

people having no share in the decision-making powers grow callous to common problems. The absence of popular participation in decision-making implies absence of popular co-operation. The obedience of the people under such a centralised system can never be spontaneous and hence cannot be productive. Decentralisation by dispersal of power over a wide field associates a larger number of people with decision-making. Under the decentralised system, the people are not required only to carry out the will of others but they are given definite share in the exercise of power and hence they become more interested in the result. *Secondly*, decentralisation creates a climate for innovation by providing scope for experimentation in different fields of governmental activity. In the absence of a rigid rule of uniformity characteristic of the centralised system, decentralisation makes for variety and novelty ensuring steady progress. *Lastly*, a modern state is confronted with a variety of problems which demand prompt and efficient tackling. But one single legislature and one single executive at the top have neither the time nor the competence to deal adequately with these intricate problems. Hence arises the greatest need for decentralisation which makes it possible to cope with the large number and variety of issues with which a modern government is confronted. Regional issues must be tackled by the regional authority not only to relieve the central authority of its excessive pressure of work but also to provide popular freedom, popular participation and popular control. In a word, the democratic ideal can best be realised through the mechanism of decentralisation.

Kinds of Decentralisation. Decentralisation may be either *political* or *administrative*. The former denotes creation of new units of government vested with decision-making power, such as, the creation of autonomous states within the U.S.A. and the Indian Union. Political decentralisation may also be effected by associating the public with administration.

Administrative decentralisation may be *geographical* or *functional*. The creation of area administration like the district, the subdivision and vesting them with independent power within prescribed limits are good examples of geographical or territorial decentralisation which is mainly based on a definite relationship between the superior and the subordinate units of government. All matters that are local in their incidence are to be decided by the local authority. The central authority may retain some power of guidance and supervision but the decision-making power relating to a regional problem should be with the local authority. Such decentralisation by multiplying the centres of administration, will make it possible for a larger number of citizens to participate in the affairs of the state.

Functional decentralisation implies the transfer of certain decision-making areas to technical and professional bodies, such as, Universities, Bar Associations, Medical Councils, etc. Interest-units like different industries and professions are more competent to exact their own standard of qualifications and professional conduct and as such these should be given the power to legislate upon their own spheres.

Advantages of Decentralisation. Decentralisation has many advantages. In the first place, by dispersal of power, functions and responsibility, it relieves the top authority of its excessive burden of work. This relief enables the top authority to devote itself to the broad problems affecting national interest. The local authorities also being free from constant interference from the top can work

independently for the solution of local problems according to local needs. *Secondly*, decentralisation makes for overall efficiency of administration by avoiding delay and red-tapism. The local authorities, under this system, need not wait for directives or sanction from the top. *Thirdly*, decentralisation enables field agencies to make decisions independently in their own spheres of activity. This independence generates in the field-agencies a sense of self-confidence and self-respect which in their turn improve local administration. *Finally*, dispersal of power enables the different units of government to make experiments for development of local resources. This is not possible under a centralised system which insists upon uniformity throughout.

Disadvantages. Decentralisation has its defects too. *First*, excessive decentralisation may lead to disintegration resulting in chaos and conflict between the top and the subordinate authorities.

Secondly, government in the last analysis being an organic whole, smooth working of the government demands that there should be co-ordination and co-operation between the different units of the government. As such decentralisation carried too far may lead to delay and even dead-lock in the working of the government. *Thirdly*, in certain field of the functions of a modern government, decentralisation leads not only to inefficiency but also to the enfeeblement of the government as a whole. In such cases, like planning, defence and transport and communication, centralisation perhaps makes for greater efficiency than decentralisation. *Lastly*, the modern state playing as it does the role of a social service organisation, should not adopt a policy of decentralisation for the sake of economy and efficiency in so far as it is required to raise the standard of living of the people, introduce free and compulsory education and impose prohibition. In such cases, a common and uniform policy is more beneficial than a policy of decentralisation.

It should be borne in mind that the problem of decentralisation is not an absolute one but relative to time and place. Decentralisation does not mean only the decentralisation of power but also the decentralisation of responsibility. Where decentralisation makes for economy and efficiency, it is welcome but efficiency should not be divorced from responsibility. Centralisation and decentralisation should be so adjusted according to the needs of the time and place that these may ensure popular participation and popular control without hindering national safety and progress.

Difficulties of classifications of Government.

Attempts to make a classification of governments can be traced back to the beginnings of the systematic study of political science. The Greek philosopher Aristotle made the first attempt to classify government. In the words of Leacock "The starting point for all later discussion is found in the celebrated classification given by Aristotle in his Politics." The Aristotelian classification has influenced the political thinkers ever since. But the question is : are the principles on the basis of which governments have been so far classified since the time of Aristotle are applicable in classifying modern governments each of which is marked by such a wide variety of characteristics which make it impossible to place any two of them under the same category. As a matter of fact classification of governments on the basis of either institutional or structural analysis is beset with

difficulties of an insuperable character. Thus there are certain fundamental problems that are common to all schemes of classification of governments.

The first problem that arises in any scheme of classification is that of defining the concepts being used. Citizens of both the U.S.A. and China enjoy certain basic rights and freedoms. But the concept of basic rights and freedoms of the citizens imply something different in the U.S.A. than they imply in the China.

Secondly, political institutions with the same label may play different roles in different states. In the Constitution of India there is placed at the head of the Indian Union a functionary who is called the President of India. The title of this functionary reminds us of the President of the U.S.A. But beyond the titles there is nothing common between the form of government existent in the U.S.A. and the form of government prevalent in India. The two are totally different. Under the Constitution of the U.S.A. the President is the chief head of the state and also the head of the government. But under the Constitution of India the President occupies the same position as the king of England. He is the head of the State but not of the government. The party systems in the U.K. and the U.S.A. are called bi-party system but there are fundamental differences in the working of the party system in two states. There exists a clear division of views between the parties in the U.K. But in the U.S.A. the rivalries between parties are much more organisational than ideological.

Thirdly, classification is often used to praise or condemn a particular regime. For example, the political system of China is regarded by some as 'democratic', while others regard this system as 'totalitarian'. This is because, while analysing political institutions, the political scientists apply their own preferences and likes and dislikes, almost unconsciously.

Fourthly, some of the states have been left out of discussion relating to classification because of the difficulties of placing them in any of the existing categories.

The government of Switzerland is unique in the sense that it combines the parliamentary and the presidential forms under one system.

The present French government also illustrates more pointedly the difficulty of classification. The Fifth Republic inaugurated in 1958 with General de Gaulle as its President is a class by itself. The government is neither of the parliamentary nor of the presidential type though leaning more towards the American type.

The question of how far, if at all, Indian Constitution and mode of government are 'federal' in nature has remained a controversial problem. The Indian governmental system is regarded as 'quasi-federal' or federal with strong unitary bias.

The above discussion makes it crystal clear that a strict classification

of government by any calculus is very difficult. So any classification based on solely structural analysis is found to be misleading.

Classification of Political Systems.

Many of the problems of classification of governments and political structures can be avoided by classifying types of political systems.

The concept of political system is a new approach, a new way of looking at the political phenomena. The political system covers all types of political activities within a society, not only the formal political institutions. A political system also implies dependence of different parts of the system and that changes in one part of the system will affect the other parts also.

There are various ways of classifying political systems. Maurice Duverger distinguishes between pluralist systems and monolithic systems. S.E. Finer has divided political system into liberal democracies, quasi democracies, facade democracies, military regimes, dynastic regimes and totalitarian regimes. Alan Ball's classification of political systems into (1) Liberal Democratic Systems (2) Communist Systems (3) Post-communist Systems and (4) Authoritarian Systems seems to be the most acceptable approach.

(1) Liberal Democratic Systems—The chief feature of this system are as follows : First, it ensures, personal liberties like freedom of speech, freedom of movement and of religion. Secondly, in general judicial independence and integrity are upheld under this system. Thirdly, the concept of separation of powers is accepted. Fourthly, there is no bar to the formation of different political parties and party rivalry for the capture of political power. Fifthly, election at regular intervals on the basis of universal adult franchise form another characteristic of this system. Sixthly, the right to criticise the government is allowed within certain limits. Seventhly, pressure groups like trade unions and other voluntary organisations can influence governmental decisions and they are not subject to strict governmental control. Lastly, agencies for the formulation and dissemination of public opinion like the press, the cinema, the radio and the television may not be under the exclusive control of the state. Generally speaking, the political systems of the U.K., the U.S.A., France and India can be grouped under this head. But the characteristics of this system mentioned above are not uniformly present in all of them.

(2) Communist Systems—Previously communist systems were regarded as a subcategory of totalitarian systems which were marked by a rigid control of the state over different aspects of a man's life. Friedrich and Brzezinski point out the following features of totalitarian system — a dominant official ideology, an all powerful leader, a single mass party, a monopoly control of all communications and armed forces, widespread use of terror and central direction of the economy. Totalitarianism has some relevance to the regimes

of Stalin and Hitler in the 1930s. After the establishment of a number of states on socialist or communist ideology the use of the term totalitarian become restricted and the label communist become widespread.

The communist states enjoy certain peculiar characteristics which differentiate them from other types of political system. These characteristics include first, there is an official ideology based mainly on Marxian lines. Secondly, only one political party is dominant and political activities are channeled only through this party. Thirdly, economy is centrally controlled by the government and there is absence of private ownership. Fourthly, freedom of association and expression are restricted by the State. Fifthly, the concept of separation of powers is rejected and the judiciary does not possess distinct independence.

Historically, communist systems, at a particular period, comprised about one-third of the world population. Of the numerous states of this political tendency, the oldest established is the U.S.S.R. There follow eastern European states—Poland, East Germany, Czechoslovakia, Hungary, Romania, Bulgaria and Albania and there after the People's Republic of China and three Asian states, namely, Mongolia, North-Vietnam and North Korea. This system also included Yugoslavia, Cuba, Afghanistan, Angola and Ethiopia. By the end of 1989 communist regimes in most of these states had collapsed. After the disintegration of the U.S.S.R. in 1991 at present communist system exists in China, Cuba, North Korea, Cambodia and Laos.

(3) Post-Communist Systems—The Post-communist systems arose out of the changes in the communist world. The emergence of Gorbachev as the leader of the communist party of the U.S.S.R. was an important milestone in this process. The events of 1989 brought about immense changes in the communist systems particularly in Eastern Europe. These communist states revealed the end of Soviet domination, the collapse of one party communist regime, the introduction of competitive elections, more representative legislature and a policy of free-market economy. These changes occurred very rapidly. These states now face a number of socio-economic problems and their future is still uncertain. Yet the post-communist states enjoy certain features which divide them from other political systems. These features include:

First, the state is weak and looked upon with suspicion.

Secondly, there exists a number of political parties and the party system is weak.

Thirdly, civil liberties are not adequately protected and minorities also do not enjoy proper safeguards.

Fourthly, there exists an extensive state ownership and control but the ultimate object is to move to a capitalist type of economic system.

(4) **Authoritarian Systems**—The Authoritarian systems are in most case unstable and likely to change more rapidly than other political systems. Authoritarian Systems can be said to have following characteristics :

First, the absence of a dominating political ideology.

Secondly, the scope for open political competition like political parties and elections is limited.

Thirdly, the system is, in the last analysis, based on force by which the ruling elite exact obedience and allegiance from the people.

Fourthly, ruling power is captured by a small conterie of leaders who try to win the support of the people.

Fifthly, civil liberties are not adequately protected and independence of the judiciary are not secured.

We could include under authoriaism states with traditional ruling groups, such as Saudi Arabia and Nepal, and modernising state, with either military government like Ghana or civilian military regimes like Egypt and Brazil.

The above analysis conclusively proves that it is very difficult to classify governments either on the basis of institutional and structural analysis or on the basis of system analysis. Even there were differences between the German totalitarianism under Hitler and Italian/totalitarianism under Mussolini although these two worked in unision. But classification on the basis of system analysis is superior in one respect namely that it holds before us a more complete picture of the political system than an imperfect and sometimes misleading picture of the system which structural analysis yields.

SUMMARY

I. *Unitary and Federal Governments.* In a unitary government, there is no division of powers but concentration in central authority which is supreme. In a federal, there is a division and distribution of powers between the general and local governments and the constitution is supreme.

II. *The broad types of Federation.* The American type of federation is formed by the union of a number of already existing states which surrender some of their rights to a newly-created government at the centre which enjoys limited powers as strictly defined by the constitution. The Canadian type is formed by the process of breaking up of a unitary state into a number of autonomous provinces to which limited powers are granted by the constitution.

III. *Marks of a Federation.* The marks of a federation are (a) division and distribution of powers, (b) supremacy of the constitution, (c) authority of the federal judiciary to act as the guardian and interpreter of the constitution and (d) separate allocation of central and local sources of revenue, (e) double citizenship etc.

IV. *Its Essential Conditions.* Conditions essential to the formation of a federation are, (a) geographical contiguity, i.e. the component states should be situated near each other, (b) factors that promote their national unity, (c) a sentiment of unity, i.e., a desire for union without unity, (d) political equality which prevents the hegemony of one state over others and (e) political competence to discharge their federal obligations.

V. *Presence of the Conditions in India.* Geographical contiguity exists and a sense of unity is also, partially, present among the diverse population of India, though it is often marred by extreme communalism. Judging from all points of view, it seems that a federal

form of government will be able to preserve the fundamental unity of India in the midst of her diversities.

VI. *Distribution of powers in the Federal system.* The general principle underlying the distribution of powers in a federal system is that common affairs requiring uniformity of regulation are entrusted to the general government while matters of local concern are administered by the local governments. In some of the recent federations, the constitution has made a three-fold division of powers instead of a two-fold division. The division of powers may make either a strong centre with weak provinces as in Canada or strong provinces with a weak centre as in the U.S.A.

VII. *Federal control over Local Government.* The national government of all federations is vested with the power of intervention in local affairs in enforcing the provision of the constitution and also for the preservation of internal peace and order. The federal government may execute federal laws either by its own officials or by the officials of the local government.

VIII. *Merits of Unitary Government.* It secures (a) uniformity of legislation and administration throughout the country, (b) it is advantageous in the field of foreign policy and national defence, (c) it is simple and less costly.

IX. *Demerits.* (a) It retards the growth of local self-government and (b) facilitates the growth of a centralised bureaucracy.

X. *Merits of Federal Government.* (a) The union of a number of small states into a federation secures their local independence and integrity. (b) It maintains both unity and diversity in those spheres where their preservation is considered essential. (c) It relieves the General Government of much of the congestion and pressure of work. (d) It provides for the political training of the people in the art of self-government. (e) It checks the growth of a despotic centralised government.

XI. *Demerits.* It suffers from (a) inefficiency and delay in the conduct of foreign affairs and (b) in the administration of internal affairs. (c) Double system of government increases complexity and makes it more expensive. (d) There is always the danger of formation of groups by the combination of several states leading to the dissolution of the federation.

XII. *Federation as a principle of the state organisation.* Federation as a principle of state organisation has not found favour with many writers who over-emphasise its defects. But really speaking, it is a principle which alone can maintain unity in diversity. In many cases as in the U.S.A. Canada and Switzerland the principle has succeeded in obliterating most of the differences by emphasising the points of agreement. Pacifists and internationalists hope that the threat of war can be permanently removed only by organising the world states on the federal principle.

XIII. *Decentralisation.* Decentralisation implies dispersal of decision-making power from the top unit to the lower or subordinate units of a government. It creates autonomous units of administration as opposed to subordinate units of administration under a centralised government. The creation of autonomous states within the Indian Union is an example of decentralisation.

Decentralisation may be geographical or territorial and functional. Decentralisation relieves the central authority of its overburdened pressure of work, ensures economy and efficiency in administration and by associating a larger number of citizens with administration increases the scope for popular participation and popular control.

XIV. *Cabinet Government.* It is a form of government in which there is full and harmonious co-operation between the executive and the legislature. The executive is made up of the leaders of the majority party in the legislature to which it is responsible.

XV. Presidential Government. The distinguishing feature of this system is the almost complete separation of the executive and legislative departments and the independence of each against the other in almost all spheres.

XVI. Merits of the Cabinet System. (a) It ensures co-operation between the executive and the legislature and (b) secures the responsibilities of the executive to the legislature. (c) Fear of criticism by the opposite party makes the government cautious and mindful of the interests of the public. (d) It secures healthy party organisation and (e) makes the system of government elastic and adaptable to varying circumstances.

XVII. Demerits. (a) The system cannot secure stability of government as a change in party politics may lead to a change in ministry. (b) It is unsuitable in times of emergencies when concerted action is necessary. (c) It may lead to the dictatorship of the cabinet when the legislature is not sufficiently strong.

XVIII. Merits of the Presidential System. (a) It is more stable and (b) secures a strong executive independent of the legislature. (c) Concentration of authority in one hand is helpful in times of emergency. (d) It secures freedom of the legislature from executive interference.

XIX. Demerits. (a) It is autocratic, irresponsible and dangerous. (b) Want of co-operation between the executive and the legislature leads to frequent dead-locks which hamper the work of the government.

XX. Bureaucratic Government. It is a government run by a class of officials who are specially trained for the job. They care more for administrative routine than fundamental principles. They consider themselves to be the masters and not servants of the people. The British bureaucracy in India was a case in point.

XXI. Merits and Demerits. Permanency of tenure and experience in government service make bureaucracy highly efficient. But it is irresponsible and excessively routine-bound.

QUESTIONS

1. What are the conditions essential to the formation of a federal union? Explain the necessity of a written constitution for federal union. (C. U. 1949)

2. Critically examine the respective merits and defects of a bureaucratic and a popular government. (C. U. 1946)

3. Illustrate the distinction between Parliamentary and Non-Parliamentary executive from Great Britain and the United States of America. (Gauhati, 1949)

4. Discuss the characteristics of a true federal union as contradistinguished from (a) a confederation and (b) a unitary state. Illustrate your answer. (C. U. Hon. 1950, 1964)

5. Wherein, according to your view, lies the essence of federalism?

How would you distinguish a typical federal union from a league or confederation? Illustrate your answer. (C. U. Hon. 1957)

6. 'The Federal Union is a sort of composite state, a new creation of constitutional law, not a band of states connected together by international agreement.'

Explain this statement. (Gauhati, 1949)

7. What are the conditions for the success of a federal union? How far do they exist in India? (C. U. 1958)

8. Discuss the characteristics of Cabinet Government and the essential conditions for its success. (C. U. 1962)

9. Point out the characteristics of Parliamentary form of government. In what different ways does the Parliament exercise control over the cabinet in this form of government?

(C. U. 1963)

10. Discuss the essence of Federalism and point out the factors and forces in the modern states that tend to obliterate the difference between a federal and a unitary state.

(C. U. Hon, 1966)

11. Explain the chief features of Federation and point out its merits and demerits.

(C. U. 1969)

12. Discuss in brief the main reasons behind the centralising tendencies in modern federations.

(C. U. 1975)

13. Classify types of political systems. What are the characteristics of each of these systems?

(C. U. Hons, 1976)

14. Analyse the different views regarding the classification of political systems.

(C. U. 1983)

15. Discuss the problems of classification of political institutions. What scheme of classification do you propose? Justify your answer.

(C. U. Hons, 1985)

16. Bring out the salient distinctions between Unitarianism and Federalism.

(C. U. 1986)

17. What are the political systems? How have they been classified?

(C.U. Law 1990)

18. Enumerate the conditions necessary for the success of a federal form of government.

(C.U. Law 1993)

CHAPTER 14

STRUCTURE OF GOVERNMENT—THE LEGISLATURE

References :

- W. F. Willoughby—Principles of Legislative Organisation and Administration
Laski—Grammar of Politics, Ch. VIII.
Marriot—The Mechanism of the Modern State, Vol. I, Chs. 14, 15.
Mill—Representative Government, Ch. 13.

Importance of the Legislature. (Of the three organs of the government, the legislature is regarded as the most important because the executive and the judiciary are to work on the basis of the laws made by the legislature.) Legislative function, however, depends largely on the nature and character of law-making bodies. Legislatures under dictatorship or legislatures of dependent countries like India before 1947 enjoyed little powers. They are merely consultative in character. The legislatures in countries having a parliamentary form of government are the most powerful, exercising its control over almost all the spheres of governmental activity. The executive is subordinate to the legislature in this form of government as in England and France. In the presidential form, there is an equal balance of powers between the legislature and the executive. The constitution of the U.S.A. provides for mutual checks and balances and thus prevents the encroachment upon the sphere of one by the other. (The legislature is important because the executive and the judiciary depends on money grants made by it.)

Functions of the Legislature. Whatever may be the range of powers actually exercised by different law-making bodies, the functions of legislatures in general may be broadly classified into *legislative, deliberative, taxative and judicial*. (The main function of the legislature is to make new laws, to repeal old laws that have, outgrown their utility and to revive existing laws according to the needs of the time. In modern democracies, no law is passed hurriedly. In making laws, the legislature considers, every aspect of the proposed law and particularly its repercussions on the different classes of society. The opinion of the public is invited, the opposition is given an opportunity to criticise the measure and experts are also consulted. Law-making therefore involves an elaborate process which takes considerable time from its start to finish. Thus the legislature is the *deliberative* organ of the state and deliberation is the soul of legislation.) Besides law-making, the legislatures in modern democracies have other functions as well. It controls the public purse. The legislature determines the amount of money to be raised, the methods of its raising, the amount to be spent and the manner in which the money thus raised is to be spent. The ever expanding expenditure of a modern state consequent upon an ever growing extension of its multifarious functions has made it necessary for every government to increase its revenue. Money, in the last analysis, comes from the pockets of the people and it is only natural that the legislature which represents the people should have control over public purse in accordance with the principle 'no taxation without representation'.)

[In England, this legislative control over national finance is enforced through the Public Accounts Committee, Estimates Committee and the Office of the Comptroller and Auditor-General. In the United States of America, the Congress also exercises an effective control over the executive by sanctioning less than what the executive demands so that the latter is again to approach the legislature for fresh sanction. This is intended to effect economy in expenditure. The most effective control exercised by the Congress over national finance is through the General Accounting Office which examines the legality and desirability of the financial operations of the government.] The Indian system of legislative control over public income and expenditure closely follows the British model. The control in India is exercised through three institutions, viz., Public Accounts Committee, Estimates Committee and the Office of the Comptroller and Auditor-General. The legislature also controls the executive directly in parliamentary forms of government and indirectly in the presidential forms. The executive is responsible to the legislature for its policy and action in the administration of domestic, foreign and other affairs. In some states, the legislature can amend the constitution as in England; in others, it has a share in the amendment of the constitution as in the U.S.A. The legislature sometimes performs some executive functions through its committees. By means of their power over the ministry or finances or over treaties, the legislature controls executive actions both during peace and war. The Foreign affairs committee of the American Senate largely influences the foreign policy of the American executive. Besides these, the legislature exercises some functions which are not purely legislative in character. Some legislatures, as in Switzerland, have elective functions. It settles its own procedure of business, can decide contested elections and can act as a court of impeachment. The judicial function is exercised by the upper house on accusation by the lower chamber. Lastly, the legislature acts as a forum of public opinion. It is a place where diversity of interests and different shades of opinion prevailing in the country are represented and every question of public interest is thoroughly discussed and decisions are made on the basis of the greatest common agreement.

Duration of the Legislature. Every legislature should exercise its functions for a temporary period. A permanent legislature or one which remains in power for a long time is not compatible with democratic principles as too long a term is likely to destroy its sense of fidelity and responsibility to the electorate. Conversely, too short a term will deprive them of the opportunity of proving their worth and utility to the people. The normal duration of the legislature should therefore be neither too long nor too short. A four to five years term is regarded as the best.

Structure of the Legislature—The Uni-cameral and the Bi-cameral Systems. When the legislature consists of one house, it is called uni-cameral and when it consists of two chambers, it is known as bi-cameral system. The arguments in favour of the bi-cameral legislature point out the defects of the uni-cameral system while the weakness of the bi-cameral system suggests the merits of the uni-cameral principle. The reasons for the adoption of the two-chambered system are *first* that the experiment of having a uni-cameral system did not prove successful in many countries especially in England during the Commonwealth under Cromwell and in France during the Revolution. *Secondly*, under the uni-cameral system, the many advantages accruing from the bi-cameral legislature are lost to a country.

Arguments for Bi-cameral Legislature. Leacock has rightly remarked that "Of all the means that have been used to secure in the work of the legislation a due amount of caution and reflection, the most important is the division of the legislature into two chambers." The existence of a second chamber prevents the legislative tyranny of a single house. The second chamber protects the liberty of the individual against the legislative despotism of a single chamber. *Secondly*, it acts as an effective check upon the errors of haste and excitement of a single house. A single chamber may prove rash and irresponsible. It may not have the time to consider all proposals for legislation as thoroughly as is desirable. The second chamber may prove its utility in such cases by subjecting every bill to minute examination. Thus it can revise, suggest improvements and act as a healthy restraint upon hasty and ill-considered legislation. *Thirdly*, a second chamber by interposing delay gives the public time for reflection on a particular piece of legislation. No bill is deemed to have been passed unless it is passed by both the houses. The existence of a second chamber therefore adds one step more to the process of legislation. Sometimes, the second chamber by refusing to pass a bill tries to draw the attention of the public on particular proposals which, in its opinion, should not be passed into laws. Thus a second chamber exercises a "controlling, modifying, retarding and steadying" influence on legislation. *Fourthly*, a second chamber is a good means of securing representation to diverse interests and classes in a country. It provides an effective method for the representation of minorities, labour, capital and other interests as well as men who have honoured the nation in different walks of life. Worthy and capable men who fight shy of election trouble may be provided with seats in the upper house so that the nation may not be deprived of the services of its best talents. *Fifthly*, bi-cameralism is a vital necessity in a federal state. The usual practice in a federal state is that the second chamber represents in an equal manner the component states, while the lower house represents the whole nation, irrespective of state-division. Thus it maintains a proper equilibrium between the centrifugal and centripetal forces. *Sixthly*, the second chamber is regarded as a ventilating chamber where important questions on public policy may be fully discussed. *Seventhly*, it is also claimed that the second chamber secures greater freedom to the executive. Two chambers having almost co-equal powers act as a check on each other, thus giving the executive greater scope in formulating and pursuing its policies. *Lastly*, second chambers usually consist of elder statesmen, men of higher age and greater experience. Their term of office is also longer than that of the members of the lower house. The members are usually men of wide and varied experience and as such second chambers command greater respect and confidence both at home and abroad.

Arguments against the system. In spite of the manifold advantages claimed by the advocates of the bi-cameral system, many modern writers have questioned the utility of second chamber in actual practice. Some states, as for example, Yugoslavia, Turkey, Greece and a few other small states adopted the single chamber system before the Second World War. Pakistan and the People's Republic of China have in recent times adopted the single chamber system. Second chambers have also been abolished in almost all the provincial Governments of the British Dominions. Thus it is pointed out by the critics of the second chamber that there is *first* no danger of hasty legislation by a single chamber and *secondly* if there be any danger at all, it is impossible for the second chamber to prevent the danger of hasty legislation. They argue that the procedure

adopted by modern legislatures is so devised that no law can be passed hurriedly. Every bill is examined, scrutinized and discussed threadbare. Every bill must pass through three readings and in between these readings, a bill is referred to a committee which goes into the details of the bill and it can also make additions and alterations in the bill. Thus very few laws are passed hastily. Sometimes, it takes several years to pass an important Act like the Irish Home Rule Act or the Government of India Act, 1935. But if the lower house is bent upon passing a law, the second chamber cannot possibly prevent it because the lower house represents the will of the people and as such it is more powerful. The second chamber therefore cannot effectively check the legislative tyranny of a single house in view of the all-powerful character of the lower house. *Secondly*, the argument that second chambers can secure special representation of classes and interests does not carry much weight. Special representation means special privileges to some and not to all and therefore it militates against the true principle of democracy which seeks to provide equal opportunity for all. *Thirdly*, the existence of a second chamber can hardly be justified even in a federal government. The necessity for proper safeguards for the component states may be provided by a division of powers guaranteed by a written constitution and upheld by judicial decisions. Besides a second chamber is useless in a federal government in view of the fact that representatives vote on party basis and on the basis of states which they represent. *Fourthly*, no satisfactory method has yet been devised for constituting a second chamber. Hereditary or nominated second chambers are undemocratic and are usually very weak. An indirectly elected second chamber fails to command the same amount of respect as a popularly elected lower house. *Lastly*, the useless character of a second chamber was propounded by a French writer in the form of a dilemma which runs as follows :— "Of what use will a second chamber be ? If it agrees with the representative house it will be superfluous ; if it disagrees, mischievous." In any case, Mill rightly remarked that the check "which a second chamber can apply to a democracy otherwise unchecked" is not of any practical value. Among modern writers, Prof. Laski is also of opinion that a legislative assembly should consist of a single chamber which is quite adequate for serving the purpose of a modern state.

Basis of Organisation and Functions of Second Chambers. Experience shows that a second chamber should be constituted neither on hereditary principle as in Great Britain nor on the principle of nomination for life by the executive as in Canada. A second chamber elected directly by the people as in the U.S.A. may give rise to difficulty in the matter of adjusting its relation with the lower house. It may claim equal or more power than the lower house, thus reducing the latter to a 'subordinate position'. The method that has been suggested by competent authorities and which has been adopted by some countries in the organisation of their second chambers is that the majority of the members may be elected by the lower house and a small number may be nominated by the executive or by a commission specially appointed by the legislature for that purpose.

The proper functions of a second chamber should *first* consist in the examination and revision of a bill brought from the lower house. *Secondly*, it should have the right to initiate only those bills which are non-controversial in character and are not likely to meet with any opposition from the popular assembly. *Thirdly*, it must have the right to interpose that much of delay in law-making

which is necessary for eliciting public opinion on bills affecting vital interests of the people. *Lastly*, it should act as a deliberative and ventilating chamber with full power of free discussion on important questions of the day. In short, the second chamber should be vested with the power of making suggestions but it will have no power to oppose the will of the people as expressed through the lower house. If it does not bend before the will of the lower chamber, it is apt to break, as the British House of Lords broke down in 1911.

Bi-Cameralism in Indian Provinces and its Utility. The Government of India Act, 1935, introduced bi-cameral legislature in six of the Indian provinces, namely, Bengal, Bombay, Madras, Bihar, U.P. and Assam. Indian opinion was strongly against the creation of two chambers in the provinces. Second chambers in Indian provinces, based as they were on representation of social interests and nomination by the executive, were directly opposed to popular interests and could seldom act as an efficient revising body. The second chamber was considered more or less a superfluous body as no important function was entrusted to the provinces. In the absence of a distinctive political responsibility in the sphere of provincial administration, the upper house in a province could hardly carry any weight with the public. A second chamber practically with no utility was considered by many as a luxury to the poor Indian provinces. Moreover, the existence of second chambers used to aggravate the then communal ill-feeling which was disastrous to the growth of nationalism in the country. *Lastly*, the most important function of a second chamber is to check hasty and ill-considered legislation of the lower house. But, under the previous constitution, the question did not arise. The provincial executive was vested with so many extraordinary powers over legislation that it had almost usurped the powers and functions of the legislature. The second chamber was therefore not necessary in the face of the Governor's extraordinary powers.

The New Constitution of India provided for the creation of second chambers in seven states of the Indian Union, viz., Bombay, Madras, U.P., Bihar, Punjab, West Bengal and for Mysore. Provision has now been made for second chambers in Andhra Pradesh, Jammu and Kashmir, M.P., and the newly-created State of Maharashtra. Now that a national government has been established in India, the necessity for creating a second chamber may to some extent be justified at least in the case of Bombay, Madras and U.P. where both territory and population of the states have increased owing to the merger of some of the Indian States which were formerly outside their jurisdiction. With the bifurcation of Bombay into two states the necessity for two chambers for that state has lost its former importance. The creation of second chamber can, however, be hardly justified in the cases of other States all of which have been considerably reduced both in size and population as a result of partition. Besides, the New Constitution of India which came into force from the 26th January, 1950, in spite of its apparent federal structure, shows strong centripetal tendency, the cream of power being vested in the Union government. Besides, in the present financial position of these states, it is not at all desirable to have second chambers. Under these circumstances, it is very doubtful whether second chambers will serve any useful purpose in the domain of state administration which is not yet free from central control. Second chamber in West Bengal has since been abolished.

Lower House. The lower house in almost all countries is organised on a democratic basis. All adult citizens, with the exception of lunatics, insolvents,

criminals and the like, have right to choose their representatives. The whole country is divided into a number of electoral districts from which representatives are elected periodically. All states prescribe certain qualifications which the representative must possess for holding office as a member of the legislature. The usual rule is that they must be citizens of the state and must have attained a certain age at the time of election. In the U.S.A., residential qualification is insisted upon. Property qualification is no longer considered as essential except in few states where it is retained for membership in the upper house.

The lower house has been so constituted in every state as to represent correctly the opinion of the people. It is not only a law-making body but possesses greater powers in law-making and in finance. Money bills must originate in the lower house. Its control over national income and expenditure has enabled it to exercise a sort of paternal control over other departments of the government. In parliamentary democracies, the executive is responsible to the lower house for its policy and action. The executive remains in office at its pleasure.

Classification of Bills. Bills are proposals for law-making. When a bill is duly passed, it is known as an Act. Bills are generally classified into *Public bills* and *Private bills*. Public bills are bills which affect the interest of the whole people while private bills concern particular interests of some individual or a local body like the corporation or the county. Public bills when introduced by an official member, i.e., a member of the ministry are called *Government bills* and when introduced by a non-official member of the house, are known as *Private Member's bills*. Thus a public bill may be either a government bill or a private member's bill. Government bills may again be classified into *Ordinary bills* and *Money bills*. Money bills can be introduced only by a member of the ministry and hence all money bills are government bills. Money bills are further subdivided into *Appropriation bills* and *Finance bills*. The former is a proposal sanctioning expenditure for the year; the latter proposes the imposition of taxes for meeting the expenditure necessary for purposes of the government. The above classification of bills is observed specially in Great Britain.

Process of Legislation. In all democratic countries, the process of law-making is almost the same, namely, the ordinary process which leaves the legislature supreme in the sphere of legislation. In India, however, the executive was more powerful even in the sphere of legislation through extraordinary law-making processes of its own.

A bill in order to become an act a law of the land must pass through several stages in both the Houses. The different stages are (a) the first reading, (b) the second reading, (c) the committee stage, (d) the report stage, and (e) the third reading. Except money bills, all other bills may be introduced in either of the two Houses. A bill after it has been drafted by the member concerned, is introduced in the legislature. The procedure regarding introduction of a bill varies from country to country and also with the public or private character of the bill. The member in charge of the bill or the Clerk of the House moves a motion that the bill be read for the first time. Generally, no discussion takes place on the day of the first reading except in the case of a very important bill. The House orders the bill to be printed and circulated among members and a day is fixed for the second reading of the bill. The second reading provides an opportunity to the members for discussing the general principles of the bill

without going into details. At this stage, the opposition may claim a division of vote on the general principle of the bill. If the bill survives the second reading, it is referred to one of the numerous committees into which the legislature dissolves itself at the beginning of the session. The bill is discussed in details, item by item, in the committee which can make amendments to the bill, if necessary. If there is any amendment, the House considers the amendment as suggested by the committee. But the report stage is dropped if no amendment is proposed by the committee. Then follows the third or the final reading. The House considers the bill as a whole and decides whether it should be passed or dropped. The bill is then presented to the other House. There it follows the same procedure. If the other House passes the bill, it is presented before the executive head and with his assent, the bill becomes an act and law of the land.

Committee System. Modern legislatures by the very nature of their composition and complexities of functions are to some extent unadapted to the task of doing full justice to law-making. Hence they transact their business through committees. At the beginning of each session, legislatures form different committees consisting mainly of its own members. Committees are formed to examine private bills, public bills and also money bills. There may be standing committees and sessional committees. Although the majority party has usually the larger share, other parties are also represented on the committees. The committees deliberate in private and if necessary, they may call for witness and follow a procedure similar to that followed in a court of law. The committees elect a chairman who often exercises great power in shaping the course of legislation. In the U.S.A. the chairmen of committees occupy such a place of importance that laws are often named after them.

The great advantage of the committee system is that proposals for law-making are thoroughly discussed in these committees which represent different political parties. When these proposals come out of the committees, they may be said to represent the national view. *Secondly*, as the committees are formed of smaller number of members, detailed discussion of every measure in a calm atmosphere free from party scramble is possible. *Thirdly*, the system ensures economy of time and speedy progress of a bill towards finalisation. *Lastly*, it avoids the greatest evil of democracy, namely, popular legislation by transferring the real power of law-making to a select few who by virtue of their specialised knowledge and experience are better fitted to do the job of law-making.

Sovereign and Non-sovereign Law-making Bodies.

Viewed from the standpoint of power wielded by different legislative bodies, they may be classified into sovereign law-making and non-sovereign law-making bodies. The normal function of all legislative bodies is to make laws but the extent of this law-making power vested in the different legislatures varies and it is on the basis of this difference in the extent of law-making power that legislatures are classified into sovereign and non-sovereign law-making bodies.

A sovereign law-making body is one which possesses original law-making powers, its power not being derived from any other higher authority. *Secondly*, there is no law which it cannot make; and *thirdly*, there is no law which it cannot repeal or modify. *Fourthly*, there is no person or body of persons recognised by law as having the right to question the validity of laws passed by this

sovereign body. In short, it possesses almost unlimited power of law-making and laws passed by it extend to every part of the territory of the state.

A non-sovereign law-making authority, on the other hand, is one whose power to make laws is not original but derived from some other higher authority which may be a written constitution or a higher law-making authority. *Secondly*, it cannot make all laws; neither can it repeal or modify all laws and *lastly*, laws enacted by such bodies may be subjected to executive veto or judicial review.

The British Parliament is such a sovereign law-making body. The legal supremacy of Parliament is so unimpeachable that it has been said that "Parliament can do everything but make a woman a man and man a woman." Parliament's authority to make laws is not derived from any other higher authority. Its competence to make laws cannot be questioned by any other authority in England nor can any court of law question the validity of laws passed by Parliament. Again, Parliament is both a law-making and a constituent body. It can make or unmake all laws—ordinary as well as constitutional. *Lastly*, a law passed by Parliament extends to every part of the King's dominions.

In sharp contrast to the legal supremacy of the British Parliament, stands the U.S.A. Congress which is a non-sovereign law-making body. It is non-sovereign in the sense that it derives its power from the constitution which is the supreme law of the land and it has to act within limits set by the constitution. *Secondly*, the Congress is limited by the power of the Supreme Court which can declare an act of the Congress as *ultra vires* if it is at variance with any provision of the constitution. *Thirdly*, laws passed by the Congress are subject to veto by the President. *Lastly*, the power of the Congress is also limited by the existence of so many state-legislatures which possess independent law-making powers derived from the constitution and hence cannot be encroached upon by the Congress. So it is said that the federal legislature in the U.S.A. is doubly restricted; in England, the legislature is not restricted at all.

It will not be quite out of place to point out in this connection that although in theory, Parliamentary sovereignty still remains unchallenged, in practice, it has undergone important modifications in recent years. Theoretically, Parliament consists of the King, the House of Lords and the House of Commons but in practice, the King and the House of Lords are out of the picture and Parliament now means only the House of Commons. But the House of Commons of today is not what it was yesterday; its own servant, i.e., the Cabinet, has now become its master. So parliamentary sovereignty now means Cabinet Dictatorship. Parliamentary sovereignty has also been limited by the growth of delegated legislation, administrative law, judge-made law and lastly by the recognition of international law as a part of the municipal law of England. Again, no law passed by the British Parliament is applicable to the self-governing Dominions without their express consent. Thus parliamentary sovereignty has now become only a legal fiction.

Delegated Legislation

Its Meaning: Law-making is generally the exclusive power of the legislature. But when the legislature delegates its law-making power to the executive, the executive-made laws are called delegated legislation. As the executive has no original power of law-making but only derivative power, that is, power derived from the legislature, such laws are also called subordinate legislation. Delegated legislation is widely in practice in England. In England, delegated

legislation refers to (a) either the exercise of the power of law-making by a subordinate authority, such as, a Minister or (b) the subsidiary laws themselves enacted in the form of rules, regulations, bye-laws, etc., by a Minister under the authority of Parliament.

History of Delegated Legislation : New laws therefore come into being not only by the formal process by which a Bill becomes an Act but also by executive decrees and proclamations. The process of law-making by proclamation is not a new device but it existed even during Tudor times in England when legislative process had become distinct. But it was during the nineteenth century when many social reforms were introduced that delegation of legislation became a common practice. Towards the end of the nineteenth century, legislative power was granted to government departments and subordinate bodies as was deemed necessary from time to time. This system of law-making in the form of orders, decrees, directions, bye-laws, etc., created so much confusion about the nature of law that it necessitated the passing of the Rules Publication Act, 1893 which prescribed a system of official printing and publication of these laws. The exigencies of the First World War made it necessary to confer wide powers to the Government to make regulations for the successful prosecution of the war. During the twenties of this century a storm of criticism was directed against the system of law-making by Government departments. A committee on Ministers' powers was appointed in 1929 to examine the nature of delegated legislation. The committee suggested certain safeguards against the danger of delegated legislation. The Statutory Instruments Act, 1946 which replaced the Rules Publication Act, 1893 enforced uniformity of procedure in delegated legislation. Since 1944, the appointment of a scrutinising committee of the House of Commons annually by the House itself to examine these laws has ensured Parliament's control over such legislation.

Need for Delegated Legislation : The factors that have given rise to the development of delegated legislation especially in a welfare state may be stated as follows :

(a) *Pressure upon the Parliamentary time.* The enormous volume of legislative business which the legislature of a modern welfare state is called upon to perform makes it almost impossible for a single legislative body to do it even perfunctorily. Despite various attempts made by Parliament to increase its legislative output, it has become impossible to cope with the ever increasing need for new legislation with the gradual extension of state functions. So Parliament now enacts laws only in their broad outlines. The details are supplied by the executive departments because Parliament has no time to enact statutes elaborately.

(b) *Technicality of law-making.* There is a technical part in law-making which requires special knowledge and learning. Parliament being a representative body is interested in the principles involved in law but not in its technicalities. The technical part of law-making is therefore entrusted to the executive which is not only an apt body to deal with technical matters but also to consult experts where necessary.

(c) *Need for flexibility.* The fast changing social environment also demands that statutes already enacted should be adjusted to meet the local needs. Such adjustments to suit local conditions may be made by delegating legislative powers to the executive enabling it to supplement the law.

(d) *Need to meet an Emergency.* Emergencies like famine, flood, economic crisis and war do not wait for the session of Parliament. During the recess of Parliament, such emergencies must be tackled promptly. To cope with such emergencies, the executive is vested with legislative power and hence it is natural that during war time the volume of delegated legislation increases by leaps and bounds.

All the above factors have combined together to make delegated legislation a universal phenomenon.

Advantages of Delegated Legislation. Delegated legislation has many advantages which may be summarised as follows :

In the first place, delegated legislation enables Parliament to concentrate on the policy and principle involved in a law rather than on wasting its time on the details of law. *Secondly*, it secures elasticity of law inasmuch as the details of law are supplied by the executive in response to the varying needs of time and place. This makes frequent amendment of law unnecessary. *Thirdly*, consultation with experts and particular interest-group is possible under the system. The executive which elaborates the statute is an expert and hence competent to tackle the subject-matter properly. *Fourthly*, in national emergencies, which call for prompt action, delegated legislation is specially welcome. *Finally*, it may be said that the officials who actually implement laws should have some discretion to make practical adjustments in executing the policy by issuing rules and regulations.

Disadvantages : Although the necessity of delegated legislation cannot be denied, there are certain abuses inherent in the system.

First, delegation of legislative power implies delegation of authority to supplement parliamentary statutes relating to details and technicalities. But the executive sometimes trespasses into the domain of Parliament, namely, policy-forming. This should be carefully checked. *Secondly*, the executive which supplements statutes often do so without reference to the will or convenience of the people though not always out of a calculated motive. Under such a system, liberty of the people becomes a plaything in the hands of the executive. *Thirdly*, the House of Commons being an elective body is in a position to know the needs and wishes of people and is therefore competent to enact laws for the people. But the officials entrusted with the power of subsidiary legislation having no connection with and first-hand knowledge about popular will and wishes cannot meet popular demand. *Fourthly*, delegation of taxing power is highly objectionable. The system militates against the well-established principle of 'no taxation without representation'. *Lastly*, delegated legislation becomes dangerous when the sub-laws made by the executive are placed beyond the jurisdiction of law courts. Under such a system, the citizens have no protection against this new despotism.

Safeguards against the evils of Delegated Legislation

Delegated legislation is a necessity but a dangerous necessity and unless proper safeguards and vigilance are adopted, it is open to serious abuse. The following suggestions have been made to counteract its evil effects.

First, the extent of delegation of power to the executive should be clearly defined. *Secondly*, provision for consultation with interest-groups affected by such rule-making should be made. *Thirdly*, the jurisdiction of the law-courts to

question rule-making power of the executive should not be curtailed except where specifically laid down by Parliament. *Fourthly*, for the purpose of removing misgivings from the minds of the public, explanatory notes should be appended to all subsidiary legislation explaining the need for such legislation. *Finally*, this rule-making power should be delegated to proper authority by Parliament itself which should also make adequate provision for control and supervision of such subordinate legislation.

Decline of the Legislature. The priority of position of the legislature is an established fact inasmuch as both the executive and the judiciary are to act in accordance with the laws made by the legislature. The executive and the judiciary are also to depend on money grants made by the legislature. In parliamentary democracies, the legislature makes the ministry and controls it in various ways. In presidential democracies, this control is only indirect.

The theory of equal balance of power as enunciated by the doctrine of separation of powers is no more applicable to the governmental organisation of a state in view of the fact that the executive has developed into a multi-functioning organ which performs not only executive but also, at the same time, legislative and judicial functions. The growing leadership of the executive has thus contributed to the decline of modern legislatures.

The factors contributing to the growth of executive leadership and consequent decline of parliaments are many.

In the first place, the advent of well-organised parties with their strict rules of discipline is an important contributory cause. The increase in the size of a modern constituency has made a legislator absolutely dependent on the party to which he belongs. His nomination, election campaign and cost post-election duties are determined by the party. Bereft of initiative and personality, he becomes almost a tool in the hands of the party which uses him according to its convenience. Thus in most cases, the legislators have become 'registering automations' for voicing the view of the party. So the debates of the legislature have become uninteresting and lifeless inspiring none both inside and outside the House. To this may be added another cause, namely, the limitation of the time for debates. Members can neither freely speak nor freely vote.

Secondly, the technical nature of modern legislation consequent upon the extension of functions of a welfare state has made it impossible for an average legislator, a layman as he is, to go into the intricacies and details of legislation. As such he leaves things more and more in the hands of the executive.

Thirdly, the rigidity of control exercised by party leaders who form the executive is another cause. The threat of expulsion from the party and the threat of dissolution of the legislature are effective weapons in the hands of the executive to cow down a recalcitrant legislature.

Fourthly, the innovation of delegated legislation which empowers the executive to enact subsidiary laws has contributed, in no small measure, to the decline of parliament.

Finally, law-making power of the legislature today depends to a certain extent on judicial interpretation and as such legislative supremacy has been curtailed by the growing power of the judiciary.

A marked decline in the position and powers of Parliament is noticeable in England where Parliament no longer governs and is not intended to govern. In India, the supremacy of the legislature was never established and the existence of too many party-groups with divergent views is a serious obstacle to the growth of legislative leadership. In India, the verdict of the judiciary has to some extent limited the powers of the legislature. In the U.S.A., direct executive control is perhaps the least owing to the operation of the doctrine of separation of powers but the indirect control of the President through veto power, press conferences, television broadcasts and through his party in the Congress is no less effective. Legislative leadership has also been overshadowed in the U.S.A. by the supremacy of the judiciary.

Still the legislature performs some important functions. It rouses public interest in politics by its questions and criticism. It also renders valuable services through its committees. It has considerably declined but on that account we must not think that it has become altogether useless. Political institutions grow and they are shaped and fashioned according to the needs of the time lest they should outgrow their utility.

SUMMARY

I. *Functions of the Legislature.* The legislature is the most important of the three organs of the government. The primary function of the legislature is (a) to make laws. (b) It controls the public purse. (c) In Parliamentary form of governments, it directly controls the executive. (d) The upper house of the legislature acts as a court of impeachment.

The duration of the legislature should neither be too long nor too short.

II. *Uni-cameral and Bi-cameral legislatures.* Modern legislatures are usually bi-cameral, i.e., consisting of two Houses. When the legislature is composed of one House only it is known as uni-cameral legislature.

III. *Arguments for Bi-cameral legislature.* The main arguments in favour of the bi-cameral system are that (a) it prevents legislative tyranny of a single house, (b) acts as a check upon hasty and ill-considered legislation, (c) secures representation of special classes, interests and able men, (d) it is essential in a federal government to guarantee the equality of position of every state.

IV. *Arguments against.* (a) There is no danger of hasty legislation because no law can be passed except through an elaborate procedure. (b) The lower chamber is usually so powerful that it is impossible for the upper House to check it. (c) It is very difficult to constitute a second chamber on a satisfactory basis. (d) It is either superfluous or mischievous.

V. *Organisation and Functions of Second Chambers.* The second chamber may be constituted on (a) hereditary principles, or (b) principle of nomination for life by the executive, or (c) direct election by the people, or (d) indirect election by the people. The best method is that of indirect election of the members by the Lower House combined with the principle of nomination of some members by the executive or by a special commission of the legislature.

The proper functions of a second chamber are (a) revision of bills, (b) initiation of bills of a non-controversial character, (c) interposition of delay for eliciting public opinion and (d) deliberation and discussion.

VI. *Bi-cameralism in India.* The Government of India Act, 1935, created two chambers in six of the Indian provinces including Bengal. They were not only useless in view of the special law-making powers of the executive, but were mischievous too. They opposed popular measures, were expensive and tended to aggravate communal ill-feeling. The New Constitution of India also provides for double chambers in six states. During the initial stage, second

chambers in the states could have been dispensed with as they served practically no useful purpose, besides being too expensive for the newly created states some of which have been considerably reduced in size, population and consequently in income.

VII. *Lower House.* The lower House consists of the representatives of the people who are citizens and possess certain other qualifications prescribed by the state. Its functions consist in making laws, controlling income and expenditure of the state and also controlling the executive.

VIII. *Classification of Bills.* Bills are either Public or Private according as the nature of the interests affected. Public bills are either Government bills or private members' bills according as the proposer of the bill. Government bills may be either ordinary bills or money bills according as the matters involved in the bill.

IX. *Process of legislation.* A bill must pass through five different stages before it becomes a law. The steps are (a) first reading, (b) second reading, (c) committee stage, (d) report stage and (e) third reading. It follows the same procedure in the other House and then with the assent of the executive, it becomes a law of the land.

X. *Committee system.* Modern legislatures transact their business through numerous committees formed of its own members. Committees examine bills thoroughly and if necessary, may revise them. The system ensures economy of time and legislation by experts thus avoiding evils of popular legislation.

XI. *Sovereign and Non-sovereign law-making Bodies.* A sovereign law-making body is one which possesses (i) original power not derived from a higher authority, (ii) it can make, amend or repeal all laws and (iii) laws passed by this body cannot be questioned by any other authority. The British Parliament is an example of such a body.

A non-sovereign law-making body is one which does not possess (i) original power but its power to make laws is derived from a higher authority, (ii) it cannot make, amend or repeal all laws and (iii) laws passed by it are subject either to executive veto or judicial review.

The U.S.A. Congress is a non-sovereign law-making body.

XII. *Delegated Legislation.* Delegated legislation implies law-making by the executive under the authority of the legislature. These laws are subordinate or subsidiary laws framed by the executive in the form of rules, regulations, bye-laws, etc., to supplement parliamentary laws. Delegated legislation is widely in practice in England. The pressure upon parliamentary time and the technicality of law-making have made it necessary to supplement parliamentary laws by these methods. But proper safeguards should be provided for protection of the rights of the people against possible abuse of delegated legislation.

XIII. *Decline of Legislature.* Of the three organs of the government, the legislature was so long regarded as the most important organ. But the position and powers of the legislature today are on the wane. The factors contributing to the decline of the legislature are many. The advent of well-organised political parties with their strict rules of discipline, the rigidity of control exercised by the party-leaders who form the executive, growth of delegated legislation and judicial reviews of laws have reduced the legislature to an organ of secondary importance. The power of the legislature has been eclipsed by that of the executive.

QUESTIONS

1. Discuss the position and utility of second chambers in modern states. (C. U. 1944)
2. Describe the process of law-making in a modern democracy.
3. A second chamber is almost indispensable in a federation such as the United States. Why? Do you think that a second chamber is a necessity in the case of India?

(Gauhati, 1948)

4. What are the essentials of good second chamber? What should be its proper functions? Give your own ideas about the satisfactory composition of second chambers.

(Allahabad, 1941 ; Agra, 1943)

5. "If a second chamber dissents from the first, it is mischievous, if it agrees with it, it is superfluous." Examine this statement. Should West Bengal have a second chamber? Give reasons for your answer.

(C. U. Hon. 1949)

6. How would you distinguish a non-sovereign law-making body from a sovereign law-making body? Illustrate your answer.

(C. U. 1950 ; Gauhati, 1949)

7. Which is a better check on a popularly elected legislative body in a modern state—a Referendum or a Second Chamber? Give reasons for your answer.

(C. U. Hon. 1954)

8. Bi-cameralism cannot be justified by any argument. Do you agree?

(C. U. 1962)

9. What are the functions of a modern legislature?

(C. U. 1970)

10. Discuss the problem of uni-cameralism versus bi-cameralism in the Constitution of the legislative organ.

(C. U. Hous. 1975)

11. Discuss the functions performed by the Legislature in a modern state.

(C. U. 1983, C. U. Law 1992)

CHAPTER 15

STRUCTURE OF GOVERNMENT—THE EXECUTIVE AND THE JUDICIARY

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Rodee, Anderson and Christol—Introduction to Political Science, Ch. 6.

The Executive : Its Meaning. The term executive denotes all those executive and administrative functionaries in a state including everybody from the chief executive head down to the police constable who are concerned with the execution of law. In a wide sense, therefore, the term includes all the governmental agencies with the exception of the legislature and the judiciary. In a narrow sense, the term denotes only the supreme executive, may be an individual or a body, who is concerned with the formulation of policies and supervision and control of other subordinate departments which carry out the will of the state.

Classification of the Executive. The executive head may either be *hereditary* as in Great Britain or *elective* as in France. In some states, there is a *nominal* head of the executive who reigns but does not govern. The British King is the titular head but the *real* executive is the Cabinet which exercises the legal powers of the king. When the executive is responsible to the legislature, usually to the Lower House, the executive is called *Parliamentary* executive. When the executive is independent of the control of the legislature, it is called *Non-Parliamentary* executive. The executives in England and in India are of the Parliamentary type while the American executive represents the latter type. The executive authority is generally reposed in a single hand. A single person or a very small body of persons is entrusted with executive functions. When the final control is vested in one individual or in an aggregate body of individuals as in England and India, the executive is a *Single* one. But the executive in Switzerland is collegial in form. The constitution of the Swiss Republic vests the executive authority in a Council of seven persons with a chairman at the head who has no more actual power than his colleagues. The final control lies not with one person but with a council of several. Such executive is called *Plural executive*. The efficiency of the executive depends on its singleness of purpose, promptness of decision and action and secrecy of procedure. A single executive is therefore better suited to discharge executive functions than a plural one with variety of views. Plurality implies division of executive power which leads to its enfeeblement. It also destroys responsibility. Although the Swiss system works smoothly in Switzerland, the principle of plurality proved a failure in other countries.

Mode of Choice of the Executive. There are four different methods of choosing the executive. *First*, the executive may be a hereditary monarch who is a mere figure-head in the government. This type is fast disappearing from the world. *Secondly*, the executive head may be directly elected by the people. The

French constitution provides for the election of the French President by direct popular vote. The system is in keeping with true democratic principle. It stimulates the interests of the people in public affairs and affords a means of political training to the people. But the most serious drawback of the system is that the masses in a big country may not generally possess the competence to choose a candidate for so important an office. *Thirdly*, the chief executive head may be indirectly elected by the people as in the U.S.A. Although indirect in form, the elective scheme for choosing the American executive has come to be almost direct in fact. Indirect election has the merit of avoiding tumults of direct election. It also leads to the choice of better type of men by restricting the immediate selection to a small body of capable representatives. But the system has failed altogether of its objects under the influence of political parties. The electors have now become party puppets, having no discretion of their own in choosing the executive. *Fourthly*, the chief executive may be elected by the legislature as in Switzerland and India. Mill was an advocate of this method. Election by legislature is regarded by many as the best method in view of the fact that the legislature, more than the masses of voters or intermediary voters, is the most qualified to choose a right man for so high an office. But the system has been criticised on the ground that it violates the principle of separation of powers. Under this system, the chief executive may be reduced to a position of dependence on the legislature which is likely to impair its efficiency and independence.

The term of the Chief Executive. The executive is entrusted with the task of maintaining internal peace and preventing foreign aggression. It must therefore be made so stable and strong that it can pursue a definite policy in order to ensure steady progress of the nation. The policy pursued by the executive in regard to internal and external affairs depends, to some extent, on its duration, *i.e.*, how long the executive continues in office. In practice, the term of the executive ranges from two years to seven years. If the term is too short as in the case of many states in the U.S.A., the executive will feel little inducement to do any positive good by exposing himself to any great risk. On the other hand, if the term is too long, there is the danger of abuse of power by the executive without any means of enforcing responsibility upon him. The term of the executive should therefore be of such duration as will enable him to translate his policy and programme into action, at the same time making him conscious of his sense of immediate dependence on public opinion. A four-year term has been suggested by many as the proper tenure of office of the executive.

Classification of the Executive Power. The executive power may be broadly classified under six heads.

(i) *Diplomatic power.* It relates to the conduct of foreign relations including the power to negotiate and ratify treaties, international agreements and to appoint and receive diplomatic agents. The treaty-making power, however, does not belong wholly to the executive as the legislatures of many states retain some amount of control over it. Thus in the U.S.A., all important treaties negotiated by the President, are subject to ratification by the Senate. In France, the legislature can approve or disapprove a treaty as a whole but cannot amend it. In Great Britain, however, Parliament has no control over the treaties made by the executive except where legislation is necessary to make them perfect or to enforce them.

(ii) *Administrative power.* This has to do with the execution of the laws and the administration of the government. The duty of the executive is to maintain law and order within the country and as such it is vested with a wide power of supervision and control so that laws are properly enforced. It has the power to appoint, direct and dismiss its subordinate officials. In some states as in the U.S.A., the power of the chief executive in matters of high appointment is limited by the requirement that all such appointments must be ratified by the Senate.

(iii) *Military power.* It relates to the prosecution of war, the supreme command of the army and navy and other military forces of the government. In Great Britain, the executive has the right to declare war but it is the legislature which provides the means of prosecuting the war. In the United States, the concurrence of the Congress is necessary for the declaration of offensive wars.

(iv) *Judicial or Pardonng power.* This relates to the power to grant pardons to persons convicted of crime. The right of clemency is by common consent regarded as a necessary part of the executive function. Considerations of humanity and sound public policy require that the executive should exercise the right of pardon. It also includes the right of amnesty especially in times of internal disturbances.

(v) *Veto power.* The executive in some states possesses veto power, i.e., the power to disapprove acts of the legislature. The power is generally vested in the executive in order to prevent the legislative tyranny of the law-making organ. The veto power may take any of the three forms, namely, *absolute*, *qualified* and *suspensive*. The executive is said to possess absolute veto when it can turn down any law passed by the legislature which cannot restore it by any means whatsoever. The Governor-General of India under British rule, was vested with this power. The British king still possesses this power theoretically, but it has become obsolete now because of long disuse. The qualified veto means a veto which is not absolute but the legislature can restore the measure by a different process, say, by passing it again by a two-thirds majority even when it has been disapproved by the executive. The President of the U.S.A. can exercise this power but if the vetoed bill is passed by the Congress by a two-thirds majority, it will become an act in spite of the dissent of the President. The suspensive veto is one where the executive may disapprove and the legislature may be compelled to reconsider the measure passed by it and turned down by the executive. But if the legislature passes it again by a simple majority, it will become an act notwithstanding the dissent of the executive. The New Constitution of India provides that the President, instead of giving assent to a bill duly passed by Parliament, may send the bill back for reconsideration. But if the bill is passed by the legislature for the second time, the President must not withhold his assent therefrom.

(vi) *Legislative and Ordinance-making power.* The legislative power of the executive is not the same in all countries. In the Cabinet form of government, the executive is a part of the legislature and directly participates in legislation. In addition to its power of summoning and closing the sessions of legislature, the members of the executive in England are also Parliamentary leaders who initiate bills and pilot them through the course of legislation. The executive, in the Presidential system, has ordinarily nothing to do with legislation but it exercises some amount of indirect influence over legislation in various ways. The executive in almost all countries is also vested with the power of promulgation of laws.

The executive in modern states is vested with the power of issuing ordinance which includes the power of the executive to issue orders or rules for the guidance of the conduct of subordinate officials and also for supplementing and filling in the details of existing statutes. In the U.S.A., the ordinance-making power can be used by the executive for administrative legislation and not for supplementing statutory laws. In England, ordinances or 'orders in council' are very extensively issued to deal with social problems like public health, education, etc. The practice of delegating the power of minor legislation to the executive is steadily increasing nowadays in Great Britain.

The Permanent Civil Service

The Civil Service in every state constitutes an essential part of the executive department of which the other two parts are the nominal and the real or the political executive. The nominal executive occupies an exalted position and the real executive possesses supreme power while the civil service, i.e. the permanent executive constitutes the very backbone of administration inasmuch as it is the civil servants who carry out the law entrusted to their care. The nominal executive has a halo round him which the civil service lacks, the real executive possesses a power which is beyond the reach of the civil service but the civil service possesses technical knowledge and practical experience which have made the civil service an indispensable part of the governmental machinery without which the other two parts of the executive become virtually impotent. In fact, it is the civil service which governs a country.

The work of a modern government has become so varied and complex in its nature that due performance of governmental functions demands the continuous service of a host of permanent officials who must be thoroughly conversant with the technical knowledge connected with their job. Each department of a government is headed by a minister who is an amateur at the top. The business of the amateur at the top is to formulate policies for his department for which he is held responsible but it is not his business to run the department of which he is the head. The actual work of administration is carried on by the members of the civil service who have a permanent status and tenure and are appointed for their administrative capacity alone. These officials keep themselves aloof from party politics and are not affected by a change of ministry. As they are selected for their administrative capacity alone, they supply to the ministers and legislature all information necessary for formulating policies on all important matters of the government. It must however be remembered here that it is not the civil service but the ministers who are responsible for the policies thus formulated. Expertness and not responsibility is thus the ear-mark of the permanent executive, i.e., the Civil Service. Thus the actual work of day-to-day administration is done by the members of the permanent civil service who are recruited after a rigid test of fitness through competitive examinations written, oral and medical. Civil Servants are generally recruited at an early age when the mind remains pliable and receptive and after recruitment they are often required to undergo a period of probation when they are given some practical training along with theoretical study.

The efficiency of the Civil Service depends to a great extent on the fixity of their tenure of service, adequate salary and prospect of promotion. To secure these conditions, almost all states have provided for the appointment of civil servants by an independent Public Service Commission. They hold office during good behaviour and retire on an age fixed by statutes. Promotion is made

according to seniority and sometimes according to proved ability. The danger about permanent civil service is that due to the excessive dependence of the executive heads on the technical assistance rendered by the civil service, it tends to encroach upon the sphere of the ministers. This is to be guarded against by all means.

Relation between the Executive and the Legislature

Government, being an organic unity, admits of no absolute separation of powers. The work of the one is supplemented and supervised by the other. Generally speaking, the relation between the two may take any of the four different forms. In the present parliamentary system of Great Britain, the initiative in legislation, finance and formulation of policies, lies in the hands of the cabinet which is the Steering Committee of Parliament. According to the French model, which is also of the Parliamentary type, the executive is subordinate to the legislature. French ministry was notoriously unstable and this instability of the French executive was partly due to its complete dependence on the legislature not only for the approval of its policy and action but also for its very existence. In England the House makes the Ministry but the Ministry can unmake the House ; in France, the House unmakes the Ministry. The U.S.A. system is marked by a complete separation of powers between the executive and the legislature, there being practically no constitutional relation between the executive and the legislature. Of course, there are some points of contact between the President and the Upper House of legislature. Lastly, the Swiss system of government has combined the advantages of the English system with those of the U.S.A. system. The Swiss executive is peculiar in the sense that it is collegial, enjoys a fixed term and does not go out of office if its policies are disapproved by the legislature.

Executive Leadership in Modern States

The executive in modern states occupies such an exalted position that it has reduced the other two organs of the government to a subordinate position. The theory of equal balance of power between the executive, legislature and the judiciary is no more applicable to the governmental organisation of a state in view of the fact that the executive has developed into a multi-functioning organ which performs not only executive but also, at the same time, legislative and judicial functions.

In England, legislative leadership is a monopoly of the Cabinet which determines, initiates, pilots bill and makes them laws. In the U.S.A., the President, the executive head, influences legislation in an effective way by his constitutional right to send message wherein drafts of bills may be inserted, to recommend measures, to convoke special sessions of the legislature and lastly to veto bills. He may also impress upon the voters his own views by effectively appealing to their sentiments through the press, radio and the modern device of the television. He has also considerable patronage at his disposal by means of which he can manage to influence the voters. Besides these, the executive in almost all countries is vested with other subsidiary powers of legislation in the form of ordinances, decrees and regulations.

Legislation by the executive is considered as a lesser evil than the investment of the executive with judicial power. The executive controls the judiciary in the sense that judicial appointments are mostly made by the executive and judicial decisions are enforced by it. Appointment

of the judiciary by the executive, though held by Dr. Garner as the best method of judicial selection, is not above criticism. The judiciary in such cases may not be altogether free from the influence of the party in power which makes such appointment and as such judicial decisions may be vitiated by considerations of party interest. This has happened in the U.S.A. The special power of granting pardon and reprieves, the existence of court martial and the administration of the *droit administratif* are examples of judicial powers exercised by the executive.

Now the question is how far this investment of the executive with almost dictatorial powers over other organs of the government is compatible with, and conducive to, the smooth working of a popular government. A popular government is one in which the people have not only the power to choose their rulers but also the power to compel the rulers to consider and to give effect to popular demand. The executive generally consists of seasoned diplomats of ripe experience and as such there can possibly be no objection if the executive is vested with the powers to determine, initiate and guide legislation but power, it should be remembered, tends to corrupt those who wield it and therefore it should be effectively safeguarded. The ultimate power of making and unmaking laws should never be delegated to the executive which, by the very nature of its composition and function, is quite unadapted to the task of the legislature. It is wholly unsuited to the task of the judiciary because it lacks the training and temperament of the judiciary. Of course, the complex mechanism of a modern government consequent upon an extension of its activities to a variety of directions makes it necessary to have a co-ordinating, unifying and controlling authority but that does not mean that the executive should be vested with overriding power—power which enables it to have its own way irrespective of the decisions of the other organs. The French people have suffered for the weakness and instability of their executive but still they have not given a *carte blanche* to the executive. The Swiss system of executive is superior in the sense that it is more stable and at the same time it has been effectively kept in check by the legislature which, in its turn, is subject to the control of popular referendum, initiative and recall. The constitution of the U.S.A. provides for one effective check upon the power of the executive and that check is judicial review which in the past curbed the monarchical ambitions of many a President.

The growing power of the executive is considered as a serious menace to the successful working of a democratic government and if democracy is to be made safe for the world, the growing power of the executive must be curbed and this can be done only by increasing popular control and popular supervision over the affairs of the government. An alert and intelligent public opinion is therefore the best safeguard against executive tyranny.

The Judiciary. There is a Duality theory and a Trinity theory. The advocates of the Duality theory refuse to recognise the judiciary as an independent organ of the government rather they look upon the judiciary as an administrative branch of the legislature. According to them the legislature and the executive are the two principal organs of the government and the judiciary simply administers the laws passed by the legislative organ. But this view is not tenable because the judiciary not only applies law but also interprets it and in the act of interpretation, it also supplements existing laws. In federal governments, the judiciary acts as a bulwark of individual liberty by keeping in restraint the activities of the executive and the legislature within the bounds of the constitution.

Its functions. The main function of the judiciary consists in the application of laws to particular cases. Judicial tribunals are agencies for the settlement of disputes between individuals and between them and the state and for the trial of persons accused of crime. But this is not the whole function. *Secondly*, in applying laws to specific cases, the judiciary interprets the law. *Thirdly*, the judges are to try various cases, some of which may not be covered by existing laws. In such cases, the judges are to try these cases according to the principles of justice, equality and common sense. Thus in the act of application and interpretation of law, the judges make precedents which are followed in subsequent cases. In this way, the judiciary supplements the existing law. *Fourthly*, in some federal governments as in the U.S.A., the judiciary possesses the competence to declare the laws passed by the legislature as unconstitutional. Besides these, the judiciary performs a variety of miscellaneous duties which are not of a judicial nature, such as, granting of licences, granting of probate, administration of estates of the deceased, appointment of receivers, giving opinion, issuing injunctions to prevent the commission of wrong and injury, etc.

The judiciary also acts as the guarantor and protector of the rights of citizens. It is said that law is the condition of liberty. Law alone is not a sufficient condition. The condition can be created only by the judiciary by the proper application and interpretation of law. Constitution of every country embodies a long list of rights of the citizens, but a mere enumeration of the rights is meaningless unless the judiciary helps the citizens enjoy them.

Qualification of Judges. The function of the judiciary is wholly different from that of the legislature and the executive. Their special functions are such that the judiciary should possess in a special degree certain qualifications which are not considered necessary either for the executive or the legislature. Judges, *first*, must possess sound knowledge of law which they are to deal with. *Secondly*, they must be impartial. They should not be amenable to any outside influence. *Thirdly*, it is necessary that the judiciary in a state should be absolutely independent from extraneous influence.

Independence of the Judiciary. Liberty and equality are the corner-stones of a democracy and the preservation of these two conditions is indispensable to the development of individual personality and is an essential function of a democratic government. Due discharge of this essential function, on the other hand, depends largely on the organisation, independence, impartiality and integrity of the judicial system. The judiciary has a two-fold function, namely, (i) the preservation of the constitutional and legal rights of all citizens against all encroachments whether by the government or by pressure groups or by other individuals; (ii) *secondly*, the judiciary is to apply law equally to all irrespective of status, wealth, religion, sex or political affiliation. Judged from this point of view, the judiciary as an organ of the government presents striking difference from the legislature and the executive. This is why the judiciary should be neutral in politics.

The protection of individual liberty by just and impartial trial is therefore regarded as a sacred duty of the judiciary. The judiciary should be independent and impartial so that it may be possible for them to try cases in accordance with law without being influenced by any extraneous factor. Judicial independence is necessary because the judges protect the innocent from injury and usurpation by means of law and punish the law-breakers strictly in accordance with law.