ORGANS OF GOVERNMENT

A Textbook for Class XI

Contents

CHAPTER 1

Government and its Organs : A Theoretical Discussion

IN EVERY modern state there are three well defined organs of government—legislature, executive and judiciary. In every organised community there must be some laws. The organ of government which makes the law is known as the legislature. The functions of the legislature increase with the growing complexity of modern society and with itsconsequent demands upon the law-making authority for social good. There is another organ of the government which is entrusted with the function of executing the laws.This body is known as the executive. It is one of the key organs of the government. Laws need to be implemented properly; otherwise these do not matter in the life of the people. The function of the judiciary is to decide upon the application of the existing law in individual cases. Judiciary is, thus, the custodian of justice in society.

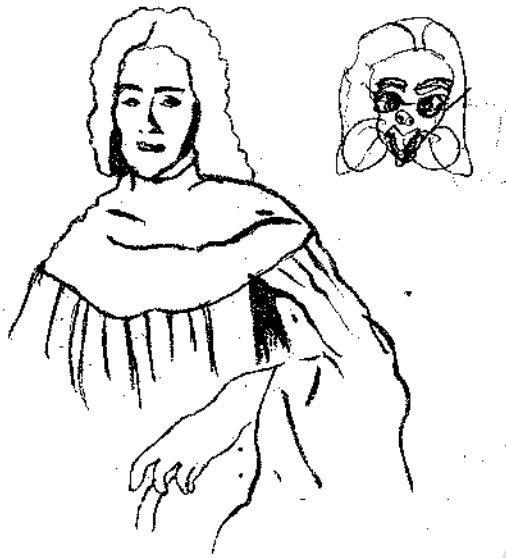
In primitive and medieval states there was no distinction among these three functions. The king was the supreme law-giver, the head of the executive and the fountain of justice. But, as society became more complex, there arose the need of specialisation of functions. The king began to delegate his powers to different bodies. The tripartite division of the sovereign power, therefore, arose. This is, however, merely a convenient means of coping with increasing business of the state.

Historical background

Aristotle was the first writer to note the distinction among the three functions of government.He called them the deliberative, magistrative and judicial. Roman writers like Cicero and Polybius praised the Republican constitution of Rome because in it they found balance between the Senate (legislature), Consuls (executive) and Tribunes (judiciary). But in practice the Senate was the supreme authority to which the other functionaries ultimately bowed down. Bodin, the French publicist of the 16th century, was the first modern writer to demand a separation of powers. He argued that, if the king were both the law maker and judge, then a cruel king might give cruel sentences. During the Commonwealth period in England, Cromwell separated the executive and legislative functions. However, as the head of the executive, he dismissed the judges high handedly. The theory of separation of powers, however, emerged finally from the writings of Montesquieu.

The absolute monarchs of Europe themselves

controlled the executive, the legislative and judicial departments. They held the ministers responsible to themselves, promulgated whatever laws they liked, and appointed and dismissed judges at their sweet will. In England, however, by a long process of constitutional struggle, Parliament secured the authority of making laws, and the judges got the right of holding office so long as they behaved well. The liberty of the subjects was greater in England than anywhere else in Europe in the middle of 18th century. Thus Montesquieu came to believe that concentration of authority meant tyranny, and that only under a wise distribution of powers safeguarded by checks and balances, was individual liberty possible. Montesquieu enunciated this theory in his *Esprit des Lois*, published in 1748.



Montesquieu (1689–1755 A.D.) 1689-1755
A liberal political philosopher. Exponent of the theory of Separation of Power. One of the outstanding French philosopher of the 18th Century. Famous works: 'De la-Monarchie Universille en Europe', 'L'Espirit des lois'.

Theory of separation of powers

The theory of separation of powers means that the legislative, executive and judicial functions should be performed by different bodies of persons. Each body or department should be limited to its own sphere of action and neither body was to have controlling power over either of the others. The theory of Montesquieu and Blackstone was adopted and put into practice in the United States of America. The theory also gained recognition in France, the land of its birth.

In a broader sense of the three powers being in separate hands, all modern constitutional states tend to conform to the spirit of separation of powers. Though in this sense the theory of separation of powers is true, yet we do not find complete separation in any government in the world today. It is neither desirable nor practicable to separate the three organs of government altogether. If each organ of the government were completely independent in the sphere of activity, it could thwart the act of others. Frequent deadlocks would also become inevitable.

The theory of separation of powers is thus not practicable in its entirety. The legislature lays down the broad outlines of a law. But the details must be worked out by the executive department in course of its application. The legislative body in every country allows more and more scope to the executive to make rules under the Act. These rules also have got a binding authority. Moreover, in times of emergency, the executive authority is vested with the power of issuing ordinance. Similarly, the judiciary gets a share in legislation through its power to interpret the written law and declare what the unwritten law is. Thus, the work of legislation is divided amongst all the three organs of the government. The judiciary performs some executive functions as well. The lower court in the USA and the Justices of Peace in England are entrusted with the duty of maintaining peace. Moreover, the legislation also has some judicial functions. The House of Lords in England is the highest court.

The Constitution in England maintains some kind of separation of powers. Parliament as a body performs the functions of the legislature

and is distinct from the executive. The Parliament in Britain is purely a legislative body. It does not share administrative functions with the executive which is a distinct department of the government. The Act of Settlement of 1701 guaranteed independence of the judiciary. The judges in Britain are independent of executive control. They are not subject to dismissal by the executive. Still concentration rather than separation of powers is the keynote of the cabinet system. Membership of Parliament, its leadership. Legislative initiative, and collective responsibility to the Parliament are the salient features of the cabinet system in England. The House of Lords is the ultimate court of appeal. Hence there is no clear distinction in the jurisdiction of the executive, the legislative and the judiciary in the English political system. The defence of liberty is sought to be secured through organised party system and pressure of public opinion. It is not accomplished through separation of powers and the elaborate system of checks and balances. Britain has, thus, rejected the doctrine of separation of powers. It has relied on other institutional safeguards against government tyranny. In contrast,there was immense complexity in America's social and political life. This, in turn, compelled framers of the constitution to rely on the constitutional device of separation of powers as a bulwark of liberty.

The doctrine of separation of powers is not explicitly stated in the American constitution itself, but it is implied. The first three articles of the constitution embody the basic principles of separation of powers. The supreme court of the United States recognised this theory as part of the constitutional law of the country.

The relation between the executive and the legislature or between the executive and judiciary shows unmistakable signs of the separation of powers. The American President is not a member of the Congress nor can he initiate legislation. The Congress cannot be dissolved by the President before the expiry of its term. The tenure and other service condition of the judges are beyond the regulative competence of the executive. Such examples can be multiplied.

tution were conscious of the impossibility of applying absolute separation of powers. Accordingly, the President can check the Congress by vetoing a measure passed by it. This veto along with power to send messages to the Congress enables the President to participate in the legislative process. The Senate can regulate the exercise of executive power by refusing to confirm treaties or appointments made by the President. The Supreme Court through its power of judicial review modifies or influences legislation and thus shares the legislative function.

The Indian context

The architects of the Constitutuion of India rejected the doctrine of separation of powers in relation to legislature and the executive. The union executive consisting of the President and the Council of Ministers is part of the Parliament.

Dr. B.R. Ambedkar (1891–1956 A.D.)
An eminent jurist and educationist. Leader of the Scheduled Castes and a dedicated fighter for the cause of the oppressed people. Chairperson of the Drafting Committee set up by the Constituent Assembly. Famous Works : 'Castes in India: their Mechanism, Genesis and Development'; 'Who were the Shudras?'; 'The Untouchables'; 'The Buddha and his Dhamma'

The two houses of Parliament participate in the election of President. The President, in turn, can influence legislation through messages and suspensive veto. Besides, he is endowed with the power to issue ordinances which are in the nature of short-term legislation covering the entire legislative field entrusted to Parliament. The Cabinet in India is the Committee of Parliament—its part and parcel. The members of the Cabinet are the members of Parliament and, collectively responsible to it. Legislative leadership and initiative belong to the Cabinet.

In the organisation of the judiciary, however, the principle of separation of powers seems to have found favour with the framers of the Indian Constitution. The judges of the Supreme Court are thus independent of executive control, and their salaries and other conditions of service are fixed by the Constitution. They hold office during good behaviour. A Supreme Court judge can be removed from office by the President only on an address passed by each House of Parliament.

One of the Directive Principles of State Policy given in the Indian Constitution says that the judicial powers should be separated from the executive powers. Find out how far this principle has been enforced in the administrative system of your State.

EXERCISES

Legislature, Executive, Judiciary

1. Name the three organs of government and state their functions.
2. Who enunciated the theory of separation of powers in modern times? Montesquie
   Name the country which was the first to incorporate the theory of separation of powers in its constitution. USA
3. What does the theory of separation of powers seek to achieve? Discuss its utility.
4. How far does the Indian Constitution conform to the theory of separation of powers?

CHAPTER II

Legislature—A General Profile

LEGISLATURE IS known in various political systems with different names. About the names there is not much uniformity. Still assembly is becoming a growingly popular name for the lower house. However, where there is only one house, assembly stands for the legislature itself.

Functions

The functions of a legislature depend on the principle on which it is constituted. Broadly speaking, three systems are in use in the formulation of a legislative policy. An autocrat or a monarch or a bureaucratic government may keep up a legislature merely as a consultative body. For example, the Legislative Councils of India were entirely subordinate to the executive in the 19th century. In a parliamentary form of government, the executive is subordinate to the legislature. The will of the legislature is supreme in almost every sphere of governmental activity. Such a system prevails in England and France. A balancing of authority between the executive and the legislature may also exist. The authority may be [illegible] This is the case in the United States of America. The Congress of [illegible] executive directly but can make laws to amend the constitution.

The primary business of a legislature is to make the laws of the land, to repeal laws which are not suited to the age, and to make them conform to the exigencies of time. The legislative bodies exercise also taxative powers. They determine the method of raising money, the amount to be raised, and the manner in which it is to be spent. They control, to a certain extent, the domestic and foreign policy of the executive government through their control over finance, and in some cases, over ministers. In parliamentary governments, the legislature controls the executive through questions, motions of adjournment, financial cuts and votes of no confidence, etc. They also exercise certain judicial functions like their power to decide cases of election disputes, setting their own procedure of work and to acting as courts of impeachment.

Thus the most important functions of a legislature relate to:

(1) legislation, inclusive of (a) law-making, (b) [illegible] (c) [illegible] and (d) [illegible]

(2) [illegible]

(3) [illegible]

(4) supervision and control of the action of the executive, although it does not directly participate in executive functions;
(5) performance of judicial functions;
(6) representative role, which implies channelising of demands from below and providing information and explanation from above; and
(7) other miscellaneous functions.

The functions of government in every civilised state have extended enormously. The result has been the widening of the sphere of activity of the legislature. But the legislatures are finding it impossible to cope with the increasing pressure of business. So even in advanced countries like England, the legislature delegates a part of its authority to administrative bodies. Still the representative role of the legislature is of pivotal importance. It legitimises authorisation of governmental policy.

Devices for direct legislation

The movement in favour of direct legislation by the whole people has originated from two considerations—one theoretical and the other practical. The theoretical consideration is that, as all power rests with the people, they should take a direct part in making the law. The practical consideration is that people, as they have been disappointed with the legislature in many cases, want power to review its action and to make laws without its intervention. In most of the states the party discipline is so strong as to destroy the individual representation. There are three democratic devices to secure direct intervention of the people in legislation. These are the Referendum, the Initiative and the Recall. The Referendum in Switzerland and some American States allows the voters to review the acts of the legislature before they actually pass into law. The popular device of Initiative, as practised in Switzerland again, gives the people the right to propose measures to be passed by their representatives. The Recall, as one finds in some Western American States, empowers the people to remove an unsatisfactory representative before the expiry of his term of office. Besides these three measures, there are also Plebiscite and Town meeting. Plebiscite which literally means a Referendum on any question provides for the submission of a constitutional issue to popular vote to ascertain the will of the people regarding it. Town meeting is practised in New England (USA) where issues concerning the local community are discussed and decided.

Direct legislation possesses theoretically certain merits. The ordinary citizens feel that sovereighty or ultimate authority is really vested in them. The Referendum, for example, ensures that no measure which is opposed by the majority of electorate can become law. If the legislature proves to be indifferent to the need of making certain good laws, a section of the people can take the initiative themselves and force the legislature to put it before the public. In both the processes, the voters can look at the proposed measures dispassionately apart from the question of personalities. In ordinary elections voters sometimes find it difficult to distinguish between the personality of candidates from the policy and programmes to which they are committed. It has also been noticed that the number of persons voting in a Referendum is often small. Thus, it becomes difficult from the size of the masses abstaining from voting to know whether there is any public opinion at all upon the question raised. Again, it is not indeed possible for many persons to vote on the complex measures which are referred to them. Even well-informed citizens can hardly grasp the implications of laws on intricate subjects like banking, currency, tariff, public control of an industry and so on. Moreover, the general mass of voters can only agree to a certain principle of legislation. They are not able to enunciate a principle in relation to its working techniques, which invariably requires expert knowledge. Further the average voter has no will or courage of conviction to express an opinion on most questions of social significance.

The enthusiasts for direct legislation contend that Referendum and Initiative correct the faults of legislature which may act corruptly or in defiance of their mandate. But the electorate is also usually influenced by newspapers and platform speeches. These may not always uphold rational views. The fact of the matter is that defects of legislature can be remedied only by the elevation of moral and intellectual standards of the electorate as a whole. This cannot be achieved by the mere substitution of machinery of direct legislation. A group of factions working hard may mislead the mass of voters more easily than the members of a legislature. The opponents of direct legislation, however, argue that if the people become the final authority for accepting or rejecting a measure, the sense of responsibility of a legislative assembly would diminish. However, in a small state with an enlightened electorate, Referendum and Initiative would be of great value. However, owing to the prevalence of widespread ignorance and illiteracy in India, it is impossible to introduce Referendum and Initiative. Moreover, the large size of the electorate makes the introduction of the devices difficult if not impossible, both on financial and on administrative grounds.

Bicameral and unicameral systems

The legislature in most of the states consists of two chambers. This arrangement is known as the bicameral system. There are some countries like Finland, Portugal, Czechoslovakia, where there is a single house in the legislature. Such a system is known as unicameral system of legislature.

In the medieval legislatures there were three, four or five chambers, each representing a particular class or estates in the community. The English Parliament was divided into two chambers, the House of Lords and the House of Commons in the middle of the fourteenth century. The success of constitutional government in England has convinced the people of different countries of the utility of a bicameral system. In the case of a federal state there is a special argument in favour of a second chamber. The first or lower chamber represents the population of a federation as a whole, the second chamber embodies federal principle or the will of the states in a federation.

Most of the unitary states of the world have adopted the bicameral system for its manifold advantage. The existence of a second chamber prevents the passage of hasty and ill-considered legislation by a single house. A second chamber interposes delay between the introduction and final adopting of a measure and thus affords time for reflection and deliberation. This is in addition to the delay inherent in the long procedure which is prescribed for enacting bills. The first reading, the second reading, a severe scrutiny in the committee stage particularly when it is referred to a Select Committee, sometimes the circulation of a bill for eliciting public opinion, and the third reading afford much time for discussion and analysis.

It is further argued that a second chamber affords protection to the individual against the despotism of a single chamber. The existence of a second chamber is said to be a guarantee for liberty. The majority party in a single chamber legislature, conscious of having only itself to consult, may abuse its powers and try to monopolise the powers of the executive and the judiciary.

Another advantage of bicameralism is that it may give representation to special interests or groups or sections of people in a state. In almost every state there are different classes and unless every section of the community is represented in the legislature, there would be oppression of one section by another. In a single chamber, it may not be possible to accommodate people representing all shades of opinion as also regional interests. A second chamber may give them a chance.

A second chamber, based on the principle of nomination, also affords a chance to able men to enter the legislature. Some eminent people do not like to undergo the trouble and botheration of election, but their counsel is of the very valuable. There is a special case for creating a second

chamber as a kind of reservoir of special knowledge. The upper house may have a longer tenure than the lower chamber, and should consist of experienced men.

The much advertised advantages claimed for the bicameral system have been seriously questioned by the advocates of unicameralism. It has often been said that a bicameral legislature is divided against itself. If the second chamber is filled by members, nominated by the executive, it would lack the authority possessed by the popularly elected chamber. If it is indirectly elected, it will encourage bribery and corruption. The main contention against bicameralism is that the double chamber sacrifices the principle of unity of the state.

The utility of the second chamber as a revising body is also criticised. As the first chamber is composed of the elected representatives who are directly accountable to the people, it is quite obvious that they will not be prepared to pay any heed to the dissenting voice of the second chamber or to sober reflections in terms of revisions. Especially under parliamentary system, the legislature possesses at its disposal a responsible ministry and a permanent body of administrative experts. Technical revisions of any measure, therefore, do not pose any serious problem in such circumstances.

Now-a-days almost all laws are debated and discussed before they are finally passed in the first chamber. In fact, many of the discussions in the second chamber are just repetitions. This is time consuming and expensive. It does not serve any purpose. There is little in the argument that the second chamber acts as a safeguard against the despotism of a majority. For, necessary safegurads may be provided through other devices like the suspensive veto of the executive. Also, the despotic tendency of a legislative majority can be successfully arrested by a critical opposition and a vigilant electorate within and without the legislature.

It is further pointed out by critics that in a federation for the units against the abuse of federal power. In the first place, the members of the second chamber usually behave on party rather than state lines. In the second place, in the course of the working of a federal system, the development of communication and the growth of a sense of common nationalism render the original units of representation almost obsolete. In the third palce, the interests of the units are best safeguarded by the terms of the constitution, and by judicial review of federal action. There is no amount of ingenuity and logic which can, the critics argue, defend a second chamber.

Functions of a second chamber—the three theories

The theories have been advanced regarding the functions of a second chamber. A second chamber may have equal power in all matters with the popular house. Such a position is sure to give rise to frequent deadlocks. The second view is that it should be subordinate in financial legislation to the lower chamber, but should enjoy equal power in all other matters. In this case also, deadlocks between the two chambers may arise. Thirdly, the second chambers may have the limited power of suggesting amendments and recommending modifications of details only. According to the third view, a time limit is fixed after which the second chamber must accept any bill passed for a second or third time which it has previously rejected. Such a method of avoiding deadlock is to be found, for example, in the English constitution.

Classification and composition of legislative chambers

Second chambers may be classified according to the method of composition into hereditary, nominated, partially elective and wholly elective. With the exception of the British House of Lords, all other purely hereditary upper houses have been

A nominated second chamber is distinguished from hereditary one by the fact that, while the office of the hereditary member is handed down from father to son, that of nominated member is terminable with death or after a period if the constitution so provides. Theoretically it may have equal power with the first chamber, and no Bill may become a law without its consent. Yet in practice it cannot stand against the will of the lower house, to which alone the ministry is responsible.

Though the principle of composition of the second chamber is different in different states, there is substantial agreement concerning the composition of the lower houses. In every modern state the right of choosing reprsentatives is extended to a large number of citizens. Seats are generally distributed over constituencies according to population. The method of direct election is followed almost everywhere, and there is a general feeling that no intermediate body should intervene between the voters and their representatives in the lower chamber.

While there is harmony of view regarding these matters, there have arisen controversies regarding the desirability of further extension of suffrage, the principle of forming multi-member constituencies and introducing proportional representation.

> Find out the names of the legislatives of Great Britain, U.S.A., USSR and Switzerland

Legislative procedure

Legislative bodies generally adopt certain rules, regulating their organisation, methods of passing laws and voting taxes and adjournments. The procedural rules prevent hasty action, ensure orderly deliberation, and allow effective utilisation of limited time available for discharging the multifarious duties assumed by the legislatures.

There is substantial agreement in procedure followed by the legislative bodies of most of the democratic countries, because they have taken up the model furnished by the British Parliament. Thus, in every legislature, we find that bills are first formally introduced in either of the two houses, then discussed by committees and debated on the floor of a house. Amendments are proposed and voted, and a final vote is taken on the amending measure.

Speaker

Another important variation in the procedure relates to the position of the speaker, the chairman of the lower house of legislature. The speaker, of course, everywhere is originally elected by the majority party from amongst itself. But once the speaker is elected, he divests himself of party character and becomes a completely impartial moderator of the proceedings. He takes no part in party activities and never speaks for or against any proposal in the House. He is not opposed in elections by the opposing party in a general election. This is the British model. But in America, the speaker continues to remain and behave as a party man.

Decline of legislature

The growing executive leadership in governmental matters and the decline of legislature are two established facts in the contemporary world. The growth of well-knit national parties with rigidity of organisational discipline, the immense limitation of time for debates and the technical nature of modern legislation have contributed to the decline of legislature.

The rigidity of organisational discipline endows the executive both in parliamentary and presidential systems with the authority to control the legislature. But such executive control over the legislative branch of the government is less prominent in the presidential system because of operation of the principle of separation of powers. Secondly, the emergence of a new technique

legislation known as delegated legislation has also reduced the importance of legislature. There are immense technicalities involved in modern social legislation. It is also impossible to provide for all future contingencies in the statutes. The executive in almost every country is, therefore, authorised by the legislature to fill in the gaps in the statutes by rules and regulations, even to enlarge and supplement them. This intrusion of the executive into what is normally believed to be the legislative field, has led to a significant curtailment of the status and importance of the legislature. Finally, the immense increase in the mass of legislative business in a welfare state has resulted in the curtailment of time for legislative debates. The legislature does not have sufficient time at its disposal for detailed discussion and careful scrutiny of the executive decisions. Consequently, the authority of the legislature has declined.

In parliamentary democracy like that of Britain, the decline of the legislature is much more pronounced than the presidential system as in the United States. The same is true of parliamentary system elsewhere.

PRACTICAL ACTIVITY

Arrange a debate competition in your class on the topic "In the opinion of the House the second chamber is neither necessary nor democratic in the modern world."

EXERCISES

1. What are the different types of legislature ? Illustrate your answer with suitable examples.
2. Discuss the merits and defects of the bicameral system.
3. Discuss the reasons for the recent decline of the legislature.
4. Discuss the functions of the legislature.
5. Write short notes on the following:
   - (i) Delegated legislation
   - (ii) Referendum and Initiative
   - (iii) Plebiscite and Recall

CHAPTER III

Legislature in India

PARLIAMENT IS the central legislature of the Indian union. It is a bicameral legislature. Thus, the legislature of the Indian union, also known as Parliament, consists of the President and two houses– Rajya Sabha or Council of States and Lok Sabha or House of the People. The President is an integral part of Parliament. All bills passed by Parliament must receive his assent before becoming act. From time to time he summons and prorogues each house of Parliament, but each house of Parliament has to meet within six months from the last day of its previous sitting. The President may also dissolve the Lok Sabha. A joint sitting of the two houses can be held in certain cases.

Qualification for membership of parliament

In order to be chosen a member of either house of Parliament, a person must be a citizen of India. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha. He must be of sound mind and solvent. Additional qualifications for members may be prescribed by Parliament by law.

Disqualification of membership

A person shall be disqualified for membership of either house of the Parliament if (a) he holds any office of profit under the government of India or the government of any state; (b) he is of unsound mind and stands so declared by a competent court; (c) he is an undischarged insolvent; (d) he is not a citizen of India or has voluntarily acquired the citizenship of some foreign state; and (e) he is disqualified by or under any law made by Parliament.

Salaries and allowances of members and conduct of business

Members of either house of the Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law.

Every member of either house has to take oath before taking his seat. Except some special cases all questions are determined by a majority of votes of members present and voting. One-tenth of the total number of members of the house constitutes the quorum. If during a meeting there is no quorum, the house is either adjourned or suspended.

THE RAJYA SABHA

Composition

The Rajya Sabha consists of not more than 250

States and the Union Territories and 12 to be nominated by the President to give representation to persons of distinction in the fields of art, science, literature and social sciences. The nominated members should be men of learning and wide experience such as artists, writers, scientists and social workers. The election to the house is indirect; the representatives of each state are elected by the elected members of the Legislative Assembly of that state in accordance with the system of proportional representation by means of a single transferable vote. The representatives of the Union Territories are elected by the same method by a special electoral college. The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. The Deputy Chairman is elected from amongst the members of the Rajya Sabha. The Council of States is a permanent body not liable to dissolution but one third of its members retire every second year. Every member enjoys six years term.

THE LOK SABHA

Composition

The Lok Sabha consists of members directly elected from the territorial constituencies in the states. The number of seats for each state is so allocated that the ratio between the number and population of the state is as far as practicable the same for all states. Unless dissolved earlier, the term of the House is five years from the date of its first meeting. The term can be extended by a year during the period of emergency and in no case beyond a period of 6 months after the proclamation of emergency has ceased to operate.

The maximum strength of House of the People is 550 members. Among these are 530 directly elected on the basis of adult suffrage from territorial constituencies in the states and 20 members represent the union territories who are chosen in such a manner as Parliament may by law provide. Not more than two member from Anglo-Indian community may be nominated by the President if he thinks that the community has not been ade-

Every citizen of India who is 18 years of age and also is not otherwise disqualified, has been given the right to vote.

Provision also exists for the reservation of seats in the Lok Sabha for Scheduled Castes and Scheduled Tribes. Under the 45th Constitution Amendment to the Constitution this reservation would continue upto 25 January 1990. The policy of reservation is likely to continue even beyond 1990. The membership from the states is on the basis of their population. For this purpose each state is divided into constituencies.

> Find out which state sends the largest number and which state sends the smallest number of representatives to the Lok Sabha.

Speaker

The Lok Sabha elects two of its members to be its speaker and deputy speaker respectively. Both are elected for the life of the Lok Sabha which is

G.V. Mavalankar (1888–1956 A.D.)
The first speaker of the Lok Sabha. Some of his works: 'Kaher Philter', 'My Life at the

normally five years. He does not vote but he can use his casting vote in case of a tie. He certifies whether a particular bill is a money bill or not. He presides over the joint sitting of the Lok Sabha and the Rajya Sabha. The speaker or the deputy speaker does not preside when a resolution for his removal is discussed by the house. He, however, has the right to speak and participate in the proceedings of the house when such a resolution is being discussed.

POWERS AND FUNCTIONS OF PARLIAMENT

The legislative powers of Parliament include law-making or legislation, financial or ordinary, delegated legislation and approval of ordinances. All legislation requires the consent of both Houses of Parliament. The two Houses sit separately and consider proposal for making laws. In case of an unresolved dispute between the two houses, a joint session is convened by the President. The Speaker of the Lok Sabha presides over such a joint meeting. The view of the Lok Sabha normally prevails because of its numerical strength.

The various subjects of legislation are enumerated in three lists in the seventh schedule of the constitution. List I, the Union List, consists of 97 subjects (including defence, foreign affairs, communication, currency and coinage, banking and customs) with respect to which the Union Parliament has exclusive power to make laws. The state legislature has exclusive power to make laws with respect to the 66 subjects given in list II, the State List, which includes police and public order, agriculture and irrigation, public health and local government. The power to make laws with respect to 47 subjects including economic and social planning, education, legal questions, labour and price control. In list III, the Concurrent List, vests with both Union and State Governments, though the laws made by the former would prevail if they come in conflict with those passed by the latter. However, Parliament may legislate with respect to any subject in the State List in circumstances when the subject assumes national importance or during emergencies.

All financial legislation must be recommended by the President. But the Lok Sabha has more powers in comparison to the Rajya Sabha regarding money bills. Money bill is first introduced in the Lok Sabha and goes to the Rajya Sabha only after it has been passed by the Lok Sabha. The Rajya Sabha has to return the bills within 14 days. The Lok Sabha may or may not accept the changes suggested by the Rajya Sabha. Again the Lok Sabha alone has the power to vote the demands for grants presented by the government. Delegated legislation is also subject to reviews and control by Parliament. In times of an emergency and also in some other contingencies laid down in the constitution, the legislative authority of Parliament also extends to matters enumerated in the state list. The power to amend the constitution also rests primarily with Parliament, except in some cases where ratification by the legislatures of not less than one half of the state is prescribed by the constitution. Although the President is the supreme commander of the armed forces, the exercise of the power is regulated by law. Parliament has the exclusive legislative power with regard to defence forces and war and peace.

Another important function of Parliament is to control the executive. The Council of Ministers is collectively responsible to the Lok Sabha. The members of the Council of Ministers have to answer to questions asked to them in both the Houses of Parliament. In fact the government under a parliamentary system like that of ours can remain in power as long as it is able to command the majority in Parliament. The moment the Council of Ministers loses the confidence of the majority it can be thrown out of power by a simple vote of no-confidence. Parliament exercises this control over the ministers by asking

questions. In the following chapter there is a detailed discussion on questions and the question hour. Here it is suffice to say that if the members of Parliament are not satisfied with the answer, they can ask supplementary questions related to the main question. Rajya Sabha has every right to be fully informed of all matters connected with the governments' activities, though it has no right to pass a vote of no-confidence. Parliament, through the question hour and other modes, elicits information from the government. At the same time Parliament serves as a forum where people's opinion is reflected through their elected representatives. Thus it serves as a link between the goverment and the people.

In addition Parliament performs certain elective functions also. Elected members of both the Houses of Parliament take part in the election of the President of India. The Vice President of India is also elected by the members of both the houses of Parliament. Besides, the Lok Sabha elects its own Speaker and Deputy Speaker. The Rajya Sabha elects its Deputy Chairman.

Parliament of India has the power of removing the President of India through impeachment. The Vice President of India can be removed if a resolution to this effect is adopted by the Rajya Sabha and agreed to by the Lok Sabha. The judges of the Supreme Court and the High Courts can be removed by the President only when a request for their removal is made in the form of address adopted by a special majority of both the Houses of Parliament.

Parliament has various miscellaneous powers also. A proclamation of emergency issued by the President requires parliamentary approval. Parliament has the power to revoke the emergency by adopting a resolution. The Rajya Sabha supported by two thirds majority can resolve this in the national interest. Under such circumstances Parliament can legislate on a matter coming under state list. the Rajya Sabha backed by two thirds majority has also been given power to create one or more all India services within the national interest.

DELEGATED LEGISLATION

The legislature has to make many laws and has, therefore, no time to devote to all the legislative details. Again, sometimes the subject on which it has to legislate are of such a technical nature that all it can do is to state the broad principles and leave out the details. There may also arise emergencies and urgent situations requiring prompt legislative action, when all the details cannot be foreseen. The legislature cannot part with its essential legislative function which consists of the determination of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is, however, open to the legistature to formulate the policy as broadly and with as little or as much details as it thinks proper. It may delegate rest of the legislative work to a subordinate authority. So long as a policy is laid down even in broad terms and a standard fixed by a statute, no harm is likely to accrue if constitutional delegation of legislative power is there to make rules within prescribed limits.

Powers have been given both to the President and the Governor of a state to promulgate ordinances during recess of the respective legislatures. Parliament or state legislature is to approve such ordinance as soon as it meets.

Privileges and immunities of parliament and its members

The constitution confers certain powers, privileges and immunities on Members of Parliament and State Legislatures. The privileges can be further defined by Parliament by law. Privileges are certain rights given to members for the proper performance of their functions. The Constitution emphasizes two major privileges, namely, freedom of speech and right of publication. Privileges are of two kinds: (i) those privileges which are enjoyed by the members, and (ii) those privileges which are given to Parliament as a collective body.

Freedom of speech, freedom from arrest and exemption from attendance as jurors and wit-

nesses in the law courts are the major privileges enjoyed by the member individually. No Member of Parliament is liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or in any of its committees. Members also enjoy freedom from arrest. A member cannot be arrested in a civil case forty days before and after the House is adjourned as well as during the period when Parliament is in session. It may be noted here that this privilege is not available to members in criminal cases.

Some major privileges given to Parliament collectively are: (i) the right to publish debates and proceedings, and also the right to restrain publication by others, (ii) the right to regulate the internal affairs of the House, (iii) the right to punish any person for parliamentary misbehaviour, and (iv) the right to punish any person for breach of its privileges. The punishment which Parliament can give to any person for misbehaviour or for the breach of its privileges, may be in the form of admonition, reprimand or even imprisonment.

STATE LEGISLATURES

The system of government in states closely follows the pattern of the Union government.

The legislature of a state consists of the Governor and one or two houses of legislature, as the case may be.

Thus, for every state there is a legislature which consists of the Governor and (a) two houses, a Legislative Assembly (Vidhan Sabha) and a Legislative Council (Vidhan Parishad) in the states of Jammu and Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh; and (b) one house, a Legislative Assembly in the other states.

The Governor, like the President, is an integral part of the State legislature. From time to time he summons and prorogues the house or houses but six months shall not intervene between the last of the next session. The Governor may address the house or houses (as the case may be) at any time and send messages. After every general election to the State Assembly, the Governor has to address the State Assembly on the very first sitting and so also the first session of every year.

LEGISLATIVE ASSEMBLY

Composition

The Legislative Assembly (Vidhan Sabha) of each state is constituted by direct election on the basis of adult franchise. The total number of the Assembly members are not more than 500 or less than 60 chosen by direct election. For this purpose each State is divided into various territiorial constituencies and the ratio betwen the popluation of each constituency and the number of seats allotted to it shall be as far as practicable the same throughout the state. Some seats may be reserved for scheduled castes. The Governor may also nominate the representatives of Anglo-Indian community.

A candidate for the Assembly should be a citizen of India and not less than 25 years of age. He should not be holding any office of profit under government and should possess sound mental and physical health. Every Legislative Assembly, unless sooner dissolved, continues in office for 5 years from the date of its first meeting. In emergency the term can be extended by 1 year.

The Assembly chooses its own speaker and deputy speaker from amongst its members. They can be removed by a resolution supported by a majority of the members of the assembly.

STATE LEGISLATIVE COUNCIL

Every state legislative Council is a permanent body and is not subject to dissolution but one-third of its members retire every two years. Parlia-

tive Council or create new one, if the proposal is supported by a resolution of the Legislative Assembly concerned.

Composition

Legislative Councils (Vidhan Parishad) have one-third of the total membership of the assemblies but not less than 40 members. Of these one-third are elected by local authorities such as municipalities and district boards, one-third by members of the Assembly, one-twelfth by graduates of universities residing in the state and one-twelfth by teachers teaching in institutions not lower than that of a secondary school; the rest are nominated by the Governor. The members to be nominated by the Governor are persons having special knowledge or experience in literature, art, science, cooperative movement or social service. As stated earlier also, this is a permanent body; one third of its members retire every second year.

For becoming a member of the Legislative Council, a person should possess the same qualifications as for becoming a member of the Assembly except, in respect of age, which has been fixed at 30 years.

Power and functions of state legislature

The Legislative Council can only make recommendation in respect of changes within a period of 14 days of the receipt of the bill from the Assembly. This should in no way affect the freedom of the Assembly to accept or reject the recommendation of the Council. If the Council rejects the bill passed by the Assembly or the Council does not consider it for three months or passes it with amendments which are not acceptable to the Assembly; the Assembly may again pass it and send it to the Council. If the Council rejects it for the second time or does not pass it within one month from the date of its receipt by the Council or it is passed with amendments to which the Assembly does not agree then the bill is deemed to have been passed by the two houses

The Legislative Council has no financial powers. The leader of the majority party in the Legislative Assembly is appointed by the Governor as the Chief Minister. He also appoints other Ministers on the advice of the Chief Minister.

The Council of Ministers is collectively responsible to the Assembly of the state. A hostile vote of the Legislative Council cannot end the life of the Ministry. The Assembly may censure the government and express lack of confidence in the Council of Minsiters. If such a motion succeeds, the ministry resigns resulting in the formation of a new ministry by the leader of the opposition or as a result of fresh elections.

As stated earlier also, the state legislature is competent to make laws, on all subjects in the state list and the concurrent list. In the other case, it has no exclusive right. Some laws passed by the state legislature require assent of the President. While proclamation of emergency is in operation, Parliament has the overall power to legislate even on matter enumerated in the State List. Even in normal times Parliament can in the national interest legislate on matters or subjects in the State List.

The elected members of the Assembly take part in the electoral college for electing the President of India.

The state legislature, apart from excercising the usual power of financial control, uses all the normal parliamentary devices like questions, discussions, debates, adjournment and no-confidence motions and resolutions to keep a watch over the day to day work of the executive. They also have their committee on estimates and public accounts to ensure that grants sanctioned by the legislature are properly utilised.

PARLIAMENTARY COMMITTEES

The work of government in a modern democratic welfare state assumes huge proportions. It is also of a very difficult and complex character. With

legislature must prove itself to be fully equal to the task. Details of policy and their practicability have to be thought out in every sphere and then accepted. Again, the implementation has to be watched with the greatest vigilance and care. It must be remembered that a gigantic administrative machine must neeessarly be a vital adjunct of an active democracy. The legislature, therefore, will have to be constantly alert to ensure that the enormous executive powers that inevitably have to be vested in this machine are properly exercised. These are not exceeded either in letter or in spirit, and are not abused.

Obviously, all the five hundred members of the legislature cannot perform these functions collectively as a body. The number is far too big to permit such a possibility. There has, therefore, developed in modern democracies the system of working through parliamentary committees. Each committee consists of members of parliament or legislature. It is elected by that chamber or nominated by the speaker. It holds office generally for a year. The number of such committees will depend upon the amount of work which the state has undertaken and the degree of interest which the legislature displays in that work. The committees are expected to contain representatives of all parties in the house. They have to hold meetings, call for evidence, examine witnesses, and after full deliberations, submit their report or findings to the parent body, Parliament. The latter can then consider these reports and take on them whatever action it deems fit.

The system of parliamentary committees which has now come to be universally adopted makes it possible for the legislature to work on the principle of division of labour. A few members of the legislature who are particularly interested in a subject are called upon to devote their time, experience and talent in helping to determine policies and actions in respect of that subject. Another important advantage of the system of parliamentary committees is that the work of government gets distributed over large sectors of the house. This, in turn, contributes to creating a [illegible] the state which is essential and healthy for the success of democracy. It must be made clear that these committees are not statutory bodies created by the constitution. They are entirely the creations of Parliament. They are, thus, brought into existence under the rule-making power that has been conferred on that body.

Several committees are provided for in the rules of procedure of the House of the People. Two of them may be described in some detail here.

Committee on public accounts

At the commencement of the first session of Parliament every year, a Committee is constituted consisting of not more than fifteen members of the House of the People elected from itself on the basis of proportional representation. The Committee has to satisfy that money shown in the accounts as disbursed was legally available or related to the purpose for which it was used. It will also examine that the expenditure conforms to the authority which governs it. It will further look into such trading, manufacturing and profit and loss accounts and balance sheets as the President may have required to be prepared. The Committee will also examine the Auditor General's Report. Scrutiny by such a parliamentary committee is a great check on the executive. Its report exposes irregularities in national expenditure though they cannot be corrected retrospectively. Investigations are in the nature of a post-mortem and serve as a warning and a corrective for the future.

Committee on estimates

This committee is to consist of not more than twenty-five members elected by the House every year from amongst its members according to the system of proportional representation. The term of office of members is one year. It is the duty of the Committee to report about economies, improvement in organisation, efficiency or administrative reform that may be effected in the estimates. It is also to suggest alternative policies to

oring about economy and efficiency in the administration. It is further to examine whether the money is well laid out within the limits of the policy implied in the estimates and to suggest the form in which the estimates shall be presented to Parliament.

It will be recalled that the Committee on Public Accounts has to examine accounts quite sometime after expenditure has actually been incurred. Its exposures and criticisms are a salutary check on administration, particularly for future action. On the other hand the Committee on Estimates is concerned with the working of different ministries during the course of the financial year. In the light of the estimates sanctioned for a particular ministry in the budget of the current year, it examines the expenditure of the ministry more or less as it is in the process of being incurred and makes its own recommendations for ensuring better economy and efficiency. The two committees thus supplement each other.

Other committees

Besides these two committees, there are the Business Advisory Committee, Committee on Private Members Bill and Resolutions, Committee on Subordinate Legislation, Committee on Government Assurances, Committee on Absence of Members, Rules Committee and Parliamentary Committees. The names of these committees are fairly indicative of the purpose for which they are formed.

PROCEDURE FOR AMENDMENT

Amendment in the Constitution may become a crying necessity when any vital change of circumstances takes place in the country. Thus the Constitution may become a stumbling block to the growth of a nation's life when it refuses to adapt itself to the progress of time. This is the reason why every Constitution provides for amendment procedure.

In the case of a flexible constitution, every part of it can be expanded, curtailed, amended or abolished by the ordinary legislature with as much ease and as freely as other laws. Such is the case in Great Britain and Italy. There is, however, the danger of an abrupt change. In the case of rigid constitution, it can be changed only by some extraordinary method of legislation like in USA. Federal constitutions like the U.S.A. as a rule are rigid as most of them follow a procedure for amending the constitution which is different from the one used in regard to ordinary laws.

Article 368 of the Constitution has laid down the procedure for amendment. It is neither too easy as in England, nor too difficult as in the United States. The constitution of India strikes a middle course, thereby avoiding both extreme rigidity or flexibility. Amendment to the constitution can be initiated only by the introduction of a bill in either house of Parliament. If such a bill is passed by each house by a majority of the total membership of the house and at least a two-thirds majority of the members present and voting and thereafter assented to by President, the constitution stands amended in terms of the bill. Most of the Provisions including those on Fundamental Rights and the Directive Principles of State Policy can be amended through this procedure. But in the case of certain amendments, ratification by the legislatures of not less than one half of the states by resolution to that effect is required before the amendment bill is presented to the President for his assent. These matters can, broadly, be described as federal issues in which both the Union and the States have interest. Ratification of States is thus required in amending some of the provisions such as those relating to the election of the President, the Supreme Court and distribution of powers as given in the three Lists.

In addition to these two procedures, there is one more procedure through which certain articles can be amended. The provisions relating to the creation of new states, and the establishment or abolition of Legislative Councils in the States can be amended by Parliament by simple majority.

EXERCISES

1. Describe the composition of Indian Parliament and compare the powers of the Rajya Sabha with those of the Lok Sabha.
2. Discuss financial and judicial functions of Parliament.
3. Discuss the functions of the Speaker of the Lok Sabha.
4. How is the Constitution amended? Describe the amendment procedure.
5. Enumerate the privileges of the Members of Parliament.
6. Write short notes on the following:
   - (i) Chairman of the Rajya Sabha
   - (ii) Committee on Public Accounts
   - (iii) State Legislature
   - (iv) Committee on Estimates

Lok Sabha Executive powers -
1) No confidence
2) Collective responsibility
3) control over ministers
4) acts as a government and people
5) PM is from Lok Sabha
6) Constituent of electoral college.

Legislative Power.
1) it frames the laws of the country (U.L - Union list, C.L - Concurrent list, S.L - State list)
2) Any bill can be introduced

CHAPTER IV

Legislative and Financial Procedures at Central and State Levels

A LEGISLATURE under the parliamentary system of government is entrusted with the work of legislation, sanctioning the financial proposals of the government of the day, controlling the ministry and performing other ancillary function. If the legislature happens to be bicameral, the powers of the upper house are limited in matters of finance. Legislature in India follows this accepted principle.

A bill, other than a money bill or a financial bill, may originate in either house of parliament, unless it has been agreed to by both the houses either without amendment or with such amendments as are agreed to by both the houses. In case of disagreement between the two houses, the President may order joint sitting of both the houses to iron out the differences. The constitution contains detailed provisions as regards joint sittings. When a bill is passed by both the houses of Parliament, it is presented to the President for his assent. The President declares that he either assents to the Bill or withholds it. The President has the power to veto a Bill. If he does not assent, he may return the bill, if it is not a money bill, to the houses as soon as possible with a message requesting that the bill be reconsidered by Parliament. He may specify particular provisions of t bill to be reconsidered or recommend amen ments to be made in the bill. When the bill is s returned, the Houses reconsider it accordingly After such reconsideration, if the bill is passe again by the Houses either with or without amend ments and is presented to the President for his assent, he cannot withhold the assent. Thus the President can return a bill to the Houses once and once only. On the receipt of assent of the President, the bill becomes an Act of Parliament.

Legislature and the government

The session of Parliament begins with a joint sitting of the two Houses, which is addressed by the President. In each House the first item of business is the Question Hour. During this hour the members ask questions to elicit information from the ministers on various issues pertaining to their ministries. The question hour is one of the most popular items of the agenda. Questions are of two kinds; starred and unstarred. The starred questions are those questions which are answered by the ministers orally. While the unstarred questions are those which are meant for written answers.

Collect newspaper clippings of Parliamentary debates and find out the main issues raised in the session. Also find out what questions are asked by the members of Parliament and what answers are given by the ministers.

A member can call the attention of the government on any matter of urgent public importance, such as serious drought or flood situation in the country. Calling attention notice is a device which originated in our country itself. Through this device the members can elicit information on important matters.

If any matter is so urgent that it brooks no delay, the members can bring it for discussion through adjournment motion. If the adjournment motion is carried, it indicates a strong disapproval of the government's policy. Adjournment actually means putting off regular business till another time. There can either be adjournment of the debate or of the House. There are similarly other devices such as no-confidence motion through which the opposition can critically examine the policies of the government.

Legislative procedure at the centre

A bill other than a money bill may be introduced either by a member or a minister. Each bill goes through three Readings. In the First Reading the mover seeks the permission of the House to introduce the bill. If the leave is granted, the bill is introduced. In the Second Reading there are two stages. In the first stage a general discussion on the bill is held and the bill is either referred to a committee for detailed discussion or circulated for the purpose of eliciting public opinion. In the second stage clause-by-clause consideration of the bill is taken up. Amendments are permitted and voted upon. In the Third Reading the bill is moved for the final approval. After a general discussion the bill is either passed or rejected. If the bill is passed, it is sent to the other House where it goes through a similar procedure. After the bill has been passed by both the Houses, it is sent to the President for his assent.

Procedure in financial matters

A special procedure has been laid down for money bills. A bill will be considered to be a money bill if it contains only provisions dealing with (a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or giving of any guarantee by the Government of India; (c) the custody of the Consolidated Fund or the Contingency Fund of India; (d) the appropriation of money out of the Consolidated Fund; (f) the receipt of money on account of the Consolidated Fund or the public account; and (g) any matter incidental to the matters listed here. The decision of the Speaker of the House of the People is final on the question whether a bill is a money bill or not.

A money bill cannot be introduced in the Council of States. After a money bill is passed by the House of the People, it is transmitted to the Council of States for its recommendations. The Council of States must, thereafter, return the bill with its recommendations within fourteen days from the date of its receipt. If it does not return the bill within this period, the bill is deemed to have been passed by both the houses in a form in which it was passed by the first chamber. If the first chamber returns the bill to the second chamber within this period with its recommendations, the second chamber has the authority either to accept or reject any of these recommendations. The bill is thereafter deemed to have been passed by both the Houses of Parliament. The passage of a bill into a law thus involves quite a lengthy process.

Let us turn for a while to a detailed study of procedure in financial matters.

(i) The initiative of the executive

It is an essential principle of democracy that all

taxation and all public expenditure must be voted by the people. The executive, therefore, can raise money by levying taxes or borrowing or otherwise, and can spend money, only with the authority of the representatives of the people. The initiative in these matters must come from the executive because they are in direct charge of the administrative machine and are in a position to know exactly the nature of the requirements of the state and also the limitations on its ability to satisfy them. All financial proposals must, therefore, emanate from the government. The legislature will have the power to sanction particular items or to reduce them or even to reject them. But they have no power to recommend an increase either in taxation or in expenditure. This is a very healthy restriction for the successful working of democracy in the country because it imposes an effective check on the temptation to indulge in irresponsible though attractive suggestion on the part of members of the legislature and thereby to achieve easy popularity with the electorate.

(ii) The budget

Estimates of the income and expenditure of the state are prepared by the Ministry, the Finance Minister being mainly entrusted with handling the task. After they have been prepared, the President asks the Finance Minister to prepare the annual finance statement, the budget, for the ensuing year to be laid before the Houses of Parliament. The statement contains the estimated receipts as well as all expenditure of the Government of the Union. The estimates of expenditure distinguishes expenditure and shows separately (a) the sums required to meet expenditure which is charged upon the Consolidated Fund, and (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund.

(iii) Expenditure charged on the consolidated fund

The expenditure charged on the Consolidated Fund of India is: (a) the emoluments and allowances of the President and other expenditure relating to his office; (b) the salaries and allowances of the Chairman and Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the people, (c) debt charges, including sinking fund and redemption charges, (d) the salaries, allowances and pensions payable to Judges of the Supreme Court (as these existed before the inauguration of the Constitution) and pensions payable to judges of a High Court; (e) the salaries allowances and pensions payable to the Comptroller and Auditor General of India; (f) any sums required to satisfy any judgement, decree or award of any court; and (g) other expenditure declared by the constitution. The examples relate to administrative expenses of the Supreme Court and of the Comptroller and Auditor General, grants-in-aid to the states, expenses of the Union Public Service Commission, etc. Parliament has also been given the power to add to the list by passing a law to that effect.

All the expenditure which is charged upon the Consolidated Fund of India will not be submitted to the vote of Parliament; but all these items of expenditure are open to discussion by either house of Parliament. The legislature will thus get an opportunity every year to criticise the administration even in respect of matters which are, therefore, not allowed to be voted upon by the legislature. It is noteworthy, however, that the construction of salaries of ministers, as also the salaries of members of the All-India services, are made subject to the annual vote of the legislature. The working of a department can, therefore, be criticised, and grievances in regard to it can be ventilated by a discussion on a token or nominal cut in these salaries.

(iv) Expenditure voted by parliament

All expenditure other than that which is charged on the Consolidated Fund is to be submitted to the House of the People in the form of demands for grants; and the house shall have power to assent

or to refuse assent to any demand, or to assent to any demand subject to a reduction of the amount. It will have no power to suggest an increase in the expenditure. No demand for a grant is made except on the recommendation of the President, that is in actual practice, the government in power who knows best the real requirements.

(v) Stages in the passing of the budget

The procedure in the Indian Parliament in regard to the passing of the budget consists of the following stages :

The presentation of the budget : On a stated day the budget for the ensuing year is laid before both Houses of Parliament. The Finance Minister personally presents it to the House of the People. While presenting the budget, he makes an exhaustive explanatory speech clarifying all the important issues involved in the proposals. The budget and copies of the Finance Minister's speech are circulated to all members who are then given sometime to study them carefully. There is no discussion on the budget on the day on which it is presented to the House. A budget generally contains three different kinds of information; (a) actual receipts and expenditure of the previous year with a review of the financial position during that period; (b) an estimate of the receipts and expenditure for the coming year; and (c) proposals of taxation and other methods for meeting the expenditure of the coming year. The financial year is the period from 1 April of a year to 31 March of the next calender year.

General discussion : The second stage in regard to the budget is a general discussion on its proposals subsequent to its presentation. A certain number of days are allotted for this purpose. The discussion will extend to the budget as a whole and to any question, principle or policy involved in it. At this stage, no motion is moved nor does voting take place on any item. No item of expenditure is exempted from this general discussion and even items that are charged on the Consolidated Fund can come within the purview of the criticism of the legislators. In fact, this is an occasion on which members of the different political parties, particularly those of the opposition parties, give expression to their grievances against the administration as a whole. They may cite instances in support of their criticism of the way in which particular department of government is actually functioning.

Demands for grants : After the general discussion is over, the estimates are submitted to the House of the People in the form of demands for grants under particular heads. They are put forward by the Ministers of the respective department who make explanatory speeches, justifying the amount mentioned in the demands. Speeches from members may follow and the House may ultimately assent to the demands or refuse them altogether or reduce the amount that is demanded. Amendments will have to be moved for the latter two purposes. The House has no power to increase the amount demanded. The Speaker, in consultation with the leader of the House, allots a definite number of days for discussion and voting of demands for grants. It is, of course, necessary that such a restriction should be imposed. Otherwise discussions might become endless and the work of the government might be unnecessarily hampered. The number of days so allotted must not, however, be too small, because it would amount to a denial of an adequate opportunity to the members of the legislature to ventilate the grievances and opinions of the public on particular issues. On the last day allotted for the voting of grants at a stated hour in the evening—5 o'clock has been prescribed in the rules—the Speaker must stop all discussions and put all the remaining demands to a vote of the House which will be at liberty to accept them or to throw them out, but which will now have no opportunity to modify them in any way.

Cut motions. : When a demand is made by a minister, a cut may be proposed in it by any member. The motion for a cut, which comes in the form of an amendment, may be intended to bring about reduction in the expenditure because in the

opinion of the mover there is scope and justification for such a reduction. If the motion is passed, the department concerned will actually get only that amount to spend as has been sanctioned by the legislature. Substantial cuts are not likely to be proposed by members belonging to the party in power, because the ministers are their own leaders in whom they have implicit confidence and whose lead they are normally expected to follow on all occasions. If there are serious differences of opinion between the leaders and their followers, they can be thrashed out at party meetings. Ministers may even agree to yield to the pressure that may be exerted on them by the rank and file. Thus, when the matter comes up before the legislature, the minister himself may announce that he has accepted certain modifications. Members of the opposition also may suggest substantial cuts for the purpose of affecting economy. But there is no chance of their proposals being passed, because they are in a minority in the house.

Token cuts : Most of the cuts which are moved are not, however, intended to reduce the amount of expenditure. They are called token cuts and suggest a reduction of only Re. 1, Rs. 10 or Rs. 100 in the amount that is demanded. The idea is to get an opportunity to discuss the operations of that particular department, to expose its inefficiency or weaknesses and to suggest concrete ways of improvement. Members of the party in power as also members of the Opposition may move such motions. Ministers intervene in the debates, give replies to criticisms and clarify issues. Quite often such motions are not pressed to a division because the purpose is served when adequate discussion has taken place. But, if such a motion is made by a member of the House, it may be taken to be a vote of no-confidence in the ministry and the resignation of the government may follow. This is, however, not likely to happen as long as the solidarity and discipline of the political party in power are in tact.

Lesser power to the council of states : The powers of the Council of States in respect of financial matters are lesser than those conferred upon the House of the People. The budget must be presented to the House of the People and it has a right to hold a general discussion on all its items, including expenditure charged upon the Consolidated Fund. The occasion can be utilised by its members to express their opinion on the general working of the various departments of the state and thus present the point of view of a body, many of the members of which are supposed to be 'elder statesman'. However, no motions can be made at this stage and there can be no taking of votes. The Council does not posses the right of voting grants; that is the exclusive privilege of the House of the People. There is no question, therefore, of any demand for grants being submitted to the Council of States and any cut motion being suggested to them.

Appropriation bills : After all the grants demanded by the ministers have been made by the House of the People, a bill called the Appropriation Bill is introduced in the House. This bill provides for appropriation out of the Consolidated Fund of India of all monies required to meet (a) the grants voted by the House of the People, and (b) the expenditure charged on the Consolidated Fund of India not exceeding the amount shown in the budget. No amendment can be proposed to any such bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any expenditure charged on the Consolidated Fund. The bill, like any other bill, must be passed by both the Houses before it can be enacted into law.

No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by the Appropriation Act. The mere voting of grants by the House does not by itself authorize expenditure of money out of the Consolidated Fund. It will be seen that the Appropriation Act contains authorization in respect of expenditure voted as well as expenditure charged upon the Fund.

Thus it is a practice in India to submit to the legislature every year what is known as the Finance Bill which incorporates all proposals of

new taxes as well as all changes in the rates of taxes or duties which are already in operation according to permanent acts passed for that purpose. Changes in the rates of income-tax which are already in operation under the Indian Tariff Act, or changes in the rates of postage which are already there under the Indian Post Office Act can be cited as examples. This bill, like other bills, has to be passed by both the Houses before it can become an Act. It must be understood that an Appropriation Act embodies proposals for expenditure, while the annual Finance Act has all proposals for taxation and revenue for the financial year. No money Bill can be introduced except on the recommendation of the President and such a Bill shall not be introduced in the Council of States.

SUPPLEMENTARY BUDGETS

It may happen that an amount authorised by the Appropriation Act for being spent on a particular service during the current financial year is found insufficient or some need may arise during the year for supplementary or additional expenditure which was not contemplated when the budget was prepared and presented. It may also happen that money has been spent on some service during the financial year in excess of the amount granted for that service for that year. In such cases supplementary budgets must be laid before both the Houses of Parliament, showing the estimated amount of the additional expenditure. Demands for grants to cover that amount must be presented to the House of the people for its sanction. After the grants are voted by the Houses, an Appropriation Bill embodying them must be presented to both the Houses of Parliament and passed by them into an Act. Supplementary budgets are naturally not looked upon with much favour by members of the legislature, because they practically amount to an ex-post facto confirmation of the expenditure which has already been incurred by the government in anticipation of the legislature's sanction. To the power of spending money in exceptional cases, in excess of the amount sanctioned, cannot be denied to the executive, because unforeseen circumstances may arise and the situation has got to be handled with efficiency and despatch.

EMERGENCY EXPENDITURE

Sometimes, in a national emergency, the government may feel that it is essential to spend some amount of money forthwith in the interest of the state. However, it may not be possible for it to work out detailed estimates, because the situation may be full of unpredictable elements. Similarly, sometimes the services for which expenditure has to be incurred may be of such a magnitude and of such an indefinite character that details of the expenditure cannot be previously worked out and given in the budget. Demands for the necessary expenditure will, therefore, have to be made in rather an unexpected manner. Occasions may also arise when a particular or special purpose does not form part of the current services of the year and yet expenditure on it is considerable during the current year. Money bill, therefore, have to be voted by the House separately for such a particular purpose. In order to cover all these exceptional circumstances the House of the People has been given the power to pass the necessary Appropriation Acts.

LEGISLATIVE PROCEDURE AT THE STATE LEVEL

With the exception of Money bills and other financial bills, a bill can originate in either house of the legislature. Subject to the provisions relating to Money bills and to general restrictions on the powers of the Legislative Council, a bill shall not be deemed to have been passed by the House of the legislature of a state having a Legislative Council unless it has been agreed to by both

Houses either without amendments or with such amendments only as agreed to by both the Houses.

The Legislative Council has been given a subordinate position in law-making. Its powers have been greatly circumscribed both in respect of Money bills and other bills. The power of a Legislative Council to amend a bill which has been passed by a Legislative Assembly and sent to the Council is severely limited by it. When such a bill is (a) either rejected by the Legislative Council or (b) passed by it with amendments to which the Assembly does not agree or (c) more than three months elapse from the date on which the bill is laid before the Council without the bill being passed by it, the Legislative Assembly may again pass the bill in the same or in any subsequent session with or without amendments suggested by the Council. The bill so passed is to be transmitted back to the Legislative Council. If now the Bill is rejected by the Council or passed by it with amendments to which the Assembly does not agree or if more than one month elapses from the date on which the Bill is laid before the Council, without being passed by it, the Bill is deemed to have been passed by both Houses of Legislature of the State, passed by the Legislative Assembly with such amendments, if any, as have been agreed to by it.

The powers of a Legislative Council in relation to Money bills are similar to those of the Council of State, the upper House of Parliament. No Money bill can be introduced in a Legislative Council. When a Money bill is passed in a Legislative Assembly, it is to be transmitted to the Legislative Council for its recommendations. If thereafter the bill is not returned to the Assembly with the recommendations of the Council within a period of fourteen days from the date of the receipt of the Bill in the Council, the Bill is deemed to have been passed by both Houses. If the Council returns the Bill within this period with its recommendation, the Assembly will have the authority to either accept or reject any of the recommendations. Then the Bill is deemed to have been passed by both Houses in the form in which it has been passed by the Legislative Assembly with or without any of the amendments recommended by the Council. The definition of Money bills is similar to that given in connection with Parliament.

Role of the Governor

When a Bill has been passed by the House or both Houses of the State Legislature, it is presented to the Governor. The Governor may then either assent to the bill or withhold his assent from it or reserve the bill for the President's consideration. It is provided that the Governor may return the bill, if it is not a Money Bill, to the legislature with his recommendations. The legislature may then again pass the bill with or without any amendments and present it to the Governor. This time the Governor cannot withhold his assent from the bill. When a bill is reserved for the President's consideration, the President may, where the Bill is not a Money Bill, direct the Governor to return the Bill to the legislature with recommendations. Thereafter, the legislature must reconsider the Bill within a period of six months and if it is passed again by it with or without any amendment, it is presented to the President for his consideration.

FINANCIAL PROCEDURE AT STATE LEVEL

As in the Centre, the main features of the financial procedure in the states are (a) the annual financial statement; (b) the demands for grants; (c) the appropriation Bills; and (d) other Financial Bills.

In respect of every financial year the Governor must place before the House or Houses of the legislature an annual financial statement showing the estimated receipts and expenditure of the state for that year. The estimates of the expenditure must show separately (i) the expenditure charged upon the Consolidated Fund of the State; and (ii) other expenditure to be made out of that Fund.

The expenditure charged upon the Consolidated Fund of the State are: (a) the emoluments and allowances of the Governor and other expenditure relating to his office; (b) the salaries and allowances of the Speaker and the Deputy Speaker and, in the case of a bicameral legislature, also of the Chairman and the Deputy Chairman of the Council; (c) debt charges; (d) expenditure in respect of the salaries and allowances of the judges of any High Court; (e) any sums required to satisfy any judgement, decree or award of any court or arbitral tribunal; and (f) any other expenditure declared by the Constitution or by the legislature of the state by law to be so charged. The other item to be charged on the Consolidated Fund of the State are: (1) sums required to meet the administrative expenses of High Courts : (ii) sums required to meet such contributions to the privy purse of rulers as may be determined by the President; and (iii) sums necessary to meet the expenses of the State Public Service Commission. The expenditure charged on the Consolidated Fund in terms of items (a) to (f) are non-votable. They can, however, be discussed in the legislature. Other expenditure must be submitted to the Legislative Assembly in the form of demands for grants. The Assembly can then either assent or refuse any of these demands or reduce the amount of any demand. No demand for grant can be made except on the recommendation of the Governor.

After the grants have been made, a bill is introduced to provide for the appropriation out of the Consolidated Fund to meet the grants made by the Assembly as well as the expenditure charged on the Consolidated Fund. No amendment can be proposed at this stage by the House or the Houses of the legislature, which may have the effect of varying the amount or altering the destination of the amounts. No money can be withdrawn from the Consolidated Fund except in accordance with the provisions of the Appropriation Act.

The Governor is authorised, whenever he thinks it necessary, to place before the House or the Houses of the State legislature supplementary financial statement and cause to be laid before the Assembly demands for supplementary or additional or excess grants. But the same procedure will apply to these matters as has been laid down for the annual financial statement or the ordinary demands for grants.

The legislative assemblies of the States have also been authorised to sanction advances and grants as well as exceptional grants.

EXERCISES

1. What is a money bill ? How is it passed ?
2. What are the different stages through which the budget passes? Discuss.
3. Descirbe the various stages in the life of a bill before it becomes an act.
4. Write short notes on the following :
   - (i) Demands for Grants
   - (ii) Consolidated Fund of India
   - (iii) Cut Motion
   - (iv) Appropriation Bills

CHAPTER V

Executive : A General Profile

IN COMMON parlance government is equated with its executive branch. That organ of the government which executes laws passed by the legislature is known as the executive. The term executive is used in two senses. In the broader sense of the term, it stands for the entire staff of officials, high and low, which are concerned with the administration of public affairs. It means the head of the executive, both constitutional and real, the whole body of ministers, secretaries, and other civil servants, personnel of the police, and even of the armed forces are included. In the narrower sense, it signifies only the real executive.

In point of time, the executive is prior to other organs of government. The government, in its early stage, was purely an executive branch. With the advent of constitution or democratic politics, however, the legislature and the judiciary arose to provide the executive with necessary limits. These institutions denuded the executive of some portion of its authority and what remained still made the executive quite strong.

In point of importance also, the executive, in the contemporary world of politics, occupies a pivotal position. The process of government can be split up in two parts. One is concerned with policy-making, and the other with the technicalities involved in the process of policy-making and policy-implementation. Policy-making is the sole responsibility of the political executive. The political executive is a small group of persons who preside over the various departments of the government. They are the architects of the policies which guide the operations of the governmental machinery. Affiliation to a particular political party or parties under a coalition and temporary tenure of office of the executive are the distinguishing marks of a political executive under a Parliamentary system of government. This is true of countries like England and India, where the political executive is designated as Cabinet or Council of Ministers. In some other countries, like the United States, where there is a Presidential form of government, it is known as Presidency which has a fixed tenure. In a parliamentary democracy, in addition to cabinet and a prime minister, there is a nominal executive—a constitutional figure-head. In England, the king is the nominal or ornamental executive, whereas in India, President occupies almost a similar position.

Policy-making as well as policy-implementation is a delicate task. It requires a vast mass of technical knowledge and information. The political executive may or may not have administrative efficiency. These are provided by thousands of civil servants who constitute the apparently non-political, permanent, professional executive. The

political neutrality and permanence in tenure of office is expected to distinguish the civil service from the cabinet or the presidency, as the case may be. Thus the executive branch of the government consists of two components, political and permanent. Altogether, in a familiar sense, the nominal head and his ministers (inclusive of the prime minister) are designated as the executive in a parliamentary system of government and under a presidential government the President and his political advisors constitute the executive.

Types of executive

There are three major types of executives:

(a) nominal and real;
(b) hereditary and elected; and
(c) single and plural.

Let us now turn to examine these types elaborately.

(a) Nominal and real

The executive may be a nominal or a constitutional ruler, a titular or ceremonial head of the state like the British king. The nominal executive as the head of state is the symbol of national unity. He does not have any real powers. The real power rests with the cabinet which constitutes the real executive. For example in India, the President of India is the nominal executive, while the Prime Minister and his cabinet are the real executive. Such distinction between the real executive and the nominal executive is found in a parliamentary form of government. But in the presidential form of government this distinction is not made. For example, the President of the United States of America, as intended by the fathers of the constitution, is the real head and enjoys vast powers.

(b) Hereditary and elected

When the office of the executive is inherited among the members of the family as in England, it is known as hereditary executive. In contrast, when people elect an executive directly or indirectly, it is an elected executive. The hereditary executive is no longer in keeping with the spirit of democratic government. However, in England hereditary monarchy has been retained as an integral part of the political system. But, as already stated, the monarch is nominal rather than actual head of the executive. The fact of the matter is that World War II swept away the autocratic monarchies in Europe. However, one of the states where the monarch still retains some actual powers in Asia is Nepal.

Elected executives may be classified under three heads : those directly elected, those indirectly elected by a body of intermediate electors; and those elected by the legislature.

Direct popular election of the executive prevails in the United States of America. The President there is in practice elected by a popular election, though the constitution provides for election by an intermediate body of electors. The main advantage claimed for direct popular election is two fold. It creates an interest in public affairs on the part of the masses. It also ensures the election of a chief executive in whose ability and integrity the people have confidence. But the disadvantages of the system are many. First, it is not possible for the citizens to know much about the candidate, if the electoral area is a large one. Secondly, the elective system breeds intrigue and corruption. It may throw the whole machinery of the government out of gear just before the election. Thirdly, it accentuates party feelings. Fourthly, it sometimes opens a way to intrigues and intervention by foreign powers. Finally the danger in this method is that such election is considerably prejudiced by demagogy and popular passion. It is not always governed by intelligent evaluation of the qualities of the contestants about which the people may be unaware.

In some countries, the executive is elected on the basis of majority in the legislature. The merits of this system are that the members of the legislature are likely to take a wiser view than the masses, and that there is a close correspondence between the executive and legislature. In

countries with parliamentary executive the cabinet is the direct choice of the legislature. In countries where the parliamentary executive or the cabinet system prevails, the real choice of the executive is thus made by the legislative branch of the government. The nominal executive only formally chooses the cabinet. In practice this choice must be in full agreement with the expressed desire of the legislature.

The chief demerit of this method of election is that it violates the principle of separation of powers. It thus reduces the executive to the status of an appendage of the legislature. But advantages, as already stated are also many. For example, it ensures collaboration between executive and legislature which is a condition of smooth working of the government. Again, it leads to an intelligent choice of the executive by a select and competent body.

(c) Single and plural executive

If the executive authority is vested in one person or a body of persons who act collectively, it is the case of single executive, for example, U.S.A. On the other hand, if executive authority is vested in a number of persons enjoying equal and co-ordinate powers, it is a plural executive, as we find in Switzerland and USSR. In Switzerland, all the members are equal so much so that head of the State is selected by rotation. Plural executive is generally defended on the ground that it safeguards against abuse of authority. The unity of power, characteristic of presidential and parliamentary executive, may generally encourage such abuse. It also arrives at better decisions because a group of men is expected to possess more knowledge and understanding than a single individual. The single-headed executive, as is prevalent in America, has the ability to decide quickly and act energetically. Still it is not without blemish. Critics have argued that it leads to centralization of authority, a tendency towards misuse of power and flattery of the chief by his subordinates.

The cabinet system so long as the Prime Minister behaves as first among the equals, seems to be the best type of executive. As it is not based on infalliability of a single person, it leads to minimisation of errors in executive decision-making. The cabinet system is also preferable because of the underlying priniciple of collective responsibility and political homogenity due to which it is expected to develop a corporate mind.

Powers of the executive

The immense growth of executive power is the most noted development in the present century. It has expanded both in depth and coverage. The executive powers in a normal constitutional state are as follows:

1. executive;
2. legislative; and
3. judicial.

Let us now have some details of these powers.

(1) Executive powers

As far as the executive powers are concerned, these relate to direction and supervision of the executive of the laws in all the states. Within the field of civil administration also lies the power of issuing regulation or ordinances in regard to matters which have not been dealt with by the legislatures. As far as the legislative power is concerned, it relates to the drafting of the bills and directing of their passage into law. It includes both financial and other bills. Finally, the judicial powers concern the granting of pardons; reprives, etc., to the criminals.

The executive powers can be further divided into the following three heads:

(i) diplomatic;
(ii) administrative; and
(iii) military.

As far as diplomatic powers of the executive are concerned, they relate to conduct of foreign affairs. In strict theory the diplomatic or treaty making power is neither purely executive nor purely legislative. It, however, relates to intiative by the executive and as such it is deemed to

belong to it more than the legislature. Further, in all states the executive appoints and receives diplomatic representatives. This further confirms the initiative of the executive in the field.

As far as administrative powers of the executive are concerned, they relate to the execution of the laws and the administration of the government. This embraces those matters particularly, which have to deal directly with the administration of the government. Thus we find that the head of the executive can appoint, control and remove all his subordinates. In the field of internal administration, it is the function of the executive to direct the implementation of laws. It requires departmental organisations, control of administrative heads of the departments through the power to appoint and dismiss them and the total flow of administrative business. It is the function of the political executive in every country to coordinate interdepartmental activities.

The executive is also generally entrusted with the task of appointing advisors or suggesting names of persons to become ministers and the administrative head of the government. In the United States, the President makes the appointments of secretaries which are subject to confirmation by the Senate. In a parliamentary democracy the nominal executive like the British king or the Indian President formally appoints the highest officials of the state. But in this system the Cabinet actually appoints and the nominal executive just confirms. The executive has not only the power to appoint but also to remove or dismiss in certain cases. This is so because the executive is charged with the responsibility of directing and supervising the flow of administrative business.

As far as the powers pertaining to military or defence officials are concerned, these basically deal with the orgainsation of the armed forces and the conduct of war. The chief executive of the state is generally the supreme commander of the defence forces. In this capacity he appoints and dismisses the military officials and directs defence planning. But the powers pertaining to defence are usually regulated by law. In the United States, for instance, the declaration of war is the right of the legislature. But the President of the United States can, through a deliberate act, precipitate a crisis situation for the nation. He may, thus, compel the legislature to declare war and move in tune with executive action. In countries like India and England, the right to declare war rests in the executive authority. However, the parliamentary approval is necessary because the parliament is alone competent to grant money for the persecution of war. There is nearly a unanimous opinion that the military power should be vested in the executive. During periods of war the executive authority greatly expands and its control becomes almost totalitarian, embracing every aspect of man's existence. People however, approve of temporary suspension of democracy in the interest of national security.

(2) Legislative powers

The emergence of rigidly disciplined national political parties has led to increasing executive leadership in the domain of legislature. In parliamentary democracies the executive, backed by the support of the majority party, provides the necessary drive and intiative in legislative business. The executive initiative introduces and urges the adoption of legislative measures upon all subjects falling in its domain. The executive hegemony in the field of legislation is so much that it is no exaggeration to say that it is the executive that legislates with the consent of the legislature. Even this consent is formal, in as much as once the executive commands a majority, the legislative consent is easily secured. Moreover, the power of the executive to summon, suspend and dissolve the legislature ensures executive control over the legislature in good measure.

Under a non-parliamentary system in the absence of an organic relationship between the executive and legislative branches of govern-

ment, the executive is not able to provide direct leadership to the legislature. But here also there are some consitutional devices through which the executive influences legislation. The President of United States, for instance, is empowered to address messages to the Congress containing concrete recommendations for legislation which the President wants the Congress to make in the national interest. The President's messages are usually favourably considered by the Congress, as the growth of national parties, linking the executive with the legislative branches of the government, has extended the influence of the President to the Congress as well. Again, in many countries, for instance the United States and India, the executive head may disapprove the acts of the legislature by means of a veto. In the United States, the President can exercise his right to veto but it can be overcome by a two-thirds vote in each house of the Congress. The President of India may, except in the case of a Money Bill, withhold his assent from a bill passed by Parliament or return it to Parliament for reconsideration. This prevents the possibility of hasty and ill-considered legislation, which in view of the tremendous pressure of business upon almost every modern legislature, is not an unusual feature these days.

In almost every modern state today the pressure of work on the legislature and its inability to look into the technical details of legislation have compelled it to delegate authority to the executive to make rules and regulations and to fill in the gaps in the statute to supplement and apply them in concrete situation. This is known as delegated legislation or legislation by the executive.

(3) Judicial powers

The chief executive in almost every state is vested with the power to pardon or commute or rescind any punishment or sentence inflicted on any person by the courts of law. The President of India, for instance, is empowered to grant pardon.

EXPANSION OF EXECUTIVE AUTHORITY

Besides, the executive authority has also expanded in other directions. The varied economic activities in modern societies demand increasing planning and coordination. The executive, in order to attain this end, has extended its control over the national economy. Moreover, the executive with a view to fulfil the programme of a welfare state has to undertake and manage a number of projects like transport, education and public health. Thus a modern executive has a long and impressive list of powers and functions. In fact, it is today the mainspring of the government. Increase in the power of the executive authority at the expense of the legislative body and sometimes of the judiciary is the characteristic feature of the politics of the 20th century democracy.

Thus the demands of economic development, requirement of welfare and social security and the pressure of defence, all add to the powers of the executive. Building roads, bridges and railways, the development of communications, provision of schools, museums and research institutes, provision of homes for the aged and the like are now to be undertaken by the state. All these tasks, in turn, fall in the sphere of the executive, as these involve highly technical issues particularly economic questions.

The legislature is over burdened with work. The initiative in making the laws has to be taken by the government. Measures, not favoured by government, have little chance of being passed. In fact, the vast mass of legislation introduced by the government in every session requires the whole time of the legislature. Hence, as stated earlier also, it empowers the government departments to issue rules and regulations which are binding on citizens.

Another cause of the growth of the executive power, as stated earlier also, is the increasing rigour of party discipline over the measures of the legislature. If the government is to be efficiently carried on through the system of political parties,

CHAPTER VI

Executive in India

THERE ARE two levels at which one finds executive in India—the union and the state levels. This chapter is devoted to a study of the executive at both these levels.

THE UNION EXECUTIVE

The union executive consists of the President, Vice-President and a Council of Ministers with Prime Minister at the head to aid and advise the President.

PRESIDENT

The President is the executive head of the Republic. All the executive powers of the union, including the supreme command of the defence forces, are formally vested in the President. All executive actions are taken in his name. The executive power vested in the President is to be exercised on the advice of the council of ministers responsible to Parliament. The 42nd amendment to the Constitution has made it obligatory on the part of the President to accept the advice of the Council of Ministers.

Dr. Rajendra Prasad (1884–1958 A.D.)
A great nationalist leader of the 'Champaran' movement, President of the Consituent Assembly, First elected President of India. Famous works: 'India Divided', 'Satyagraha in Champaran', 'Legacy of Gandhiji'

Qualifications

To be eligible for election as President a person
(1) must be a citizen of India;
(2) must have completed the age of 35 years;

the party leaders must be able to depend on the votes of their followers. The leaders of the majority party or the coalition party form the government. They generally pass measures which they think proper on the basis of the majority that they command in the legislature.

The tendency of the increase of power of the executive is noticeable, not only in parliamentary governments, but also in presidential governments. The relations among the executive, legislature and judiciary were of a co-ordinated nature in the 19th century and would thus balance each oth[illegible]hese are not so in the 20th century. As stated earlier also, during the war, the power of the executive becomes all the more pronounced. This is so because the strategy and the plan of action in dealing with the enemy are in the hands of the executive and the army leaders.

Some people fear that this growing executive power may ultimately jeopardise the operation of the system. In almost every democratic country, a number of countervailing institutions and processes in the shape of alternative political parties, periodical elections, vigilant press and dependent judiciary operate to prevent executive leadership from turning into executive tyranny.

Name the office of Head of the State in following countries. (For example, in India it is President).
1. The United Kingdom 2. Nepal 3. Pakistan 4. Bangladesh.

EXERCISES

1. Give one advantage and one disadvantage of direct popular election of the chief executive.
2. Discuss judicial and legislative functions of the executive.
3. Discuss any two major factors which are responsible for the expansion of executive authority.
4. Distinguish between the following :
   (a) Single and Plural Executive
   (b) Nominal and Real Executive
   (c) Hereditary and Elected Executive

(3) must be qualified for election as a member of the Lok Sabha; and

(4) must not hold any office of profit under the Government of India or under the government of any state or under any local authority subject to the control of any of these governments.

Election of the president

The President of India is elected indirectly by an electoral college consisting of elected members of both houses of Parliament and elected members of the Legislative Assemblies of states in accordance with the system of proportional representation by means of a single transferable vote. To ensure uniformity among the state *inter se* as well as parity between the states as a whole and the union, suitable weightage is given to each vote. The voting at such election is by secret ballot. The votes of electorate are so regulated that the total voting strength of Parliament is equal to the total voting strength of all state assemblies taken together and all states are uniformly represented at the election.

Procedure of election

As far as practicable, there is uniformity in the scale of representation of the different states at the election of the President. For the purpose of securing such uniformity among the states and parity between the states as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each state is entitled to cast at such election is determined in the following manner: (a) every elected member of the Legislatvie Assembly of a state has as many votes as there are multiples of one thousand in the quotient obtained by dividing the population (population according to preceding census) of the state by the total number of the elected members of the Assembly; Number of votes of MLA=Total population of The State + Total number of elected members of the Legislative Assembly of the State + 1000. Thus, the number of votes of members of legislative Assemblies vary from state to state; (b) if, after taking the said multiple of one thousand, the remainder is not less than five hundred, then the vote of each member is further increased by one; and (c) each elected member of either House of Parliament has such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the states by the total number of the elected members of both Houses of Parliament, fractions exceeding one half, being counted as one and other fraction being disregarded. Number of votes of an M.P. = total number of votes cast by all the members of all state Legislative Assemblies + total number of elected members of Parliament.

The election of the President is held on the basis of single transferable vote. Every voter has the right to cast one vote but he can indicate his order of preference for the Presidential candidates. After the votes are polled counting takes place. A candidate has to obtain the fixed quota of votes in order to win the election. All have to get at least one vote more than half of the total votes polled. Suppose the total number of votes polled is 50,000 the quota would be $\frac{50000}{1+1=2} + 1 = 25,001$. First of all every candidates' first preference votes are counted. If in this counting no candidate gets the fixed quota of votes, the candidate who gets the least number of first preference votes is eliminated and second preference votes on his ballot are transferred to the remaining candidates. This process of elimination and transferring the third or fourth preference votes on their respective ballot papers continues until one of the candidates secures the requisite number of votes.

As stated earlier also, the election of the President is held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election is by secret ballot..

Power and functions

The President of India has to perform a number of functions, the more important of which are discussed here. The powers to be exercised by the President relate to normal times and emergencies. Let us begin with his power during normal time.

(i) Executive powers

The President is the supreme executive head of the state. The executive power is exercised by him either directly or through officers subordinate to him in accordance with the constitution. There is a Council of Ministers headed by the Prime Minister to aid and advise the President. The President appoints the Prime Minister who is generally the leader of the Lok Sabha and on his advice, he selects other ministers and distributes portfolios among them. As stated earlier also, he holds the supreme command of India's defence forces and has the power of declaring war and peace. All important appointments are made by the President. As already stated, he makes the appointment of the Prime Minister and on his advice of other ministers of the union government. He also appoints Governors of states, Ambassadors and other diplomatic representatives, Chief Justice and Judges of the Supreme Court and High Courts, Attorney-General, Comptroller and Auditor-General, the Chairman and members of the Union Public Service Commission and members of various commissions like the Election Commission, the Finance Commission, etc. The administration of Union Territories is run by Lieutenant Governors or Chief Commissioners on behalf of the President who appoints them. In fact, the governance of the country is done in his name. The President has also the power to dismiss some of the high dignitaries with the approval of the Parliament. The President made the Government of India (Allocation of Business) Rules in 1961 under the Constitution. The business of the Government of India is transacted in the ministries, department, secretariat and other offices as specified in the rules. The allocation of business is made by the President on the advice of the Prime Minister among ministers by assigning one or more departments to the charge of a minister.

(ii) Legislative powers

The President of India is an integral part of Parliament. He summons and prorogues either house of Parliament, calls joint sittings of the two houses, when necessary and dissolve the Lok Sabha. He opens the first session of the Parliament after every general election where he explains the important principles of the government. In each year also, the President at a joint sitting of the houses addresses the Parliament. He can also send message to either house of the Parliament. Without his consent no bill can become an act. When a bill is passed by the two houses of Parliament, it is sent to the President for his assent. He may give his assent or veto the bill or send the bill back to the Parliament for reconsideration. But if the bill is again passed in the same form, he is bound to give assent. He also issues ordinances. Certain type of bills like the money bill cannot be introduced in Parliament without the previous sanction or recommendation of the President and they cannot be vetoed by the President. When a bill is passed by the state legislature and sent to the Governor for his assent, he may reserve the bill for the consideration of the President. The President may or may not give his assent or return the bill to the state for reconsideration. But even if the bill is again passed by the state legislature in the same form and if the President does not give his assent, that is the end of the bill. He can promulgate ordinances at any time when the Parliament is not in session but such ordinances must be ratified by the Parliament within six weeks as soon as the Parliament reassembles.

(iii) Financial powers

He permits the annual budget and important reports to be laid before the Parliament and recom-

mends, as stated earlier also, the introduction of money bills in the Parliament. He appoints the Finance Commission for allocation of share of proceeds of taxes between the Union and the States. He can also allow advance from the Contingency fund of India to meet unforeseen expenses like flood, drought, war, etc., pending approval of Parliament.

(iv) Power to grant pardon, etc.

The President can grant pardon, reprieve, respite or remission of punishment or may suspend, remit or commute the sentence of any person convicted of any office (a) where the punishment or sentence is by a court martial; (b) where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; and (c) in cases where the sentence is a sentence of death.

Find out in which case a controversy arose relating to President's power to grant pardon.

Emergency powers

Thus far we have discussed the powers of the President during normal time. We now turn to discuss powers of the President during emergency.

The President himself is the sole judge to determine whether an emergency has arisen or not and whether, according to his satisfaction, a declaration of emergency is justifiable. The emergency provisions are intended to be resorted to in periods of grave national peril. As a general rule emergency must not be continued for any period beyond which it is absolutely necessary.

The Constitution of India envisages three kinds of emergencies (i) national emergency; (ii) emergency arising out of the failure of constitutional machinery in the states; and (iii) emergency resulting from a threat to financial stability or credit of India. Let us now discuss these three sets of emergency at length.

(i) National emergency : When the President is satisfied that there is a grave danger to the security of India either from external aggression or armed rebellion, he may declare national emergency either for the whole country or any of its part. The President can declare national emergency even before anything serious actually takes place if he is satisfied that there is an imminent national danger. Under the emergency, the Parliament acquires powers to frame laws regarding the subjects mentioned in the State list. The Parliament can issue directions to any state regarding the conduct of executive business. The President can also modify the distribution of revenue between the Union and the States. All this amounts to the suspension of internal autonomy of different states. The declaration of emergency of this kind further empowers the President to suspend the operation of the Fundamental Rights and their constitutional guarantees. No citizen can then have the right to move a court of law for the enforcement of these rights. The proclamation of emergency, as stated above, needs to be approved by Parliament, voting taking place separately in both the houses within one month from the date of proclamation. If the Lok Sabha is dissolved before the expiry of this period of one month, the proclamation must be approved by the Rajya Sabha within one month and by the Lok Sabha within 30 days after the first date of its meeting after re-election. A proclamation so approved remains valid for six months. But it may be extended again by the same method for 6 months at a time. The constitution does not place any time limit on the period for which the emergency is to continue since it is approved by Parliament. It continues till it is revoked by a subsequent proclamation.

(ii) Emergency due to the failure of constitutional machinery in the state : If the President is satisfied either on the recommendation of the Governor or otherwise that the Government of a particular state cannot be carried on in accordance

with the constitution, he may declare emergency in the state. Under such an emergency the President may assume to himself any or all functions of the government of the state concerned and all or any of the powers of the Governor of a state. He may also declare that the powers of the state legislature shall be exercised by the Parliament. Again, subject to the approval of the Parliament, the President may sanction expenditure of the state out of the Consolidated Fund of the state. He may also suspend the provision of the constition relating to any authority in the state except that he cannot assume any of the powers of the High Court. He may dissolve the State legislature and dismiss the Council of Ministers in the State.

(iii) Financial emergency : The President may declare financial emergency if he is satisfied that there is threat to financial stability or credit of the country as a whole or a part thereof. In such a case, he may give such directions to any state as he may deem fit and ask it to observe certain cannons of financial propriety. He may order reduction in the salaries and allowances of all or any class of persons serving under the Union or State governments, including the judges of the Supreme and High Courts. He may require states to submit before him all money bills for his assent after they are passed by the state legislature.

Term of office and emoluments

The President holds office for a period of five years. He is eligible for re-election. He draws a salary of Rs.15,000 per month, besides various other allowances. He is also entitled to a rent free official residence. His emoluments are a charge on the Consolidated Fund of India and are, therefore, not votable by the Parliament. His salary and allowances cannot be reduced during his term of office. He may himself decide to draw less than his fixed salary.

Procedure for the removal of President

The President may be removed from office for violation of the constitution before the expiry of his term by impeachment. Charges for this purpose may be preferred by either house of the Parliament in the form of a resolution by a two-thirds majority. But prior to that at least a fourteen days' notice signed by not less than 1/4th of the total number of members of that house is to be given. The other house ivestigates the charges. If it is finally established by two-thirds majority of the total membership of the other house as well, the President is forthwith removed from his office. The President has the right to appear or to be represented before the investigating house for self-defence.

He has the option to resign voluntarily before the expiry of his full term. In case of his resignation, the President is supposed to write in his own hand a letter addressed to the Vice-President of India, indicating his desire to resign from his office, The Vice-President shall have to communicate forthwith such a decision of the President to the Speaker of the Lok Sabha. In case of a vacancy caused by his death, resignation or removal, the Vice-President is to officiate as President till the post is filled by new election of the President. This must take place before the expiry of a period of six months after the occurence of the vacancy. The new holder of office is chosen for a full term of five years.

Position of the President

The President is more or less the titular head of the government at the Centre. The real power is vested in the hands of the Council of Ministers. The government is run in the name of the President, though he cannot do so except in accordance with the advice of the Council of Ministers as laid down in the 42nd amendment to the Constitution.

VICE-PRESIDENT

The Vice-President is the ex-officio Chairman of the Upper House of Parliament or Rajya Sabha. He is elected indirectly by the members of an

electoral college consisting of the members of both houses of Parliament. He should not be a member of either house of Parliament or of any state legislature. If such a member is elected Vice-President, he has to resign from his membership. The constitution also lays down that such a person should not be a convict of a court of law; he must not be an insolvent; and must not be of unsound mind. He must not hold office of profit under the union or any local authority subject to the control of any of these governments. The Vice-President may hold office for five years. Any citizen of India aged 35 years and above and qualified for the membership of Rajya Sabha can be elected to the office by both houses of Parliament at a joint sitting on the basis of proportional representation by single transferable vote and by secret ballot. He must not hold office of profit under the Union government or a state or any local authority subject to the control of any of these governments. The Vice-President may be removed from his office by a resolution of the Rajya Sabha passed by a majority of all the members of the Rajya Sabha and agreed to by the House of the People (Lok Sabha).

The Vice-President performs a number of functions, the more important of which are being mentioned here.

(1) He is the ex-officio Chairman of the Rajya Sabha. In case he acts as President of India and discharges the functions of the Presidency, he shall not preside over the session of the Rajya Sabha.

(2) He officiates as President in case of death, resignation or removal of the latter till the new President is elected. This period can be extended for a maximum period of six months.

(3) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions. During such a period, he shall be entitled to all the powers and immunities of the President. He shall be entitled to such emolumets, allowances and priyileges as may be fixed by the

Term of office and emoluments

As stated earlier also, the term of office of the Vice-President is five years. During this period, a Vice-President may resign voluntarily or he may be removed from office by a resolution passed by an absolute majority of the Rajya Sabha and agreed to by a single majority of the Lok Sabha. But no resolution will be moved for this purpose without a notice of 14 days. The election of the Vice-President must be held as soon as possible after the vacancy has arisen. He shall hold office for a full term of five years.

The Constitution does not fix any emoluments for the Vice-President of India. He is entitled to a salary as the Chairman of the Rajya Sabha of Rs.7500 per month in the capacity of his being the Chairman of the Rajya Sabha. When he acts as President, he is entitled to get the emoluments equivalent to that of the President.

PRIME MINISTER

The Prime Minister of India is appointed by the President. But it is expected of the President to

Pt. Jawaharlal Nehru (1889–1964 A.D.)
A great leader of India's National movement, builder of modern India. First Prime Minister and continued as India's Prime Minister for 17 years (1946–1964). Famous works: 'Discovery of India', 'Glimpses of World History', 'Letters from a Father to a Daughter'.

appoint only that person as Prime Minister who is leader of the majority party in the Lok Sabha. This is necessary because the constitution holds the Prime Minister and his team of ministers responsible to the Lok Sabha. But the constitution does not debar the President from appointing a person as Prime Minister who belongs to the Rajya Sabha or who is not a member of the legislature if that person has been chosen as leader of the majority party. The President can also appoint the Prime Minister from outside the Parliament for a period of six months. Such a person must get himself elected to the Parliament within this period.

Term of office and emoluments

The Prime Minister holds office during the pleasure of the President. Normally the President cannot dismiss the Prime Minister at will because the former is bound by convention to recognise the person commanding leadership of the majority party in the Lok Sabha as the Prime Minister. The Prime Minister holds office till the new Lok Sabha is elected. Even where the Lok Sabha is dissolved by the President, he can ask the Prime Minister to hold office till the new Lok Sabha is elected. He draws salary of Rs:10,000 per month.

Functions

The constitution assigns a unique position to the Prime Minister but does not spell out specifically what are his powers and functions. From different provisions of the constitution we may deduce some trends in this regard.

The Prime Minister advises the President about the choice of the ministers and distribution portfolios among them. Since the advice of the Prime Minister in the appointment of the other ministers is invariably accepted, the choice really is that of the Prime Minister.

Although all executive authority of the Union is vested in the President, it is invariably exercised by the Prime Minister and his Council of Ministers. It is the Prime Minister who determines and assigns business to various ministers. He presides over cabinet meetings. The policies of the government are formulated and decisions in this regard are made in cabinet meetings. As Chairman of the Council of Ministers, the Prime Minister wields great control and enjoys a pre-eminent position in influencing cabinet decisions.

He is also the link between President and the Cabinet. It is the Prime Minister who keeps the President informed of the decisions of the Council of Ministers.

It is one of the important functions of the Prime Minister to coordinate the policies of the various departments and ministers. He shapes the domestic and foreign policies of the country. He therefore, guides the various ministers. He exercises general supervision over all the departments. He can ask any minister to resign.

Inside Parliament, the Prime Minister is the leader of the Lok Sabha and the chief spokesman of the government. He is responsible for piloting all important legislations, affecting policy matters. The speaker in consultation with the Prime Minister fixes the agenda of the Lok Sabha. The Prime Minister can also advise the President to dissolve the Lok Sabha.

The Prime Minister of India is also the Chairman of the Planning Commission.

CABINET SECRETARIAT

The Cabinet Secretariat has an important coordinating role in the process of decision making at the highest level. It operates under the direction of the Prime Minister. Its functions include submission of cases to the cabinet and its committees and preparation of the records of decisions taken and of follow-up action on their implementation. It also serves the committee of secretaries which meet periodically under the Chairmanship of the Cabinet Secretary to consider and advise on problems requiring inter-ministerial consultation and coordination. It formulates the Rules of Business and allocates the business of the government to

the ministries and departments under the direction of the Prime Minister and with the approval of the President.

COUNCIL OF MINISTERS

The constitution provides for a Council of Ministers to aid and advise the President. It comprises of ministers who are members of the cabinet and ministers of state. The actual executive authority is discharged by the Council of Ministers under the leadership of the Prime Minister; all of them are collectively responsible to the Lok Sabha. They exercise the executive powers which are vested in the President. They are the real policy making body. Every member of the Council of Ministers must either be a member of Lok Sabha or Rajya Sabha or he must get elected to a seat in either house within six minths of his appointment as a minister. If he fails to do so, he has to resign from the Council of Ministers. There are three different categories of ministers in the Council of Ministers : (1) Cabinet Ministers (2) Ministers of State—not members of Cabinet, and (3) Deputy Ministers. There are also Parliamentary secretaries who are not ministers. They assist the ministers to whom they are attached in their parliamentary work. They have no independent powers or functions.

The Cabinet occupies a pivotal position in the Council of Ministers. The Cabinet is only an informal body and does not include all ministers. It is a part of the Council of Ministers. But the constitution does not speak of the Cabinet. A Cabinet Minister is often assisted by a Minister of State. Generally each department has an officer designated as Secretary to the Government of India to advise a minister on policy matters and general administration. The cabinet has enormous administrative, legislative and financial matters. It frames the general executive policy of the Union government. Each of its members is in charge of one or more departments. It also prepares legislation for the Parliament. It prepares the budget, thereby determining the sources of revenue and avenues of expenditure. It also frames the foreign policy of the government. As stated earlier also, the Cabinet is meant to aid and advise the President. It is obligatory on the part of the President to accept the advice. As already seen, every decision of the Cabinet is made in the name of the President.

The ministers attend the meetings of Parliament, move and pilot bills, participate in debates, answer question and explain their policies. According to Article 75 of the constitution, the Council of Ministers is collectively responsible to the Lok Sabha. The Council of Ministers remains in power only so long as it enjoys the confidence of the house in terms of the support of a majority of its members. It works as a team and its members sink or swim together. If the Lok Sabha passes a no-confidence motion, the whole Council of Ministers has to go. Collective responsibility is an important element of the parliamentary system of government. Without collective responsibility of the ministers to parliament, the parliamentary system in the country cannot function effectively and efficiently. Whatever decisions are taken by the cabinet collectively, they are to be supported by all ministers. If any minister is in disagreement with the decision of the cabinet, he has to resign.

This takes us to another kind of responsibility which every individual minister has. All ministers are individually responsibly for what happens in their respective minisries or departments. The ministerial responsiblity is enforced through the Prime Minister. It is under his leadership and general guidance that the ministers function. One could recall here a wellknown case of Shri Lal Bahadur Shastri who owned moral responsibility for a rail accident and resigned as the Minister for Railways.

The Council of Ministers works under the leadership of the Prime Minister. As seen earlier also, the Prime Minister enjoys vast powers. He selects members of the Council and distributes portfolios among them. He presides over the

meetings of the cabinet. He can change memebers of the Council by demanding resignation of any one and appointing any other minister in his place. If he resigns, the Council is deemed to have been dissolved. In the case of difference of opinion between any member of the Council and Prime Minister, it is the former who must resign from the Council or yield. The supremacy of the Prime Minister provides necessary guarantee for the collecive responsibility of the Council. He is the chief spokesman of the government in Parliament. As stated earlier also, the Prime Minister is the main link between the Council and the President. He keeps the President posted with information about governmental affairs.

But the Prime Minister is only a leader and not a boss. Normally the members are drawn from the same political party and all of them are improtant party leaders. The Prime Minister cannot maintain his position without their cooperation and goodwill.

The Council of Ministers holds office during the pleasure of the President.

EXECUTIVE AT THE STATE LEVEL

The pattern of executive at the State level follows that of the Union. Here, of course, the role of the President is performed by the Governor. The office of the Chief Minister is a prototype of the office of the Prime Minister. There is also a Council of Minister headed by the Chief Minister whose jurisdiction of activities is confined to the subjects given in the state and the concurrent lists.

THE OFFICE OF THE GOVERNOR

As stated earlier also, the system of government in the state closely resembles that of the Union. The state executive consists of the Governor and a Council of Ministers with a Chief Minister as its head. The Governor is appointed by the President and holds office during his pleasure. He usually holds office for a term of five years unless he resigns earlier. His period can be extended until his successor enters upon his office. He can alse be removed earlier by the President, if he so desires. The Governor is assisted by a Council of Ministers with a Chief Minister at the head of the Council to aid and advise the Governor. The Chief Minister is appointed by the Governor and other ministers are also appointed by him on the advice of the Chief Minister. Ministers hold office during the pleasure of the Governor. The Council of Ministers is collectively responsible to the Legislative Assembly of the state.

The Governor is a constitutional head of the state. The real and effective authority with respect to administration of the state is exercised by the minsters.

For being appointed a Governor, a person must be a citizen of India, must have completed 35 years of age, must not hold any other office of profit and must not be a member of either house of Parliament or any of state legislature. In case he is a member of legislative body in India, he will have to resign before taking over the charge of his office.

The Governor draws a monthly salary of Rs. 35,000 per month plus other allowances befitting his position and status. He is provided with free residential accommodation with all other facilities.

The Consititution lays down that the executive powers of a state shall be vested in the Governor and all executive action shall be taken in his name.

As stated earlier also, the Governor appoints the Council of Ministers with the Chief Minister as its head. They hold office at his pleasure. He also appoints important officials of the state like the Advocate General, the Chairman and members of the State Public Service Commission and so on. The judicial appointments below those of judges of High Courts, etc., are also made by him. He is consulted by the President while making appointments of High Court Judges.

The Chief Minister must communicate to the Governor all decisions of the Council of Ministers relating to administration and legislation.

The Governor summons, adjourns and prorogues the state legislature. He can dissolve the legislative assembly which is the lower house of the stae legislature. All bills passed by the legislature must be referred to him for final approval. He may reserve bills for the consideration of the President. At the commencement of the first session of the state legislature every year, the Governor delivers an address. He also enjoys the powers of promulgating ordinances during the recess of the state legislature. But the ordinances cease to be effective six weeks after the re-assembly of the legislature unless approved earlier. The Governor nominates one sixth of the total strength of the Legislative Council from amongst distinguished people in the sphere of science, arts, literature, cooperative movement and social services.

No money bill or financial measure or amendment of financial matters can be introduced in the legislative assembly without the recommendations of the Governor. The Governor sees that budget is laid before the state legislature every year. But the Governor must give his assent to a money bill. He has no veto power in case of money bills.

The Governor has the power to pardon, commute or suspend sentence of any person convicted of any offence relating to the executive power of the state. But he cannot grant pardon in case of death sentence.

Certain discretionary powers are given to the Governor in the case of Sikkim, Nagaland, tribal areas of Assam, Meghalaya and Tripura to safeguard the tribal way of life of the people in the area. All governors, while discharging such constitutional functions as appointment of Chief Minister of a state when no party commands majority in the state legislature, reservation of state bills or sending a report to the President about the failure of the constitutioanl machinery in a state, have to exercise their own judgement.

During emergency, the Governor can act regardless of the advice of his ministers. But he must act according to the directions of the President.

Thus, though the Governor is a constitutional head of the State during normal times, he acts as the agent of the Centre during periods of emergency in a State.

Position of the Governor

As in the case of the President of India, so in that of a State Governor, there is a gap between theory and practice. Theoretically, Governor is the source of all executive action and is armed with an imposing array of powers. But in practice, he is a constitutional ruler and has, normally, to act on the advice of his ministers. But, under normal circumstances, the constitution gives few discretionary powers to the Governor as well.

COUNCIL OF MINISTERS

There is also Council of Ministers headed by the Chief Minister at the state level. It is expected to work on the pattern of the Union Government.

The Governor appoints the Chief Minister. In making his choice, the Governor has to keep in view the capacity of the person chosen by him to command a stable majority in the Legislative Assembly of the state. The other ministers are to be appointed by the Governor on the advice of the Chief Minister. A person who is not a member of the state legislature may be appointed a minister, but he ceases to hold office after six months unless within that period he has been elected to the state legislature. Portfolios are distributed among the ministers by the Governor on the advice of the Chief Minister.

The Chief Minister is the real head of government of the State. It is he who selects the ministers and distributes portfolios to them. It is on his recommendation that the ministers are appointed by the Governor. If he is not satisfied with any minister he can ask him to resign or get him dismissed by the Governor.

The Chief Minister presides over the cabinet meetings. He guides and coordinates the work of ministers. The Chief Minister is the sole channel of communication between the ministers and the Governor. Being the leader of the majority party he is also the leader of the majority party and of the State Legislative Assembly. He is the chief spokesman of the policies of his government, both inside and outside the state legislature.

The Council of Ministers constitute the real executive in the state. Although the administration is carried on in the name of the Governor, actual decisions are normally made by the ministers. Under ordinary circumstances, the Governor is to follow their advice. It is the duty of the Chief Minister of a state to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the state and proposals for legislation and to furnish such information concerning the above as the Governor may call for. If a matter has been decided by an individual Minister, the Governor may require it to be submitted to the Council of Ministers as a whole. The constitution says that the ministers are to hold office during the pleasure of the Governor. Thus, in theory, the Governor may dismiss a minister if he so likes. However, in view of the collective responsibility of the Council of Ministers to the Legislative Assembly in a State, he is not likely to use this power in actual practice.

> Find out any one state where Governor and the Chief Ministers have differences over certain issues. Find out what these issues are.

The constitution defines the position of the Council of Ministers in relation to the state legislature by providing that the Council of Ministers is collectively responsible to the Legislative Assembly of the State. This means that ministers can remain in office only if they enjoy the support of a majority of the members of the state legislature. They have a right to attend its meeting and to participate in its proceedings. They also move and pilot government measures.

The State Legislature can supervise and control the work of the ministers in a variety of ways. Members of the legislature can put questions, followed by supplementary questions, in order to elicit information. They can ventilate public grievances against the administration during budget debates. They can move adjournment motions on matters of urgent public importance in order to bring to light and criticise the errors of omission and commission made by the ministers or their departments. Finally, on account of the principle of collective responsibility, the Legislative Assembly can remove Council of Ministers by refusing to pass a government bill supported by the ministry, by reducing budgetary demands or by passing a direct vote of no-confidence against it.

In short, the legislature can make or unmake ministries. Ministers are also able to influence and control the legislature. They are leaders of the majority party. With the backing of this majority, they can, normally, get their legislative proposals carried. If party discipline is strict and the party majority in the legislature is absolute and clear, the ministry has little to fear. It may even use the legislature as a mere registering body. It is only if the government's majority is precarious or unreliable or there is a serious split in the party ranks that the legislature can dislodge the Council of Ministers.

Selection of Class Monitor

(Simulation of President's election through single transferable vote system on the basis of proportional representation)

The teacher can divide the students according to the following model :

1. Number of students in the class : 45
2. Division :
   (i) Students from roll nos. 1 to 25 will represent the states.
   (ii) Students from roll nos. 26 to 35 will represent the parliament.
   (iii) Students from roll nos. 36 to 40 will be the candidates.
   (iv) The rest of the students will assist in arranging the election.
3. Weightage of condidates vote : Every candidate will give one vote and the vote will be valued as follows :
   (i) Representatives from the States : The value of the vote of each student from roll nos. 1 to 25 will be equal to his roll number, e.g. the value of the vote of the student at roll no. 14 will be 14, that of the student at roll nos. 20 and 25 will be 20 and 25 respectively. The value of the total votes of the States or the total of voters from numbers
   1 to 25 will be the total of figures
   1 to 25 This will come to 325.
   (ii) Representatives of Parliament : The value of the votes of students from 26 to 35 will be equal to that of the states viz. 325, as above. Thus the value of the vote of each M.P. will be $\frac{325}{10}=32.5$
4. Minimum figure for being declared elected : $\frac{325+325}{2}+1=\frac{650}{2}+1=326$
5. Format of Ballot paper

Candidate	Preference of voter
A	3
B	1
C	5
D	2
E	4

6. **After the election, counting of votes should be done on the basis of the preferences and then the result should be declared. The teacher will have the cooperation of the class and he/she will give the guidance.**

EXERCISES

1. **How is the President of India elected ?**

2. Discuss the executive and judicial powers of the President.
3. Explain emergency powers of the President.
4. Discuss the position of the Prime Minister.
5. Distinguish between the cabinet and the Council of Ministers.
6. Describe the powers and position of the Governor.
7. Write short notes on the following :
   (a) Impeachment of President
   (b) Collective responsibility
   (c) Individual responsibility
   (d) Vice-President

CHAPTER VII

Judiciary : A General Profile

The security and welfare of the average citizen depend on the prompt, certain and impartial administration of justice. It is the judiciary which is the shield of innocence and the impartial guardian of every private civil right. Since administration of justice is the exclusive function of the modern state, the judiciary occupies a significant place among the organs of government. In fact, the freedom of the individual becomes meaningless unless the mechanisms of justice are so constituted as to ensure impartial administration of justice.

The chief functions of the judiciary are to ascertain and decide upon rights to punish crimes, and protect the innocent from injury and usurpation. In all countries the judiciary applies existing law in individual cases. But in countries where laws have been codified, as in England and the United States, the judges not only interpret laws but also make them. Where the letter of the law is silent, the judges are called upon to attach to it the meaning which may be considered reasonable and consistent with the general principles of morality and public policy. The decisions given by them become precedents for future cases of similar type. The functions of interpretation call for high legal ability because each decision given becomes a precedent determining for the future the respective powers of the several branches of government, their relation to one another and to individual citizens. In short, the nature of judicial function demands that the judges ought to possess great legal acumen, faithfulness to the constitution, firmness of character and, above all, honesty and independence.

In monarchical states the independence of the judiciary is essential to protect the people from the arbitary interference and oppression of the ruler and also to prevent the judges from being reduced to a position of subserviency to the executive. In republics, the independence of the judiciary is also necessary for protecting the constitution and laws against encrochments in a partisan spirit and in terms of tyranny of action. When grave political issues excite partisan feelings, the courage and uprightness of the judges become supremely valuable to the nation.

Structure

In the judicial system of every country there are generally two sets of courts, namely civil and criminal. The civil courts have a supreme court at the head and so also the criminal courts. Below the highest courts, there are lower courts with definite jurisdiction both pecuniary and territorial.

Functions

The primary function of the judiciary is to hear and decide disputes. In accordance with the recognised procedure, namely, production of evidence, examination of witnesses, etc., the courts determine the facts of a case. Once the facts are ascertained, the courts are simply to apply the appropriate law and give a decision.

Very often the judges find it difficult to select the appropriate law for application to a particular case. Owing to ambiguity of language, the meaning of law may not be very clear. The judges are then called upon to decide what was the original intention of the legislature. More importantly, a new situation may arise which is not covered by existing laws. In such an event it is the duty of the judges to call for a judicial legislation. Such judicial legislation is characteristic of common law in states like Great Britain.

The judiciary in some countries also takes part in the administration of law as it is called upon to give an authoritative interpretation of the law even in the absence of any actual dispute. Thus, in Canada and India, the Supreme Court may give advisory opinions on constitutional questions which would enable the executive to settle constitutionanl issues before administrative enforcement of a legislation starts.

Normally, the courts are set in motion only when someone comes forward complaining that a wrong has been done. The courts are usually found to perform certain other miscellaneous functions which are, strictly speaking, non-judicial in character. Thus, for instance, the courts sometimes grant licences of deceased persons and appoint receivers.

In a federation, the judiciary is called upon to play a vital role. As a federation involves division of powers between a central government and number of state governments, each of which is supreme within its own sphere, the courts, in such a situation, are to see that the governments work within their constitutional limits and respect them.

Judicial review

The doctrine of judicial review is a unique innovation of American constitutional genius. It refers to judicial competence to review executive enforcement of legislative enactments. Although judicial review is linked up with a federal system, there is hardly any necessary connection between the two.

A constitution may embody the institution of judicial review either explicitly or implicitly. In the United States, the principle of judicial review is inherent in judicial power. In consequence, there has developed in the United States the doctrine of judicial supremacy. The supremacy of the constitution of India is implied, as all the governments operate under the authority of the constitution. Obviously, therefore, if any institution transgresses the limits set by the constitution, the courts would have the power to examine such acts. Any action either by the legislature or by the executive in contravention of the provisions of the chapter on Fundamental Rights can be declared void. The scope of the judicial review in India is, however, limited. The Supreme Court of India, while interpreting a law, will not itself legislate. It will not question the reasonableless of any law except where the constitution has expressly authorised the court to exercise the power. Normally, it works according to procedure esteblished by law.

No doctrine of judicial review has been subjected to serious criticism. It tends to elevate the judiciary to the rank of super-legislature. Strangely enough, the Supreme Court of the United States, sometimes, through a simple majority of five to four, sets aside a measure passed by an overwhelming majority of the elected representatives of the people. Further, the exercise of reviewing power by the supreme court has obstructed the passage of progressive social legislation in the United States.

Despite its blemishes, the institution of judicial review has also its utility. Under a written

sixty-two. A long judicial career naturally allows the judges to become acquainted with judicial precedents.

The security of tenure is essential for the independence of the judiciary. The judges should, therefore, not be removed on flimsy grounds. If they fall victims to the whims and fancies of the executive, they can hardly serve the ends of justice and inevitably tend to lean on the executive for security. Thus a good behaviour tenure means in Great Britain that the judges shall bot be removed by the Crown except upon an address of both houses of Parliament. In the United States the usual practice is to remove the judges through impeachment. In India a judge of the Supreme Court or a High Court can be removed only on the ground of proved misbehaviour or incapacity.

In order to ensure independence of judiciary and eliminate the possible misuse of authority, it is advisable that the judges should not practice after retirement. Any judge who practices law after retirement may not remain quite fair in the discharge of his duties while in service. This hampers the independence of judiciary. The judges of Supreme Court of India are not therefore allowed to practice after retirement.

Qualification

The nature of the judicial function entails technical competence. Hence the judges must have requisite qualifications. The usual practice in almost all the countries is to appoint judges from among the distinguished members of the legal profession. In India, for instance, the constitution provides that to be a judge of the Supreme Court a person must have been a judge of a High Court of at least five years standing or the person concerned is, in the opinion of the President, a distinguished jurist.

Adequate salary

An adequate remuneration of the judges is a necessary pre-condition of the indepenence and integrity of the judiciary. Properly qualified and efficient men will not be attracted to the bench unless they are assured of a handsome salary. Further, an ill-paid judge may will be susceptible to corrupt practices. Thus the Indian constitution has fixed the salary of the Chief Justice of the Supreme Court at Rs. 10,000 per month and that of the judges at Rs. 9,000 per month. Also, the salaries, allowances and other rights and privileges of a judge cannot be altered to his disadvantage. However the salaries of the judges in India may be reduced by Parliament during a financial emergency proclaimed by the President.

SAFEGUARDS AGAINST EXECUTIVE ENCROACHMENTS

The administration of justice which is the vital task of the judiciary is largely determined by the degree to which the judiciary is immune from executive control. It is the object of judicial function to save the citizens from executive encroachment. Under British rule in India, it was abundantly made clear by the role of the district magistrate who combined in himself the dual functions of an executive and a judge. Even the subordinate magistrates who used to try the bulk of the criminal cases were directly under the control of the executive authority of the district magistrate. In such circumstances the judges could hardly hold the scales of justice even handed.

To ensure the independence of the judiciary, the Indian constitution took special care. The constitution authorised the Supreme Court to have its own establishment over which it would have complete control. Thus the officers and servants of the Supreme Court are appointed by the Chief Justice or any other judge or officer whom he may direct to do so. The court determines the conditions of service of these officers and servants. Also, all the expenditures pertaining to the maintenance of the court establishments are charged on the Consolidated Fund of India. The constitution has further ensured the independence of the court by making all the actions

constitution from which the organs of government derive their powers, there must be a final arbiter to see that each of the organs keeps to its constitutionally demarcated area. Judicial review affords protection against legislative excesses and executive arbitrariness. There is an additional reason for judicial review in a federal system. There is a need for an authority to keep both the national and state governments within their proper constitutional spheres, to resolve conflict between them and settle disputes.

Independence of judiciary

The independence of the judiciary depends upon three factors : (1) the incentives to meritorious men to join it; (2) the method of selecting them; and (3) guarantees for the independence of the judges when appointed. The inducements are good salary, permanence in office and social status. The tenure of judges in the majority of modern states is permanent. They hold office in "good behaviour" till not found guilty under any laws of the country.

As democracy necessarily implies popular control of the institutions of government. Thus complete independence of the judiciary may seem to be apparently impossible and undesirable. The very nature of judicial functions entails independence of the judiciary. The administration of justice is its vital task. Justice which is the soul of the state must be administered without fear or favour. Hence the judiciary should remain as far as possible outside politics. In interpreting laws and administering justice, the judges must be impartial and honest. Integrity, probity, and wisdom are some of the high qualities which should characteristise the judicial mind. The vital need is to organise the judiciary properly. The appointment and tenure of the judges, their relations to other agencies of government—these and other similar considerations are important in maintaining the independence and integrity of the judiciary.

ORGANISATION OF JUDICIARY

The independence of the judiciary in a democracy depends upon a number of factors. The degree of independence enjoyed by the judiciary is largely dependent on the mode of its organisation. In the modern states the judiciary may be organised in three different ways: (1) it may be elected by the legislature; (2) it may be elected by the people; or (3) it may be appointed by the executive.

The system of popular election exists in many of the states in the USA. The obvious defect of the system is that the masses hardly possess the requisite capacity to test the qualifications of the person which may make him an efficient judge. They often elect incapable judges who thus appointed seek to win public approval and as such make themselves poor judges indeed by playing to the wishes of the populace. Election by the legislature is a shade better, though open to similar defects. In the election by legislature the party politics come into play. It thus discourages the qualities of fairness and reasonablenss. In such a situation, judiciary may function under the control of the legislature. The system of appointment by executive has been found by practice to be most satisfactory, if combined with provisions for independence of the judiciary after appointment in terms of security of office, etc. This system has been adopted in most of the states.

Tenure

Regarding the tenure of the judges, opinions and practices widely differ. In most of the American states, the judges hold office for limited terms. The federal judges in the United States, however, hold office during good behaviour. Although the Indian constitution does not provide for life tenure, the existing provision provides for a long tenure. For the Supreme Court judges hold office until they complete the age of sixty five and for the High Court judges this limit has been set at

and decisions of the judges in their official capacity immune from criticism.

As one of the chief functions of the judiciary is to protect the citizens from executive encrochment, it must be separated from the executive. The executive, as in Great Britain or India, may have the power of appointing the judges; yet the power of dismissal of judges must not be entrusted to the executive authority.

Sometimes the executive is permitted to consult the judges and seek advisory opinion of the courts on constitutional questions. For example, under the Indian constitution, the President has the power to consult the Supreme Court. Such provisions, the critics argue, might bring the executive quite close to the judiciary and unduly strengthen it. Still, however, in modern times the executive which is burdened with heavy responsibilities must necessarily consult the courts to ensure successful implementation of policies.

It is almost a recognised public law that the chief executive should be exempted from the jurisidction of any court or magistrate so long as he remains in office. For instance, the President of the USA is immune from judicial control. But he is responsible to the Senate when that body becomes a court for the specific purpose of trying the President in cases of impeachment. But, as soon as he becomes an ordinary citizen divested of public office, he is subjected to the control of the judiciary as a private individual. At that time, the orders and regulations issued by the President may be scrutinized and even declared invalid if anybody questioning their validity applies to the court for redress. The subordinates of the chief executive, however, are not exempt from the jurisdiction of the judiciary. The courts may freely exercise control over them whenever they are found guilty of violation of rules of the constitution. Even the fact that they acted, according to the orders of the President, cannot be a defence in their favour. Thus it is evident that as the chief executive has to carry on administration largely through the subordinates, the judiciary has indirectly a large measure of control on the activities of the executive.

Judicial independence of the executive, it is sometime suggested, is violated when the executive is given the prerogative of pardon. In India, for instance, the power to grant pardons, etc., has been given to the President and so also to the Governor in a State.

It has been contended that the executive should not be given supreme authority as that may lead to tyranny. It has also been argued that, if the executive is controlled by the judiciary, the efficiency of the executive may suffer. If a water-tight division of function is attempted, unnecessary conflicts between the judiciary and the executive are bound to occur. The need, therefore, is of balanced partnership between the two.

JUDICIARY AND THE LEGISLATURE

According to the principle of separation of functions, the legislature makes laws and the judiciary interprets and applies those laws to specific cases. But sometimes one usurps the functions of the other and as such has some controlling influence on its activities.

In certain countries the judiciary is entitled to declare the laws passed by the legislature as null and void when these laws are found to be in excess of the powers vested in the legislature by the written constitution. In the USA the judiciary is really the coustodian of the constitution. In England and France, however, any law enacted by the legislature cannot be invalidated by the law courts, for in these countries the political sovereignty of the people as expressed through the legislature is regarded as inviolable. Besides, the judiciary by its interpretations of law and their application to particular cases creates rulings and conventions which are practically regarded as laws.

Legislature exercises certain functions of the judiciary. In England, the Upper House of the

Legislature, *i.e.*, the House of Lords, acts as supreme court of appeal. The Senate in the USA constitutes itself into a tribunal to try executive officials charged by the lower house of the legislature.

Usually, under a written constitution which defines the scope of legislative authority, the judiciary is authorised to indicate the limits of the latter. In a federation, on the other hand, the judiciary which is the custodian of the constitution determines the area of competence of different authorities under the constitution. Whatever might be the merits of judicial supremacy in a federation, the judiciary in a unitary state should not be empowered always to thwart the will of the legislature. A written constitution is sure to reflect the spirit of the time when it was framed. To deprive the legislature of the opportunity to change the laws in accordance with changes in circumstances is to block the way to progress.

EXERCISES

1. What do you understand by 'Independence of Judiciary'? How can it be secured?
2. What are the different ways in which the judiciary is organised?
3. Enumerate any three functions of judiciary in the modern state.
4. Explain any two merits of Judicial Review.
5. Discuss the relationship of the following :
   (a) Judiciary and Executive
   (b) Judiciary and Legislature

CHAPTER VIII

Judiciary in India

JUDICIARY HAS an important position in India's federal system. It acts as an arbitrator between the two sets of government, the Union and the States. But unlike other federations, India has a single, unified Judicial system. At the apex is the Supreme Court of India. Then there are High Courts at the state level and subordinate courts below them.

Supreme Court

At the apex of the judiciary in India there is Supreme Court of India, consisting of a Chief Justice of India and 25 other judges appointed by the President. The Parliament has the power to prescribe the number of judges. It is the highest and final court of appeal in the country.

Qualifications and emoluments

A judge of the Supreme Court is appointed by the President after consultation with the Chief Justice of the Supreme Court and holds office until the age of 65.

For appointment as a judge of the Supreme Court a person must be a citizen of India and must have been at least for five years as judge of a High Court or of two or more such courts in succession for at least ten years or he must, in the opinion of [illegible] be a distinguished jurist. Provision has also been made for the appointment of a judge of a High Court as *adhoc* judge of the Supreme Court and retired judges of the Supreme Court or of High Court to sit and act as judge of the Supreme Court. The constitution debars a retired judge of Supreme Court from practising in any court of law or before any other authority in India. The Chief Justice of India receives a monthly salary of Rs.10,000 and other judges of the Supreme Court Rs.9,000.

> Name the present Chief Justice of India and his two immediate predecessors.

Removal

The judges of the Supreme Court can be removed from office by the President only after an address by each house of Parliament, supported by more than two thirds majority of members present and voting, has been presented to the President in the same session for removal of the judges on the ground of proved misbehaviour or incapacity.

Jurisdiction

The Supreme Court in India exercises original, appellate and advisory jurisdictions.

Its exclusive *original jurisdiction* deals with disputes (1) between the Government of India and one or more states; (2) between the Government of India and any state or states on the one side and one or more states on the other, or (3) between two or more states *inter se*, if and in so far as the dispute involves any question on which the existence or extent of a legal right depends. However, disputes arising out of the provisions of treaties with the former Indian states or to which any such states is a party are excluded from the original jurisdiction of the Supreme Court.

The *appellate jurisdiction* of the Supreme Court covers three types of cases : (1) constitutional, (2) civil, and (3) criminal. In constitutional matters, an appeal lies to the Supreme Court from the decision of a High Court whether in civil or criminal proceedings if the High Court certifies that the case involves a substantial point of law as to the interpretation of the constitution. In civil cases, an appeal lies to the Supreme Court from the judgement, decree or final order of a High Court if the High Court certifies that the appeal involves a substantial question of law. In criminal cases, appeal lies to the Supreme Court from the decision of a High Court if the High Court (a) has on appeal reversed the order of acquittal of an accused person and sentenced him to death, (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or (c) certifies that the case is fit for an appeal to the Supreme Court. The Supreme Court can itself give special leave to appeal from the judgement of any court or tribunal in the territory of India. Parliament can, by law extend the appellate jurisdiction of the Supreme Court.

The Constitution has also given the Supreme Court certain *advisory functions*. The President can refer to it any question of law or fact which is of considerable public importance for its opinion. Under this jurisdiction even those disputes which involve an interpretation of the treaties and agreements of the former Indian states can be referred to the Supreme Court for its opinion.

> Mention one case about which the President of India sought the advice of the Supreme Court.

An important function of the Supreme Court is to act as the *guardian of the Constitution*. The Constitution has clearly defined the functions of each organ of the government each organ has to function according to the provisions of the Constitution. Every law enacted by Parliament or a State legislature should be in consonance with the provisions of the Constitution. To check this Supreme Court has the power of *judicial review*. Under this power it can examine the legislative enactments and their constitutionality. If any law violates the Constitution, the Supreme Court can declare that law invalid. Thus, the Supreme Court can examine the validity of any order of the executive or any law of the legislature. It is in this sense that it has been described as the guardian of the Constitution.

The Supreme Court is also the *guardian of the liberties and fundamental rights* of the citizens of India. The Court can declare a law passed by any legislature null and void if it encroaches upon the fundamental rights guaranteed to the people by the Constitution. The Supreme Court can issue writs in the nature of habeas corpus, mandamums, prohibition, quo warranto and certiorari and the like for the enforcement of fundamental rights. The Supreme Court has been empowered to review laws passed by the legislature and declare them unconstitutional if they contravene any provision of the Constitution. It is for the Supreme Court to declare what the provisions of the Constitution mean. The Supreme Court has power to review any judgements or order made by it earlier. In other words, the Supreme Court is the custodian of the Constitution and the highest forum for its interpretation.

Supreme Court is a *court of record*. Its decisions and judicial proceedings may be presented before any court for the purpose of evidence. They are cited as precedents. They can not be challenged in any court. The Court has the power to punish for its own contempt.

The High Court

At the state level, the highest court is the High Court. It consists of a Chief Justice and some other judges. The number of judges is to be determined by the President of India from time to time.

The states of Andhra Pradesh, Assam (in common with Nagaland, Meghalaya, Manipur and Tripura, Arunachal Pradesh, and Mizoram), Bihar, Gujarat, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab (in common with the state of Haryana and the union territory of Chandigarh), Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and Sikkim have each a High Court. The jurisidction of Bombay High Court extends to Goa also. There is a separate High Court for Delhi. For the Andaman and Nicobar Islands the Calcutta High Court, for Pondicherry the High Court of Madras and for Lakshadweep the High Court of Kerala are the highest judicial authorities. In Dadra and Nagar Haveli the High Court of Bombay is the relevant High Court. There are 18 High Courts in India.

The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of the Supreme Court and the Governor of the State concerned. The procedure for appointing other judges is the same except that the Chief Justice of the High Court concerned is also consulted. They hold office untill they attain the age of 62 years and are removable from office in the same manner as a judge of the Supreme Court.

Qualifications and emoluments

A person to be appointed as judge of a High Court must possess certain specific qualifications. He must be a citizen of India. He must have held a judicial office in the territory of India for at least ten years or he should be an advocate of a High Court or of two or more such courts in succession for at least ten years. Alternatively, he, in the opinion of the President, has to be a distinguished jurist.

The Chief Justice of a High Court in a state draws a salary of Rs.9,000/- per month and other judges get Rs.8,000/- per month, apart from various other allowances. The service conditions of the judges cannot be altered to their disadvantage during the course of their service except in the case of financial emergency. Like the judges of Supreme Court, the judges of the High Court have been given complete security of service. A High Court judge may be transferred from one High Court to another by the President after consultation with the Chief Justice of India.

Jurisdiction

The High Courts have *original jurisdiction* in such matters as writs and appellate jurisdiction over all subordinate courts in their jurisdiction. Every High court has the power to issue to any person or authority, including any government within its jurisdiction, directions, or orders including writs which are in the nature of *habeas corpus, mandamums, prohibition, quo warranto* and *certiorari* or any of them for enforcement of fundamental rights conferred by Part II of the Constitution and for any other purpose.

Election petitions challenging the elections of Member of Parliament or Member of State Legislative Assembly or other local bodies can be filed in the concerned High Court.

The High Courts, have *appellate jurisdiction* in both civil and criminal cases against the decisions of lower courts. They can decide revenue cases also. Appeal can be filed against the decision of a sessions judge if the accused has been sentenced to imprisonment for 7 years or more. Capital punishment given by sessions judge is not executed unless it is confirmed by the High Court.

In the State, all the Courts and Tribunals work under the High Court. The High Court ensures that the Courts and tribunals do not excercise powers beyond their jurisdiction. The Chief Justice of a High court is consulted in the appointment and promotion of District and Sessions Judges and other appointments in judicial services in the State. The High Court exercises both judicial and administrative superintendence over the subordinate Courts. The High Courts, like the Supreme Court, can declare any law of the States or order of the executive as invalid, if it is against the provisions of the Constitution or there is an infringement of Fundamental Rights of the people.

Every High court is a *Court of record.* Subordinate Courts are bound to follow the decisions of the High Courts. Its proceedings and decisions are referred to in all future cases. It has the power to punish for contempt of Court.

A High Court stands at the apex of the judicial system in a State. It supervises the working of all subordinate courts and frames rules and regulations for the transaction of business. It can also examine the records of its subordinate courts. However, it does not have any power of superintendence over any court or tribunal under any military law.

Subordinate courts

The organisation of subordinate courts throughout the country is generally uniform. There are two types of law courts in every district, civil and criminal courts. They function under the superintendence and control of the High Court of the State.

The Court of the District Judge is the highest Civil Court in a district. This court decides the civil and criminal cases. When the judge decides the civil cases he is called the District Judge and when he deals with criminal cases, he is called the Sessions Judge. He is appointed by the Governer of the State in consultation with the Chief Justice of the High Court. The District Court hears the appeals against the decisions of the sub-judges. It hears cases relating to the disputes of property, marriage and divorce. The civil courts exercise jurisdiction over such matters as guardianship of minors and lunatics. Besides the District Court, there are Courts of sub-judges, Munsiff Courts and Courts of small causes. In a district criminal cases are heard by the Court of Sessions Judge for his court is competent to award punishment sanctioned by law. It hears appeals from the subordinate criminal courts. Below the District and the Sessions Courts are the Courts of First Class Magistrate. In metropolitan cities like Delhi Bombay, Calcutta and Madras these magistrates are called Metropolitan Magistrates. Besides this there are courts of second class and third class megistrates also.

> Find out the names of the various kinds of subordinate courts in your district.

Revenue courts

Land revenue is an important source of income of the Government. The Board of Revenue is at the apex of all the revenue courts. Under the Board of Revenue are the Commissioner's Court, Court of Tehsildar and Nayab Tehsildar. Each district has separate courts for its land revenue system. Every dispute related with land revenue first comes before the court of Tehsildar. An appeal against the decision lies in Court of Collector or Deputy Commissioner. Thereafter an appeal against the decision of Deputy Commissioner's court can be made in the Court of Commissioner.

Further appeals can be made to the Board of Revenue which is the highest court of land in revenue matters.

Lok adalats and public interest litigation system

For providing speedy and economical justice to the poor and the downtroden, some new

programmes have recently been introducted in the country like legal aid, Lok Adalats and public interest litigation. The basic idea behind the scheme of Lok Adalats is to eliminate delay in imparting justice and to speed up clearance of pending cases as soon as possible. The Lok Adalats resolve cases which have not yet gone to the courts or are pending in the courts. Lok Adalat which met in Delhi in January 1989 decided 531 cases in a single day.

With the help of your teacher find out in which year did the first Lok Adalat met.

The Supreme Court has also opened a new chapter on public litigation, where merely on a post card or application the complaints are registered and necessary orders passed. The grievances of weaker sections, bonded labourers, women and children, have been given due importance under this scheme.

Independence of judiciary

Independent judiciary is necessary for the protection of rights and freedom of the people. The Constitution of India has made provisions to ensure the *independence of judiciary* and to keep judges away from political and other influences. The judges are appointed by the executive on the basis of the prescribed qualifications and legal competence. They can not be removed from their office at the whims of the executive. Judges are appointed for a fixed period. They do not function under the fear of loosing office. No discussion on the conduct of a judge in the discharge of his official duties can take place in Parliament or state legislatures unless the proposal to remove him from the office is brought before the House. Their salaries and other allowances can not be voted by Parliament of the state legislatures. The objective is to ensure that their behaviour and functioning does not come under criticism. The salaries and allowances cannot be changed or reduced to their disadvantage unless there is a declaration of emergency which the President of India is empowered to do so.

The Attorney-General

The President appoints a person as the Attorney-General, who is qualified to be appointed as a judge of the Supreme Court to advise the Government of India on legal matters and to perform such other duties of a legal character as may from time to time be entrusted to him. He has the right to speak and otherwise to take part in the porceedings of either house and to be a member of any Parliamentary Committee. He is not entitled to vote.

The Comptroller and Auditor-General

There is a Comptroller and Auditor-General of India who is appointed by the President. He is only to be removed from office in the like manner and on similar grounds as a judge of the Supreme Court. He exercises general control over the accounts of the Union and State Governments. His duties and powers are prescribed by a law, made by Parliament. His reports submitted to the President and the Governors of States are laid before each house of Parliament and the legislature of States respectively. He is not eligible for further office either of the Union or State Governments once he has retired.

EXERCISES

1. Describe the composition, jurisdiction and powers of the Supreme Court.
2. Describe the composition, jurisdiction and powers of the High Court.
3. Describe the procedure through which a judge of the Supreme Court can be removed.
4. Write short notes on the following :
   (i) Supreme Court as a protector of fundamental rights
   (ii) Supreme Court as a court of records
   (iii) Subordinate Courts at the district level
   (iv) Revenue Courts
   (v) Lok Adalats

Bureaucracy

Go through all the Writs

Habeas Corpus - If somebody detains me the court will issue a writ to justify on what grounds he has been detained. It is an order issued by a court directing the detaining authority to present the detained person before the court and justify the detention.

Mandamus - Order issued by the superior court to a lower court or tribunal or public authority to perform an act which falls in their jurisdiction or within its duty. It is issued with the purpose of directing the inferior authority to perform such functions the non-performance of which infringes the principal of public interest.

Prohibition - Confine yourself till your jurisdiction don't exceed. It is a writ issued to an inferior authority to prevent the authority from doing something that falls outside its jurisdiction. When if some lower court hears some cases which doesn't fall within its jurisdiction or a state official exceeds the limits of its powers of jurisdiction, the high court can prohibit such a court or the state official from doing so.

CHAPTER IX

Bureaucracy—A General Profile

THE WORK of modern government has two closely integrated aspects. One is formulation of a blue-print for the operation of the government, and the other is conduct of administration within its framework. The political executive controls administration, the detailed working of which is left to the permanent officials of the government, known as civil service or bureaucracy. They implement the policies which the political executive decides.

Bureaucracy or civil service is a body of professional, full-time officials employed to handle the civil affairs of a state in a nonpolitical capacity. Traditionally this body is contrasted with other bodies serving the state on a full-term basis, such as the military service, the judicial service and the police service. A civil servant belongs to a body of persons who are directly employed in the administration of the internal affairs of the state and whose role and status are not political, ministerial, military or constabulary.

Certain characteristics are common to all civil services. Most civil servants become skilled professionals in a branch of public administration. They are regarded as the professional advisors to those who formulate state policy. To this extent every country expects its civil servants to be impartial and neutral, their role being to advise, warn and assist those responsible for state policy and when the policy has been decided, to provide the organisation for its implementation. Customarily, civil servants are protected from public blame or censure for their advice. The act of their administration may, however, be subject to special judicial controls.

Civil services are organised upon standard bureaucratic lines, in which a chain of command stretches in a pyramid like fashion from the highest to the lowest cadre. The command implies obedience to the lawful orders of a superior. The hierarchy of officers is marked by fixed positions, with well defined duties, specific powers, salaries and privileges.

The term civil service was first used in British administration in India and was popularised by Sir Charles Trevelyan a little more than a century ago. When the principle of open competitive examination was introduced in Great Britain the phrase "civil service" was also mentioned over there and was applied to the officials serving the state in a professional capacity, except for those in the military and judicial services.

As used in Great Britain and to a certain degree elsewhere, the term "civil service" refers to officials serving the central government or its agencies rather than local units of government.

Basically, however, the term civil service identifies the expanding corps of trained manpower that must be maintained by every modern polity to carry out government functions. Invariably, the civil service plays a crucial role in the operation of modern government systems whether in western or non-western states. In all of them, the civil service is the core of modern government.

Requisites

Certain requisites can be identified for the establishment and maintenance of any civil service system. Some kind of legal basis for the system must be provided. This may be largely customary and uncodified. Another common feature is provision of a personnel agency or agencies charged with responsibility for maintenance of the system.

A developed civil service system calls for the installation of well-established procedure for the conduct of common personnel transactions, such as selection, poromotion, compensation, performance evaluation, discipline, etc. The system must also provide status guarantees and establish cannons of conduct for civil servants.

The relationship of the civil service to other instruments of government and to outside interest groups is a topic of concern in any political system. In western democracies the role of the bureaucracy is fairly well defined and the problem is essentially one of maintaining an existing balance which has been worked out over a long period of time.

Need and rational

The increase in the functions of government and the growing complexity of the administrative work have made it necessary to have a professional civil service. It consists of technically trained persons who enter the service of the state and remain in office, irrespective of change of parties in power, till they attain the age of retirement. The appointment of permanent, technically qualified officials also relates to the desire to increase efficiency. To enable the service to give all their time, energy and attention to the business of the state, provision has been made for pension, not only to themselves after their retirement, but also in some cases to their families and dependents.

Administration and political executive

Administration today is a highly technical job which temporary political executive is not expected to master. The civil servants possess the technical equipment necessary for efficient administration. Even in the matter of decision making the senior civil servants furnish all pertinent information and necessary advice in the light of which the political executive takes a decision. The political executive provides the popular element, and the civil service supplies the expertise in the functioning of the government. The efficiency of the governmental machinery depends very much upon the quality of and understanding between these two branches of the executive.

The growing importance of civil service is a significant fact in modern politics. The increasing importance of civil service can be ascribed to three factors : the highly technical nature of governmental operations, the realisation of social advantage of division of labour, and immense increase in the activities of government. The need for technical skill in the actual operation of the administrative machinery and the growing awareness of the benefits of specialisation in public management have led to the establishment of a permanent professional class. The great extension of the activity of the government in a modern welfare state has immensely increased the load of administrative work which, in turn, has led to employment and a large number of civil servants. Civil service today as measured by the quality of its work and its number occupies an enviable position of paramount importance in modern politics.

Historical perspective

The professional civil service was instituted in England in 1855, when the Civil Service Commission was established. This body arranges entrance examination for candidates for all openings in the civil service. There are two classes of civil service—executive and administrative. The function of the executive class is to perform the operations developed and determined by laws, rules and practice. Officers of this branch are recruited at the age of 18 or 19 after finishing a secondary school examination. The administrative class is supposed to be recruited from the brilliant university graduates who enter the service between the ages of 22 and 24. The present personnel of the service, whether in England or in India, is not experienced or competent in matters of industry, trade and finance which are increasingly the concern of governmental direction.

In the United States of America the professional civil service was instituted in 1883. A committee was appointed in 1936 to devise means for increasing the efficiency of the civil service.

Recruitment to civil service

States follow varying principles of organising civil service. In some states certain categories of civil servants are appointed by the political executive. They serve the administration for a temporary period. But in most of the states the civil servants are a permanent cadre whose appointment is beyond the competence of the political executive. The temporary appointment of the civil servants by the political executive has some undesirable consequences. It prevents the formation of a pool of administrative experience which is essential for competent operation of the administrative machinery. The insecurity of tenure will frighten away men of competence and ability from administrative service where permanent livelihood is not amply secured. The spoils system and political patronage result in filling the public offices with incapable and inexperienced and sometimes, even corrupt persons. The inevitable consequence is a tremendous decline in the standard of public service. In the United States, the debasement of the federal service by the spoils system ultimately led to civil service reform based on merit system. This has substantially improved the standard of civil service in the United States. The vast majority of civil servants are not subject in their appointment to control of the political executive.

The appointment of public service must be beyond the competence of the political executive. The chances of nepotism in appointment must be reduced to be a marginal phenomenon. The principle of open competitive examination conducted by an independent service commission for entrance into public service seems to be most rational and satisfactory principle. The public service commission in almost every modern state enjoys an autonomus status and is not subject to executive or legislative control. A member of the Union Public Service Commission in India, for instance, can only be removed by the President for his proved misbehaviour through a special procedure. This ensures independence of the commission. While in some countries like the United States and England, the public service commissions are the creation of the legislature, in countries like India, the public service commissions have been established under the authority of the constitution, and as such they enjoy a distinct constitutional status.

No uniform method of competitive test has been evolved. The English method, for instance, is entirely academic, whereas the American system tend to be specific and practical. In the United States, the civil service commission has some relation to the nature of the candidate's future job. In English method the assumption is that a man of intellectual ability and mental alertness will not find it difficult to acquire in a short span of time broad knowledge of his specific work. Besides, English method is based on a belief that the civil servant who will, in the course of his career, become a narrow specialist, should possess an academic cultural background. But the American

system does not insist on a broad academic qualification as a condition of entry into service. It can draw its administrative class, not only from the upper layer of society, but from varied strata of the community. Hence, compared to English system, the American system is said to be democratic. With increasing democratisation of educational privileges, the system of civil service in England is also being increasingly democratised.

Classification of civil service

Civil service can be classified into three broad categories on the basis of nature and responsibility of work. At the top there is an executive class which has to shoulder greater responsibility and take more initiative than the clerical class. Below that there is the administrative class. This class consists of highly competent personnel who provide the necessary leadership and drive to the whole range of administration. At the base there is a clerical class of people who have to perform purely routine work. Thus, civil service is a manylayered system where different grades and ranks co-exist.

Role and characteristics

The actual role of bureaucracy in the decision-making process and policy formulation varies from one governmental system to another. Structurally, a bureaucratic form of organisation exhibits a number of characteristics, the more important of which are being listed here.

(1) *Division of labour* : The total task of the organisation is broken down into a number of specialised functions.

(2) *Hierarchy* : Hierarchy manifests itself in a number of levels of differently graded functionaries in which supervision of the lower office is done by the higher ones.

(3) *System of rules* : The rights and duties of the employees and the modes of doing work are governed by clearly laid down rules.

(4) *Role of specificity* : Every role in the organisation is clearly earmarked with specific job descriptions. Organisational expectations are reflected in job specificity.

There are a set of behavioural characteristics of bureaucracy which can also be described here.

(i) *Rationality* : Bureaucracy represents a rational form of organisation. Hence by definition it leaves no room for irrationality. Decisions are taken on strict evidence. Alternatives are considered objectively to choose a path for decision.

(ii) *Impersonality* : A bureaucratic form of organisation does not entertain irrational sentiments. Official business is conducted without regard for persons. It is a machine-like construct and as such it is characterised by high degree of impersonality.

(iii) *Rule orientation* : Depersonalization of the organisation is achieved through formulation of rules and procedures which lay down the way of doing work. The employees are to follow the rules strictly in the discharge of their duties.

(iv) *Neutrality* : As a corollary of impersonality, this characteristic implies absence of bias. Bureaucracy as an instrument serves any kind of political regime without being aligned to it. It has commitment to work only and to no other value.

Development administration

It will not be out of place here to identify the characteristics of development administration, of which bureaucracy is growingly becoming an instrument.

(1) *Change orientation* : The distinctive mark of development administration is its central concern with socio-econimic change. This special orientation distinguishes development administration from regulatory or general administration which is basically concerned with the maintenance of the *status quo*.

(2) *Result orientation* : Since changes have to be brought rapidly and within a definite time horizon, development administration has to be

result-oriented. Its performance is overtly related to productivity in terms of increase in per capita income, provision of health and welfare facilities, etc.

(3) *Commitment*: Commitment to change and concern for completing time-bound programmes constitute the organisational role expectations in development administration. Administrators are expected to be involved and emotionally attached to job they are called upon to perform.

(4) *Client orientation*: Development administration is overtly client-oriented. It has to be positively oriented towards satisfying the needs of specific target groups, so their satisfaction is an important criterion for evaluating performance. The people in development administration are not passive beneficiaries. They are looked upon as active participants in the public programmes. Thus closer nexus between 'public' good and 'administration' is an essential attribute of development administration.

(5) *Temporal dimension* : Development administration attaches special importance to time. Since socio-econimic changes have to be brought about as quickly as possible, the time limit of all activities assumes considerable significance. This is the essence of result-orientation.

Bureaucracy and development

The characteristics of a bureaucratic form of organisation can be reiterated as existence of rule, division of work, hierarchical arrangement of officers, selection of technically trained officials, separation of ownership from management, adherance of rights to offices and not to incumbents and meticulous recording of administrative acts in writing. Thus bureaucratic norms and essentials of development administration go ill together in theory. In practice, however, the involvement of civil service in developmental tasks is tending to change the nature of bureaucracy itself.

Development has to depend a lot on political management, as the impulse for change comes more often from the political leadership than from the clientle itself. To accept the supremacy of the politician and to work along side him as a co-partner in development enterprise are the inbuilt requirements of development administration. Bureaucracy has to work very closely with the people under the general rubric of service ethics in development administration. Popular participation in development has to be looked at as a resource and the bureaucracy has to elicit popular support for developmental tasks. The traditional concept of people as passive beneficiaries has thus to be replaced by the newer concept of people as active participants. Corresponding behavioural changes are needed to make the bureaucracy change-oriented, result-oriented and people-oriented. It is in this context that training of civil servants has assumed much significance. The change has yet to be achieved in India to a considerable extent from a regulatory to a development oriented bureaucracy.

Appraisal

Anonymity and impartiality constitute an important aspect of the nature of civil service activity. The growth of parliamentary democracy has emphasized the need for cabinet responsibility. The inevitable consequence is that the civil servants have no responsibility for any policy of the government. They are not personally blamed, nor are they praised for any disaster or achievement of the government. These are inevitably the lot of the cabinet. The civil servants work behind the cloak of ministerial responsibility. Thus they are an anonymous authority. Closely related to this is strict impartiality of their work. As they have no political responsibility for any policy of the government, they are expected to be nonpartisan. In theory, at least, politically, the civil servants are neutral, as they are a permanent staff serving temporarily elected political executive. They enjoy a tenure of office which is independent of the fate of the political executive. However, it is being realised more and more that in the wake of

growing politicisation neutrality of the civil service has growingly become more a myth than a reality.

Democracy fails when a popular measure, because of administrative incompetence, is badly executed. An efficient administration is thus an indispensable adjunct to the democratic process of popular initiative in decisions concerining policy-making. Administrative efficiency demands a continuous pool of competent personnel who have made the service to the state as their life-time profession. Thus the value of civil service in the management and operation of the modern governmental machinery has been greatly enhanced.

But some people doubt whether civil service, innovated for the purpose of meeting the demands of the old order state, can now be geared to the dynamic needs of the new welfare system. Administration by civil service is an intellectual routine. The traditional qualities of a civil servant are impartiality and conservatism. But in modern welfare system the administrator is expected to believe zealously in a welfare programme. Thus the rigidity of outlook and conservatism in the habits of the civil servants prevent the organic integration of administration with the structure of a welfare state. An administrator in this type of state must be made to develop a new frame of mind, flexible and sensitive to the influx of new ideas.

It is worthwhile to mention in this context that it is for this reason that bureaucracy has come to acquire a decisive connotation. The term "bureaucracy" is of recent French origin. In the 17th century important branches of administration were entrusted to individual ministers, each of whom had a so-called "bureau" at his command in which business was transacted by several higher and lower officers who acted as subordinates of respective ministers. As there was frequent change of ministers, the chief clerks shaped and dictated the policy to the ministers. The chief clerks thus acquired a preponderent influence which was often abused to the disadvantage of general interest of the state. This form of government was contemptuously termed bureaucracy. In every modern state the highly complex business of administration is now preferred by a host of officials. This body is collectively known as bureaucracy.

Bureaucracy refers to a special type of formal organisation whose structure has a number of specific characteristics. A highly developed division of labour and specialisation of tasks is one of the most fundamental features of bureaucracy, when we use the term in a positive sense.

The emergence of bureaucratic type of organisation in modern governments has laid the foundation of a body of civil servants who work for the government in terms of life time career. The very presence of such a professional body of trained men is expected to exercise a 'rational' influence on the entire decision-making processes, which, however, does not always happen.

Still it is useful to remember that there are six constituents of a bureaucracy. These are (1) centralisation of control and supervision; (2) safeguards for the independence of judgement of each member of the organisation; (3) keeping of records and file; (4) secrecy; (5) differentiation of functions; and (6) qualification for office.

Certain functions are allotted to regional or local authorities in every state. But the central authority must act as an intermediary and integrator between technically and regionally differentiated functions. A hierarchy of officials is needed to bring about unity of policy and uniformity in administration. The hierarchical system implies faultless subordination. But the principle of differentiating and distributing functions limits the absolute domination of higher officials over the members of lower rank. A higher official will hesitate to reverse the decision of a lower official, when he feels that the latter has a better knowledge of the facts in detail. But at the same time there are in every administrative hierarchy some rules of discipline. A gross breach of discipline is punished with degradation or removal from office. The punishment, however, should not be

awarded until one has been formally accused, indicted, examined and pronounced guilty either by a regular court or by a court composed of his peers. Keeping of records and files has become absolutely necessary in all forms of government, because precision and continuity are essential to effective administration. Officials have got a tendency to follow precedents. Rigid adherence to precedents give rise to red-tapism. Certain amount of secrecy, also, has got to be maintained by officials. The bureaucracy should be neutral and independent towards political parties as far as possible.

Altogether thus bureaucracy, despite the negative image it carries, is the backbone of a modern state, both democratic and non-democratic. More independent and non-partisan it is allowed to remain in its functioning, the greater are the chances of people getting a fair deal. It has, however, to work within a system of checks and balances so that political executive and administration can reinforce each other without becoming a liability.

Identify the personnel who maintain law and order in your locality.

EXERCISES

1. Why is civil service necessary in a modern state?
2. What are the characteristics of bureaucracy? What is its role?
3. What are the different ways or organising civil service? Discuss.
4. Discuss in brief the important constitutents of bureaucracy.
5. Write short notes on the following :
   (i) Anonymity of civil servants
   (ii) Bureaucracy and development

Bureaucracy.

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CHAPTER X

Civil Service in India

AN IMPORTANT legacy of the British administration was the Indian civil service. The conception of an organised civil service originated with the East India Company. The term was first used by the East India Company to distinguish between the military and civil sectors of the company's personnel. All along the British rule in India, the members of the Indian civil service developed their own traditions. It was a highly trained professional service, characterised in the main by intelligence and diligence. It was practically the sole repository of power. The Indian civil service, in fact, became a *ruling class* outside the main currents of Indian life and feelings.

With the transfer of power in 1947, the British rulers withdrew, but left a well trained, competent and experienced civil service. The Government of India decided to retain the old administrative structure with minor reorganisation and readjustment. This was natural because the law and order situation in 1947 was very bad on account of communal disturbances. It was justified to continue with the old British administrative system. The Indian Administrative Service (IAS) was the continuation of the I.C.S. The I..C.S. had come to acquire a reputation for honesty and competence. This was impossible to dismantle the institution of the Indian Civil Service altogether. At the same time with the adoption of the parliamentary system and 'development through planning' there has been a significant change in the role of the civil service since Independence. In the first place, the civil servants were to help the political executive in the formulation of policies in their respective ministries and department. In the second place they became responsible for implementing these policies.

Due to the approach of 'development through planning' the functions of the civil servants have increased manifold. These are not confined merely to the maintenance of law and order, and the collection of revenue. They are now responsible for performing many developmental functions too. From this point of view the functions of the civil service in India can be divided into two categories; *traditional* and *developmental*.

Traditional functions are those functions which the civil service has been performing since the pre-independence days. Some of these functions are the collection of land revenue, maintenance of law and order, providing administrative and technical assistance to the political executive and running of the day-to-day administration. The *developmental functions* are mainly related to the social and economic development of the counrty. Being a welfare state there has been a marked

emphasis in India on the welfare activities of the government. The civil service has to help the government in the formulation and implementation of its welfare programmes. Altogether the civil service in India has today a major role in the people's welfare and their development.

Ministers constitute the political executives but the civil servants are the permanent executives. Though the ministers know the pulse of the nation, they are not experts. The expertise is provided by the civil servants who are qualified, trained and experienced. They are responsible for the implementation of the government policies faithfully. Thus both the ministers and the civil servants are complimentary to each other.

The ministers provide the popular base to the government and the civil servants provide the expertise and experience. The ministers being political leaders hold their positions so long as they enjoy the support of the majority whereas the permanence of the civil servants ensures continuity in the administration. Considering the nature of work they have to perform, it is necessary for the civil servants to maintain political neutrality. But this traditional concept of neutrality of civil servants has undergone a change. The role of civil servants is no longer confined to giving advice on policy matters. Civil servants are expected to be responsive to the needs and aspirations of the people and responsible for public welfare.

There is another view which upholds that a neutral civil service is likely to be indifference and unresponsive to the people. In the present context it is becoming increasingly difficult for the civil servants to be neutral in the performance of their duties. In fact what is needed is commitment to the national goals and faith in those policies and programmes which flow from these goals, commitment does not mean commitment to a particular ideology or a political party. It stands for certain amount of involvement in the implementation of the government policies and programmes. Because it is obvious that without such a commitment on the part of those who implement the programmes, the policies and programmes can not be successfully implemented.

Safeguards for civil service in India

Under the English common law all servants of the crown hold office during the pleasure of the crown and are laible to be dismissed at any time and without any reason being assigned for such dismissal. No action lies against the crown in respect of such dismissal, even though it may be contrary to the expressed terms of the contract of employment. A servant of the crown cannot sue the crown even for arrears of his salary.

But Indian law has not adopted this rule in its entirety and with all its rigorous implications. The Indian Constitution has provided for it. He has to be given a reasonable opportunity of being heard in respect of these charges against him. He is thus to be given reasonable opportunity of making representation on the basis of the evidence adduced during an enquiry. If a civil servant is removed or dismissed without observing the procedure he can demand a declaration from the court that the order of dismissal or removal was void. He should be allowed to continue to be a member of the civil service. It must, however, be noted that the protections provided to him are available only when the appointment has been duly made. Thus, where concurrence of the Public Service Commission is essential before making an appointment and no such concurrence is obtained, the person appointed has no right to claim constitutional protection.

Structure

India, being a federation has two sets of government; the central and the state governments. Subjects assigned to each are to be manned by two sets of people. The former are recruited by the central government with the help of the Union Public Service Commission, and the latter by the state governments with the assistance of their respective state Public Service Commissions.

In the Indian civil service, there is a set of persons who are common to both the centre as well as the states. The people of these services are recruited on an all India basis and can be posted both at the centre as well as in the states. The Constitution provides for the Indian Administrative Service and the Indian Police Service as the *All India Services*. The Constitution has also a provision to create more all India services. The Indian Service of Engineers, The Indian Forest Service and the Indian Medical and Health Service were added to the initial all India services. Civil servants, belonging to the cadre of All India Service hold the top positions in the states. Some states have been opposed to the creation of more All India services because they feel that these services affect their autonomy. In addition, there are a number other services known as the *central services* like the Indian Foreign Service, Indian Audit and Accounts Service, Indian Postal Service and Central Engineering Serivce. Members of these services can be transferred to any part of the country. These services are organised into four groups viz. Group A,B,C,D. on the basis of their pay scales.

In the administration, there are other people recruited to non-technical posts to man lower and subordinate offices. There is a Staff Selection Commission with its regional offices to recruit the members of these services.

A head of the department in the administrative set up of the government is generally the Secretary, who looks after the machinery of administration in his department. Sometimes there are Additional Secretaries. Further below are the joint secretaries, deputy secretary the under secretaries to assist the secretary. There are many branches and sections. The section are looked after by section officers.

PUBLIC SERVICE COMMISSION AT UNION AND STATE LEVELS

The Public Service Commission is the adapted version of the United Kingdom Civil Service Commission in the former British colonies and was established to keep politics out of the civil service. We have in India, Public Service Commissions, both at the Central and State levels.

History

The question of setting up of a public service commission in India was considered by the MontagueChelmsford Report (1918). The Government of India Act of 1919, which was based on this report, provided for the establishment of a public service commission. As provided by the Government of India Act of 1919, the Public Service Commission, as it was first named, was established in the year 1926. The Commissio. consisted of four members, in addition to the chairman. The Commission came to be known as the Federal Public Service Commission (FRSC) when the Government of India Act of 1935 came into force. The FPSC was replaced by the Union Public Sevice Commission (UPSC) in 1950, which was constituted as an independent statutory body under the Consitution of India.

Structure of the PSC: Union/State/Joint

There is a public service commission for the union and a public service commission for each state. If two or more states agree by passing a resolution in their legislature that there shall be one PSC for that group of States, Parliament by law may provide for such a joint State Public Service Commission. The PSC consists of a Chairman and other members appointed by the President in case of UPSC or joint commission and in the case of a state by the Governor of that state. The President or the Governor (as the case may be) is empowered to determine by regulations the number of members of the Commission and other conditions of service. Nearly half of the members of the Commission are persons who at the time of their appointment have held office for at least ten years either under the Government of

India or a state government. Half of other members should come from other fields.

A member of the Commission holds office for a term of six years or until he attains the age of 65 in case of the Union Commission and 62 in case of State and Joint Commission (whichever is earlier). A member may, by writing under his hand addressed to the President in case of UPSC and to the governor in case of SPSC and Joint Commission, resign his office. The Chairman or a member of the Commission can be removed from office only by an order of the President. The Governor has no power to remove member/ Chairman even of the State Commission. He can only suspend them. The members/Chairman of UPSC/Joint Commission may be suspended by the President only. He can be removed also in the following situations.

(a) If the Chairman or any other member of PSC is or becomes in any way interested in any contract or agreement on behalf of the Government of India or of a State or participates in any way in profit there, he shall be deemed to be guilty of misbehaviour. Then the Supreme Court, on reference being made to it by the President, has an enquiry held in accordance with the procedure prescribed in that behalf in the Constitution of India. The report should come to the conclusion that chairman or such other members, as the case may be, ought to be removed;

(b) If he is adjudged as insolvent; or

(c) If he engages, during his terms of office, in paid employment outside the duties of his office; or

(d) if he is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

In order to ensure the independence of the Commission, the Constitution debars its Chairman from further employment either under the Government of India or the Government of a State. A member, other than the Chairman of the Commission, is, however, eligible for appointment as Chairman of that Commission or a State Public Service Commission but for no other employment.

The relations of the Commisssion with the Government are coordinated by the Ministry of Home Affairs. In its day to day work and in the discharge of its statutory responsibilities, it deals directly with the different ministries and departments of the Government of India. The Commission has no attached or subordinate office under it.

The number of members of the staff of the Commisssion and their condition of service are given in the regulations made by the President in the case of UPSC and Joint Commission, and by the Governor of the State in case of the State Commission. The number of members of the Commission and the conditions of their service are also left to be determined by the President or the Governor, as the case may be. It has since been decided that there shall be six to eight members of the Commission whose authorised strength, thus, is nine including the Chairman. The Chairman and the members of the UPSC and Joint Commission are appointed by the President on the advice of the Prime Minister and by the Governor on the advice of the Chief Minister in case of a State Commission.

Name the present chairperson of the Union Public Service Commission.

Name the chairperson of Public Service Commission in your state.

Jurisdiction

The jurisdiction of the commision extends to public services of the Union government and the centrally administered territories in case of UPSC. In case of State Commission, the jurisdiction extends to public services of the state government. It is also enjoined upon if that, if requested

by any two or more states, it should assist them in framing and operating schemes of joint recruitment for any service, for which candidates possessing special qualifications are required.

Functions and powers

The functions of PSC are laid down in the Constitution of India. They are as follows:

(1) to conduct examinations for appointments to the services of the union and state and conduct interviews for direct recruitment; (The recruitment for such posts, which cannot be filled by promoting persons already in any organised services, is made by a system of competitive interviews conducted by the Commission.) and

(2) to assist the states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

Further the Commission shall be consulted:

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts as also in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petititons relating to such matters;

(d) on any claim to be paid out of the Consolidated Fund of India/Consolidated Fund of the State (as the case may be) by it in regard to person (who is serving or has served under the Government of India or the government of any state or under the Crown in India in a civil capacity) about any costs incurred by him in defending legal proceedings instituted against him in respects of acts done or purporting to be done in the execution of his duty; and

(e) on any claim for the award of a pension in respect of injuries sustained by a person, while serving under the Government of India or under the government of any state or under the Crown in India in a civil capacity and on any question as to the amount of any such award.

The Commission is also consulted when any appointments are made by the ministries provisionally. The advice of the Commission is also sought in regard to cases of re-employment of retiring or retired officers.

The Commissions also deal with quasipermanency cases. Such cases are dealt with by the government in consultation with the Commission wherever direct recruitment to the post in question is whitin the purview of the Commission.

It shall be the duty of the commission to advise on any matter so refered to them and on any other matter which the President may send to them for advice.

Some of the important duties performed by Public Service Commissions are:

(a) *Examinations:* The Commissions hold open competitive examinations for various All India and Central Service/State Services, as the case may be.

(2) *Promotion:* Many of the senior posts, particularly in the regularly organised scales and services, are filled by promotion of officers who have acquired a certain amount of experience in junior posts in those services.

(3) *Disciplinary cases:* In disciplinary cases, the Commission has to be consulted before orders are passed by the President/ Governor imposing any penalty on a government servant.

(4) *Reimbursement of legal expenses:* Government servants are sometimes prosecuted in respect of acts done or purporting to be done in the execution of their official duty. The claims for reimbursement of the legal expenses incurred by them in defending themselves are refered to the Commission. In such cases the Commisssion has to examine the reasonableness of the claim with reference to the circumstances of each particular case and to advise the government as to the amount that should be reimbursed.

(5) *Appointment by transfer:* The Commis-

sions advise the government on cases of transfer from one service to the other.

Miscellaneous aspects

The expenses of the union or a state public service commission, including any salaries, allowances and pensions payable to in respect of the members or staff of the commission shall be charged on the Consolidated Fund of India or Consolidated Fund of the State, as the case may be.

It shall be the duty of PSC to present annually a report as to the work done by it to the President/ Governor. The President/Governor has to cause a copy of the report to be laid before both Houses of the legislature together with a memorandum explaining the cases, if any, where the advice of the Commission was not accepted.

Suggestions for reform

The administrative Reform Commission made some recommendations in respect of improving the quality of membership of the commissions. Some of them are being mentioned here.

(1) In making appointments to a state public service commission, the Governor should consult the Chairman of the Union Public Service Commission and the Chairman of the State Public Service Commission.

(2) In making appointments to the Union Public Service Commission, the Chairman of the Union Public Service Commission should be consulted.

(3) Not less than two thirds of the membership of the Union Public Service Commission should be drawn from among the Chairman and members of the state public service commission.

(4) At least one of the members of a state public service commission should belong to a different state.

(5) The minimum academic qualification for membership of a commission should be a university degree.

(6) A member selected from among government officers should have held offce under a state government or the Central government for atleast ten years, and should have occupied the position of a head of a department or Secretary to government in a state or held a post of an equivalent rank under the Central government, or a comparable position in institutions of higher education.

(7) Members selected from non-officials should have practised atleast for ten years in any of the recognised professions like teaching, law, medicine, engineering, science, technology, accountancy or administration.

Appraisal

The commissions are quite independent and civil servants recruited by them do constitute a significant bulwork of administration in India.

Although the vital role of the public sector in bringing about rapid socio-economic changes is generally acknowledged, there are many misgivings about the role of bureaucracy in development of administration in India. It is commonoly asociated with red-tape, rigidity and never-ending rules and regulations. Conservation rather than change is the essence of bureaucracy. Bureaucracy has also been criticised as urban-oriented and elitist in nature and unrelated to the needs of rural areas. Above all, development has been taken as essentially a matter of shrewed political management in a society. Some of these pitfalls can be avoided if the commissions take care of these aspects at the time of recruitment to higher civil service both at the national and state levels.

PRACTICAL ACTIVITY

The students of Political Science class may please arrange a meeting with some civil servants of the area (say, Director of Health Services, Director of Education, Administrator of a local body, etc.) and elicit information from him regarding his/her training, recruitment, functions and day to day activities. The civil servant may also enlighten them more about the role of bureaucracy in a welfare state.

(The questions to be asked should be prepared with the help of the teacher in advance.)

EXERCISES

1. How did civil services come into being in India?
2. How are civil sevants protected in discharge of their duties? What are the constitutional safeguards?
3. Enumerate the powers and functions of the Public Service Commission.
4. Write short notes on the following:
   - (i) Differentiate the role of civil servants in pre- and post-independent India
   - (ii) Structure of Civil Services in India
   - (iii) Organisation of the Public Service Commissions

Public Litigation – being public we can file a case

writ of a court of law issued to subordinate court or an officer of government, or a corporation [illegible]

[illegible] cast in

Ordinance: When Parliament is not in session and the law is required immediately for a specific purpose, the President may issue an ordinance which has the same force as that of law enacted by Parliament.

Pardon: A pardon is an act of grace which releases a person from punishment for some offence. It can free a convicted person from serving any sentence imposed on him by a court of law. It wipes out the offence. The President of India or Governor of a State may pardon any criminal who is punished by a court of law.

Plebiscite: It is a device by which opinion of the people is ascertained over any issue of political nature. The people exercise their option through a vote on the given alternatives. For example, in 1935 the people of Saar (a former German territory) were asked through a plebiscite to decide whether they

Quo Warranto: It is a writ issued against a person who claims or usurps a public office. Through this writ the court inquires by what authority the person supports his claim.

Recall: It denotes a device or procedure by which the tenure of a people's representative can be terminated by popular vote.

Spoils System: The distribution of government positions on the basis of political connections, sometimes with little regard for ability to carry out responsibilities assigned to them. This system prevailed in the United States of America where government positions were used to be given to the supporters of elected political party.

Veto: The deliberate refusal of a chief executive to give his approval to legislative act, thus preventing it from becoming a law.

Difficult Terms

Censure Motion: It refers to that particular motion in the Parliament which is usually moved by the leader of members of the opposition to discredit or disapprove the policies of the government. The adoption of the motion may result in the resignation of the government.

Certiorari: It is one of the writs issued by the High Court or the Supreme Court to protect the fundamental rights of the citizens. This particular writ is issued by the superior court to a lower court directing the latter that the record of a case be sent up for review.

Checks and Balances: It is the system by which powers of different organs of the government are kept within their defined jurisdiction. In case any organisation of the government tries to become ambitious and encroaches upon the jurisdiction of the other organisation, it is immediately checked by that organisation. This is how the three organs of government keep a constant check on each other and maintain coordination and balance in the proper functioning of the government.

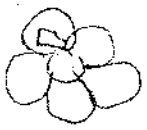
Collective Responsibility: It is an important feature of parliamentary form of government. For any decision or action of the cabinet all ministers are jointly responsible. If their actions are not approved by the Parliament, the whole Council of Ministers has to resign. This is based on the principle that they are collectively responsible to the Parliament for all their acts of omissions and commissions.

Electoral College: A body of electorates, especially constituted for the purpose of particular election. For example, elected members of both houses of Parliament and the elected members of the Legislative Assemblies of the State constitute electoral college for the choice of President of India.

Hebeas Corpus: The full title of the writ is habeas corpus and sujiciendum meaning 'give my body back'. The writ is regarded as one of the most important safeguards for the liberty of a person. It is available in all cases of wrongful deprivation of personal liberty or wrongful detention.

Impeachment: The process of framing charges against the President and Judges of Supreme Court and High Courts by a legislative body. If resolution or address for their removal is passed, they are removed from their offices.

Judicial Legislation: It implies laws created by the pronouncement of a judge in the course of hearing of a case. It is a law emanating in the wake of pronouncement of judgement.



Questionnaire

Please give your comments on the book by filling this questionnaire. Tear off the questionnaire and send it to the Head, Department of Education in Social Sciences and Humanities, NCERT, Sri Aurobindo Marg, New Delhi-110016.

While answering a question if you find the space inadequate, please attach a separate sheet.

All questions are ment both for teachers and students, except the questions with asterisk marks, which are meant only for teachers.

~~Teacher~~/student

Name Nimisha Sinha

School address St. Bede's College.

Textbook

Name of the book

Class

Language of the book

1. (i) Is the get-up including printing of the book attractive? Yes/No
   (ii) Is the book reasonably priced? Yes/No
2. Do you find the book easy to understand? Yes/No
3. Point out those terms/words which you find difficult to understand.

(i)	(ii)	(iii)	(iv)
(v)	(vi)	(vii)	(viii)
(ix)	(x)	(xi)	(xii)

4. Point out chapters/pages where the language is difficult to understand.

Chapter no.	Page no.	Lines

*5. Do you think that the content of the textbook is adequate to meet the requirements of the syllabu Yes/No

*6. (a) Please list out those content areas which suffer from sex bias, caste bias, class bias, commun bias, regional bias and ideological bias.

Bias	Page no.	Line

(b) Mention the content areas which go against international understanding.

*7. (i) Point out chapters which are lengthy.

(ii) Point out chapters which are too sketchy.

8. Do you find the illustrations helpful in understanding the content? Yes/No

9. Point out illustrations which are not helpful in understanding the content.

Page no.	Illustration	Caption

10. Certain practical activities have been suggested at the end of some of the chapters.

(i) How many activities have you undertaken in your class? Mention them.

(ii) What difficulties did you face in organizing these activities?

(iii) Guidelines have been given for organizing practical activities. Which of these guidelines did you find inadequate?

11. Certain questions have been given in boxes in the text of each chapter.
    (i) Do you try to find out their answer? Yes/No
    (ii) Are they helpful in understanding the text of the chapter? Yes/No
    (iii) Do your find these questions interesting? Yes/No
12. (i) Do you find the exercises given in the book interesting?
    (ii) Point out the exercises which according to you should be modified.

Page no.	Excercise no.

13. 'Difficult Terms' are given at the end of the book. Are these terms well explained? If no please mention those.

14. Point out those terms which could be added to the list of difficult terms.

15. Point out the printing errors, if any.

Page no.	Error

16. As an overall assessment of the book, please point out
    (i) strong points of the book.

    (ii) weak points of the book.