_\_\_\_.  
 (a) 18<sup>th</sup> December 1998 (b) 20<sup>th</sup> April 1999  
 (c) 1<sup>st</sup> January 2000 (d) 20<sup>th</sup> January 2001
- New Swiss Constitution has \_\_\_\_\_ Articles.  
 (a) 20 (b) 158  
 (c) 178 (d) 196
- New revised Constitution describes Switzerland as \_\_\_\_\_.  
 (a) United State (b) Federation  
 (c) Confederation (d) Quasi-Federal
- Swiss Federal Government consists of \_\_\_\_\_ no. of members.  
 (a) 7 (b) 10  
 (c) 15 (d) 20
- Swiss Federation, there are \_\_\_\_\_ no. of cantons.  
 (a) 20 (b) 23  
 (c) 25 (d) 27
- Article \_\_\_\_\_ of the Swiss Constitution says the Federal Government is the highest governing and executive authority of the Federation.  
 (a) 120 (b) 130  
 (c) 154 (d) 174

## II. True or False:

- The constitution of Switzerland was revised in the year 1998.
- The Swiss System of Government is a mixture of Parliamentary and Presidential forms.
- The Swiss Constitution provides for a Plural Executive.
- In Swiss Federation there are 23 cantons and 6 half cantons.

## III. Match the following:

- | (A)                          | (B)                    |
|------------------------------|------------------------|
| 1. Swiss Federal Legislature | (a) National Council   |
| 2. Plural Executive          | (b) Council of States  |
| 3. Senate                    | (c) Federal Government |
| 4. House of Representatives  | (d) Federal Parliament |

## 5.8 ANSWERS TO 'CHECK YOUR PROGRESS'

## Multiple Choice Questions

- (c)
- (d)
- (b)
- (a)
- (b)
- (d)

**True and False**

1. False
2. True
3. True
4. False

**Match the following**

1. (d)
2. (c)
3. (b)
4. (a)

**5.9 SUMMARY**

Switzerland's Constitution is a duly ratified document. In 1848, 1874, and 1999, the Swiss people and cantons gave their approval. It is a constitution that has been authored, enacted, and adopted. It has a strict constitution as well. Switzerland is described as a confederation in Article I of the Swiss constitution of 1874. However, following a complete reorganisation in 1999, it is now a federation both in name and in practise. Switzerland has long been known as the birthplace of direct democracy. The Swiss government is a one-of-a-kind system that combines elements of both the parliamentary and presidential systems. Another one-of-a-kind aspect of the Swiss Constitution is that it establishes a plural/collegial executive. A seven-member Federal Government exercises all of the federation's executive powers. The Swiss Federal Parliament is a bi-commercial body. The House of Representatives and the Senate are the two houses of Congress. The first is the lower, popular national house, which represents the Swiss people, and the second is the upper house, which represents Switzerland's cantons and their sovereign equality. The most recent entire reform maintains Switzerland's traditional democratic character while consolidating the constitution as a truly Federal document.

**5.10 KEY TERMS**

- **Canton:** Unit or States of Swiss Federation.
- **Referendum:** A Latin word means refer to the people. It is a device of direct democracy.
- **Quorum:** Required number of members to be present in the meeting.
- **Federal Government:** The highest governing and executive authority of Swiss Federation.
- **Senate:** The upper house of the Swiss Federal Legislature.

## NOTES

**5.11 SELF-ASSESSMENT QUESTIONS AND EXERCISES****Short Answer Questions**

1. Referendum in Switzerland.
2. Direct Democracy in Switzerland.
3. Plural Executive in Switzerland.

**Long Answer Question**

1. Discuss the salient Features of the Swiss Constitution 1999.
2. Write an essay on working of Direct Democracy in Switzerland.
3. "Switzerland is a Federation not Confederation." Discuss.
4. Discuss composition and functions of Swiss Federal Legislature.
5. Discuss the composition and functions of the Swiss Plural Executive.

**ACTIVITY****Provide two real life examples to prove how:**

1. There is a Plural Executive in Swiss Federation.
2. Swiss system of Government is a mixture of Parliamentary and Presidential System.

**CASE STUDY****Working of Direct Democracy in Switzerland**

Switzerland has long been known as the birthplace of direct democracy. It has been operating as a direct democracy since 1848, using such modern technologies as direct legislation. Referendum and initiative are two different types of referendums. The people have the right to approve or disapprove the laws or constitutional amendments made by their legislature under the Referendum system. Swiss voters can initiate any proposal for legislation or constitutional amendment under the initiative system. Landsgemeinde is a Swiss institution that operates in one complete canton and five half cantons. As a result, the Swiss people use Referendum, Initiative, and Landsgemeinde as direct democracy methods inside a representative democracy system.

**5.12 REFERENCES**

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