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AN INTRODUCTION TO POLITICAL SCIENCE

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PREFACE

The considerations which were foremost in the author's mind in preparing this book were that a book of this kind should be as lucid as possible and that it should, through repeated references to important points, help the students to get them indelibly impressed on their memory. The author has tried to discuss the subject in the simplest possible language and has frequently summarised and numbered important points for the readers' convenience. As for repetition, he has not been afraid of it in the least, and all essential things have been stressed again and again in the same or different chapters. The author hopes that the publication will prove useful to students and even experts, and will contribute in some measure, however small, to the quickening of the civic consciousness of the people of the country, on whom the Constitution of India has imposed heavy civic obligations by introducing the system of universal adult franchise.

No trouble has been spared to ensure that the facts and figures incorporated in the book are all up-to-date.

The author's indebtedness to the standard books on Political Science will be obvious to anyone conversant with the subject. In his anxiety to be helpful to the students as much as possible, the author has consulted these books on all important topics. Suggestions for improvement will be thankfully received by him.

The author takes this opportunity to express his sincere thankfulness to Sri Janakinath Basu, M.A. without whose help it would not have been possible for him to bring out this work.

Calcutta,
August 1, 1955.

A. NANDI

PUBLISHER'S NOTE

The publishers regret that, owing to circumstances beyond their control, the delay in publishing the second and the third parts of the book has been far greater than they had originally estimated. Full advantage has, however, been taken of the delay to incorporate in the body of the text, as well as in Appendices, reference to latest developments and changes. Among the more recent constitutional and political developments which have been dealt with in these two parts are the birth of the Fifth Republic in France, the abrogation of the Constitution in Pakistan, increase in the membership of the Commonwealth and of the United Nations and the phenomenon of deStalinization in the Soviet Union.

The publishers hope that these parts will prove as useful to students and general readers as the first part of the book which has already become popular all over the country, as well as in some of our neighbouring countries.

15.6.59.

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CHAPTER I

NATURE AND SCOPE OF POLITICAL SCIENCE

Poiltical Science, Its Scope and Utility: Political Science is the science of the state. Just as Botany deals with the plant kingdom or Physics deals with the properties of matter and energy, Political Science deals with the phenomena of the state. It studies the origin and nature of the state, investigates the nature, history and forms political institutions, and deduces from such enquiry the laws of political growth and development. In short Political Science is concerned with the study of the phenomena of the state—the state as it is today, the state as it had been in the past, the state as it ought to be.

What is the utility of studying Political Science? By studying this science we acquire knowledge of a highly important field of human activity. We learn from it how laws are made and enforced, how governments are constituted and function, when governments gain popularity and why they often become unpopular, as well as the causes that lead to revolutions and overthrow of governments. We learn from it the basic purposes for which the state exists and the conditions under which the ends of the state are likely to be best achieved. Secondly, the study of Political Science gives one valuable training in the art of observing social and political affairs, properly assessing the importance of political issues and developments, correctly understanding the implications of such developments and forming intelligent opinions on public questions. In other words, the study of this science gives a person a good training for the proper performance of his duties and functions as a citizen.

Other Names Suggested for the Science: The word 'Politics' is used by some writers to mean Political Science. This word is, however, an ambiguous one. Nowadays various kinds of issues, political, economic and

even social, are indiscriminately referred to as politics. "When we speak of a man as interested in politics," says Gilchrist, "we mean that he is interested in the current problems of the day, in tariff questions, in labour questions, in the relations of the executive to the legislature, in any question, in fact, which requires, or is supposed to require, the attention of the law-makers of the country. Similarly, a 'politician' is not a student of Political Science but a member of this or that political party." Thus, since the word "Politics" does not exclusively refer to problems that are purely political in character, it would be wrong to use the term to mean the science of state. (The word 'Politics' is derived from the Greek word *poils* which means a city.)

Again, some writers are in favour of using the term Political Philosophy as the name for this science. But use of this name would be inappropriate because Political Philosophy deals with the fundamental problems of the state and government, political ideals, of law and liberty and the like. Political Science is, however, concerned not only with such problems but also with the history of past political institutions as well as the description of present political phenomena. Such history and description would be out of place in Political Philosophy. In other words, Political Philosophy deals with only part of the subject that is included in the scope of Political Science. The term Political Philosophy ought not, therefore, to be used as the name for the science.

Some writers, notably the French, use the term Political Science to denominate sciences like sociology, constitutional law, public finance, political economy and the like because each of them deals, primarily or incidentally, with some or other class of phenomena belonging to the state. While use of this plural form may be justified as a general name for all these sciences, the singular form should be used when one means the particular science dealing exclusively with the phenomena of the state.

Is Political Science a Science? There are critics who reject the claim of Political Science to be treated as a science. According to them, it is a misnomer to call Political Science a science. Their chief argument is that the subject-matter of Political Science is so complex and so variable that scientific methods of investigation are not applicable to them. Political phenomena, they point out, are characterised by such uncertainty, complexity and lack of continuity and are influenced by so many factors, tangible and intangible, including diverse human emotions and passions that it is impossible to reduce them to general laws. Physics and Chemistry have discovered the general laws governing the physical world or chemical reactions of various kinds of elements, and on the basis of these laws they can make predictions in respect of these things. Can Political Science, the critics ask, make predictions of this character? Chemistry, for instance, can state accurately what will happen when zinc is dipped in dilute sulphuric acid, and physics can predict on which dates of the year the earth will move nearest to the sun. But can Political Science predict what will be the effect of a certain idea on the mind of the people of a country, or when economic discontent will throw a country into revolution?

Secondly, it is argued that the natural sciences arrive at their conclusions, or verify them, by experimentation, but Political Science cannot do so. While the botanist, for instance, can study in his laboratory how a plant will behave under certain conditions of moisture and temperature, the political scientist cannot put a community in a laboratory and study how it will behave under some given conditions. Experimentation being impossible in the political field, the conclusions of Political Science lack scientific accuracy and hence it cannot be regarded as a science.

Thirdly, the critics say that the essence of the scientific method is measurement, and in Political Science accurate measurement of the factors involved is in most cases impossible. This is because passions, sentiments and opinions

which constantly influence political affairs are intangible things and cannot be measured in any way. While we can measure accurately the temperature or the pressure of a gas, we cannot measure the strength of a passion or the force of an opinion. None could, for example, measure accurately how hot were the feelings and passions of those who demanded the partition of India, nor how sad the minorities on either side of the border felt when partition took place. None again could measure in the twenties of this century how much influence the Gandhian technique of non-violence would ultimately exert on India's struggle for freedom, nor how much influence it is likely to exert on the current political affairs of mankind.

Now, it must be readily admitted that there is much force in these arguments of the critics. It is impossible to achieve in Political Science the exactness and accuracy of the natural sciences like Chemistry or Biology. For political phenomena are highly complex and variable and subject to innumerable influences, both subjective and objective. Ideas, opinions and passions influence the political life of mankind as much as do objective factors like food supply and geographical situation. Sometimes ideas influence people's political behaviour far more powerfully than objective factors. Nevertheless, it is possible in Political Science to study its subject-matter in a scientific manner and deduce general principles or laws which are capable of wide application. The word 'science' implies systematised knowledge of a subject and Political Science has, through careful study and observation of political phenomena, already built up a body of systematised knowledge which entitles it to the appellation of science. Again, while it is true that the political scientist cannot carry on experiments on its material, just as the biologist or the botanist can experiment in his laboratory, political experiments are being constantly made in every country and the student of political science can study the results of such experiments and draw conclusions of general applicability from such study. Every law that is passed by

a legislature, every constitution that is framed and enforced by a Government is a political experiment. The present Constitution of India, which was framed by the Indian Constituent Assembly and brought into force on January 26, 1950, is a gigantic experiment in democracy, and political minds in almost every country are studying the results of the experiment. The Gandhian satyagraha movement is again an experiment of great importance in the political history of the world and there are people who are of opinion that on the success of this experiment depends the very fate of human civilisation. Thus, while the student of Political Science cannot experiment with his material in a laboratory, the wide world is his laboratory where political experiments of various kinds—experiments, for example, in democracy and dictatorship, in cold war and shooting war, in gradual progress and revolution—are canstantly being made. It is, of course, extremely difficult to reach correct conclusions from a study and observation of these experiments because the factors involved are numerous, some of them being intangible, while the comparative importance of the several factors is hard to assess. There is also the likelihood that the conclusions of the investigator may be vitiated by his own preconceived notions, and prejudices. This is a peculiar difficulty which the natural scientist does not have to face. The chemist feels neither love nor hatred for an atom or a molecule, but the political scientist may be unconsciously influenced, in reaching his couclusions, by his own political beliefs and prejudices. This is well illustrated by the widely differing judgments passed on the results of the Soviet socialistic experiment by different observers.

In spite of these difficulties, however, it is possible to study political phenomena in a systematic and scientific manner, to verify the conclusions through a comparison of the results of numerous experiments of a similar character, and thereby to deduce certain general laws or principles. A study of Political Science will reveal that it has already arrived at some broad principles which are capable of wide

application and which are highly useful in the handling of the actual political problems of society. It is, for instance, a generally accepted principle of Political Science that if justice is to be properly administered, judges must be ensured a reasonable degree of independence of the executive. No state can ignore this principle without jeopardising justice.

We thus come to the conclusion that Political Science is really a science. It may not be as exact a science as any of the natural sciences. But it is a science because it has built up a systematic body of knowledge and has arrived at certain general laws of political phenomena. That Political Science has not been able to attain the degree of exactness that one finds in the physical sciences is due to the fact that the phenomena it deals with are highly complex, subject to a wide variety of influences and are constantly changing. Aristotle, the great Greek philosopher, described Political Science as the master science or the supreme science. In later times, great writers on the subject like Hobbes and Montesquieu also regarded it as a science. Modern writers like Bryce, Bluntschli, Pollock Sidwick and others have defended the claim of Political Science to be renked as a science. Sir Frederick Pollock rightly says that "political science must and does exist, if it were only for the refutation of absurd political theories and projects." Political Science is, moreover, a highly progressive science. Researches in various fields of social sciences are continually adding to our knowledge of the political behaviour of both the individual and groups.

The Methods of Political Science: Every science follows certain methods in studying its material and arriving at its conclusions. Political Science too would not be entitled to the name of science if it did not apply some scientific methods to the study of political facts. What are the methods of Political Science ?

The experimental Method :—As has been already stated, it is not possible to make such experiments in Political Science

as are usually done in the field of natural sciences. The student of political science cannot use any mechanical apparatus in studying his material, nor observe the behaviour of groups and communities in the controlled conditions of a laboratory. This does not mean, however, that the method of experimentation has no place in the field of Political Science. As has been pointed out, political experiments are being conducted, whether consciously or unconsciously, in almost every country and almost every day of the year. The introduction of a reform, the passing of a law, the starting of a revolution and the outbreak of a war are all so many political experiments. Every move on the chess-board of international politics is also such an experiment. The Republican Constitution of India, the present socialist regime in the Soviet Union, the creation of Pakistan and the establishment of the United Nations all represent gigantic political experiments. The student of Political Science studies the results of these expriments and tries to deduce principles of general applicability from his material. Great care and patience are, however, needed in such study for the factors involved are complex and numerous, the similarity of the instances may be only superficial and the preconceived notions of the investigator may completely vitiate his conclusions. The fact, particularly, that political processes are determined not by any one factor but a plurality of factors, economic, geographical, religious, racial and psychological, makes the task of the investigator of political phenomena extremely difficult.

The Historical Method :—The historical method is a very valuable one in Political Science. No political institution can be properly understood unless one studies the history of its origin and development. The historical method of investigation is that of studying the past history of an institution to find out the causes that influenced its birth and development. The historical method, says Sir Frederick Pollock, "seeks an explanation of what institutions are and are intending to be, more in the knowledge of what they have been

and how they came to be what they are, than in the analysis of them as they stand". Nationalism as a political phenomenon, for instance, cannot be clearly understood nor its future predicted, in so far as prediction is possible in political matters, unless one studies the history of nationalism and the processes through which it came to be what it is today.

The Comparative Method :— The essence of the comparative method lies in comparing different historical facts and political events to discover their underlying causes. By comparing the history of a number of wars, for instance, it is possible to find out the causes of war as a social phenomenon. By comparing the facts of the various revolutions in history, it is possible to discover certain general laws governing the course of social upheavals.

The investigator, however, must be very careful in using this method because no two historical events are completely identical and resemblances are sometimes merely superficial. Conditions vary from country to country so greatly that any comparison that leaves out of account these differences is sure to lead to wrong conclusions. To take an example, nearly cent per cent voters cast their votes in elections in the Soviet Union, while between 60 to 70 per cent voters usually vote at elections in the United States. If, by comparing these two facts, one concludes that choice of the people's representatives is far more democratic in the Soviet Union than in the United States, one would be utterly mistaken. For elections in the Soviet Union are entirely different in character from those in the United States. This point has been dealt with in detail in a subsequent chapter.

In using the comparative method, the principles of inductive logic are followed.

The historical method, it should be noted, is only a particular form of the comparative method for no study of past history can yield conclusions of general applicability unless different sets of past events and instances are

compared to one another and the past is compared to the present.

The Philosophical Method :—The historical and the comparative methods are inductive ones, and there are writers who believe that deductive methods have no place in Political Science. But in the study of political facts, the philosophical or the deductive method is highly valuable. The deductive method starts from some abstract principle or idea about human nature or society and then goes on making deductions from it. Among the exponents of this method are Mill and Rousseau. While the student of Political Science must base his conclusions on facts, it is almost impossible for him to interpret the facts properly unless he views them in the light of some guiding principle or idea. There is a great danger, however, that in using this method one may become too much theoretical, and form conclusions having little connection with facts. Sometimes a writer becomes so obsessed with a principle that he comes to believe that all history is an illustration of that principle. Karl Marx, for instance, was so greatly impressed by the influence of the economic factor on historical processes that he taught that history is determined by the economic factor. Political institutions, religion, art, literature and the like, he maintained, are all determined by the economic factor. Marx based his political ideology, which is known as Communism, on this theory of economic interpretation of history. Later researches have, however, proved conclusively that history is determined not by any one factor but by a large number of factors, and the economic factor is only one of them. Political, religious, geographical and racial factors exert a powerful influence on historical processes and they even greatly influence the economic factor itself. Much of the imperfection of the doctrine of Communism arises from the fact that it is based on the theory of economic interpretation of history—a theory which takes a one-sided view of human life and, hence is a false theory.

The Best Method :—Each of these two methods, inductive and deductiv,e, has its own defects. When the one is, however, combined with the other, they correct each other's defects and supplement each other. A judicious combination of these two methods is, therefore, the best method, the right method of enquiry in Political Science. Historical facts must be carefully studied and scrutinised to discover their inter-relations and the laws governing them, as well as to ascertain how far ideas accord with facts. Similarly, facts and their significance are to be properly assessed and interpreted with the help of guiding principles and ideas. In short, ideas are to be tested on the touch-stone of facts, and facts must be interpreted with the help of ideas. Among the exponents of this method are Aristotle and Burke.

Methods and Points of View :—The state, it is sometimes said, can be studied by the sociological, biological, psychological and juridical methods. Many French and German writers hold this view. The biological method, for instance, compares the state with a living organism and tries to describe various aspects of state life with the help of analogies drawn from the life of an organism. But these so-called methods are not really methods but so many points of view. Instead of saying that the state can be studied by the biological or sociological method, we should say that it can be studied from the biological or sociological point of view. A study of the state from these points of view can hardly be expected to yield valuable results for they deal with resemblances between the state and living organisms which are at best superficial.

Relation of Political Science to Allied Sciences : The state represents only one form of human association. In other words, political life is only one aspect of the total social life of man. The numerous aspects of social life of man other than the purely political can be studied as separate subjects. But all these aspects are inter-connected because all of them relate to the same thing, namely, man considered as a social

being. It is easy to see, therefore, that Political Science is inter-connected with the other social sciences.

Sociology :—Sociology is the general science of society. Its scope includes all aspects of the organised life of man, religious, economic, cultural and political. Political Science is thus a branch of Sociology. Sociology is the science of society, while Political Science is the science of political society.

Society is much older than the state. The state came into existence only at a later period in the social history of man. The primitive societies which existed before the evolution of the state or such societies as do not show any manifestation of political life do not come within the scope of Political Science. They, however, come within the scope of sociology. And since, as has been pointed out, the domain of sociology includes, besides the political, the cultural, economic and other relations of human beings, its scope is much wider than that of Political Science.

History :—Political Science and History are closely interconnected. History provides Political Science with its raw material. It is on the study and analysis of historical facts that Political Science largely bases its conclusions. No political institution can be fully understood or explained unless the history of its origin and development is carefully studied. In fact, Political History forms a part of Political Science.

The significance of historical events can be properly understood only when the methods and principles of Political Science are brought to bear on the study of History, and Political Science can reach sound conclusions only by studying and analysing the facts of history. This is what Professor Seeley meant when he said: "History without Political Science has no fruit; and Political Science without History has no root."

History, said some one, is past politics. This is not true. Much of history has nothing to do with politics. The history of art, literature and language, for instance, has very little

relation to politics, and Political Science, therefore, has very little to do with it.

Political Science, some believe, is nothing but Political History. This again is untrue. Much of Political Science is philosophical and speculative in character and can by no means be called history.

Political Economy or Economics :—Political Economy or Economies is the science of wealth, while Political Science is the science of the state. Their subject matters are thus distinct and separate. Yet the two sciences are closely related. This becomes clear when one reflects that the government of a state has to concern itself greatly with the problems of the production, distribution and consumption of wealth—problems which are the subject-matter of Economics. Political and economic problems act and react on one another. The fact that the present poverty of India is mainly the result of the British rule in the past illustrates how greatly the political affairs of a nation determine its economic affairs. Again, the existence of numerous political parties in India with socialist and communist ideologies which are putting forward before the poor masses a more radical economic programme than that of the party in power (the Congress) shows how greatly the economic situation of a country influences its politics. In fact, to utter the very word 'socialism' or 'communism' is to point to the close relations between political and economic problems. For these ideologies aim at the establishment of economic justice through the socialisation of the means of production, that is, by bringing the means of production under the ownership and control of the Government. Books on both Economics and Political Science have to deal with the questions of socialism and communism. All this clearly indicates how closely the two sciences are inter-related. Formerly Economics used to be regarded as a branch of Political Science, as the older name Political Economy itself indicates. Today both Economics and Political Science are regarded as co-ordinate branches of the general science of society, namely, Sociology.

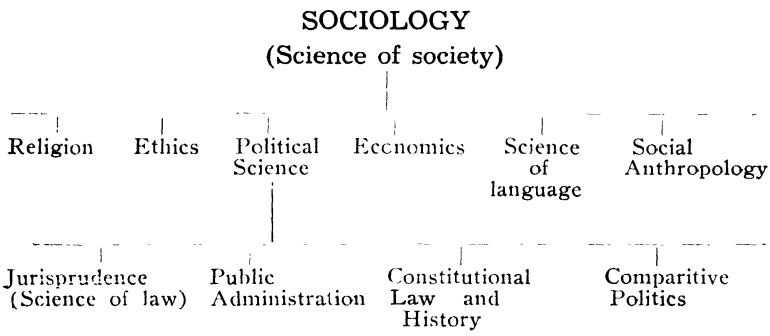
Ethics :—Ethics is the science of morality. It is concerned with the problems of right and wrong, the morality or immorality of human conduct. The state is greatly concerned with such questions. In fact, the very end of the state is the establishment of a moral order. The perfect state is conceived of as one in which the political and the ethical ideals coincide. Every modern state gives legal sanction to many things that are unjust from the ethical point of view and this constantly gives rise to discontent, agitation and even attempts to overthrow the existing social order. Political Science and Ethics are thus closely inter-connected.

Psychology :— Lord Bryce rightly remarked that " politics has its roots in psychology, the study (in their actuality) of the mental habits and volitional proclivities of mankind." In recent years, psychologists have devoted considerable attention to the study of the fundamental human instincts as well as to the problems of group psychology and crowd behaviour. Many eminent psychologists such as McDougall, Durkheim, Le Bon and others have tried to explain social phenomena through psychological laws. There is no doubt that the political behaviour of the individual and the group is greatly determined by the basic instincts of man such as the gregarious instinct, pugnacity and love of power. Since Psychology studies these instincts and their influence on the social behaviour of man which includes his political behaviour, Political Science and Psychology are inter-related. The former is indebted to the latter for the light it throws on certain questions relating to the political habits of men.

Jurisprudence, Public Administration, Constitutional Law and Comparative Politics :—The connection between Political Science and Jurisprudence or the science of law, Public Administration, Constitutional Law and Comparative Politics is obvious. Each of these subjects is but a branch of Political Science.

Political Science is also related to Anthropology, Ethnology and even Geography. Anthropology studies, among

other things, customs, superstitions, religious festivals, and various other aspects of the cultural life of mankind. Ethnology deals with races and racial characteristics. It throws much light on questions relating to the differences in the political behaviour of the various races. Geography, everybody knows, powerfully influences the economic life of people and thereby plays an important rôle in the moulding of their political life. The following diagram shows the relation of Political Science to the various social sciences.



CHAPTER II

THE NATURE OF THE STATE

Definition of the state: Definition is the starting point in every science. Political Science, being the science of the state, must begin by defining the state. This is all the more necessary because the word "state" is very loosely used by people. It is used in different senses. The constituent units of the Indian Republic, for instance, are known as States. Thus West Bengal is a State, Bombay is a State, Madras is a State and so on. None of these units are, however, states in the scientific sense of the term. For one of the essential characteristics of a state in the strict sense of the term is sovereignty. None of these units are sovereign. Similarly, the component units of the United States, though called states, are not states strictly so called.

Again, we speak of the necessity for "state action" when what we mean is governmental action. Thus we use "state" and "government" as interchangeable terms creating thereby no end of confusion. The government is not the same thing as the state. The government is only the organisation through which the will of the state is expressed and enforced. "The government", says Garner, "is an essential organ or agency of the state, but it is no more the state itself than the board of directors of a corporation is itself the corporation."

Now, what is the correct definition of the state as the term is used in Political Science? Different writers have given different definitions of the term. Most of these definitions, however, point to the essential constituent elements of the state.

Thus Bluntschli, the German writer, says: "The state is a combination or association of men in the form of government and governed, on a definite territory, united together into a moral organised masculine personality, or, more

shortly, the state is the politically organised national person of a definite country."

Phillimore, the English jurist, defines the state as follows: "A people permanently occupying a fixed territory, bound together by common laws, habits and customs into one body politic, exercising through the medium of an organised government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into all international relations with the communities of the globe."

Holland, the English lawyer, defines the state thus: "A numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority, or of an ascertainable class of persons, is by the strength of such a majority, or class, made to prevail against any of their number who oppose it."

Dr. Woodrow Wilson has given probably the briefest definition of the term. He says simply that "the state is a people organised for law within a definite territory."

Professor Garner says that the state "is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control, and possessing an organised government to which the great body of inhabitants render habitual obedience."

Although these definitions have been given from different points of view, they bring out the essential elements of the modern state. These essential elements are: population, territory, government and sovereignty. Let us now consider these elements in some detail.

The Essential Elements of the State: As has been stated, the essential constituent elements of the state are: first, a group of persons, or population; second, a definite place of residence for the population, or territory; third, an organisation through which the will of the people is formulated, expressed and enforced, or government; and fourth,

supremacy in internal affairs and freedom from foreign control, or sovereignty.

The state is thus composed of both physical and spiritual elements. The population and the territory constitute the physical basis of the state. The government through which the will of the people is formulated, expressed and enforced, as well as the sovereignty are essentially an expression of spiritual elements in the life of the state.

The state must not be confused with any of its constituent elements. As Garner says, "the state is neither the people, nor the land, upon which they reside, nor the government which formulates and executes the will of the state." Just as water is neither hydrogen nor oxygen but a chemical compound made up of these elements, the state is neither the land, nor the government but a special combination of all these elements.

Population :—Without population there can be no state. For in an uninhabited land there is none to govern or to be governed. Also, a single family cannot constitute a state. There must be, obviously, at least a number of families before a state can come into being. It is impossible, however, to lay down any definite figure or principle as to the size of the population necessary for the formation of a state. Plato suggested that the number should be fixed at 5040 inhabitants. Aristotle who maintained that the number should be neither too large, nor too small was of the opinion that neither ten nor a hundred thousand could form a good state. The population, said Aristotle, should be large enough to be self-sufficing and small enough to be well-governed. But both these philosophers lived at a time when the modern territorial state had not come into being. Their ideas about the state were confined to those relating to the Greek city-states. Rousseau, the French philosopher, was of opinion that 10,000 would be an ideal number. This is rather surprising because Rousseau lived in a period when the modern state had already come into

existence and there were big states with millions of inhabitants. All these writers believed that there could not be good government unless the population were small. But in the big modern states, as we know, it has been possible to ensure good government to vast populations. This has been possible because of the growth of federalism and distribution of functions between a central government and local authorities in a state, as well as the modern technological progress which has given mankind quick means of transport and communication. Modern states greatly vary in population. In India, for instance, there are over 350 million people, while in the states of Israel and Panama there are 1.6 million and .8 million people respectively. The population in the state of San Marino is only 12,100.

Territory :—Territory is another essential element of the state. There can be no state without a territory. Before the emergence of Palestine as a state in 1948, the Jews did not constitute a state. A nomadic tribe, however powerful it may be, does not form a state.

This element of territory is one of the things that distinguish the state from other associations and organisations. The membership of the state is confined to the people living in its territory, while other associations may well have a world-wide organisation and membership. The members of a literary society may be, for instance, evenly distributed throughout the globe. Again, there may be a large number of voluntary associations in the territory of a state. But there cannot exist more than one state in the same territory. This rule, however, has some exceptions. Instances are sometimes found of the same territory being subject to the common authority of two or more states. Such a territory is said to be under a condominium. The Anglo-Egyptian condominium over Sudan is an instance in point. Secondly, under the principle of extra-territorial jurisdiction, foreign diplomatic representatives in a state as well as the embassies remain subject to the jurisdiction of their respective states.

But in this case, the state may be regarded as having waived its jurisdiction over the persons and areas concerned in pursuance of the rules of international law.

The territory of a state does not merely mean the land surface included within its boundaries. It also includes the lakes and rivers. Not only that, it includes the subsoil extending downward to an indefinite depth, as well as the air space above the land surface. Every state is thus the owner of the mineral resources lying on or below the land surface of its territory. It also enjoys sovereignty in the air space above the land surface.

No principle can be laid down as to the size of a state. Formerly it was believed that smallness of size is essential to good government in a state. Nowadays, however, technological development has made it possible to govern large areas quite efficiently. Trains, motor cars and aeroplanes have made space shrink, as it were, by enabling people to cover vast distances in almost no time. The telegraph and the wireless have made possible almost instataneous communication between places separated by half the world. Decentralisation of governmental activities through the development of local self-governing institutions has, further, helped mankind to overcome the difficulty of maintaining efficient administration over vast areas. Modern states vary greatly in size. Thus India is 1.1 million sq. miles in area, while the area of Israel is only 8 thousand sq. miles. The area of San Marino is less than 40 sq. miles.

It must be admitted, however, that the power and prosperity of a state depend greatly on its size. It is easier for a big state with vast resources to defend itself against attacks by foreign enemies than it is for a small state. A big state, speaking generally, can ensure a better standard of living to its citzens than can a small state. Today the United States and the Soviet Union are the most powerful states in the world. The source of their strength lies mainly in their vast size and their wealth of mineral resources.

But the power, wealth and importance of a state do not always depend on its size. In point of size, Britain, Germany and France are small states. But they are among the most powerful states in the world and their contributions to the culture of mankind—contributions in the field of art, literature and science— are far greater than those of many a big state. The greatness of a state, it should be obvious, is determined not only by its size but by its geographical position, climate, the natural resources it possesses, as well as the temperament and genius of the people.

Government :—A state is not merely a population plus a territory. Unless the people are politically organised, they cannot form a state. The existence of a government is thus the third essential element of a state. The government is the organisation through which the will of the people in the state is expressed and executed. It is the machinery through which the common affairs of the people are regulated and promoted. It gives unity to the life of the people. Without a government the people would be a mere aggregation of individuals and not an organised community. The form of government is, however, not essential. The government may be of a republican or of a monarchical type. It may be a simple or a complex organisation. But there must be some form of government for the expression and enforcement of the popular will.

Sovereignty :—Another element which is essential to the existence of a state is sovereignty. Sovereignty is what fundamentally differentiates the state from other associations. There are associations which can claim to have a large membership, a territory and even a governmental organisation. But there is only one kind of association, namely, the state, which possesses the attribute of sovereignty. The state is sovereign. This means that the state is supreme in both internal and external affairs. It has the supreme and unlimited legal power of control over all persons and things within its territory, and is independent of foreign control. A state that is subject to foreign control is not a state in the true

sense of the term. It is only a part of the state which controls it. The subject of sovereignty has been dealt with in detail in a subsequent chapter.

State and Government: It is highly important for the student to understand clearly the distinction between the state and government. Failure to distinguish the state from government has led in the past to serious errors and confusion. The state is a politically organised people inhabiting a fixed territory. And the government is the agency or organisation through which the will of the state is expressed and realised. It is the machinery through which the purposes of the state are translated into reality.

The state is sovereign; the government is not sovereign. The government derives its authority from the state. The power which the government wields is the power that has been delegated to it by the state. It should be clearly understood that though the government is not sovereign, it exercises sovereign authority because it has been authorised by the state to do so.

The state is permanent; the government is not permanent. Governments rise and fall, change and die, but the state continues to exist through all these changes of government. A republican form of government in a state may be replaced by a monarchical one or a dictatorial form of government replaced by a democratic one, but these changes will not affect the existence of the state. During the past two centuries, for instance, various types of government, monarchical, dictatorial and republican, succeeded one another in the state of France but that has not affected the statehood of France. Thus, while governments come and go, the state continues to exist through all changes of government.

All citizens are members of the state, but all of them are not members of the organisation known as the government.

Lastly, the word state has a territorial connotation; the word government has no such connotation. The words "the

Indian state", for example, call up in mind the picture of a definite portion of the earth's surface. But the words "the Government of India" do not call up any such picture, or if it does, it does so only because the Indian Government is closely associated in one's mind with the state of India.

The State and Other Associations : To understand clearly the nature of the state, one must try to be very clear in one's mind as to the differences which distinguish the state from other human associations. These differences are being dealt with here one by one.

Membership of the state is compulsory, but the membership of other associations is a purely voluntary matter. A person can withdraw at his will from an association (other than the state) of which he is a member; he cannot, however, throw off his membership of the state in this way. A person can terminate his membership of the state only by leaving the territory of the state and renouncing his citizenship.

A man can be a member of a number of voluntary associations. He can be at the same time a member of a football club, a debating society, a church and a political party. No person can be, however, a member of more than one state.

Thirdly, a state is confined to a particular territory, while voluntary associations are not territorially restricted. In fact, a voluntary association may have a world-wide organisation. The Ramkrishna Mission and the Cominform, for instance, extend almost over the whole world.

Fourthly, voluntary associations are not as permanent in character as the state. We see every day the growth and disappearance of many such associations. The reason why the state is a permanent association, while other associations have only a temporary existence is to be found in the respective ends of the state and other associations. And this leads us to the fifth point of difference between them.

A voluntary association usually pursues one or two particular interests, while the state is concerned with the general interests of the people. And the functions of the

state have been gradually increasing in number and variety. Formerly the state was concerned only with purely police functions. Nowadays the state has been increasingly extending its activities into the fields of production and distribution, and has been carrying on various other welfare activities.

A state is, therefore, an indispensable association. Other associations are not indispensable. From the cradle to the grave, a person may not belong to any voluntary association, but he cannot avoid being a member of the state.

A fundamental difference between the state and other associations is that the state possesses the legal power of coercion, while the latter do not. In other words, the state possesses the power of sovereignty, while the voluntary associations do not have this power. The state can arrest, fine and imprison a person for the violation of its laws, and can even inflict death on him if it considers such a step necessary to meet the ends of justice. But a voluntary association cannot coerce its members in this way. It can at most expel a member from the organisation.

Finally, all voluntary associations are subject to control and regulation of the state. Of course, the state does not exercise on every voluntary association the same degree of control and regulation. The state control is more stringent in certain spheres of human activity than in others. Nevertheless, the fact remains that the state possesses the authority to exercise control in the general interest on all kinds of associations, and the state does exercise this authority. All associations in a state, churches, political parties, cultural bodies, trade unions, chambers of commerce, sports associations, all are subjected to some measure of state control.

State, Nation and Nationality : The meanings of the terms state, nation and nationality must be clearly distinguished from one another. Nation and Nationality do not mean the same thing. Nor are the words State and Nation synonymous. Much confusion, however, arises from the fact that political writers are not all agreed as to meaning of the terms *nation*

and *nationality*. In the German language, again, the word *nation* is used in a sense different from that in which it is used in the English language.

In the English language, the words *nation* and *nationality* have come to have distinct and definite meanings and the majority of the writers are agreed as to these meanings. John Stuart Mill says: "A portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others—which make them co-operate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves exclusively." Lord Bryce defines Nationality thus: "A nationality is a population held together by certain ties, as, for example, language and literature, ideas, customs and traditions, in such wise as to feel itself a coherent unity distinct from other populations similarily held together by like ties of their own." Thus nationality is a population bound together by a sense of unity arising from common traditions, common language, literature and ideas, common racial origin and residence on common territory. No one of these elements is, however, essential. Nor are all of them, taken together, essential. But the sense of unity which binds together the members of a nationality cannot arise unless some of these factors are present. These factors are thus the elements of nationality. There cannot be, however, any nationality unless there is a sense of unity, 'a consciousness of kind,' a sense of belonging together, among the members of the population. It is not impossible that all or most of the factors which usually bind together a population into a nationality may be present in a particular case without giving rise to that sense of unity among the population which is the very essence of nationality. Till that sense of unity is developed, the population concerned will not constitute a nationality. Nationality is thus essentially something spiritual. Though nationality must always have

a physical basis, without the spiritual element represented by a sense of unity and of common destiny there can be no nationality at all. The physical element represents the body and the spiritual element constitutes the soul of a nationality.

Nation :—According to Lord Bryce, "a nation is a nationality which has organised itself into a political body either independent or desiring to be independent." This definition brings out clearly the distinction between a nation and a nationality. It is the element of political organisation which constitutes the difference between the two. A nationality becomes a nation only when it organises itself politically; till that stage is reached, it remains only a nationality and does not become a nation. A nationality is thus a nation in the making. It represents a certain advanced stage in the evolution of a nation. One might also say that when a nationality organises itself into a state it becomes a nation. It must, however, be understood that an essential element of the state is both internal sovereignty and independence of foreign control. When a state loses its independence it ceases to be a state. But a nation that has lost its independence does not on that account cease to be a nation. The state of France, for instance, lost its independence during World War II and remained under German domination for a number of years. It cannot be said that the French nation ceased to exist during those years because, despite loss of independence, it remained politically organised during all those years and intensely desired to be independent. Such periods of foreign domination may be described as but passing phases in the life of a nation.

A nation is not the same thing as a state. A state may be inhabited by more than one nationality. In Britain, for instance, the English and the Scots belong to two different nationalities. They cannot be said to belong to the same nation in the strict sense of the term, but they belong to the same state. The Union of Soviet Socialist Republics is also a state consisting of various nationalities. It is, however, a fact that when a nationality does not want

to sever its political connection with the state in which it resides, it tends to get fused in a larger nationality. The English and the Scots, for instance, are gradually being fused into a bigger nationality—the British nationality. In America, people belonging to various nationalities have been fused into a bigger whole, so that the people of America are now a homogenous nation. Since practically all states existing at present are nation-states, the words *nation* and *state* are often used as if both mean the same thing. Such use is, however, confusing because the word nation has a wider connotation than the word state. *Nation* means a state plus nationality. The United Nations, though called by this name, is not really an organisation of nations as such but of states and self-governing dominions.

The State as a Concrete Thing and an Abstract Idea : The state can be viewed both as a concrete thing and as an abstract idea. Viewed concretely, the state is the land, the people and the political organisation. But viewed as an abstract idea, the state is a corporation with a juristic personality having legal capacity to enter into relations with other states. It is in this sense that the word state is used in International Law.

The Idea and the Concept of the State : Some German writers distinguish between the idea and the concept of the state. Bluntschli says : "The concept of the state has to do with the natural and essential characteristics of actual states. The idea of the state presents a picture, in the splendour of imaginary perfection, of the state as not yet realised but to be striven for." Thus the concept of the state is derived from the observation of the common and essential characteristics of actual states, while the idea of the state is the state as it ought to be, that is, the perfect state. It should be obvious, therefore, that all actual states conform to the concept of the state ; but since none of them are perfect, they do not embody the idea of the state or are only remote approximations of that idea. Professor Burgess who accepts this distinction

says: "The idea of the state is the state perfect and complete. The concept of the state is the state developing and approaching perfection." Professor Garner, however, rightly says that the distinction is largely metaphysical and has little practical value.

The Ideal of the State has varied from Age to Age: The state is a human institution, and since human affairs are dynamic and not static, the ideal of the state has varied from age to age. In ancient Greece, the ideal state meant a perfect city state. In the nineteenth century, speaking generally, the cherished ideal of the state was that of the fully developed nation-state. Political thinkers today believe that a world-state based on a federal union of all the nations of the world is the ideal the attainment of which should be goal of the political endeavour of men in every country.

The Organic Theory of the State: The organic or organismic theory of the state views the state as a living organism. According to the theory, the state is not a mere aggregation of individuals, but an organism having parts and organs which are related to one another in the same way as the different organs of an animal or a plant are related to one another. Just as a plant or animal body is composed of cells which are connected and interdependent, so the state is composed of individuals who are intimately related to one another and are dependent on one another for their existence and happiness. The organismic theory is essentially a biological concept which describes and interprets the phenomena of the state in biological terms.

The organismic theory is one of the oldest theories of the state. It goes back to Plato and Aristotle. Both these ancient philosophers compared the state to the body of a human individual in explaining some political phenomena. The analogy occurs frequently in mediaeval writers. St. Paul's statement that the church was a mystical body whose head was Christ led to the idea that the Pope who was the representative of Christ was the head in this world of the

mystical body. The state also adopted the idea and imperialists maintained that the Emperor was this head. Since the idea of one body having two heads was unnatural some maintained that there were actually two bodies, each with its own head, both forming part of a greater body whose head was God. Among the mediaeval writers who drew an analogy between the state and the human organism may be mentioned John of Sailsbury, a twelfth century philosopher, Ptolemy of Lucca, Marsiglio of Padua, St. Thomas Aquinas and Johannes Althusius.

Coming to the modern era, we find numerous writers who compare the state to the human organism. Hobbes and Rousseau both draw an analogy between the state and the human body. But the most thorough-going parallel between the state and the biological organism is found in the writings of Herbert Spencer and Bluntschli who exaggerate resemblances between the two beyond all reasonable limits. An examination of Spencer's theory will give us a clear idea of the merits and defects of the organic theory of the state.

Drawing an elaborate analogy between society and a natural organism, Spencer says that just as an organism grows from a simple to a complex structure, so does society. As growth takes place in an organism, the parts become more and more unlike each other. In society also, there takes place a progressive differentiation of functions. Again, in lower organisms there are hardly any organs; the bodies of lowest forms of life consist of a single cell or a small group of cells. In the higher types of animals we find different organs performing different functions. Similarly, in primitive and simple societies there are hardly any differentiation of functions, every individual doing a large variety of work to meet his needs. But with the gradual evolution of society, specialisation takes place, different groups of people specialising in the performance of different functions.

Just as there is a sustaining system—the stomach, intestine and the like—in the natural organism, in society

there is the productive system which sustains its life. In the natural organism there is a circulatory system consisting of veins, arteries and the like. Corresponding to this, there are in society roads, railways etc., for transportation of goods and services from one place to another, and their distribution among the members of the society. Thirdly, there is the nervous and nervo-motor system in the animal body to regulate the functions of the various organs and, correspondingly, there is the governmental and military organisation in society to regulate its affairs. There are, however, two fundamental points of difference between society and a natural organism. In the first place, the parts of the animal body are closely connected together, while the parts of social organism are separate and free to move about. In other words, the animal body is *concrete*, the social body is *discrete*. Secondly, and this is the most fundamental point of difference between the two—in the animal body consciousness is concentrated in a small part, while in the social body it is diffused over the whole. The individual cells of an animal body have no consciousness of their own and they play their parts blindly in the life of the whole. The members of the society are, however, endowed with consciousness, can judge things for themselves and experience pain and pleasure in their own selves. This difference, according to Spencer, points to the conclusion that society exists for the individuals, and not individuals for the society or, in other words, that the good of the units and not the good of the whole is to be sought in society. This is the theoretical basis of the individualistic philosophy of Spencer.

Bluntschli, in comparing social bodies with animal organisms, went so far as to maintain that like the former the latter too have sex differentiations. The state, according to him, is a masculine association, while the church is feminine.

The organic theory of the state has both its merits and defects. Its defects, however, far outweigh its merits. The

merit of this theory is that it stresses the organic nature of the state. It emphasises the fact that the members of society are closely related to one another and are dependent on one another for the fulfilment of their needs and, hence, for their happiness. The theory thus points to the moral obligation of the individual to promote the common good, to do such things as further the general interests of the state. Secondly, the theory emphasises the fact that the state is a historical formation, that it has grown and developed through a long period of time and that its roots lie deep in many past traditions and customs. Any political experiment that ignores this fundamental fact is likely to come to grief.

While considering the merits of the theory, one ought to remember that Spencer, as has been indicated, based his individualism on this theory and thereby robbed it of practically all its merits.

The defects of the theory are manifold. First, the theory is based only on an analogy and stretches the analogy too far. The state is really not a organism, it is like an organism. A close analysis will show that the differences between the two are so fundamental as to make the analogy practically valueless. (a) For while the cells of an animal body have no consciousness, the members of the society are conscious beings. The parts of an animal body cannot mould the life of the whole by exercising their independent volitions, but in the case of society, it is the desires and emotions of the individual members which shape the social life and determine the policies of the state. (b) The parts of an animal body are tied to one another and cannot move about independently of one another. But the members of the society are not only free to move about, they can belong to a number of associations at the same time. The members of a natural organism cannot belong to more than one body. (c) All living organisms come into existence through the process of reproduction, one living body producing a new body. But a state is created through a process which is very different from the reproductive process of the plant or animal world.

(d) The processes of growth, decline and death are inseparable from the life of an animal organism, but they cannot be called necessary processes of state life.

The great danger of the theory is that by stressing the organic character of state life, it may strengthen the hands of those who believe in completely subordinating the individual to the state. Fascists and autocrats often justify suppression of civil liberties by pointing to the organic analogy which, in their opinion, proves the necessity of sacrificing the individual to the interests of the state. Mussolini, the Fascist dictator of Italy, very often laid stress on the organic character of the Italian state which was, according to him, "a moral, political and economic unity" and had a historic destiny to realise. The interests of this organism—the Fascist state—were so paramount that the state had a right, held Mussolini, to sacrifice individuals to further those interests. The state, of course, meant the Fascist Government headed by Mussolini himself. The Nazis of Germany also laid great emphasis on the organic character of the state.

Another danger of the theory is that by unduly emphasising the organic nature of the state, it may create the notion that one need not bother about the growth and development of the state because, like an organism, the state also grows in response to some natural forces working in it. This is, however, far from true. The growth of an animal body is no doubt brought about through some blind chemical processes, but social development is mainly the result of the exercise of human volition. Unless people tried to plan the development and progress of a state, life in the state will soon become moribund or will be overtaken by chaos.

Monistic, Monadistic and Mechanistic Theories of the State: The monistic theory of the state is only an extreme form of the organismic theory. It states that the individual, like the cell of an animal body, is so closely integrated with the social body that he has no real independence and cannot live at all except as part of that body.

The monadistic theory goes to the opposite extreme and maintains that society, more or less like a sand heap, is really an aggregation of individuals who are free to live and act independently of their fellows. This theory denies altogether the organic character of state life.

The mechanistic theory regards the state more or less as a mechanical contrivance, a machine created by man to achieve certain ends. The theory ignores the forces of history and tradition which are among the important factors contributing to the formation and growth of a state.

None of these theories accord with the facts of life. The state is neither an organism, nor a mere aggregation of individuals, nor a machine.

What is the Basis of the State, Will or Force ?—There is a long-standing controversy among political philosophers as to the basis of the state. Some of them such as Bentham, Comte and Treitschke maintain that the state originated in force and is held together by force. Others, notably Green, hold that 'will and not force is the basis of the state'.

Treitschke, the Prussian historian, says: "The state is the public power of offence and defence, the first task of which is the making of war and administration of justice." Comte, the French Philosopher says that "force is the basis of every human society." The Italian Fascists and German Nazis have upheld the doctrine of force and regarded it as a legitimate means of strengthening the state and furthering national interests.

There is no doubt that force played a great part in the formation of states. Conquest and subjugation of weaker peoples by stronger ones have very often laid the foundation of states. Use of force is also indispensable in the day-to-day life of the state because without it law and order cannot be maintained, nor can the state be protected against external attacks. These facts have so greatly impressed political philosophers like Hobbes and Comte that they have come to regard force as the basis of the state.

But, as Green points out, "will and not force is the basis of the state." And he justly remarks: "No state could maintain itself unless there were somewhere consent to its maintenance, at least among a section of the population, and some positive will to sustain it against attack."

Although, if one takes a superficial view of things, force will appear to be the real basis of the state, a closer analysis will show that force can be used by the government of a state only because the people, or a large section of them, authorise its use. Whenever force tends to be used in a manner disliked by the people or it is exercised by a government that does not represent the popular will, violent convulsions take place in the state and a new government more faithfully reflecting the popular will is brought into existence. The American, French and Russian revolutions illustrate this principle. In fact all revolutions aim, at least when they occur, at the creation of a governmental machinery and, through the use of that machinery, a social order that express the will of the people more faithfully than did the old government or the old order. This shows that it is the popular will which constitutes the ultimate basis of the state and that the force which the state uses is but a means to give expression to that will.

Particularly, in these days when people everywhere have developed a high degree of political consciousness, even a casual observer can see that it is the will of the people which is the basic factor in state life. People of every civilised nation, speaking generally, are conscious of the fact that without the use of force by the state to a certain extent civilised existence will become impossible. Whether a person supports or opposes a government, he recognises the fact that the use of force by the government for the maintenance of internal order as well as for defending the country against foreign attacks is an indispensable necessity. Of course, occasions arise when the use of force by a Government in relation to a particular matter or in a particular manner is

disapproved by the people. Such situations are nowadays quickly remedied, at least in democratic countries, through the pressure of public opinion on the Government or through the putting in office of a new Government.

We thus conclude that will and not force is the basis of the state.

CHAPTER III

NATIONALISM AND NATION-STATE.

Growth of Nationalism and Nation-State: Nowadays nationalism is such a pervasive phenomenon in the political life of mankind, that we take nationalism for granted in all our political discussions. Some appear to think as if nationalism is as old as mankind and nation-states have existed from immemorial times. The fact is, however, that nationalism is a comparatively recent development in the political history of the world. Nationalism or the nation-state did not exist in the days of Plato and Aristotle. They lay beyond the political horizon of the Middle Ages. It is really the eighteenth and nineteenth centuries that witnessed the growth of nationalism, although in one or two countries, notably England, the sense of nationalism had developed earlier.

In the early historical period, the political life of mankind did not progress beyond the city state. There were city states in ancient times in Greece, India, China, Egypt and Sumer. That broader sense of unity among a large population inhabiting a big territory, which we call nationalism, was yet to develop.

Even during the Middle Ages, political conditions in Europe or elsewhere were not ripe for the growth of nationalism. It was only towards the close of the mediæval period that we notice the beginnings of that collective sentiment known as the sense of nationality or nationalism.

The main causes which led to the growth of nationalism are the following: (1) Increasing authority of the Central Government; (2) gradual replacement of the law of persons by the law of the land; (3) the Protestant Reformation; (4) partition of Poland; (5) the French Revolution and (6) the spread of education.

The close of the Middle Ages was marked by a gradual increase in the authority of the central government in the state and a corresponding decline in the power of the barons and local chiefs. This growing centralisation of political organisation helped in strengthening the sense of unity among the people of the state. This centralisation was accompanied by a gradual replacement of the personal relation existing between the tribes and tribal chiefs by territorial relations. The emphasis tended to shift from personal loyalties to loyalties based on territorial relations. These two factors greatly contributed to the development of a community of feeling among persons inhabiting the same country and laid the basis for the growth of nationalism.

The Holy Roman Empire in which a number of European states remained under the authority of the same church was one of the powerful factors that prevented the growth of nationalism. The rise of Protestantism and the Protestant Reformation stimulated national consciousness by breaking the bonds of religious universalism and emphasising the separateness of one state from another and its independence in both temporal and religious matters. England's revolt against the authority of Pope and its separation from the Roman Church in the sixteenth century was a factor in paving the way to the development of nationalism in that country. The Civil war and the glorious Revolution of 1688-89 powerfully stimulated national consciousness among the English people. In fact, England was the first country to develop a strong sense of national unity and to build a nation-state in the true sense of the term.

The Partition of Poland and the French Revolution unleashed powerful forces of nationalism all over Europe. In 1772, in callous disregard of the feelings of the Poles, Austria, Prussia and Russia partitioned Poland and each appropriated a part of its territory. The only fault of Polish people was that they had a monarchy based on the elective principle, which thus represented a challenge to the absolute monarchies of the age. In 1795, these three Powers divided

the whole of Poland among themselves. The Poles were thus made a stateless people. They scattered all over Europe and opened everywhere a powerful barrage of criticism against the shameless act of international brigandage which deprived them of their territory. The conscience of people everywhere was roused against the grave injustice done to the Polish people and men came to recognise the right of nationalities to have governments of their own choice and the need of drawing state frontiers along the frontiers of nationality.

The French Revolution, by destroying the old autocratic regime in France and ushering in an era of democracy, greatly strengthened the sense of unity among the common people of France and stimulated the growth of French nationalism. Napoleon's policy in bringing a number of European states under his subjection and of changing frontiers in disregard of national feelings powerfully roused the spirit of nationalism all over Europe. In fact, it was the force of nationalism which he unleashed by his imperialist policies that powerfully contributed to his downfall.

The spread of education among the masses has made them more and more conscious of the past history and traditions of their country, as well as of its present policies and ideals. Education has been, therefore, a powerful cement in the life of the people and greatly intensified their sense of national unity.

How powerful a factor nationalism has become in the political life of mankind since the early nineteenth century becomes evident when one compares the principles which mainly determined the state frontiers in earlier ages with those of modern times. Formerly, dynastic interests and ambitions determined the frontiers of states, which would often cut across various nationalities. In other words, claims of nationality were not taken into consideration in drawing and settling the frontiers of states and, it should be noted, these claims were seldom asserted before the middle of the eighteenth century.

When after the fall of Napoleon, the rulers of Europe met in the Congress of Vienna, nationalism, as has been already indicated, had already become a force in practical politics. But the Vienna Congress greatly ignored the claims of nationality in redrawing the map of Europe. The old dynastic principle was adhered to and enforced in effecting the reconstruction. Belgium was yoked to Holland, Norway was joined to Sweden, Germany was made a confederation of 38 states, most of the old possessions of Austria were restored to her thereby yoking together a number of distinct nationalities under one government. The Congress did not restore Poland to statehood. It ratified the annexation of Finland by Russia. It kept Italy divided under a number of gevernments. It left unsolved the question of the freedom of the Christian nationalities who writhed under the domination of Turkey.

The powerful spirit of nationalism which deeply stirred the minds of different peoples in Europe began, however, to assert itself and very soon it started undoing the Vienna settlement. The Belgians struggled to free themselves from domination by the Dutch; and in 1830, Belgium separated from Holland. The Greeks rose against their Turkish rulers and became independent in 1827. The nationalist struggle for the unification of Germany succeeded in attaining its objective in 1871. Unification of Italy was effected during the period 1848-70. Revolt of some of the Balkan nationalities against the Turks during the period 1875 to 1878 led to their emancipation from Turkish imperialism. By the Treaty of Berlin, 1878, the independence of Montenegro, Serbia and Rumania was recognised both by the Porte, and the European powers. Under the Treaty, Bulgaria was made a tributary state to Turkey but, a few years later, it attained complete independence.

The tide of nationalism continued to swell steadily during the late nineteenth and the early twentieth centuries. It surged not only all over Europe but also in many Asiatic countries including India, China and Japan. After World

War I, the principle of self-determination was one of the guiding considerations at the peace conferences and it largely determined the redemarcation of the map of Europe. The Peace Treaties created seven new states to satisfy the aspiration of the nationalities concerned to have their own states. Thus, Poland was recognised as an independent state—125 years after the Poles had been rendered a stateless people. The Austrian and Hungarian empires were broken up and a number of subject nationalities freed from their yoke. The Czechs and Slovaks were given a new state, Czechoslovakia, which was carved out of territories formerly included in Austria and Hungary. The Serbs, Croats and Slovenes were, likewise, emancipated from the rule of these two powers and united into the state of Yugo-Slavia. Four Baltic nationalities which had been under the Russian rule were emancipated and allowed to organise themselves in four new states, namely, Finland, Esthonia, Latvia and Lithuania. Alsace Lorraine was separated from Germany and reunited with France. Under the Treaty of Lausanne (1923), Syria, Palestine and Mesopotamia were emancipated from Turkish rule.

India's struggle for independence continued for nearly three decades after the end of World War I and succeeded in attaining its objective only after World War II. The end of World War II also witnessed the independence of Burma, Pakistan and Indonesia, as well as the establishment, in 1948, of the independent Jewish state of Israel in Palestine.

The Elements of Nationality: The elements which constitute a group of people a nationality are said to be the following: (1) common residence, (2) community of race, (3) community of religion, (4) community of language, (5) community of traditions and culture, (6) common political aspirations and (7) community of economic interests. No one of these elements is, however, essential, although the sense of nationality can never develop unless some of these are present.

Common Residence— Residence on a common territory always tends to create a sense of unity among a group of people, and this sense of unity has powerfully contributed all over the world to the growth of the collective sentiment which we term nationalism. Common residence is, however, not an absolutely essential element of nationality. The Jews, for instance, had no territory of their own before 1948 when the state of Israel was established. They were scattered all over the world, but were united by a strong sense of nationality in spite of their dispersion for over a century among a large number of countries.

Community of race is regarded by some as one of the factors which go to make up nationality. But there is no nationality which can be regarded as racially pure. The various races of the world have become fused with one another, and ethnological study shows a mixture of various racial elements in the population of every country. Nor is racial purity essential to the growth of the sentiment of nationality. "Race," it has been well said, "is a physical phenomenon, whereas nationality is a complex phenomenon into which spiritual elements enter." Racial differences do not prevent the growth of a sense of unity where people live a common life or share the same ideals and interests. In India different races have become fused into one nation with characteristics which sharply distinguish them from other nations of the world. Similar has been the case in America.

Community of Language— Language is a powerful bond of human unity. People speaking the same language are always seen to develop a sense of unity among themselves. This does not mean, however, that language is an essential element of nationality. There are nations composed of people speaking more than one language. The people of Switzerland, for instance, constitute a distinct nationality—the Swiss nationality, but the population of the country is composed of three distinct linguistic groups speaking German, Italian and French. Similarly, the Belgians speak two different languages but this has not prevented the growth of a sense

of national unity among them. The Americans, again, speak English, but they do not belong to the British nationality; they have developed a distinct nationality of their own—the American nationality. It is sometimes found that the dominant group in a state tries to impose its language on the weaker sections of the population and to suppress the languages of the latter. In the Tsarist Empire, systematic attempts used to be made to impose on the subject peoples the great Russian language. Such attempts usually provoke resistance and lead to disunity in a state.

Community of Religion— Religion is a great unifying force. Persons belonging to the same religion are spontaneously drawn to one another by a strong sense of affinity. Community of religion has, therefore, very often contributed to the growth of national sentiment and served to strengthen it. The work of religious leaders is sometimes found to influence the national mind and strengthen the sense of nationality far more than the activities of politicians. No patriotic Indian can forget how powerfully Swami Vivekananda, a religious leader, influenced and stimulated India's growing national consciousness in the late nineteenth and the early twentieth century. "The indentification of Protestantism with patriotism," says Gilchrist, "made England defeat Spain in the time of the Armada." The part played by religion in moulding the Jews into a nationality is also well-known. A historian has justly remarked that it is not so much the Jews that made the Bible as it is the Bible that made the Jews. Religion, however, not only unites people, it also divides and disrupts. It sometimes acts as an agent of dissolution, rather than an instrument of unification. The partition of India and the creation of Pakistan as a separate state exemplify how religion can at times disrupt a state, and how imperialists can check the growth of national unity by taking advantage of the religious differences of a people.

Common history, Culture and Traditions— Community of culture, history and traditions plays a great role in developing

national consciousness among a people. Residence for a long period of time on a common territory usually leads to the development of common traditions and a common culture among a group of people. Once such traditions have been created and culture brought into existence, they act as a strong bond of unity. In India, the people speak a large number of languages and no common language has yet been developed, but the Indians share a common culture of great antiquity. Community of culture has, in spite of differences of language, given the people of India a sense of belonging together, that has greatly contributed to the growth of Indian nationalism.

The consciousness of participation in the past in common struggles, of sharing common sorrows and sufferings as well as common ideals gives a group of people a deep sense of unity and destiny. The history of the American War of Independence, for instance, fills the mind of every American with a sense of pride and helps to rouse in his mind a feeling of unity with his fellow countrymen, as well as a belief in a common destiny of the American people. The story of Waterloo or of the Spanish Armada exerts on the mind of the English people a strange influence and makes them feel bound together by invisible ties of harmony. The thousand and one events of India's struggle for independence similarly exert a powerful influence on the mind of the Indian people strengthening their sense of unity that transcends differences of language and customs. Just as July 4 stirs deep national memories in America, so does January 26 here in India. Common history and traditions undoubtedly play a greater role in cementing a group of people into a nationality than does community of language or race.

Political Union—Living under a common political system or common subjection to a foreign power helps greatly to create a sense of national unity among a group of people. In America, people of diverse racial origin and speaking a great variety of languages have been moulded into the American nationality. In Britain, the English, the Scotsmen

and the Welsh people are being gradually fused into a common nationality, the British nationality. In both these cases, the common political system under which the people have lived for a long period have remarkably contributed to the growth of a sense of nationality among them. The case of India illustrates how common subjection to a foreign rule helps in rousing and strengthening national consciousness. Africa is at the moment witnessing the phenomenon of large populations, which had no sense of national unity formerly, gradually developing a national consciousness under the impact of common political subjection to foreign rule.

Common Economic Interests—Common economic and other interests also contribute to the growth of nationality. Such interests have always played their part in creating and strengthening a sense of unity among a people. They played an obvious role in the development of American nationalism. In Australia and New Zealand where English-speaking peoples are developing distinct nationalities of their own, common economic and defence interests are among the factors contributing to their growing sense of nationhood.

"A common memory" says Delisle Burns, "and a common ideal—these more than common blood— make a nation." Common history and traditions and sharing of common ideals play a more important role in moulding a people into a nationality than community of race or language. The sense of nationality, it must be clearly understood, is something spiritual. Although a number of elements of nationality may be present among a particular group of people, they do not form a nationality till that spiritual element, a sense of unity and common destiny, a consciousness of kind, a sense of belonging together, comes into being and animates their lives. When this consciousness is developed, people look upon themselves as being united into a collective personality, and as being different from similar other groups of people. Zimmern has aptly said: "nationality, like religion, is subjective; statehood is objective; nationality is psychological; statehood is political; nationality

is a condition of mind; statehood is a condition in law; nationality is a spiritual possession; statehood is an enforceable obligation; nationality is a way of feeling, thinking and living; statehood is a condition inseparable from civilised ways of living."

Rights of Nationalities: One of the most important characteristics of nationalities the world over is the desire to have states of their own. In other words, nationalities, speaking generally, are characterised by a great desire to become nations. The Indian nationality, under the British rule, felt a deep and tormenting urge to break the fetters of the country's slavery and to create an independent state based on the will of the people. The struggles of the Irish, Swiss, American, Chinese, Greek and other nationalities for emancipation from foreign rule constitute the most inspiring chapters in the history of mankind. It came to be generally recognised towards the middle of the nineteenth century that nationalities have a right to form their own governments—they have the right of self-determination. Every nationality, it is further believed and asserted, has a right to its own language, as well as a right to its own customs and institutions.

Let us examine these so-called rights of nationalities in some detail.

The Right of Self-Determination, One Nationality, One State: Every nationality, it is asserted by some writers and politicians, has the right to determine its political destiny, that is, the right to have a state of its own. This right is known as the right of self-determination. Though this principle has been asserted by some of the subject nationalities since the beginning of the nineteenth century, it gained general recognition only towards, the middle of the nineteenth century. John Stuart Mill stated in his famous book, *Representative Government*: "It is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of

nationalities." This theory, if carried to its logical conclusion, reduces itself to the principle: "One Nationality, One State." During World War I, President Wilson of the United States laid great stress on this principle in his addresses. And it was mainly on the basis of this principle that several new states were carved out in Europe after the war. These new states were Czechoslovakia, Poland, Finland, Latvia, Lithuania, Esthonia and Yugo-Slavia.

But the right of self-determination, as Lord Curzon pointed out, is like a two-edged sword and can be admitted only with reservations. It can be both an intregrating and a disintregrating force. In the case of Italy, for instance, it acted in the middle of the last century as a great unifying force. But if it is applied to Britain, it will perhaps mean the break-up of the state into three separate states, England, Scotland and Wales. If this theory were applied to Switzerland, it would lead to its division into three states and, if applied to the Soviet Union, this vast state would split up into at least sixteen separate states. Obviously, therefore, the right of self-determination of a nationality cannot be absolute. It should be noted also that there are various distinct nationalities, living in multi-national states, who do not want to form separate states of their own. Thus, Scotsmen do not want a separate state for themselves, nor do Walloons of Belgium, nor the Georgians and Ukrainians of the Soviet Union. In fact, if the principle of self-determination were strictly applied to Europe, it will bring about its division into 68 states.

Secondly, in many cases, the nationalities are so hopelessly intermixed that it is impossible to draw boundaries that will entirely include one nationality or entirely exclude another. In redrawing the map of Europe after World War I, the victorious powers were faced with this difficulty which they failed to overcome. As a result, large national minorities were left in the territories of almost all the new states. Thus a large German population

was left inside Czechoslovakia. To Italy and Poland also were assigned territories with large German populations. Large groups of Hungarians were assigned to other states. Austrians in large numbers were left inside Yugoslavia and so on. Of course, in redrawing the boundaries, the victors were guided to a very great extent by motives of self-interest and favoured the claims of one group as against those of another to suit their own designs and interests. But the difficulty of drawing state boundaries along the frontiers of nationalities was also very real. Those acquainted with the history of the period between the two World Wars know well how intense was the dissatisfaction of the national minorities left inside the various states and how it led to movements for the revision of the state boundaries. Hitler's demand for the reunification of the Sudeten area of Czechoslovakia with Germany had to be conceded by the powers concerned by the Munich agreement of September, 1938.

If the principle of self-determination is carried to an extreme, there is no doubt that the international complications will terribly multiply thereby intensifying suspicion and bitterness all around. Such a situation can only retard the progress of civilisation. For reasons to be noted presently, the present trend of world politics is in the direction of increasing integration and interdependence. The principle of self-determination which runs counter to this trend can be accepted, therefore, only with qualifications.

Other Rights of Nationalities— A nationality, it is widely believed, has a right to its language, customs and institutions. It is through language, customs and institutions that the distinctive genius of a nationality manifests itself. It is through them that the collective personality of a nationality finds expression. To deprive a nationality of its language, customs and institutions amounts to taking away its right to exist. For when a nationality loses its distinctive characteristics, it ceases to constitute a nationality and becomes indistinguishable from the people among whom it lives. Speaking generally, therefore, a nationality has an

undoubted moral right to its language and institutions. And modern states recognise the rights of the nationalities living within their jurisdiction to preserve their own languages and cultures. The Soviet Constitution, for example, guarantees the rights of the various nationalities living in the state to preserve and develop their language and cultures. Laws in the Soviet Union are published in sixteen different languages and schools are conducted in 70 languages. In Switzerland, the proceedings of the courts, the parliament and the administrative bodies are recorded in three languages, namely, Italian, German and French.

There are, however, many instances in history of attempts by the dominant groups in a state to supress the languages of the national minorities and impose their own language on them. Germany used to supress in the past the languages of the French and Danish minorities. In the Tsarist Empire, attempts used to be made by the Government to impose on the national minorities the Great Russian language, the Russian culture as well as the religion of the Orthodox Church.

While attempts to exterminate by force the culture of the national minorities cannot be supported, the right of a nationality to its own language and culture cannot be absolute. In the first place, too much diversity of language and customs definitely tend to weaken a state. It is often difficult, from the practical point of view, to concede to every national group in a state, particularly when such groups are very small in size ,the right to use their language, at least for state purposes. If small minorities in a state demand that their languages must be used in court proceedings in areas in which they predominate or in administrative orders issued in their areas, a Government, in spite of its best wishes, may find it practically impossible to concede all these demands. Another difficulty is that if the Government meets the demands of some of the minority groups and fails to meet those of others, it will expose itself to the charge of discrimination.

Again, if any custom or institution of a minority militates against the general interests of the state and tends to weaken its solidarity, the state cannot allow the observance of such a custom or the continuance of such an institution. Sometimes the suppression of a custom or institution of a minority may help to strengthen the unity of the state. The suppression of the wearing of the Kilt, the national dress of the Scottish Highlanders, by the Earl of Chatham is said to have definitely helped the unification of Great Britain. Very often, however, imperialist powers have suppressed the customs and institutions of subject peoples merely because they did not like them or considered them as barbaric. Such suppression cannot be justified from the moral point of view. There are instances, of course ,where the suppression of an evil custom by a foreign ruling authority has resulted in distinct gain to the forces of civilisation. In the past there was a custom among certain sections of Hindus to throw a child into the sea at the mouth of the Ganges in fulfilment of religious vows. Again, certain sections of Rajputs, Jats and Mewats used to kill infant girls by starving them or sometimes by poisoning the mothers' nipples; the difficulty of marrying girls is said to have given rise to this horrible practice. The famous Regulations of 1795 and 1802 whereby the foreign ruling authority in India declared both these forms of infanticide as murder and punishable according to law were no doubt, very salutary regulations. The Regulation XVII of 1829 whereby the foreign rulers declared the practice of *Sati* as illegal is another instance in point. When one remembers that, as has been estimated on reliable evidence, about 500 widows used to be burnt on an average every year in the districts around Calcutta, one cannot but feel thankful to the foreign rulers who, in the teeth of opposition, abolished one of the most cruel customs known to the history of civilised nations.

Nationalism in India: The Indian nationalism is a product of a number of factors, the most important of which are the geographical and cultural unity of India and common

subjection of the Indian people to foreign rule for a long period of time. Before the advent of the British, nationalism in the true sense of the term did not exist in the country, although the people had developed a sense of cultural unity which transcended all regional diversities. The chief difference between a sense of cultural unity and the sentiment of nationality is that the latter is characterised by the urge to form a government based on the popular will. Though, for ages past, the people of India have been united by the ties of a common culture and common residence on a territory clearly marked off form the surrounding territories by the barrier of a vast mountain range, never before the British conquest of the country had this sense of unity expressed itself in a desire to build a state and a government of the people. The impact of the British rule strengthened the unity of the Indian people and roused in them a desire to destroy the foreign rule and replace it with a political system of their own creation. Thus Indian nationalism was born as a reaction against the foreign rule. But the psychological soil for the growth of nationalism in India had been prepared by a common history and culture which gave the Indian people a sense of belonging together and of being bound together by a common destiny. In fact, it is the desire to cast aside a foreign culture imposed from above and to build a culture on the basis of the rich heritage of India's past that has been, from the beginning, an important element of Indian nationalism.

The foreign rule which powerfully contributed to the growth of Indian nationalism has been already swept away by the tide of that nationalism and India has now attained the status of full nationhood.

A question which has always been a subject of sharp controversy is whether India is really a nation. Many have maintained that the Indian people do not constitute a nation. They have pointed out that differences of language, religion and customs are so great among the people of India that they can by no means be regarded as a nation. H. G. Wells, the

famous historian, once said that the people of India are not a nation but a constellation of nations. Many Muslim leaders believe that the Muslims and Hindus of India constitute two separate nations. Pointing to the creation of Pakistan, some assert that it has proved to the hilt the two-nation theory.

There is no doubt that for centuries past, the population in India have shown a great diversity of language and race. But always, as eminent observers and historians have noted, life in India has been characterised by what may be called unity in diversity. Underlying all the differences of language, customs and race, there has always been a remarkable cultural unity. The various races that have come to India have slowly but steadily fused with one another and their cultures have also gradually fused into a larger and richer whole. The Muslims of India, too, have not been an exception to this rule. For six or seven centuries before the British conquest of the country, there took place in India a remarkable process of cultural synthesis which brought about a gradual fusion of the Hindu and Muslim cultures. In architecture, Hindu and Muslim styles became welded into a mixed style that was neither Hindu nor Muslim but Indian. In music also, there was a similar fusion. The languages of the two races also gradually got intermingled. Both Hindus and Muslims helped in the development of the Hindi and Urdu languages and words of Sanskrit, Persian and Arabic origin were freely absorbed in these two languages. The process of synthesis between Hindu and Muslim cultures did not exclude even the field of religion. The doctrines and tenets of both religions were synthesised in the teachings of a number of great religious leaders among whom, perhaps, Kabir and Nanak are the most illustrious. Gradually, through centuries, many of the customs of the two communities—customs relating to birth, death and marriage—became similar. This was chiefly the result of the conversion of large groups of Hindus into Muslims. In the Moghul period, the process of synthesis between the two cultures was greatly helped by the policy of religious toleration

followed by all the rulers of the dynasty, excepting Aurangzeb. Akbar the Great consciously promoted this process of fusion. When the British conquered India, not only were the Hindu and Muslim cultures welded into a richer whole which was neither Hindu nor Muslim but a common heritage of both the races, but also ninety per cent of Muslims in the country were descendants of converted Hindus.

The British, however, put the clock back. True to their imperialist tradition, they adopted a policy of 'divide and rule' which retarded the process of fusion between the two cultures and races. They tried systematically to drive a wedge between the Hindus and Muslims. By alternately favouring one community as against the other, they succeeded in fostering disunity between them. They introduced the system of separate electorates which unleashed the forces of communalism and continually widened the gulf between the two communities until the cry was raised by some Muslim leaders that the Muslims and Hindus in India constituted two separate nations and the former must be given the right of self-determination.

In a letter to Mahatma Gandhi, Mr. M. A. Jinnah, the founder of Pakistan, wrote in 1944, "We maintain and hold that Muslims and Hindus are two major nations by any definition and test of nation. We are a nation of a hundred million, and what is more, we are a nation with our own distinctive culture and civilisation, language and literature, art and architecture, names and nomenclature, sense of values and proportion, legal laws and moral codes, customs and calendar, history and traditions, aptitudes and ambitions, in short, we have our distinctive outlook on life and of life."

It was on the basis of the two nation theory that India was partitioned and the Muslim majority areas in the eastern and western parts of the land were organised into the new state of Pakistan. There can be no doubt at all that it was the policy of 'divide and rule' followed by the British in the country which was responsible for the division of the

country into two separate states. Thus the British rule exerted two opposite influences on the political life of India. On the one hand, it quickned India's political consciousness and roused a burning sense of nationalism in the country. On the other, it released some forces of separatism which slowed down the process of cultural synthesis that has been at work in India for centuries past.

In spite of the creation of Pakistan, over 40 million Muslims are now living in India as citizens enjoying equal rights and privileges with other sections of the population. The process of fusion between the two cultures, Hindu and Muslim, which was retarded by foreign rule, is once again at work in the country in full vigour. The Constitution of India has also abolished the system of separate electorates and introduced a uniform system of joint electorates all over the country. This has been gradually narrowing down the psychological gulf between the Hindus and Muslims of India. Economic issues like socialism and the problem of distributive justice are, further, assuming an increasingly bigger role in the political life of the country and pushing religious issues more and more into the background. There is reason to believe, therefore, that the Indian nation will achieve complete psychological and spiritual unity in no distant future.

The Merits and Dangers of Nationalism—Nationalism and Imperialism: Nationalism is a great unifying force. It welds separate groups of people into a bigger whole and makes for a richer an fuller life for all of them. By making possible the bringing of vast territories under a unified political system, nationalism helps better and fuller utilisation of the resources of a land. It also helps elimination of conflicts between small groups by binding them together under one government and thereby makes availible for constructive purposes the energy which would have been lost in destructive activities.

Nationalism is also often a great source of inspiration in art, architecture, literature and other aspects of man's

cultural life. It has inspired some of the noblest creations in the history of literature. Particularly, among subject nationalities struggling for freedom, nationalism has fired the imagination of poets and writers who have made immortal contributions to the literary treasure of mankind. Nationalism has very often roused in man his nobler self, brought out into full play his higher instincts and sentiments, and led him to highest acts of self-sacrifice. The history of freedom movement in every land is replete with instances of men and women sacrificing their lives at the alter of national salvation. The stories of some of these martyrs will remain an enduring source of inspiration to mankind.

Nationalism, however, sometimes takes unhealthy forms. Instead of being love of one's own country, it becomes hatred of another. The desire to develop one's own country very often seeks to satisfy itself by subjugating other countries and exploiting their wealth. In other words, nationalism often transforms itself into imperialism. It gives rise to the will to war, the will to power and the will to overpower. The world is ,only too familiar with the large-scale suffering devastation and blood-shed which the phenomenon of imperialism has caused, and has still been causing in various countries of the world. Militant nationalism not only destroys the peace and happiness of other nations, it also destroys freedom at home and sometimes brings ruin on the aggressor nation itself. We all know how the aggressive nationalism of Germany under Hitler subjugated various countries in Europe, bathed a whole continent in human blood, plunged in chaos the economy of Europe, destroyed in a few years what was built through centuries of patient work, and ultimately brought ruin and devastation on Germany herself. How the bellicose nationalism of Japan scattered sorrow and devastation over wide areas in the world and finally made Japan herself a victim of atomic attack and led to occupation of the country by foreign forces is fresh in the memory of the people all over the world.

Nationalism sometimes exerts such a paralysing effect on the finer sensibilities of man that even persons of education and culture try to find reasons for justifying aggression on helpless people by stronger nations. People have often tried to justify imperialism on the ground that it helps the spread of civilisation among uncivilised people. Some British die-hards used to maintain that the British conquerors had carried to India a higher civilisation than India possessed before. Some political philosophers have even maintained that imperialism helps the elimination of the weak and survival of the fittest and thereby advances the cause of human civilisation. These writers forget that a strong man is not necessarily the best man, and a strong nation is not always the most civilised one. They also forget that war almost always kills the most energetic and unselfish members of the belligerent nations and thus leaves all of them morally and culturally poorer.

Nationalism, we conclude, can rouse the noblest sentiments in man as well as the basest propensities in human character. It can be a vehicle of culture as well as an engine of oppression. It can unify as well as disrupt. Its contribution to the sum-total of human welfare has been great but its contribution to human misery has been, perhaps, greater.

The Future of the Nation-State—Nationalism and Internationalism: Most of the states in the world today are nation-states. But the nation-state cannot be regarded as the last word in human political organisation. It has not come to stay for ever. The nation-state represents but a state in the political evolution of mankind. In the early days of human civilisation, men were politically organised in very small groups. Gradually through conquest or voluntary union, the groups began to grow larger and fewer. This trend towards the formation of increasingly bigger political organisations led in course of time to the creation of nation-states. But there is no reason to believe that the forces which in the past led to the formation of increasingly larger

political units have now ceased to operate and the world will remain organised in nation-states for all time to come.

Indeed there are powerful forces at work today which are making inevitable the formation of political organisations on a much bigger basis than that of the nation-states. In fact, enlightened minds in every country are today looking forward to the formation of a world-state in which nations will remain at best as so many autonomous units, like the units of a federal state of today.

Progress of science and technology is the chief factor responsible for bringing about this new political outlook. Scientific progress has brought about a crisis in the life of the nation-state and has been emphasising every day the need for organising the political life of mankind on a world basis.

Invention of the aeroplane has made it possible for an aggressive power to drop bombs on the capitals of its neighbouring countries in a few hours and cause destruction of life and property on an immense scale. Scientific progress has also enabled the nations to mechanise their forces more and more and has enabled the bigger powers to build up war machines that no weak and poor nation can now hope to resist successfully. During World War II, Hitler's army overran Europe within a few months and conquered Poland, Norway, Holland, Belgium and France in less than ten months. And Japan, in a lightning dash across the countries of South East Asia created, within about one hundred days beginning from December 7, 1941, one of the biggest and richest empires the world has ever seen. Thus progress of science has placed the weak nations at the mercy of the big and powerful nations. In a world of constant warlike preparation and mounting piles of armaments, the right of self-determination has proved illusory. A number of European states which were created after World War I on the basis of the principle of self-determination disappeared during World War II. Latvia, Lithuania and Estonia have been annexed by the Soviet Union and merged in its territory.

Czechoslovakia, Rumania, Hungary, Poland and Bulgaria have passed behind the Iron curtain and become mere satellites of the Soviet Union.

Even those smaller states which still retain their freedom are not as free as they appear to be. Most of them are dependent on the bigger states for defence of their land against foreign aggression. They are increasingly entering into defensive alliances with the bigger states and this has been considerably limiting their sovereignty. In fact, the world has become already divided practically into two Power Blocs—the Soviet Bloc and the Anglo-American Bloc. Excepting a few, all states, big and small, are now openly or secretly in alliance with either of these two Blocs.

The invention of mass destruction weapons like the atom bomb and the hydrogen bomb has made the position of the smaller states still more difficult. Production of these weapons is a very costly affair and is beyond the means of the small and economically weak states.

It is also becoming increasingly clear that in an atomic warfare both sides are likely to suffer devastation on such a scale as to be completely crippled by it.

All these facts, as well as the need for world cooperation for raising the living standards of people everywhere, are every day underlining the incompatibility of the nation-state with the realities of the present scientific age. Far-seeing statesmen, philosophers and men of goodwill in every country are now stressing the need for organising the various peoples of the earth into one world-state on a federal basis.

Perhaps the world-state is not just round the corner. Perhaps humanity will have to travel through more conflicts and horrors, far greater than it has experienced so far, before the world-state comes into existence. But the ideal is sure to be attained one day if, of course, the human race is not completely wiped off the face of the planet by its own bombs. The United Nations which represents an attempt,

however small, of the various nations to organise the political life of mankind on a world basis seems to be the precursor of the future world-state.

When that ideal is attained and the world-state is born, it will mean the disappearance of the nation-states. The nations, of course, will continue to exist, probably as autonomous units in the all-embracing state. In such a situation nationalism will gradually tend to become more a cultural than a political phenomenon, and the self-expression of a nation will tend to confine itself more and more in the sphere of art, literature and religion.

CHAPTER IV

ORIGIN OF THE STATE

Theories of the Origin of the State: One of the most baffling problems of Political Science is how the state originated. Men in the past speculated about the problem without finding any satisfactory answer. In modern times social scientists have carried out research into the phenomena of the primitive state and analysed ancient political institutions in an effort to find out the exact processes whereby the first states of the world came into existence. While their work has thrown much light on various aspects of the question, it is difficult to claim yet that the problem has been completely solved.

The fact is that the phenomenon of the state originated in a dim distant past which has left behind very little mark, if any, of its existence on the earth. The vision of neither the social scientist, nor the historian can penetrate into the obscurity of that distant age. They have, of course, arrived at certain conclusions on the basis of whatever evidence they have been able to lay their hands on. But such conclusions can hardly be regarded as a completely true picture of what actually happened in the past. As Gilchrist rightly says, any detailed construction of the earliest forms of civic organisation is bound to be fanciful.

In the past, political philosophers put forward various speculative theories of the origin of the state. Among them, the most important theories are (1) the theory of Divine origin of the state, (2) the contract theory and (3) the force theory. All these speculative theories have been proved to be false and worthless. Still it is important to discuss these theories because, although false, they exerted great influence on the political affairs of mankind in ages in which they held sway. Such discussion, moreover, will help the student in grasping the fundamental problems of Political Science.

The theory which now holds the fields as the true theory of the state is known as the Evolutionary theory. The idea of evolution, which Darwin applied in biology, is now-a-days very often applied in social sciences to explain various social phenomena. The Evolutionary theory of the state represents an attempt to explain the origin of the state by the Darwinian method.

The Divine Origin Theory: This theory states, in essence, that the state owes its origin to the Divine will. It is God Who created the state. The human ruler is merely the representative of God and derives his authority from Him.

In the early ages people used to believe that the power of the king was of divine origin. In those days, religion and politics used to be inseparably mixed with each other and very often the priest would be the ruler. The idea of Divine Origin of the state is found practically in every religion. In some instances, the idea is found stated explicitly; in others it is only implied, though such implication is in most cases quite clear. The belief that God created the state was widely prevalent among the Jews in ancient times. The theory was also prevalent among the early Christians. The following statement of St. Paul formed the basis of the Christian belief in the Divine Origin of political power: "Let every soul be subject unto the higher powers; for there is no power but of God: the powers that be are ordained of God. Whosoever resisteth the power resisteth the ordinance of God, and they that resist shall receive to themselves damnation." The New Testament, however, does not support the theory. Christ's statement—"Render upto Caeser the things that are Caeser's and unto God the things that are God's"—clearly implies that politics and religion must be kept separate from each other and that the state is a human organisation and its affairs are controlled by the human will.

Many passages in Hindu and Muslim religious scriptures suggest Divine Origin of the state. In the Mahabharat there

is a passage in Santi Parvam which says that God appointed Manu to rule over men. The early Christian fathers held the belief that government is the result of sin. Before man's fall, he lived in a stateless condition. After his fall, God imposed government on him as a punishment. Pope Gregory used to maintain and teach that a good people is rewarded with a good ruler and a bad people is punished with a bad ruler. The theory, however, did not get any support from the Roman or Greek political institutions. The Roman law was based on the assumption that the people were the ultimate source of law and that the emperor derived his authority from the people. The Greek political institutions, too, were based on the belief that the state is an association of human creation.

The theory of the Divine Origin of the state sometimes took the form of the theory of the Divine Right of Kings. This latter theory states that the king derived from God his authority to rule over his subjects. The king's responsibility was, therefore, to God and not to men. The Stuart kings of England tried to justify their absolutism by this theory. And they found among the people of their time many supporters of this theory. But the claim of the Stuart kings to rule by Divine Right was challenged by a very large section of the people and was a source of constant friction between the king and Parliament during their reign.

Nowadays there are few people who believe in this theory in its original form, although millions of people in every land hold the belief that God being the ultimate cause of everything in the universe is also the ultimate cause of the state and Government. Because of the powerful influence religious doctrines have exerted over the minds of men in every age, we still find in almost every country relics of the theory of the Divine Origin of the state in one form or another. The coronation ceremony in Britain is still a mainly religious ceremony. Another surviving vestige of the theory in Britain is found in the fact that a certain number of bishops, known as Lords spiritual, still sit in the

House of Lords, in virtue of their offices, and participate in law-making. In some countries, including Britain, there are still established churches or state churches which shows that religion and politics are still interlinked in these hands. The title of the present British monarch is: "Elizabeth the Second, by the grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories, Queen, Head of the Commonwealth, Defender of Faith." This title clearly reflects the influence of the theory of Divine Origin.

One of the latest assertions of belief in the Divine Origin theory of the state is to be found in the Objectives Resolution which the Constituent-Assembly of Pakistan passed on March 12, 1949. The resolution begins as follows:

> "In the name of Allah, the Beneficent, the Merciful; whereas sovereignty over the entire Universe belongs to God Almighty alone, and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust;
>
> This Constituent Assembly, representing the people of Pakistan, resolves to frame a constitution for the sovereign independent State of Pakistan."

Thus it is asserted by this resolution that the political authority which the State of Pakistan will exercise is an authority that has been delegated by God to the state through its people. It further states that this authority is to be exercised by the state within limits prescribed by God Himself.

Uses and Dangers of the Divine Origin Theory: In early ages, the theory was helpful in maintaining order among the people of the primitive states, who would unquestioningly accept the theory and believe that obedience to the ruler was a sacred duty. In later ages, however, the theory has proved very harmful to the cause of progress and civilisation. Many kings tried to justify their absolutism by claiming that they derived their authority from God and

was, therefore, not responsible to their subjects. In fact, in sixteenth and seventeenth centuries the theory was used more as a justification for arbitrary rule by kings than as an explanation of the origin of the state. One of the chief causes of friction between the Stuart Kings and Parliament in England was their claim to rule by Divine Right. This theory was thus one of the contributory causes of the English Civil War. Since the theory tends to undermine the principle of the responsibility of the ruler to be ruled, it is positively dangerous.

Criticism of the Theory: The main criticism of the theory of Divine Origin of the state is that it cannot be proved by arguments based on reason or commonsense. No palpable evidence can be put forward in support of the theory. No king who has claimed to rule by authority delegated by God has been able to show any letter of authority from the Almighty. People have only been asked to believe in the Divine Right of kings; they have never been given any proof of the same. And while there has been no tangible evidence of the Divine delegation of authority to any ruler, oppression by arbitrary rulers has been always something very tangible. Men of reason and common sense have, therefore, questioned the truth of this theory almost in every age. The idea of Divine delegation of political authority, again, is not at all helpful in explaining the position of an elected executive head. It would be, for instance, ridiculous for an American President to claim that he has derived his executive authority from God.

It is always dangerous to base political institutions on beliefs which have no rational basis. The Objectives Resolution of the Pakistan Constituent Assembly asserts that the political authority of the state of Pakistan has been delegated to it by God through the people. If some day, any power-loving leader succeeds in assuming dictatorial powers in Pakistan and claims that he is working only as an instrument of God Who has delegated to him the authority to rule Pakistan, he will be on as strong or as weak ground in making

this assertion as the Constituent Assembly of Pakistan is in making the above-noted statement. For neither the dictator nor the people will be able to show any letter of authority from God. And the issue will be decided, as it is always decided in such situations, through the arbitrament of force.

The Divine Origin theory is a positively dangerous theory because, as has been pointed out, it undermines the principle of responsibility of the rulers to the ruled, of the Government to the people, and makes for the growth of absolutism. The theory, however, would be harmless if it simply meant that God being the ultimate cause of everything in the universe, including the human instincts and the other factors that lie at the root of civil institutions, is the ultimate cause of the phenomenon of the state.

Decline of the Divine Origin Theory: Happily there are few people nowadays who seriously believe in the Divine Origin theory or the Divine Right of kings, although there may be some who still pay lip-service to the principle embodied in the theory. The main causes which contributed to the decline of the theory are three in number. In the first place, the rise of the Social Contract theory dealt a crippling blow to the theory. For while the Divine Origin theory states that the state has been founded by God, the Social Contract theory maintains that the state came into being as a result of a contract or agreement among human beings. In other words, according to the contract theory, the state is a human contrivance and not a Divine creation. Secondly, the growing power of the temporal authority and subordination of the church to the state and, thirdly, the growth of democracy greatly weakened the hold of the theory on the popular mind.

The Social Contract Theory: The Social Contract theory states that formerly people lived in a state of nature, and the state came into being as the result of a contract or agreement made by the people with one another in order to escape from the inconveniences or the insecurity from which

they suffered in the state of nature. The idea of contract as the origin of civil society is a very old one. It is found even before the age of Plato and Aristotle. Both these philosophers mention this theory in their writings though neither accepts it. They refer to the theory only to criticise and reject it. The theory is found in an embryonic form in the Sanskrit literature, particularly in the Mahabharata (Santiparvam). The idea of contract as forming the basis of civil society is also found in the Bible. A passage in the Old Testament runs thus: "So all the elders of Israel came to the King in Hebron; and King David made a covenant with them in Hebron before the Lord; and they anointed David King over Israel." The idea of contract is inherent in Roman law, which is based on the conception that the people is the source of all legal authority. The emperor, according to Roman law, can make laws because he has been authorised by the people to do so. The idea of contract also formed the basis of Teutonic political institutions. Among the Teutonic races, kingship used to be elective, and the king, at the time of his election, made an agreement with the people which required him to guarantee good government. Some feudal institutions embodied the idea of contract. Under feudalism, the vassal and the overlord were bound to each other by ties of mutual obligation, each being required to perform certain duties for the benefit of the other. In the eleventh century Manegold, an ecclesiastic, clearly stated the theory of contract. In the sixteenth and seventeenth centuries the theory came to be universally accepted. Among the most important exponents of the theory may be mentioned Languet, Althusius, Grotius, Pufendorf, Hobbes, Locke and Rousseau. It is the views of the three last-mentioned writers that had the most powerful impact on people's mind, and they also exerted considerable influence over political practice. The views of these three writers on the subject will be discussed here in some detail.

Hobbes, Locke and Rousseau: Thomas Hobbes (1588-1679), the English philosopher, set forth his views on the

subject of social contract in his famous book, *Leviathan,* which was published in 1651. He had witnessed the chaotic situation and the misery caused in England by the Rebellion and the Civil War of the sixteen forties and the book, *Leviathan,* represented his mental reaction to those happenings. It will be helpful in understanding his theory, if we remember that he disapproved defiance of the constituted authorities and wanted to prove that the people had no right to rise against their ruler. Formerly, according to Hobbes, men lived in a state of nature which was a state of extreme insecurity. Men were in a state of war with one another, at least potentially. Selfishness and desire for self-preservation resulted in every man trying to kill his neighbour. Every man lived in constant dread of being killed by his fellows. Man's life in the state of nature, to use Hobbes's words, was "solitary, poor, nasty, brutish and short." However, the same law of self-preservation which was responsible for this situation of extreme insecurity ultimately led men to seek a way out of such lawless, intolerable condition. The way of escape was found in a contract, a covenant between each individual and his fellows. Every man, by that contract, agreed to surrender his right to govern himself to a particular man or to an assembly of men. It was as if, to quote Hobbes's own words, every man said to every other man: "I authorise and give up my right of governing myself to this man, or this assembly of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner." The particular man or the assembly of men to whom people surrendered their natural rights became, thenceforth, the sovereign. This is how, Hobbes says, the state came into being. The sovereign, according to him, derives from the contract unlimited and absolute authority. People have no right to rise against the sovereign in any circumstance, because they have surrendered all their rights to the sovereign. However arbitrary a ruler may be in exercising his authority over his subjects, they must not rise against him or try to depose him.

Without the permission of the sovereign, the people cannot, it follows, enter into any new contract among themselves to transfer their allegiance to a new sovereign. And the sovereign can never be accused of committing any breach of contract, for the sovereign was not a party to the contract, but only a result of it. Thus Hobbes's theory gives support to absolutism.

John Locke (1632-1704) was also an English philosopher who expounded his story of social contract in his famous book, *Two Treatises on Civil Government.* This book was published in 1690, that is, two years after the Glorious Revolution in England which saw the deposition of James II by the people of England. After deposing James II, the English people elected William III King of England. John Locke tried to justify in his book the deposition of James II who was an arbitrary ruler and to prove that the people have the right to depose an arbitrary ruler and to choose a new monarch. Thus while Hobbes tried to justify absolutism by his theory of contract, Locke, on the basis of the same theory, justified constitutional government. People, says Locke, lived originally in the state of nature. According to him the state of nature was not, as Hobbes thought, a state of lawlessness or internecine strife. People were co-operative and mutually helpful in the state of nature which was marked by freedom and equality for all. In fact, people in the state of nature lived under a law, "the law of nature." But the difficulty was that each man was the judge of what the law of nature permitted and what it did not permit and there was no common judge either to interpret or enforce the law. To escape from this situation, people agreed to unite into a community and surrender some of their natural rights to the community. Each individual surrendered his right to interpret and execute the natural law according to his judgment as well as the right to punish offenders for the violation of the natural law. The individuals, however, did not surrender all their natural rights, but only so much of their rights as was necessary to secure

the attainment of the objective. They surrendered some of their natural rights for the protection of their remaining rights. This is the social contract through which the state came into existence. But apart from this contract, according to Locke, there was another contract which may be termed the governmental contract. The people, after they had organised themselves into a civil society, set up a government or a ruling authority which is required to exercise power according to certain principles. If the ruler tries to exercise power arbitrarily, that is, if he betrays his trust, the people have the right to depose him and to set up a new government or enthrone a new ruler. Thus, while Hobbes believed that the people surrendered all their rights to the ruler and had therefore no right to rise against him even if he ruled arbitrarily, Locke maintained that the people never surrendered all their rights and had the legal right to revolt against a ruler who ruled arbitrarily and thereby violated the terms of the contract under which he was invested with ruling authority.

Jean-Jacques Rousseau (1712-78) was one of those literary giants of eighteenth century France, who may be called the spiritual fathers of the French revolution. Two of his books, *Social Contract* and *Discourse on Inequality,* helped greatly in rousing those emotional forces which ultimately destroyed the corrupt monarchical regime in France. Rousseau's views on social contract are contained in the former book. Like Hobbes and Locke, Rousseau also believed that men lived formerly in the state of nature. But according to him, the state of nature was an idyllic state. In the state of nature, men enjoyed perfect happiness, freedom and equality. In fact, according to Rousseau, the "natural man" was innocent and virtuous and it is civilisation that has corrupted him and deprived him of his freedom and happiness. "Man is born free, but everywhere he is in chains," wrote Rousseau. The growth of population and the resultant complexities of life gradually forced man into the civil society. He gave up his natural rights and received

in return civil rights. The civil society came into being as the result of a contract. Each man puts himself by the contract under the control of the community. While Hobbes believed that each man surrendered his natural rights to a ruler, Rousseau maintained that he surrendered his rights to the community. It is thus the community which becomes the sovereign, and not the ruler, as Hobbes held. What each man, says Rousseau, "loses by the social contract is his natural liberty and an unlimited right to anything that tempts him which he can obtain; what he gains is civil liberty and the ownership of all that he possesses." And the community which comes into being as a result of the contract is the sovereign. The government or the ruler is a mere subordinate authority. The ruler is merely a servant of the community which is sovereign. And the sovereign can limit or take away the power which the ruler exercises.

The central doctrine in Rousseau's theory is the doctrine of the general will. The general will is not the will of all. It is not the sum-total of individual wills. It is the very instinctive conscience of society. The general will always wills the common good. No law can be a valid law unless it expresses and embodies the general will. Rousseau believed that the general will can be expressed only at a mass meeting ot the people. An assembly of elected representatives of the people cannot adequately give expression to the general will. It is, however, not necessary that the people assembled at a mass meeting should be perfectly unanimous in framing their resolution. The voice of the majority may be regarded as the expression of the general will. The government, Rousseau believed, is solely concerned with the executive function. The legislative function is the function of the people. And it is the general will of the people which finds expression in the laws.

Rousseau maintained that each individual, uniting with all under the social contract, nevertheless remains free and obeys only himself. An individual who is punished for the violation of the laws in reality obeys himself in being pun-

ished, because he is part of the sovereign which wills his punishment. The general will embodies the will of the offender also—or rather the nobler will in him. This is why, according to Rousseau, each man, placing himself under the direction of the general will, still remains free. In this way Rousseau reconciles authority with freedom and law with liberty.

The points of difference of the theories of Hobbes, Locke and Rousseau in regard to (1) the state of nature and (2) the contract should be clearly noted. As for the state of nature, Hobbes believed that it was a state of extreme insecurity, a state of war of all with all in which every man lived in constant dread of being killed by his neighbour. According to Locke, the state of nature was not a state of perpetual warfare and lawlessness. In the state of nature, Locke held, people lived more or less in peace and co-operation with one another. And although there was no civil law in the state of nature, there was another law, namely, the "law of nature." In the absence, however, of a common interpreter of law of nature and a common authority to enforce it, every individual interpreted it in his own way and tried to enforce it accordingly. It was to escape from this inconvenience and confusion, that the people entered into a social contract and set up a common authority to protect the individual in the enjoyment of his rights. Rousseau held that in the state of nature people enjoyed perfect freedom and happiness. The 'natural man' was altruistic and virtuous and it is civilisation that has corrupted him. Growth of population, however, put an end to the state of nature and compelled men to unite into a civil society in which the natural rights of man were substituted by civil rights.

As regards the contract, Hobbes held that each individual entered into a contract with all others to surrender his right to govern himself to a particular person or assembly. This person or the assembly became the sovereign. The sovereign was not a party to the contract and

can, therefore, never be accused of committing any breach of contract. The individuals had no right to rise against the sovereign even if he ruled arbitrarily, nor to depose him. According to Locks, there were actually two contracts — (1) the original social contract and (2) the governmental contract. Men in the state of nature, Locke believed, first formed a civil society by agreeing, each with all, to surrender some of their natural rights to society so that their remaining rights could be protected by it. Having thus formed a civil society, they entered into a contract with a person to exercise ruling authority. If the ruler violated the terms of the contract he could be deposed by the people. The authority of the ruler was thus not unlimited. It was limited by the terms of the contract. This view sharply contrasts with that of Hobbes who believed that the ruler's authority was absolute and unlimited. Rousseau's idea of the contract was more or less like that of Locke. Rousseau believed that the people, in forming the civil society, did not surrender his natural rights to any particular person. He surrendered them to the community. He placed himself under the control of all. To quote his language, each individual "puts his person and faculties into a common stock under the direction of the general will." As a result of this contract, the community becomes the sovereign, not any particular person. Kings and rulers are merely servants of the people; they are creations of the popular will. The ruler exercises his authority only because the people have authorised him to do so, and the people can limit or restrict his authority or even take away that authority if they so desire. Thus, Hobbes used the theory to justify absolutism, Locke to support constitutional government and Rousseau to support popular sovereignty.

Let us, now discuss the merits and defects of the respective theories of Hobbes, Locke and Rousseau. The chief defect of Hobbes's theory lies in the fact that he fails to recognise that the will of the ruler cannot be the will of the people. The authority of a ruler cannot be unlimited;

he cannot have the authority to act regardless of the interests of the people. He can claim no authority to oppress the people. His power must be exercised in such a way as to ensure the welfare of his subjects. Civil society exists for the common good; and the authority of a ruler must be exercised so as to serve the common good. From the strictly legal point of view, a ruler may be said to possess absolute authority, although in countries with written constitutions the ruler or the government does not possess such authority even in the legal sense of the term. But assuming that a ruler possesses unlimited legal authority, he cannot exercise that authority to serve his personal ends at the expense of the people's interests. The chief merit of Locke's theory lies in his emphasis on the fact that the authority of a ruler cannot be unlimited. His authority is limited by the requirements of the common good. If a ruler exercises his power to oppress the people, the people have a right to revolt against him. But Locke failed to recognise that the right of revolt cannot be a legal right, it is a moral right. Law does not authorise revolt against the supreme legal authority in a state. But when that authority oppresses people, they have a moral right to overthrow it and put in its place a new authority. Thus while Hobbes failed to recognise that the ruler was not the state and that the ruler derived his authority ultimately from the people, Locke failed to recognise that the ruler, though he derived his authority from the state, was the supreme legal authority in a state. If the people have a right to rise against the ruler in certain circumstances, that right is not based on law but is essentially a moral right. "Hobbes," says Gilchrist aptly "gives a theory of legal sovereignty, without recognising the existence and power of political sovereignty; Locke recognises the force of political sovereignty but does not give adequate recognition to legal sovereignty." The terms 'legal sovereignty' and 'political sovereignty' will be defined and discussed in detail in the chapter on Sovereignty. The great importance of John Locke in the history of political theories lies in the fact that

he is the first advocate of the modern conception of constitutional law and democracy.

Both Rousseau and Hobbes hold that the sovereignty of the state is inalienable and absolute. But while Hobbes maintains that it is the ruler who is the sovereign, according to Rousseau it is the people who are the sovereign. Hobbes fails to distinguish between the state and the government. Rousseau, however, like Locke, clearly distinguishes between the state and the government. The government, according to Rousseau, is merely the servant of the state. Kings, Rousseau maintained, do not exercise power by divine right, they are merely creations of the people. And the people have a right to limit their power or to depose them if they failed to exercise their power within proper limits. As will be explained later, this theory of Rousseau released mighty forces of revolution in France, and exerted a powerful influence on the political thought and practice in other countries. The central doctrine in Rousseau's theory, as has been already pointed out, is the doctrine of the general will. The general will always wills the common good. It is expressed only in a mass meeting of the people. A defect in Rousseau's theory of the general will is that he makes it equivalent to the will of the majority. The will of the majority does not in all circumstances will the common good. Rousseau believes further that popular government in the true sense of the term cannot be possible in a big state. For the general will of the people cannot be known unless all the people meet in a general assembly, which is not possible in a state extending over a vast territory or containing millions of people. Rousseau had no faith in the principle of representation. A representative assembly does not, according to him, adequately express the general will. In fact, Rousseau holds that a representative assembly tends to become the master of the people, instead of remaining their servant as it should. All modern democratic governments are, however, based on the principle of representation. If political life of mankind were organised on the basis of Rousseau's theory of the general will, the world would have

been divided into hundreds of small states and human progress would have been greatly retarded.

Criticism of the Social Contract Theory: The Social Contract theory as an explanation of the origin of the state has been rejected by all modern political scientists and philosophers. The main arguments against the theory may be grouped under the following heads: (1) the theory is false; (2) the theory is illogical; (3) the theory is not only unhistorical but it also reverses the course of history; and (4) the theory is dangerous.

The theory is false. History does not furnish a single example of primitive men who have no knowledge of political institutions forming a state by entering into a contract among themselves. Of course, examples are often cited of states coming into being as a result of contract. But an examination of all such cases will show that the contract in question was made by men who were formerly citizens of highly developed states and had a knowledge of political institutions. Take, for instance, the "Mayflower Compact," which is often cited as an example of a contract bringing a state into existence. In 1620, a group of English puritans, who have come to be known as Pilgrim Fathers, emigrated to America on a ship called the Mayflower. They founded the first colony in America—the colony of New Plymouth. Before landing they entered into an agreement, which has come to be known as the "Mayflower Compact." It said: "We do, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic for our better ordering and preservation." But this was a compact made by people who had been members of a well-developed state and were politically experienced. This is certainly not an example of men in the state of nature forming a civil society by making a contract among themselves, and it does not prove that primitive men who had no knowledge of political institutions created the first states in the world by entering into such contracts. A number of other American colonies were

founded by men who entered into coventants similar to the "Mayflower compact." But, as Garner points out, all these are instances of men already subject to political authority transplanting old political institutions to new lands. The Mayflower covenanters, says he, expressly acknowledged that they were "loyal subjects" of an existing sovereign.

The theory is Illogical. The Social Contract theory is illogical because there can be no rights in the state of nature. Rights presuppose a consciousness of common ends among the people. A person has a right means that his fellow-beings recognise that he has that right and also recognise the duty of all others to refrain from doing anything that might infringe his right. But such a common consciousness of rights and obligation could not exist in the state of nature. In fact, in the state of nature, might rather than right determined the relations between individuals. Might does not create right. Rights can exist only in a civil society which aims at securing the common good and regulates the conduct of individuals to that end. The idea of men enjoying in the state of nature certain rights which they surrendered by a contract among themselves is, therefore, illogical.

The theory is not only unhistorical, it reverses the course of history. The idea of a contract presupposes a system of law and a higher authority to enforce the contract. In the state of nature there is no such authority, nor any system of law. The idea of contract could not, therefore, arise in the state of nature. The idea developed after the formation of civil society, not before. But according to the Social Contract theory, the civil society came into being as the result of a contract. The theory, therefore, reverses the course of history.

The theory is dangerous. The Social Contract theory is dangerous because it might give rise to the belief that the state and government, like a business partnership, is a matter of mere voluntary contract and that a person is free to withdraw from the contract or to remain outside the contract as

he wished. If such a belief became widely prevalent, it might subvert authority and destroy the state. Membership of the state, however, is not a mere matter of contract. Men are born in states, just as they are born in families. While membership in all other associations is voluntary, membership of the state is compulsory. And the relation between the individual and the state is based upon the fact that it is only in an organised society that the individual can attain his full moral and spiritual stature and fulfil his life. "Membership in the state and the obligations of allegiance and obedience", says Garner, "cannot be interpreted in the terminology of legal contract. We can no more explain them on the theory of contract than we can account for membership of a child in the family or its duty of obedience to the parent, on the principle of consent. These relations rest upon utility, and the general interests and necessities of society; they are independent of consent and they are entered into without any more thought as to their justification or legal basis than one bestows on the principle of gravity or the operation of the laws of nature in general."

Both Plato and Aristotle, the Greek philosophers, rejected the idea that the state was an artificial creation. The state, according to them, was not a manufacture but a growth. The state is as natural as life itself. Its origin lies in the natural instincts of man. It rests on the needs of human life. Man is by nature a political animal, says Aristotle. Nature always seeks some ends and the end of the state is good life. A state when fully developed ensures good life. The good life, according to Aristotle, is the *final cause* of the state, while the needs of man constitute the *efficient cause*. Although modern political scientists have not accepted this conception of Aristotle in toto, they fully agree with the basic conception of the Greek philosopher that the state is a growth rather than an artificial creation, that its roots lie in the instincts of man and that it is as natural a phenomenon as the family. Burke, the English political philosopher, vehemently combated the theory of contract. Society, said he, was something

more than "a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and then dissolved by the fancy of the parties." We, therefore, conclude that the state is neither "the handiwork of God" nor the result of a contract.

The Great Influence of the Contract Theory: The Social contract theory has been used (1) to explain the origin of the state and (2) as a theory of the relations that should subsist between the ruler and the ruled, the government and the people. And it is its use for the latter purpose that gave the theory the great force which it exerted over the minds of men in many countries in the eighteenth century. Nobody bothered whether the state really originated in a contract, but millions were powerfully stirred by the idea that the people are the ultimate source of authority, and the state is an expression of the popular will. Whether there was actually any social contract or not, the government or the ruler ought to behave as if they are merely an instrument to give expression to the will of the people who created the state to secure the common good. People, thundered Rousseau, were the sovereign, and the rulers were merely the creations of the popular will. If the rulers oppressed the people, they ought to be deposed. Rousseau's writings deeply stirred the minds of oppressed people everywhere. He "unchained the tigers of emotion." His theory created a psychological revolution which ultimately expressed itself in the great French Revolution that swept away the oppressive monarchical regime in France. The idea of contract—the idea that the consent of the people is the source of all political authority—also powerfully influenced the American mind and inspired the American struggle for independence. The preamble to the American Declaration of Independence which was adopted on July 4, 1776, is but an assertion of the idea of contract and the principle of popular consent. It said: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among

these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Much the same idea appears in the Indian Independence Resolution which was adopted in the Lahore Congress in 1929—the pledge which the nation renewed every year on January 26 till the attainment of freedom. The preamble to the Resolution says: "We believe that it is the inalienable right of the Indian people as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth. We believe also that if any Government deprives a people of these rights, and oppresses them the people have a further right to alter it or to abolish it."

The idea of contract, as has been pointed out, was the main psychological force behind the French Revolution of 1789; and the "Declaration of the Rights of Man and Citizen" which the French National Assembly drew up in August that year is practically an elaboration of the idea. It declares, *inter alia*: "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression. . . . .The source of all sovereignty is essentially in the nation; nobody, no individual can exercise authority that does not proceed from it in plain terms. . . . . Law is the expression of the general will. . . .The guarantee of the rights of man and citizen requires a public force; this force is then instituted for the advantage of all and not for the personal benefit of those to whom it is entrusted."

When one recalls how greatly the examples of the French and American Revolutions have inspired oppressed peoples

in other lands, the great influence that the theory of contract—the idea that governments derive their just powers from the consent of the governed—has exerted on the course of human history will become evident. The idea has been, indeed, a social dynamite which revolutionists in many lands have successfully used to blow up oppressive regimes.

The theory, for all its weaknesses, contains one fundamental truth, namely, that the state rests on the will of the people, that the governments derive their powers from the consent of the governed. Herein lies the value of the theory. And it is this element of fundamental truth in the theory that made the theory a powerful force in the political life of mankind. By declaring the essential relation between the government and the people, the theory has played a great role in the shaping of modern democratic institutions.

Decline of the Theory: The decline of the theory has been due mainly to four causes. (1) The rise of the historical spirit in Political Science gradually resulted in the replacement of the speculative approach to political problems by the historical approach. The publication in 1748 of the famous book, Spirit Of The Laws, by Montesquieu, the French writer, marked the beginning of the new approach in Political Science. In sharp contrast to contemporary writers who arrived at their conclusions by the speculative method, Montesquieu adopted the historical method—the method of basing conclusions on the facts of history and observation. Gradually this method came to be generally accepted by students of Political Science. (2) Darwin's theory of biological evolution so powerfully influenced the mental climate of the nineteenth century that the idea of evolution came to be applied in almost every branch of Science. The state came soon to be regarded as an organisation that has gradually evolved through centuries rather than as artificial creation of people making a contract with one another. The organismic theory of the state thus greatly contributed to the decline of the contract theory. (3) The inherent defects of the theory itself weakened its hold on the

popular mind. (4) The development of new theories which embodied the elements of truth contained in the theory of contract also contributed to its decay. The doctrine of political sovereignty, for instance, which states that the people are the ultimate sovereign in the state embodies the essential truth contained in the Contract theory.

The Force Theory: The advocates of the force theory state that it is force which lies at the origin of the civil society. The state came into being as the result of the subjugation of the weak by the strong. In the early ages, the stronger men enslaved the weaker and exploited them, and, similarly, stronger tribes and clans subjugated and exploited the weaker ones. In this way bigger and bigger groups gradually came into existence. Tribes grew in size till they became kingdoms; and kingdoms fought against one another till the victorious ones absorbed the weaker ones and became continually bigger. Finally vast empires came into existence by the same process. The advocates of the force theory thus picture the social history of man as a continuous struggle in which, round after round, the weaker individuals, tribes, clans and kingdoms have been eliminated and larger and larger organisations have been formed.

In the Middle Ages, some theologians, in order to establish the superiority of the church over the state, used to assert that while the church was founded by God, the state originated in brute force. The force theory has found many advocates in modern Germany. Treitschke, the Prussian writer, not only believed that the state is the result of force, he also justified the use of force by the stronger tribes and races against the weaker ones. Subjugation of the weaker by the stronger, according to him, has helped the progress of civilisation. "The state," says he, "is the public power of offence and defence, the first task of which is the making of war and administration of justice." "The Germans" says he, "let the primitive Prussian tribes decide whether they should be put to the sword or thoroughly Germanised....Cruel as these processes of transformation

may be, they are a blessing for humanity. It makes for health that the nobler race should absorb the inferior stock." General von Bernhardi, another modern German writer, maintains that struggle is the universal law of life and the desire for peace is antagonistic to the first principle of life. Says he: "Might is the supreme right, and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since its decisions rest on the very nature of things." Thus General von Bernhardi believes that struggle and war are highly beneficial forces because they eliminate the weak and result in the survival of the fittest.

The Marxian theory of the state is also essentially a force theory. According to Marx and Engels, the state is nothing but a machinery in the hands of the economically powerful class for exploiting the poor and weaker classes. In the capitalist society, the state is only an instrument in the hands of the dominant economic class, namely, the bourgeoisie, to exploit the working class and to hold them down. Laws, the Marxists believe, are nothing but a system of rules designed to protect the interests of the stronger class. The struggle between the bourgeoisie and the proletariat will end in the victory of the latter which will thus become the dominant class in the next stage of social evolution. The victorious proletariat will set up their own dictatorship in the state which will become an instrument in their hands for the expropriation of the bourgeoisie. The proletariat will organise the economic life of the state on a socialist basis, which will ultimately lead to the disappearance of all classes. And since the state is but an instrument in the hands of the stronger class to exploit the weaker classes, with the disappearance of classes, the state itself will disappear. This classless, stateless stage of social evolution is the stage of communism.

The force theory has been rejected by modern political scientists and sociologists. While it is admitted by them that force did play an important part in the evolution of

the state, they point out that many other factors such as kinship, religion and political consciousness contributed to the formation and growth of states. Force is but one of the factors and not the only factor in the formation of the state. Again, while it is undeniable that a state can neither maintain internal order nor resist external attack without the use of force, it does not follow that force is the basis of the state. As Green points out, will and not force is the basis of the state, for even the use of force by the state is ultimately based on the consent of the people. A state exercises force not for the sake of just coercing people, but to ensure their welfare. "It is not" says Green, "supreme coercive power, simply as such, but supreme coercive power exercised in a certain way and for certain ends, that makes a state; *viz.*, exercised according to law, written or customary, and for the maintenance of rights." A territory in which one man is the master and the rest of the people are his slaves is not a state because there is neither law nor rights in such a territory.

The idea that the brute struggle for existence leads to the survival of the fittest has been rejected by sociologists. Such struggle may lead to the survival of the physically strongest or the most cunning people. But these people cannot be regarded as the fittest to live. In a brute struggle for existence, a man like Newton or Mahatma Gandhi would not survive. But it is these people who are fittest to live because they help mankind develop those higher mental and spiritual powers which differentiate man from the brute. Man is a higher order of being than the animal. Man does not live by bread alone but by art and knowledge, love and co-operation, beauty and goodness. People who help mankind to build up this higher life are the very persons who will be the first to go down in a situation dominated by the law of the jungle. In fact, in such a situation, development of the higher potentialities in man is an impossibility. This is the reason why all states prohibit violence and brute struggle for existence and regulate by a

system of laws competition among men for wealth and power. The laws of the states give protection to the physically weak against the strong. The laws in civil societies thus make possible the survival of those individuals who help men to develop their higher potentialities and to build up their higher life of beauty, truth and goodness.

The force theory ignores the fact that neither the individual nor society can live without co-operation. In fact, the human life begins in co-operation. A new-born child will die if the mother or the father did not help it to live. Co-operation has played a far greater role than struggle in the development of the human society and the state.

The Patriarchal and Matriarchal Theories: The Patriarchal theory states that the patriarchal family, that is, the type of family in which the eldest male parent is absolutely supreme in the household, is the earliest form of society. Gradual expansion of the patriarchal family has resulted in the formation of the state. Sir Henry Maine is the chief exponent of the theory. He expounded his theory in his books, *Ancient Law* and *Early History of Institutions.* According to Sir Henry, the family is the unit of primitive society. In its simplest form, the family consists of the two parents and children, the father being the head and supreme authority in the household. Gradually the family grows in size and breaks up into a number of families, which, however, continue to recognise the head of first family as their supreme authority, or the patriarch. Held together by this bond of kinship, this group of families constitute a tribe. As the tribe grows in size it breaks up into a number of tribes but the bond of kinship still continues to hold together all these tribes in one organisation and leads ultimately to the formation of a state. "The elementary group," says Maine, "is the family connected by common subjection to the highest male ascendant. The aggregation of families forms the gens or house. The aggregation of houses makes the tribe. The aggregation of tribes makes the commonwealth." Maine based his theory mainly on evidence derived

from the Bible, various systems of ancient law and accounts, given by observers, of the customs and institutions of primitive peoples.

The Patriarchal theory of society has been challenged by a group of writers who maintain that not the patriarchal but the matriarchal family is the earliest form of society. Among this school of writers, the most important are J. F. McLennan and L. H. Morgan. Morgan's book, *Ancient Society*, which contains his views on the various stages of social evolution is one of the most famous books in the hostory of sociological research. It was on the conclusions embodied in this book that Marx and Engels based their theory of the evolution of the state. The upholders of the Matriarchal theory assert that in the earliest forms of society descent was traced not through males but through females, that is, through the maternal line. There was also a marked pedominance of women in those societies. The matriarchal society evolved through a number of stages into the state.

Both the Patriarchal and Matriarchal theories of the origin of the state have been demolished by later sociological research. It has been conclusively proved in the first place that neither the patriarchal, nor the matriarchal family was universal in early societies. Secondly, both these theories lay an exclusive emphasis on the factor of kinship in explaining the origin of civil society. It has been proved that factors other than kinship such as religion and political consciousness have played an equally important role in the evolution of organised social life. In many primitive communities, the head used to be elected on the principle of ability and not on the principle of kinship. In other words, the ablest man and not the eldest ascendant used to be elected to the position of headship in such communities. The two theories oversimplify the problems involved and fail to take note of the fundamental differences between the family and the state. As Garner points out: "The family and the state are totally different in essence, organisation, functions and purpose, and there is little reason to suppose that one

should have developed out of the other." The relationship of command and obedience arise naturally in the family, but in the state it is based upon a recognition by the people of the need for a public authority to regulate social life. The citizens are supposed to be equal in the eye of the state, but in the family there is a natural principle of subordination of the younger to the elder. The value of the Patriarchal and Matriarchal theories, however, lies in the fact that it draws attention to one of the factors that contributed to state development. For kinship has undoubtedly played some part in the evolution of the state.

The Historical or Evolutionary Theory: The Historical or the Evolutionary theory now holds the field as the true theory of the origin of the state. According to this theory, the state has evolved through a long period of time as the result of the operation of a number of factors. In short, the state is a historical growth. The most important factors in the development of the state have been kinship, religion, force and political consciousness. A study of History, Anthropology and comparative Philology shows that each of these four factors has played an important part in the growth and development of the state. It is, however, impossible to state with exactitude in what combination the factors have operated or to indicate the exact stages through which the state has evolved. The only thing about which we can be sure is that all these factors have contributed to the formation of the state and that different stages have been probably marked by the predominance of different factors.

The roots of the phenomenon of the state lie in the gregarious instinct of man, that is, man's instinctive inclination for living in groups. Aristotle rightly says: "Man is by nature a political animal." Man is by nature sociable. He is fond of associating with other members of his species. It is to this inclination for associating with others, this instinctive desire for social life, that the origin of the state is to be traced. But though this instinct accounts for the origin of the state, conscious purpose also must have played a role

in its development. People have always felt, however dimly, the need for social organisation to secure certain ends. The state is, therefore, not a mere spontaneous growth like a plant. Both instinct and purpose, innate impulse and deliberate choice have played a role in the development of the state. Aristotle believes that it is the instinctive sociability in man which accounts for the origin of the state but its subsequent development has been greatly determined by choice.

There can be no doubt that kinship has played a vital role in the formation of the state. In early societies, kinship was a powerful bond of union. Large groups or tribes used to be held together by the bond of kinship, whether real or fictious. While there is much controversy as to whether the patriarchal or the matriarchal family came first, there are few who dispute that kinship, real or imaginary, must have greatly contributed to the formation of the state. In a family, the relationship of command and obedience arises naturally. And command and obedience are essential elements in the life of the state. In many primitive tribes which survive to this day the work of government is carried on by despotic tribal chiefs or councils of elders. These facts together with various other evidences brought to light by sociological and anthropological researches lead to the conclusion that kinship was an important factor in the evolution of the state.

Magic and religion have also been important contributory factors in the development of the state. Dr. Frazer has shown that in very early societies, magical powers or the supposed possession of magical powers enabled people to compel obedience among their fellows. Various natural phenomena like thunder and lightning struck terror into the heart of the primitive people and the magicians who claimed to possess the power of propitiating the spirits which caused such phenomena were held in awe and obeyed by the common people. Gradually intelligent people saw through the game. They found out the deception by which the magicians kept themselves in power. As a result, the power of the magicians

declined and they came soon to be replaced by the priest-king. The priest-king used the power of religion to compel obedience and preserve order in the state.

It is, of course, difficult to believe that everywhere social evolution has followed this line of development. It is possible that in some cases the magician has never held sway and the priest-king has dominated society from the very beginning. Whatever that be, this is at least certain that religious beliefs have been a powerful instrument in early societies for enforcing order. Religion has also always been a strong bond of unity and has held together large groups of people. In ancient Greece and Rome, city states grew up centring temples of gods or godesses worshipped by dominant families. The history of the creation of Pakistan proves beyond doubt that religion, which was a much stronger force in early ages than it is in modern times, must have played a great role in the development of the state.

Facts of history, again, leave one in no doubt that force has been a potent factor in state development. In past ages, nomadic tribes have often subjugated agricultural populations and exacted tributes from them. Gradually the relations between the conquerors and the conquered were placed on a more stable basis, the former protecting the latter from external aggression and subsisting on tributes of corn and other things given by the latter. History is replete with instances of states growing in size and power through conquests. All these facts, together with the fact that force is an essential element in the state prove that that force has contributed greatly to the evolution of the state. It must be clearly borne in mind, however, that force has been only one of the factors in state development, and that force alone cannot hold together a state.

In almost all stages of the evolution of the state, except perhaps the earliest, political consciousness has played an important part. Political consciousness means consciousness of common ends to be achieved through political organisation. Even in very early times people must have been

vaguely aware that political organisation is essential for the maintenance of internal order and for resisting external aggression. And it is this consciousness which slowly led to the growth of customary law in the state. Law, in early ages, was inextricably bound up with religion. Slowly religion and politics came to be separated from each other, and enacted law came to replace more and more customary law. With the growth of political consciousness, obedience to law also changed its character. Formerly, habit and fear were the chief elements in such obedience. When people began to understand the purpose which laws seek to secure, obedience to law became more and more intelligent and rational. With the development of political consciousness, people also began to adapt their political organisation to conscious ends so that political processes came to be directed more and more by conscious purpose rather than by instinctive desire.

We, therefore, come to the conclusion that " the state is neither the handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family " ; it is the result of an evolutionary process in which kinships, religion, force and poiltical consciousness have been the most important factors.

The Evolutionary theory of the state is, it should be noted, based on a pluralistic interpretation of political phenomena. The state, according to this theory, came into being as the result of the operation of not any one factor but of a number of factors. Those who assert that the state was created by force, or those who maintain, as do the Marxists, that the state came into being as the result of the operation of the economic factor, put forward a monistic interpretation of political phenomena. Modern sociology has come to the conclusion that no historical phenomenon can be fully explained by reference to any single factor. Every historical phenomenon, including the state, is the result of the action and interaction of a plurality of factors.

CHAPTER V

THE SOVEREIGNTY OF THE STATE

Meaning of Sovereignty: The word sovereign means supreme, and sovereignty means supremacy. In Political Science, sovereignty of the state means the supreme power of the state. We shall presently analyse the concept of state sovereignty. The student must carefully note that in Political Science the word sovereignty is used in a definite technical sense which must be clearly distinguished from the various other senses in which the word is used in common parlance. Thus the word sovereign is used to designate a king or monarch. In Britain, for instance, the King or the Queen is referred to as the sovereign. This use of the term originated in the days when the monarch really wielded supreme power, that is, when he was really sovereign. Although the monarch in Britain is now only a nominal head, a constitutional monarch, the word still continues to be applied to him.

In Political Science, sovereignty of the state means the supreme power of the state. According to Bodin, the sixteenth century French writer, sovereignty is "the supreme power of the state over citizens and subjects, unrestrained by law." Burgess defines sovereignty of the state as "the original, absolute, unlimited power over the individual subject and over all associations of subjects." It is this power which fundamentally differentiates the state from other associations, for the state is the only association that possesses sovereignty.

In modern Political Science a distinction is made between legal sovereignty and political sovereignty. The distinction is vital for the proper understanding of the problems of Political Science. It must be clearly noted, however, that legal sovereignty and political sovereignty do not refer to two different things. They refer to the same thing sovereignty of the state, looked at from two different points of view.

Legal and Political Sovereignty: Legal sovereignty means the supreme law-making power. The legal sovereign is "the authority which by law has the power to issue final commands." In every state, in normal conditions, there is some authority, whether a person or a body of persons, which is recognised by law as the supreme law-making authority. The laws laid down by that authority are binding on all concerned in the state. In case of conflict between laws made by this authority and the rules framed by other associations, it is the former which prevail. These laws are backed by the entire force at the disposal of the state, and their violation is punished by fines, imprisonment, confiscation of property and even, in some cases, death.

Behind the legal sovereign lies another power which, in the ultimate analysis, determines the character and content of the laws made by the former. This power is the political sovereign. "The political sovereign," says Gilchrist, is the sum total of the influences in a state which lie behind the law. In a modern representative government we might describe it roughly as the power of the people." Whereas the legal sovereign is organised and determinate, the political sovereign is unorganised and indeterminate. Ultimately the legal sovereign must bow to the political sovereign, but the commands of the political sovereign do not become law until they are expressed in legal form by the legal sovereign. In other words, the political sovereign which is the final source of all law is, technically speaking, unknown to law. A government cannot be sued in a court on the ground that it has violated some mandate issued by the people, because no court will recognise such mandate, however definitely expressed, as law. In modern democratic states, it is the voters who ultimately determine the character of the laws of the state, but they cannot by their own action lay down the law, except in those states in which the system of the initiative or referrenda obtains.

The legal sovereign is easily discoverable in some states, while in others it is not so easy to discover. For instance, in

Britain, it is not at all difficult to find out the legal sovereign. Parliament is the legal sovereign in Britain. It is the supreme legal authority in the state. Parliament can make laws on any subject and laws made by it are binding on everybody in the state including the courts. It can by law change at any moment the constitution of Britain. It can abolish kingship, abolish the courts, take away all civil liberties of the people and can even inflict death on innocent men. No court can declare unconstitutional any law passed by Parliament. Parliament's legal sovereignty is so unlimited that one writer has said that it can do everything except make a man a woman and a woman a man. But even this is not correct. If Parliament declares a man to be a woman, he will be regarded, for legal purposes, as a woman; he will be deprived of all the legal rights to which he would be otherwise entitled as a man. Parliament is, therefore, the legal sovereign in Britain.

But though from the legal point of view, the British Parliament's power is unlimited, from the practical point of view it is limited. Parliament functions within limitations imposed by the will of the people. Legally, Parliament has power to disfranchise the British people, but it will never think of doing that. If Parliament, again, passes a legislation laying down that the British people must renounce Christianity and adopt the Hindu religion, such a law would be perfectly valid from the legal point of view and the courts will be bound to enforce that law. But the British Parliament will never even dream of passing such a law. Thus there is in Britain an authority higher than Parliament, and Parliament must ultimately bow to it. The political sovereign in Britain is, roughly speaking the people who acting in various ways, partly through organised groups and partly as unorganised mass, give expression to their will which is ultimately embodied in the laws of the realm.

In countries having a federal system of government it is difficult to place one's finger on the exact spot where the

legal sovereignty resides. For instance, in the United States the legal sovereignty resides neither in the Central legislature which is known as the Congress nor the state legislatures. The powers of both the Congress and the state legislatures are limited by the national constitution of the United States and any law which violates the provisions of that constitution can be declared unconstitutional and void by the courts. In the United States, therefore, only that authority is the legal sovereign which can change the national constitution and redistribute the powers between the Centre and the states. The position is the same in India.

It is highly important, however, to remember that legal and political sovereignty are not two different kinds of sovereignty. They are only two aspects of the same thing, namely, the sovereignty of the state. The political sovereign which exerts its influence through the press, through speeches, through the ballot box and the like controls the activities of the legal sovereign and determines the character and content of the laws.

From what has been said the relation between the legal sovereign and the political sovereign should be clear. The legal sovereign is the highest law-making authority in the state, while the political sovereign is the power behind the legal sovereign. The political sovereign cannot directly lay down laws except in states in which the system of the initiative or the referrendum prevails; but laws are ultimately an expression of its will, for it controls the activities of the legal sovereign. This controll is in most cases indirectly exercised. In states with a democratic system of government, the political sovereign exercises control over the legal sovereign through voting, through the press, through meetings, demonstrations, deputations, strikes and the like. If the legal sovereign in a democratic state fails to carry out the mandate of the political sovereign, the latter replaces the former with a new legal sovereign through elections. In states in which there is no constitutional method of changing the legal sovereign, people

sometimes resort to violent means to overthrow that sovereign and to install a new legal sovereign in its place. Thus the will of the political sovereign always ultimately prevails in the state. A democratic system of government is a device to ensure that the legal sovereign reflects the will of the political sovereign as closely as possible. In a direct democracy, that is, under a system in which the entire adult population directly participates in law-making, the legal and political sovereigns coincide. Modern democracies are, however, indirect or representative democracies. In all modern states political and legal sovereigns are two distinct and separate authorities. And political controversies in every modern state mostly centre round the problem of making the legal soverign reflect the will of the political sovereign as closely as possible.

De Jure and De Facto Sovereignty : A distinction is sometimes made between *de jure* and *de facto* sovereignty. The *de jure* sovereign is the authority which is recognised by law as the sovereign. In other words, the *de jure* sovereign is the authority which is legally entitled to rule. The *de facto* sovereign is the power which can actually make its authority prevail, whether it has legal right to rule or not. According to Lord Bryce, the *de facto* sovereign is "the person or body of persons who can make his or their will prevail whether with the law or against the law." "The person or body of persons", says Garner, "who or which for the time is able to enforce obedience or in whose rule the people voluntarily acquiesce is the *de facto* sovereign, although he or it is not necessarily the *de jure* sovereign. This sovereign may be a usurping king, a self-constituted assembly, a military dictator, or even a priest or a prophet ; in either case the sovereignty rests upon physical power or spiritual influence, rather than upon legal right."

One comes across numerous examples of *de facto* sovereignty in history. Cromwell made himself the *de facto* sovereign after he had dissolved the Long Parliament. The

Convention Parliament of England which, after the Revolution of 1688, offered the crown to William and Mary is another example of *de facto* sovereignty. Nepoleon, after he overthrew the Directory, became the *de facto* sovereign of France. Two other well-known examples of *de facto* sovereignty are: the Bolshevic regime in Russia following the Revolution of 1917, and the military government, headed by General Neguib, that was set up in Egypt after the coup of 1952 which deposed King Farouk.

What is the relation between the *de jure* and *de facto* sovereigns? "In a well-ordered state", says Gilchrist, "*de jure* and *de facto* sovereignty coincide, or, in other words, right and might go together." It is common experience that in a well-ordered state, the authority which is legally entitled to rule is also the actual ruling authority. In times of revolution, however, when the legal sovereign's moral right to rule is challenged or when its authority is overthrown, governmental power is taken over by a *de facto* sovereign. De facto sovereignty is thus a phenomenon usually connected with revolutions. All the examples of *de facto* sovereignty cited above, it will be noted, relate to periods of turmoil and revolution in the countries concerned. In politically backward countries, however, it is sometimes seen even in normal conditions that power is actually wielded by a *de facto* sovereign, while another authority is legally in power. When, however, a *de facto* sovereign stays in power for some time, it becomes the *de jure* sovereign. In fact, wherever there has been a successful revolution, the *de facto* sovereign has in course of time established itself as the *de jure* sovereign through popular consent and the establishment of new a legal structure in the country. In political affairs, therefore, successful might has a tendency of being transformed into legal right. But might seldom achieves a permanent victory in society unless it has moral right on its side.

Popular Sovereignty: Let us now analyse the theory of popular sovereignty which says that sovereignty belongs

to the people. The idea of popular sovereignty arose in the sixteenth century as a reaction to absolute monarchy prevailing in these days. William of Ockam, Marsiglio of Padua, George Buchanan, Suarez, Althusius and others attacked absolutism and held that it is the people who are the sovereign. Rousseau defended the principle of popular sovereignty with a revolutionary fervour and thereby helped in releasing the forces which ultimately exploded in the French Revolution. The American Declaration of Independence also embodies the principle of popular sovereignty. The idea of popular sovereignty has been truly, as Bryce says, "the basis and watchword of democracy." Revolutionaries in almost every country have asserted that the people are the sovereign and the governments derive their just powers from the consent of the governed.

The phrase "popular sovereignty" is, however, used in a loose sense. Writers sometimes mean by this phrase that sovereignty belongs to the total mass of unorganised people, which is wrong. The people in their totality are not capable of exercising sovereignty; nor can unorganised people exercise sovereignty. No state gives the right to vote to its entire population. If again the term popular sovereignty is used to mean that the voice of the people is law, that would also be incorrect. Public opinion is not law until that opinion is formulated in legal form and expressed through certain recognised channels. If, however, by the term popular sovereignty is simply meant popular control, or adult franchise, there can be no objection to it. Some writers mean by this term that public opinion must ultimately prevail in the state. This, too, is unexceptionable. Laski says: "All, in fact, that the theory of popular sovereignty seems to mean is that the interests which prevail must be the interests of the mass of men rather than of any special portion of the community."

Sovereignty, strictly speaking, belongs to the state and not to the people. It is only when the people are politically organised that sovereignty comes into existence. Gettel

rightly remarks that if we ascribe sovereignty to the unorganised mass, we resolve the state into its atoms; if, on the other hand, we say that sovereignty belongs to the politically organised people, we merely repeat the proposition that sovereignty belongs to the state, for a people politically organised is the state. The concept of popular sovereignty is, therefore, illogical.

National Sovereignty: There are people who believe that sovereignty belongs to the nation. The leaders of the French Revolution laid great stress on the principle of national sovereignty, and the Declaration of the Rights of Man drawn up by them in 1789 declares that " all sovereignty resides essentially in the nation." The idea of national sovereignty used to be regarded in France as one of the fundamental principles of public law. The theory of national sovereignty, however, is false because it implies that the nation possesses a personality and a will apart from the individuals and the wills of the individuals of whom it is composed. The nation does not possess any such personality, the idea being a mere abstraction. The French Revolutionists proclaimed the principle of national sovereignty as a counter-blast to the idea of the sovereignty of the monarch. They also tried to lay stress on the fact that sovereignty was not, as Rousseau believed, divided into millions of fragments, each individual being regarded as a fractional sovereign, but resided in the corporate personality of the entire people. The idea of national sovereignty, as has been pointed out, is unscientific and has, therefore, been rejected by Political Science.

History of the Theory of Sovereignty: The idea of sovereignty as we understand it today did not exist in ancient or mediaeval times. Of course, the roots of the idea can be traced even to early writers like Aristotle, but the modern concept of sovereignty did not arise till the closing stage of the Middle Ages. The idea could not emerge in the Middle Ages because the state in the modern sense of the term did not exist in those days. In the Middle Ages, the

Western countries were regarded as a single commonwealth in which the supreme power was vested, at least in theory, in the Pope or the Emperor. Society was also organised on the feudal basis characterised by personal allegiance as distinguished from the territorial principle of organisation. Clearly, in such a situation, the idea of the sovereignty of the state, that is, its supreme authority over all persons living in its territory could not arise.

It was the struggles of the sixteenth century, which led to the emergence of the modern national democratic state, that gave birth to the modern concept of sovereignty. They were struggles between the rising power of the monarch and its internal and external rivals. The kings everywhere fought to assert their supremacy over the feudal nobility and repudiated the supposed authority of the Pope and the Emperor. The conflict resulted in the victory of the monarchs who thus raised themselves to a position of authority in their countries. They became sovereign. It is significant that it was in sixteenth century France which witnessed a fierce struggle waged by French kings against the pretensions of the feudal nobility, the Pope and the Emperor, that the modern doctrine of sovereignty came to be first formulated. Jean Bodin, the sixteenth century French writer, was the first propounder of the modern doctrine of sovereignty. Bodin defined sovereignty as "supreme power over citizens and subjects unrestrained by law." He regarded sovereignty as a constituent element of the state. He was, however, not very clear in his mind about the distinction between the sovereignty of the state and the power of the government and often confused the two things. The confusion was chiefly due to the fact that in his time the monarch had emerged as the supreme authority in the state and wielded almost unlimited power over his subjects. In fact, the confusion between state sovereignty and the power of the government which is but an organ of the state was a common confusion not only in the sixteenth century but also in later times. Even Hobbes who published his famous book, Leviathan, in

1651, utterly failed to distinguish between the state and the government, and attributed sovereignty to the monarch. Gradually, as the nature of the state came to be understood more and more clearly, the distinction between state sovereignty and power of the government, whether monarchical or republican, became clear.

Hobbes, Locke and Rousseau contributed considerably to the building up of the modern theory of sovereignty. Hobbes, as we have already noted, maintains that people in the state of nature entered into an agreement with one another whereby they surrendered their rights to a person or body of persons who thus became the sovereign. The people, Hobbes believes, surrendered all their rights to the sovereign and cannot, therefore, claim any right against him. The sovereign, moreover, was not himself a party to the contract and so can never be accused of violating the contract. In short, the ruler's power over his subjects is absolute. Hobbes thus supported absolutism. His theory, as we have noted earlier, is only a theory of legal sovereignty. He completely failed to recognise the existence of political sovereignty in the state.

Locke, though he did not use the term sovereignty, distinguished between the supreme power of the government and the supreme power of the people. Legislative power, Locke believes, is supreme in the governmental sphere. But behind the legislative power lies the power of the people who can change the legislative authority if it betrays the trust reposed in it, that is, if the laws made by it do not conform to the popular will. This distinction made by Locke between the power of the legislative authority and the power of the people later developed into the distinction between the legal sovereign and the political sovereign.

Rousseau further developed the theory of sovereignty. In fact, Rousseau is the first advocate of the doctrine of sovereignty in its modern form. According to Rousseau, men in the state of nature surrendered their rights to the

community and placed themselves under the direction of the general will. Sovereignty is the power of the community directed by the general will. In short, according to Rousseau, the general will is the sovereign. The general will, Rousseau maintains, always wills the common good. The general will is not the sum of individual wills. It is rather the instinctive conscience of society, and it is only in a mass meeting of the people that the general will is expressed. The sovereign (that is, the general will) is absolute, infallible, indivisible and inalienable. It resides in the community by virtue of the original contract, the social contract. Both Hobbes and Rousseau believed that sovereignty is absolute. But while Hobbes maintained that sovereignty belonged to the ruler, Rousseau held that it belonged to the community, the body politic.

After Rousseau, the theory of sovereignty has been developed still further by a number of writers, the most famous of whom are Bentham, Austin, Green and Bosanquet. Bentham, and Austin developed the legal aspect of the theory of sovereignty, while Green and Bosanquet made notable contributions to its philosophical aspect. But all these later writers may be said to have built on the foundation laid by Rousseau. Austin's theory of sovereignty which played a highly important role in the development of the modern theory of sovereignty has been discussed below in some detail.

Recently the theory of sovereignty has been attacked by a school of writers, known as the pluralist school. The pluralist attack on the doctrine of state sovereignty has been discussed below.

Characteristics of Sovereignty : The characteristics of sovereignty are : (1) Permanence; (2) Universality; (3) Absoluteness; (4) Inalienability and (5) Indivisibility.

Permanence : The Sovereignty of the state continues as long as the state itself exists. In other words, sovereignty is as permanent as the state itself. Change of government

does not affect the sovereignty of the state. A monarchical system of government in a state, for instance, may be replaced by a republican system and the latter may be replaced by a dictatorship, but these changes will not affect the sovereignty of the state. The death of a monarch and the succession to the throne of a new ruler is also a mere change in government and not a break in the continuity of sovereignty. Sovereignty ceases to exist only when the state itself ceases to exist. As Garner has beautifully remarked, sovereignty "does not cease to exist with the death or temporary dispossession of a particular bearer, or the reorganisation of the state, but shifts immediately to a new bearer, as the centre of gravity shifts from one part of a physical body to another when it undergoes external change."

Universality : Sovereignty is characterised by universality. This means that the sovereignty of the state extends over all persons, things and associations in the state. The sovereignty of the state is not affected in the least by the existence in the state of any association or organisation, however powerful it may be.

Foreign embassies and diplomatic representatives in a state, however, remain subject to the law of their own states. This is known as the extra-territorial sovereignty of states. But this does not constitute an exception to the universality of a state's sovereignty. What happens in this case is that the state voluntarily waives jurisdiction over some persons and places, as a matter of international courtesy. If a state refused to grant these privileges to foreign representatives and embassies, nobody could challenge its legal power to do so.

Absoluteness : Sovereignty is absolute. This means that the sovereign power of the state is legally unlimited. There is no power, either inside or outside the state, which is superior to it, from the legal point of view. If a state's power is limited by the laws of another state or the dictates of another authority, it would not be a state at all but only part of another state. Limited sovereignty is but a contradiction

in terms. If the sovereignty of a body is limited by the laws or dictates of a higher authority, it is that higher authority which would be the sovereign and not the former.

It must be clearly understood, however, that though sovereignty is legally unlimited, there are some practical limitations on the exercise of sovereignty. These are limitations imposed by the very nature of things, and not by law. Even the most autocratic ruler would not normally think of passing such laws as are likely to provoke resistance or rebellion. Though the British Parliament has the power to pass any kind of law on any subject, it can never think of passing laws which are sure to be disobeyed or resisted by the people. It will not, for instance, dream of passing a law making it obligatory for the British people to use the German language for all official and non-official purposes. And apart from the question of disobedience or resistance, all human beings are subject to limitations imposed by their character, habits and outlook. Even a dictator cannot transcend limits imposed by his own character—his likes and dislikes, habits and ideas.

Obligations imposed by treaties which a state has voluntarily concluded with other states are not also legal limitations on its sovereignty. They do constitute, of course, some practical limitations on the exercise of its sovereignty. No state will, in normal circumstances, violate or repudiate a treaty, for such action is likely to strain its relations with other states and prove detrimental to its own interests.

Some believe that the fundamental law or the constitution of a state imposes limitations on its sovereignty. But this belief is based on a misconception. Constitutions limit the government, not the state. The state can alter or modify the constitution at its will.

The conclusion is, therefore, inescapable that the sovereignty of the state is absolute or legally unlimited.

Inalienability: Sovereignty is inalienable. "Sovereignty," says Lieber, "can no more be alienated than a tree can

alienate its right to sprout or man can transfer his life and personality without self-destruction." Sovereignty is the very essence of a state's being. Alienation of sovereignty means disappearance of the state itself. Inalienability of sovereignty does not, of course, mean that a state may not part with a portion of its territory or cede sovereign rights in respect of such territory. There are numerous instances of states ceding portions of their territory to other states; and such cessions do result in alienation of the state's sovereignty over the territories ceded. But this does not mean that the state can alienate its sovereignty, apart from cessions of territory, and still remain a state. Nor does abdication by a ruler result in alienation of the state's sovereignty. Abdication merely brings about a change in government.

Indivisibility: Another characteristic of sovereignty is its indivisibility. Sovereignty cannot be divided. There can be only one sovereign in a state. If sovereignty were divisible, there could be a number of sovereigns in a state, which is an absurdity. There cannot exist in a state a number of authorities each of which is supreme. For, if one of them is supreme, the others are necessarily not supreme but are subordinate to the former. John C. Calhoun, the American statesman, very aptly remarked: "Sovereignty is an entire thing; to divide it is to destroy it. It is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty."

The theory of sovereignty set forth above is known as the Monistic theory. Recently it has been subjected to a vehement attack by a school of writers, known as the pluralists. The arguments of the pluralists have been examined below.

Austin's Theory of Sovereignty: Austin's theory of sovereignty has played a great role in the development of the modern theory of sovereignty. In fact, the criticism which his theory evoked greatly helped in clarifying the problems involved and thus led to a clearer understanding of the true

nature of sovereignty. John Austin was an English jurist. His views on sovereignty are contained in his book, 'Lectures on Jurisprudence," which was published in 1832.

Law, according to Austin, is a "command given by a superior to an inferior." And Austin's theory of sovereignty stemmed from this conception of the nature of law. "If a determinate human superior," says Austin, "not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society and the society, including the superior, is a society political and independent." Thus, according to Austin, the sovereign is a determinate person or body; neither the general will, as Rousseau held, nor the people taken together is the sovereign. Secondly, the sovereign is legally unlimited, for if any authority has power to impose legal limitations on the sovereign, that authority will be the real sovereign.

Austin's theory of sovereignty has been severely criticised on a number of grounds. The most important of the criticisms directed against his theory is that it completely ignores the political sovereign, the power behind the law. He gives us merely a formal theory of law and authority, and ignores the ultimate source of all law and authority, namely, the power of the people. In short, Austin failed to grasp the concepts and ideas on which the whole theory and practice of modern democracy is based.

Austin's theory of law has also been criticised by a number of writers, the most notable among whom is Sir Henry Maine. Maine pointed out that Ranjit Singh of the Punjab never "issued a command which Austin would call law"; the lives of his subjects were regulated by rules derived from immemorial usages. The substance of Maine's criticism, it will be seen, is that Austin's theory of law ignores customary law which has grown up through usage and has not been enacted by any legislature, nor emanated from the command of any other determinate superior.

Austin tried to meet this criticism by saying that "what the sovereign permits he commands." But critics argue that much of the customary law in any country is so deeply rooted in the traditions and sentiments of the people that the ruling authority is powerless to alter it. Any arbitrary attempt to alter such law might precipitate a revolution. It cannot be said, therefore, that the existence of customary law depends on the sovereign's permission.

Thirdly, critics have maintained that the sovereign is not always a determinate person or body of persons. In a federal state, it is not possible to place one's finger on any person or body of persons and say that the sovereignty resides in him or that body.

In the fourth place, it is pointed out that by maintaining that the sovereign is legally unlimited, Austin has advocated absolutism or legal despotism. Austin, however, says that there is no escape from this position, since any authority which can legally limit the sovereign's power will itself be the sovereign and will be legally unlimited.

The chief defect of Austin's theory of sovereignty arises, as has been indicated, from his failure to distinguish between the political and the legal sovereigns. It is interesting to note that this failure to distinguish between the two led him into difficulties which he tried to overcome by making contradictory statements. For instance, he says at some places that in Britain Parliament is the sovereign. At other places, he says that the electorate is the sovereign when Parliament is dissolved. Sometimes he states that the King, Peers and electors are the sovereign. Once, however, the political and the legal sovereign are distinguished, the difficulty disappears. It becomes at once clear that in Britain Parliament is the legal sovereign. But behind Parliament lies the power of the people, including the electorate, which constitutes the political sovereign. The electorate or the political parties have no power of laying down the law. In other words, the political sovereign does not enjoy the law-making power.

It is, however, the ultimate source of all law and the legal sovereign must ultimately obey the political sovereign.

This analysis makes it clear that the Austinian theory is really a theory of legal sovereignty. And if it is studied as such a theory, it will be found to be clear and logical. Much of the criticism levelled against Austin is unjust and based on misconception. His analysis of the characteristics of legal sovereignty is, in many respects, logical and unassailable.

The Theory of Limited Sovereignty: Some writers maintain that sovereignty cannot be absolute and that there are various limitations on the power of the sovereign. (1) According to some, the sovereignty of the state is subject to limitations imposed by the moral law or the Divine will. The German writer Schulze says: "There is above the sovereign a higher moral and natural order, the eternal principle of the moral law." Bluntschli maintains that the nations are responsible to the eternal judgments of God. (2) It has been held by some writers that the state's power is limited by the fundamental law of the land or the constitution. Constitutional conventions also, it is believed by certain writers, constitute limitations on a state's sovereignty. (3) Some authors have strongly asserted that the principles of international law impose certain obligations on every state and thus limit its sovereignty.

Let us examine these alleged limitations on sovereignty.

It must be admitted that no state can completely ignore the principles of morality or religion. Violation of such principles by the ruling authority is sure to cause widespread resentment and may, in some cases, lead to revolutions. But principles of morality or religion or the laws of God do not constitute legal limitations on the power of a state. No court will declare a law invalid on the ground that it violates the principles of morality or is opposed to the teachings of religion. Garner says: "If in any case the limitations of the divine law or the law of nature are

recognised, the state in the last analysis must be the interpreter thereof, so that in fact the restriction is nothing but a self-limitation. In other words, the principles of morality, of justice, of religion, etc., so far as they constitute limitataions on the sovereign, are simply what the state decides them to be, for there can be no other legal conscience than that of the state."

As for limitations imposed by the constitution of a state, it is easy to see that the constitution limits the government and not the state. The state can change the constitution at its will. The Constitution of India, for instance, imposes a large number of restrictions on the exercise of governmental power. But these are not restrictions on the sovereignty of the Indian state which can amend, modify or completely abrogate the constitution. Again, in every state there are time-honoured conventions which have, for all practical purposes, the force of law. Ordinarily, no state can think of violating such conventions. But these conventions do not constitute legal restrictions on the power of the state. Courts do not recognise the existence of such conventions; nor will they invalidate a law on the ground that it violates an established convention.

Rules of international law do impose certain obligations on every state. But international law is not law in the strict sense of the term. There is no international government to enforce international law, just as the laws of the state are enforced by its government. In normal conditions, of course, the rules of international law are obeyed by every state because they find it to their own interest to do so. International intercourse would be impossible unless these rules were observed. In times of crisis, however, each state decides for itself whether it should obey or violate any of these rules. Thus international law lacks binding character. The obligations imposed by it are not legal obligations in the strict sense of the term but are more or less moral obligations. When international law will become law in the true sense, that is, when a world government will come into existence

to enforce international law the states of to-day will cease to be states and become parts of a world state.

It must be admitted, however, that international law is to-day a much greater force in international life than it was formerly. It developed greatly in recent years. The states of the world are also coming closer together and organising themselves with the purpose of taking collective action to defend themselves against aggression and to punish aggressor states. The North Atlantic Treaty Organisation, to cite an example, is a defensive alliance of a large number of Atlantic states including the United States, Britain, France, Holland and Belgium. The formation of such organisations in various regions of the world and the establishment of the United Nations have greatly strengthened the sanction behind international law and made it extremely difficult for individual states to violate it. One of the chief objects of the United Nations is to maintain international peace and security and to that end to take collective action for removal of threats to peace and suppression of acts of aggression. By taking collective police action in Korea (1950-53) against the aggressor state, the U.N. has proved not only its determination but also its ability to take, in certain circumstances, effective action to resist aggression. Still, the United Nations is far from being a world government. Its resolutions are not regarded as legally binding on the member states who are free to withdraw from it. Moreover, its decisions to take effective action in case of aggression can be vetoed by any of the Big Five Powers, namely, the United Kingdom, the U.S.A., U.S.S.R., China and France. It has, further, no organised police force to enforce its decisions. It cannot, under its charter, intervene in matters which are essentially within the domestic jurisdiction of any state, and each state ultimately decides what is within such jurisdiction.

We thus conclude: The sovereignty of the state is legally unlimited. But this does not mean that the state is

omnipotent or that it is subject to no restraint whatsoever. Principles of morality, religion and justice, as well as rules of international law do impose limitations on the exercise of power by the state. But these are practical limitations and not legal ones. Possibility of internal revolt and retaliatory action by other states is the sanction behind these restraints. It must be remembered also that the state is a human association, and men are all finite beings, whose physical and mental powers are limited and who are subject to limitations imposed by their own character and outlook. No state can transcend limitations arising out of this fact.

Is Sovereignty Divisible? Sovereignty and Federalism: It has been already stated that one of the characteristics of sovereignty is its indivisibility. Sovereignty is an entire thing and cannot be divided into parts. There are some writers, however, who maintain that sovereignty is divisible and that in federal states sovereignty remains divided between the central authority and the constituent units.

Towards the middle of the nineteenth century a sharp controversy arose in the United States as to where the sovereignty of the state rested. Some maintained that sovereignty resided partly in the union and partly in the states. Others asserted that sovereignty could not be divided and that it existed in its entirely in the separate states constituting the union. It may be mentioned that Madison and Hamilton who were among the most distinguished members of the convention which framed the constitution of the United States held that sovereignty was divided between the union on the one hand and the states on the other. This view was upheld by the Supreme Court of the United States. Judges Cooley and Story and writers like De Tocqueville, Hard and others were also of the same view. All of them maintained that the United States was sovereign in respect of powers conferred upon the national government, while the states were sovereign in respect of powers reserved to them. This theory of divided sovereignty was vehemently criticised by a number of writers, the most

notable among whom was Calhoun who, as we have seen, held that sovereignty was indivisible and rested in its entirety in the states. A number of German writers, notably Waitz, Von Mohl, Bluntschli and others, it may be mentioned, believed in the divisibility theory. Freeman, the English historian, stated that "the complete division of sovereignty we may look upon as essential to the absolute perfection of the federal ideal."

The theory that sovereignty is divisible is, however, based on a misconception. It confuses governmental power with sovereignty. The constitution of a federal state divides governmental power between the centre and the units. But division of governmental power is not the same thing as division of sovereignty. Sovereignty is a unity, an indivisible entity. In a federal state, the sovereignty of the state is expressed partly through the organs of the central government and partly through those of the local governments. It is sometimes said that the units of a federal government are sovereign in their own sphere. But this is a misuse of the term sovereignty. We might as well say that a municipality is sovereign in its own sphere or that every organisation in the state is sovereign within the sphere assigned to it by law. To say this is to maintain that sovereignty is divisible into thousands of parts. If one remembers, however, that sovereignty means the supreme power of the state, the fallacy of describing a unit of a federal government or a municipality as sovereign in its own sphere will be obvious. Gilchrist has justly and incisively remarked: "This idea of divided or dual sovereignty....arises from the usual cause—the failure to distinguish state and government. All states are units with one and only one sovereignty: but in their organisations they vary one from another. The division of power or delegation of power by one part of the organisation to another no more affects the central fact of undivided sovereignty than the existence of many nerve centres affects the existence of only one head in the human body."

In the United States, the question whether the states retained their original sovereignty and could secede from the union led to a civil war, but the southern states which asserted their supposed right to secede only did so because they wanted to preserve the institution of slavery. The civil war ended in the defeat of the southern states and restoration of the union. Immediately after the end of the civil war, the thirteenth amendment to the constitution was adopted abolishing slavery. Since then the question of location of sovereignty has never been an issue of practical politics in the United States.

Location of Sovereignty in a Federal State: From what has been said above it should be clear that sovereignty in a federal state does not reside in its constituent units. Nor does it reside partly in the units and partly in the union, for sovereignty is indivisible. Sovereignty in a federal state belongs to the state as a whole, the state that has been brought into existence through federation of the units.

It may be asked where legal sovereignty rests in a federal state. It should be clear that neither the central government, nor the governments of the component units are the legal sovereign in such a state, for the powers of both are limited by the constitution. That power is the sovereign in a federal state "which can in the last analysis determine the competence of the central government and those of the component states, and which can redistribute these powers between them in such a way as to enlarge or curtail the sphere of either." In short the power which can amend and modify the constitution is the legal sovereign in a federal state. It is no doubt difficult to discover that sovereign but that does not mean that it does not exist. It certainly exists and is always present somewhere in the state.

Pluralistic Attack on the Theory of Sovereignty: The traditional doctrine of sovereignty, which has been discussed above, has been subjected in recent years to a vigorous attack by a school of writers known as pluralists. The most

notable among these writers are Leon Duguit, the French jurist, H. Krabbe, the German writer, Harold J. Laski, the English political scientist, Ernest Barker and A. D. Lindsay, English publicists. Krabbe says: "The notion of sovereignty must be expunged from political theory." Laski has declared that "it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered." Lindsay has opined: "If we look at the facts it is clear enough that the theory of the sovereign state has broken down."

The pluralistic attack on the doctrine of sovereignty has taken various forms. Their main line of attack is as follows: Groups and associations have multiplied so greatly in society that the state is becoming more and more an association of groups and less and less an association of individuals. As Barker puts it: "We see the state less as an association of individuals in a common life; we see it more as an association of individuals, already united in various groups for a further and more embracing common purpose." These associations fulfil certain vital purposes which their members have in common; they promote economic, political, cultural and various other interests of the members. A very large measure of autonomy should be recognised as the right of these associations for they satisfy needs no less vital than those satisfied by the state. The state, says Laski, is only one among many forms of human associations and has no superior claim to the individual's allegiance. Some pluralist writers maintain that the groups possess natural corporate personalities which are not dependent for their existence on the will of the state. The power of regulation which the state exercises should be, in a large measure, surrendered and divided among the groups. Each group, Laski maintains, should be allowed to legislate for itself within the frame-work of the broad aims of social life.

It may be mentioned here that the origin of the pluralist doctrine can be traced to the works of Von Gierke, the German jurist and F. W. Maitland, the English jurist, who maintain that an association has a personality and a will

distinct from the personality and the will of its members. It formulates its own laws and functions independently of the state. Some associations are even prior to the state. The state is but one of the law-making bodies in society, for all associations frame laws for themselves. The state is only the chief, not the sole, law-making body.

Another form which the pluralistic attack on sovereignty takes may be stated thus: International law has developed to such an extent and international solidarity has grown so enormously that obligations imposed by international law on states are no longer mere voluntary or self-imposed obligations; they are, in a large measure, compulsory. The states, being subject to these obligations, can no longer be called sovereign. Progress of science has brought the people of the world so close to one another, that assertion of sovereignty by states in their relation to one another cannot fail to be detrimental to human welfare. Laski declares that "the notion of an independent sovereign state is, on the international side, fatal to the well-being of humanity."

The French jurist, Duguit, has attacked the sovereignty of the state from a different angle. Law, he maintains, is objective and not subjective. Laws grow spontaneously out of the facts of social life. They are rules of conduct which must be obeyed if men are to live in society, and derive advantages of social life. These rules are binding on everybody. Their binding character is not derived from the decrees of the political authority; it arises from the very fact of social life. In fact, laws are binding on the state. If the state violates the rules of social conduct, it acts unlawfully. The state, being thus subject to the rule of law, is not sovereign. Krabbe has also put forward a theory of law more or less akin to Duguit's theory and rejects the traditional doctrine of sovereignty.

The Value of the Pluralist Doctrine: The pluralist doctrine has done a useful service in Political Science by laying emphasis on the importance of voluntary groups and associations in modern society. These groups fulfil certain

vital needs of individuals, and enable them to live a richer and fuller life than would be otherwise possible for them. The groups also help individuals to make their influence felt in the current of social affairs, and to exert pressure on the state machinery in order to get their demands fulfilled and their grievances redressed. In modern states with their vast populations, the will of an isolated individual can hardly hope to make itself felt in seats of authority. It will be lost in the welter of the thousands of wills which compete and clash with one another for expression. This is why men build organisations so that they can put behind their demands the collective strength of a large number of individuals and bring to bear on the state machinery sufficient pressure to make it accept those demands. The pluralists have done well by focussing attention on the fact that it is the pull and pressure exerted by various associations on the government which largely determine the character and content of the laws. They also rightly emphasize that the government should ascertain the views of the associations concerned before framing or enacting any law, because they possess a deeper and more intimate knowledge of the needs and desires of the individuals who will be affected by such law. The writings of the pluralists have helped a clearer understanding of the forces and processes which are collectively known as the political sovereign. It is due in no small measure to the emphasis laid by pluralists on the importance of voluntary associations that the Governments in almost all democratic countries have now come to recognise the vital need of consulting associations representing various economic, political and cultural interests before framing and passing laws.

Criticism of the Pluralist Doctrine: The pluralist doctrine that the idea of sovereignty should be abandoned is dangerous. If this doctrine were translated into practice, social life would be reduced to complete chaos. If order is to be maintained in society, there must be some authority in it having the ultimate power of regulating the relations

between individuals and groups and possessing the power of coercing them if they violated the regulations laid down by it. The sovereignty of the state is thus a logical and vital necessity. It is the very condition of ordered social existence. If the sovereignty of the state is thrown overboard, that is, if the state is shorn of its comprehensive and compulsive authority, society will soon become a scene of anarchy and bloody strife, and peace and progress will be banished for good.

The pluralistic attack is in most cases motivated by a desire on the part of the writer for greater autonomy being granted to particular kinds of organisations. Laski has greatly stressed in his writings the need for expanding the freedom of the working class organisations. Dr. Figgis has pleaded for recognition of a large measure of autonomy for churches. But it should not be difficult to see that if groups are granted greater autonomy, that would only increase, and not lessen, the need for an authority having the power to adjust their relations, adjudicate their conflicts and prevent them from infringing one another's rights and oppressing their members. If the state were shorn of its sovereignty, its supreme authority over all individuals and groups, it will be impossible for the groups to enjoy undisturbed the rights which they desire. For, in such a situation, the various groups will be quarrelling and fighting for supremacy and, there being no authority superior to them, the struggle will be carried to the bitter end. Pushed to its logical conclusion, pluralism will thus bring about a situation of universal strife and chaos in which the rights of both individuals and groups will prove illusory. Throwing the sovereignty of the state overboard means returning to barbarism and the law of the jungle.

The pluralistic attack has failed to demolish the doctrine of sovereignty. It should be clear that if sovereignty goes, the state also goes. But the pluralist writers do not advocate the abolition of the state, as do the anarchists. They only

advocate the discarding of sovereignty. But state and sovereignty are essential to each other. As Gilchrist says, no state, no sovereignty; no sovereignty, no state. The pluralist who does not want to abolish the state is inwardly conscious of the need for a supreme power in society possessing a comprehensive and compulsive authority. But this power is sovereignty and the association which possesses this power is known as the state.

From what has been said above it should be obvious that the pluralist idea that voluntary groups are more or less equal in status to the state is wrong. For if the state becomes equal in status to voluntary associations it ceases to be sovereign or supreme over others, or in other words, it ceases to be the state.

Sovereignty as a Logical Necessity: Enough has been said about the concept of sovereignty to make it clear that sovereignty is a logical necessity. If men are to live peacefully in society and to enjoy certain rights which are essential for the development of what is best in them, there must be some power to regulate their relations, to adjust their differences, to adjudicate their disputes. That power must be given supreme authority to command and coerce if it is to perform these functions properly. It is not difficult to see that this power cannot perform the functions of over-all regulation properly if its will did not, in the case of conflict, prevail over all other wills in society, whether of individuals or of groups. It is out of this necessity that the phenomenon of sovereignty arises. The association which possesses sovereignty, or supreme power over individuals and associations, is known as the state.

Sovereignty and Liberty: It may be asked: Is not sovereignty antagonistic to liberty? If the state is sovereign, that is, if its power is legally unlimited, does it not mean that the state is a despot? Are not our liberties at the mercy of the sovereign state which, being subject to no higher authority, can restrict and even destroy our freedom at its will?

A little reflection will, however, show that it is because the state is sovereign that we can enjoy liberty. Sovereignty, far from being antagonistic to freedom, is the very condition of freedom. Law is the condition of liberty. If the state did not possess supreme power over individuals and groups, our life would have been a prey to thousand and one tyrannies of powerful individuals and groups. If the state were not supreme, there would have been no law and order in society, and, consequently, no liberty. To take away sovereignty from the state means to annihilate freedom.

The belief that the sovereignty of the state is not compatible with freedom arises from a confusion between state and government. The state and government are not the same thing. The state is sovereign, not the government. The constitutional law in all modern states imposes limitations on the exercise of power by the government. And these limitations are imposed with the sole purpose of preventing the government from infringing the liberties of the people.

In the eighteenth century when the distinction between state and government had not become very clear to people, the doctrine of state sovereignty would often be opposed because state sovereignty would be equated to absolutism of the monarch. With the growth of democracy and constitutional government, the distinction between state and government became increasingly clear and it came to be realised more and more that state sovereignty does not mean unlimited governmental authority. The theory of sovereignty of the state has, therefore, today more advocates than opponents. Even much of the pluralist criticism of the theory of sovereignty is found on scrutiny to be a result of confusion between state and government.

CHAPTER VI

LAW

The Various Senses of the Term: The word law is not the exclusive property of any one science. It is used in various fields of knowledge including Political Science. And it is used in different senses in different fields of knowledge. It means one thing in Political Science and quite another in Physical Science. Thus we speak of the Law of England, law of crimes, as well as of the Law of Gravitation and the laws of motion. The word law in the first two expressions means certain uniform rules of conduct enforced by a political authority, while in the last two it means certain uniformities in the processes of nature. We also hear of Laws of honour, Law of God, Law of Nature, Laws of Chess and so on. It should be noticed, however, that running through the various significations of the term is a common element, namely, the idea of uniformity or order.

Definition of Law in Political Science: As we have already noted, Austin defines law as "a command given by a superior to an inferior." This definition was objected to by Sir Henry Maine on the ground that it ignores the great body of customary law which is an important element in the law of almost every land. The Austinian conception of law is also open to another objection, namely, that there are even various statutory laws which can hardly be called commands of the sovereign. Command means an order to do, or abstain from doing, some act. Laws which are permissive in character cannot be called commands. A law, for instance, which states that heresy is no crime cannot be called a command. Laws conferring francise, again, are not commands. At least such laws cannot be resolved into the terms of a command unless one described their content in a very circuitous way. Austin tried to meet such objections by saying that what the sovereign permits be commands.

But to say this is to stretch improperly the meaning of the term ' command ', and to admit indirectly that the definition which identifies law with commands of the sovereign is defective.

John Erskine defines law thus: " Law is the command of the sovereign, containing a common rule of life for his subjects and obliging them to obedience." This definition suffers from more or less the same defects as the Austinian conception.

According to Dr. Woodrow Wilson, " law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government." This definition is more scientific than the Austinian definition because it is more comprehensive. Both statutes and customary laws, as well as mandatory and permissive laws come within the scope of this definition.

Professor Holland's definition is probably the best definition of law. This definition is as follows: " A law is a general rule of action taking cognizance only of external acts, enforced by a determinate authority, which authority is human and among human authorities is that which is paramount in a political society; or, briefly, a law is a general rule of external action enforced by a sovereign political authority."

An analysis of this definition will help a clear understanding of the nature of law.

Law, in the first place, is a general rule. This does not mean that every law must apply to all persons in the community. Application of laws may be limited to particular classes, such as, doctors, industrialists, workers, children, booksellers and so on. Sometimes the class may consist of only one person or occasion, *e.g.*, the law which lays down that the President of India shall, before entering upon office, take a prescribed oath or make a prescribed affirmation.

The generality consists in the fact that a particular act is commanded for a particular situation if and when it arises.

To say merely that law is a general rule of human conduct does not, however, distinguish it from morality, which also lays down general rules of conduct. Law is differentated from morality by two things. In the first place, law takes cognizance only of external acts and does not concern itself with motives, feelings or thoughts as such; but morality takes into consideration not only what men do but also what they think and feel. Law is concerned with motives only in so far as they manifest themselves in external acts. Secondly, law is enforced by a determinate authority, while moral rules are enforced by social approbation or disapprobation, that is, the pressure of public opinion.

Thus a law is a general rule of human conduct which takes cognizance of an external act and is enforced by a determinate authority. It might be argued, however, that what we call Divine laws are also enforced by a determinate authority, namely, God, and many of such laws are concerned with external acts. To clearly distinguish law from the law of God, therefore, we must stress the fact that the authority which enforces law is a human authority and not a Divine one.

But the rules of conduct framed by all determinate human authorities are not laws. The rules and regulations framed by the voluntary clubs and associations such as football clubs, debating societies and religious associations are not laws. Only the rules of conduct enforced by the supreme political authority in a society are laws. In other words, laws are rules of conduct enforced by the authority of the state.

Various Schools of Law: Law can be studied from various points of view—analytical, historical, philosophical and sociological. And there have grown up various schools of law according to the difference in the point of view from

which the subject has been approached. The Analytical School studies law by analysing various concepts common to the developed systems of law and arrives at certain general principles on the basis of such study. It does not concern itself with the historical origin of laws, nor with the ethical principles underlying those laws. Austin is perhaps the most distinguished writer belonging to this school. The Historical School of Law studies law as a historical growth or evolution. It bases its conclusions on a comparative study of the origin and growth of the various legal concepts. Unlike the Analytical School which regards law as a product of conscious, determinate human will, the Historical School regards law as something that is found and not made. Friedrich Carl von Savigny is a representative author of this school. This School became prominent in the first half of the nineteenth century. The Philosophical School studies the philosophical and ethical bases of law. It is chiefly concerned with abstract concepts and not with any particular system of law. It came into prominence in the seventeenth and eighteenth centuries. The Sociological School, which is of comparatively recent origin, studies law as a social phenomenon and in its relation to social conditions and progress.

Each of all these various methods of studying law has its merits as well as defects. These Schools are not rivals, but are really partners. They supplement one another, each throwing light on a different aspect of the problems involved. Professor Holland rightly points out that there may be different methods of studying law but these different methods should not be regarded as a ground for the division of the Science of law itself.

The Sources of Law: The chief sources of law are the following: (1) Religion, (2) Custom, (3) Scientific discussion, (4) Adjudication, (5) Equity and (6) Legislation.

(1) *Religion*: Early law was inextricably bound up with religion. The Hindu law is based mainly on the Hindu

scriptures. The most important basis of Hindu law is the Code of Manu. The Mahomedan law is based on the Koran. In early times, society in almost every land used to be dominated by the priestly class who were the law-givers. The Brahmins were the dominant class in Hindu society for several centuries. The Pontiffs held sway in Rome for a long time and so did the ecclesiastics in England. There can be no doubt that religion and custom were the only sources of law in early societies. And custom was in early times closely interwoven with religion. In most cases the sanction behind custom was that of religion. Custom used to be observed because people were made to believe that its non-observance would bring down the wrath of God on their heads. As the temporal power, as distinct from the spiritual, rose to supremacy, the sphere of religion began to be separated from the sphere of law. The separation is yet far from complete, particularly in Hindu and Mahomedan systems of law.

Custom: Custom has always been an important source of law. In fact, in earliest societies custom, backed by religion, was probably the only source of law.

Custom, it has been aptly said, originates in imitation following upon invention. When a person invents a particular method of doing a thing and is imitated by others, a custom gradually comes into existence. A custom, as Prof. Holland points out, is formed in much the same way as a path is formed across a field.

The importance of custom as a source of law has been recognised by Hindu law from very early times. The Code of Manu recognises the importance of customs. Says Manu: "The King who knows the revealed law must enquire into the. . . .rules of certain families and establish their particular law." The recognition of custom as a source of legal rules has enabled Hindu law to adapt itself continually to changes in social conditions. In Mahomedan law, custom is not given much importance. The Mahomedan law is, therefore,

inherently more rigid than Hindu law. But such is the force of custom that even Mahomedan law sometimes allows a custom to override a written law.

English law also attaches considerable importance to custom. In English law, a custom fulfilling certain conditions is recognised as law. These conditions are: (1) The custom must be reasonable, that is, it must not be opposed to the fundamental principles of morality or law of the state. (2) It must be of immemorial antiquity. (3) It must not go against the statutory law. A custom which is contrary to a statute is void. (4) The custom must refer to legal relations. A custom having nothing to do with rights or obligations cannot be regarded as having the force of law.

In modern societies a custom cannot be said to have become a law until it is recognised by the state as such. And in all modern states there are numerous instances of customs receiving the imprimatur of the state, that is, receiving its recognition. It may be safely asserted that after the state came into existence its first laws were nothing but previously existent customs which had received recognition from it. We have seen that in Punjab under Ranjit Singh the laws were based almost wholly on custom or usage. Wherein lies the force of customs? Apart from the religious or legal sanction behind it, the force of a custom that is widely observed lies usually in the fact that it is beneficial to society and based on the principles of justice or morality. Salmond says: "Custom is the embodiment of those principles which have commended themselves to natural conscience as principles of truth, justice and public utility."

Scientific Discussion or Commentaries: Another source of of law is scientific discussion or commentaries. With the growing complexity of social life, laws have tended to be increasingly numerous and complex. This has given rise to the need of a class of professional legal interpreters or experts in law. The need was felt even in very early stages in society when life was far less complex than it is to-day. Opinions

of legal experts or able writers on law have always commanded the respect of judges and lawyers. Very often the opinion of commentators has been accepted as the law on the subject in question. Thus scientific discussion has played an important role in the development of law. In England, the opinions of commentators, such as Coke, Blackstone and Hale have wielded tremendous influence over legal thought and practice. In Hindu law, the commentaries known as the Mitakshara and the Dayabhaga occupy a position of great importance. It must be clearly understood that the opinions of commentators are not laws. They become laws only when the state recognises them as such, that is, when the judiciary recognises them as law and enforces them.

Adjudication : It is commonly believed that judges only interpret the laws and apply them to cases that come before them, and have no power of creating any new law. Actually, however, judges in every land enjoy a certain amount of legislative power. Once a case has been decided in a particular way, it becomes a precedent and tends to be followed subsequently in similar cases. The decision of the judge in that particular case thus becomes the law. In England and America, legal precedents are always treated with respect by the judges. Judicial decisions are thus an important source of law in these two countries. In France and Germany, on the other hand, the authority of precedent is much less than in England or America. In the former, judicial decisions are regarded as only instructive and not authoritative; in the latter their authority is so well-established that American decisions are freely cited by the English judges and vice versa. Even in India, American and English decisions are frequently referred to by the judges, and the legal precedents of those countries are always treated with respect. Though adjudication is an important source of law, it should be clearly understood that in case of conflict between judge-made law and law enacted by the legislature, it is the latter which prevails. The Legislature can by passing

a law sweep away the judicial precedents. The English common law is mainly judge-made law; it grew up through a long period of time and is based on numerous judgments rendered in the past by the judges of the king's courts. Parliament can, however, by enacting a law alter, modify or abrogate any rule of common law.

Equity : Another important source of law is equity. Equity has been defined by Sir Henry Maine as "any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles." Equity comes into existence when civil law becomes rigid and inelastic and is found difficult of adaptation to new conditions. The legal history of both Rome and England shows how equity comes to the aid of civil law when the latter fails to meet the requirements arising from new conditions.

The origin of equity in England goes back many centuries in the past. When people thought that rules of common law did not give them sufficient protection or did not apply to their cases, they petitioned the king for remedy because the king was supposed to be the fountain of justice and to have in his hands a reserve of residuary justice. Such petitions began gradually to multiply so greatly that it became impossible for the king to deal with them personally. The king began, therefore, to refer those petitions to his Chancellor, who was the head of his secretariat, for examination and disposal. The Chancellor decided those cases according to their merits and on the basis of the principles of justice and morality. He was not bound by the rules of common law and did not attach much importance to the technicalities of procedure. In this way a body of rules known as equity grew up gradually, and in course of time a regular court came into existence to administer those rules. This court came to be known as the Court of Chancery. It was also called the Court of Conscience, as the Chancellor was known as "the Keeper of King's Conscience."

It should be clear that though lawyers speak of law and equity, the later is also law. "Equity is case-law, equally with the common law; indeed it is a species of common law—a sort of supplement or appendix to common law." Through development over a long period of time equity in England has become to-day a vast body of principles and rules distinct from what is known as the common law. The rules of equity are, however, no longer administered in Britain in separate courts. The same courts administer equity and other kinds of law.

Equity has nothing to do with the criminal law. It is confined entirely to civil matters. In Britain, in certain kinds of civil cases, redress may be sought either at law or in equity as the plaintiff prefers. In certain other kinds of cases, rules of equity are invariably applied, *e.g.*, in cases relating to the administration of trust property. The great bulk of the civil cases are, however, decided according to common law or statute law; sometimes, equity is appealed to in these cases to correct alleged omissions or injustices.

It is interesting to note that in Rome, too, equity came into existence at a stage in the evolution of the Roman civil law when it failed to meet the new and expanding requirements of a great commercial nation. The presence of foreigners in Rome also necessitated a body of rules applicable both to foreigners and the Romans. The new body of legal rules which thus came into existence was known as the Jus Gentium. The Jus Gentium was the Roman equity. It was supposed to be based on the Law of Nature and came to play an important part in the development of the Roman civil law. The Jus Gentium was also known as the praetorian law. The Roman praetor, on the assumption of office, would issue a proclamation indicating the manner in which justice would be administered during his term of office. And the principles embodied in the proclamation would be based on equity. In fact, the Roman equity or the Jus Gentium was built up through the labours of successive praetors. This explains why it is also called the praetorian law. In course

of time the earlier system of civil law of Rome was replaced by the Jus Gentium which was supposed to be based on a higher principle, namely, the Law of Nature.

When equity ceases to be an active factor in the development of law, it losses its separate existence. In Rome, the legislation of Justinian made it an integral part of Roman law. In England also, since the passing of the Judicature Act of 1873 which abolished the Court of Chancery as a distinct court of law, both law and equity have been administered by the same courts.

Legislation : Legislation is by far the most important source of law in modern age. Every year the various legislatures of the world are turning out thousands of laws. And, it is important to note, laws based on custom, usage, religion and adjudication are being constantly altered and modified by laws enacted by legislatures. In India, for instance, the Hindu law which is based on the Hindu scriptures is undergoing profound transformation under the impact of legislataion.

There are important differences between adjudication as a law-making agency and legislation. In adjudication, there is always a presumption that the judge only interprets the law and does not create any new law. As has been already pointed out, this presumption is a fiction. Still, the presumption is there. In legislation, however, there is no such presumption. In the second place, while the decisions of lower courts are not binding on higher courts, laws enacted by legislatures are binding on all courts, higher as well as lower. Thirdly, while laws made by legislatures derive their force from the governmental power which is behind them, case-law derives its force from the justness or the reasonableness of the principles on which it is based. American Courts freely cite English decisions, while English judges frequently cite American decisions. But statutes of one country have no force in relation to the affairs of another country.

Law of Nature : The term 'Law of Nature' is used in modern times to mean uniformities in the processes of Nature. In other words, it means the physical law. But in the past the term had a number of different meanings. In fact, the conception of the Law of Nature has varied from age to age, and often different writers in the same age have used it in different senses. The term has been employed to mean, for instance, Divine Law, Law of Reason, Moral Law, Universal Law and Eternal Law.

The notion of the Law of Nature is believed to have originated with the ancient Greeks. They believed that the universe is governed by some laws or uniformities which dictate certain fixed principles of human conduct. These fixed principles were described as the laws of nature. The ancient Greeks thus distinguished positive justice from natural justice; the former was a creature of human laws while the latter was based on the very nature of things. The former was largely a matter of compromise and subject to change, while the latter was immutable and eternal. References to natural law and justice are found in Plato and Aristotle.

The Stoics identified Nature with Law or a Rational Principle which, according to them, regulated the universe including the human life. This Law was of Divine origin, and was 'identical with Zeus, the supreme administrator of the universe'. They taught that the human laws should be framed so as to conform to the Law or the Divine Reason which regulates the natural phenomena.

The Stoic conception of the Law of Nature considerably influenced the Roman legal thought. We have seen that the Roman equity, or the Jus Gentium, was based on the doctrine of the Law of Nature. The Jus Gentium ultimately replaced the earlier system of Roman civil law (jus civile) because the former was said to be dervied from a higher principle. The terms Jus Gentium and Law of Nature were synonymous in the time of Gaius, as he has recorded. Cicero speaks of

the Law of Nature as "the highest reason implanted in Nature, which commands those things to be done which ought to be done and prohibits the reverse." Bryce says: "Speaking broadly, the law of nature represented to the Romans that which is conformable to reason, to the best side of human nature, to an elevated morality, to practical good sense, to general convenience. It is simple and rational as opposed to that which is artificial or arbitrary. It is universal as opposed to that which is local or national."

Later, in the Middle Ages, the doctrine of the Law of Nature became inextricably interwoven with various kinds of theological speculation, and the term was used very often to mean Divine Law. Even as late as the seventeenth and eighteenth centuries, legal and political thinking remained under the spell of the philosophical and theological speculations about the Law of Nature. We have seen how the theories of the origin of the state were considerably influenced by the doctrine of the Law of Nature. This doctrine constituted an important element in the Contract theory of the origin of the state. According to the Contract theory, men originally lived in the state of nature in which their relations were regulated by the Law of Nature, and the state came into existence as the result of a social contract whereby men agreed to give up their natural rights and to live under a system of civil rights enforced by a sovereign authority. Locke belived that in the state of Nature, when men were bound by the Law of Nature, they were peaceable and sociable. Rousseau also believed that the state of nature was a state of perfect freedom and happiness. It was, in fact, the happiest period of human life.

In the nineteenth century, legal theories freed themselves from the metaphysical and theological speculations about the Law of Nature. But the doctrine of the Law of Nature had exerted such a pervasive influence over juristic thinking in the past that vestiges of its influence are still to be found in modern legal theory and practice. The following

are some examples showing the influence of the doctrine in modern times. (1) Courts are sometimes authorised to decide cases according to principles of natural law or justice, or of justice, equity and good conscience, when the positive law of the land contains no provision for them. (2) The distinction between *mala prohibita* and *mala in se* is based on the idea of Natural Law or justice. A thing may not be wrongful in itself (*mala in se*) but may be prohibited by the state (*mala prohibita*). For instance, in a state where transport services have been monopolised by the state, the running of a private bus service would be an illegal act punishable by the state, but the thing would not be in itself objectionable. That is, our natural sense of justice does not find anything objectionable in such conduct. (3) The system of trial by jury which is an important feature in English legal practice was originally based on the assumption that when several minds meet together the Law of Nature is revealed to them. (4) International Law is based on a supposed foundation of the Law of Nature. It used to be believed that the Law of Nature dictates that states should observe certain rules in their dealings with one another, and it was on the basis of these rules that international law was gradually built up. Sir Henry Maine says that the grandest function of the Law of Nature was discharged when it gave birth to international Law.

The main criticism of the doctrine of the Law of Nature is that it is not historically true. Men have never been bound or guided by the Law of Nature as conceived by speculative philosophers. In fact, what passed in former ages as Laws of Nature were nothing but a set of ideals and standards of conduct which, it was believed, men ought to follow in their lives. Secondly, the Law of Nature cannot be called law because it has no legal sanction behind it. It is not enforced by any political authority. To describe certain moral principles or ideals as Laws of Nature is to confuse morality with law, and to mix up law as it is and law as it should be.

Classification of Law: Law has been classified by different writers in different ways. Classification has varied according to the basis adopted for it. A common classification is that based on the kind or character of the agency formulating law. According to this classification law is divided into: (1) Constitutional Law, (2) Statute Law, (3) Common Law, (4) Ordinances, (5) Administrative Law and (6) International Law.

Constitutional Law : Constitutional law has been defined as the rules of law which regulate the structure of the principal organs of government and their relationship to each other, and determine their principal functions. Constitutional law, says Gilchrist, is the sum of the principles on which the government rests. Constitutional laws may be written or unwritten.

Constitutional laws may be framed by bodies specially created for the purpose or they may grow up on the basis of custom and usage through a long period of time. In some countries, as in Britain, the ordinary law-making body enjoys the power of laying down constitutional laws. The Constitution of India was framed by a body specially created for the purpose. The Constitution of the United States was also similarly framed.

Statute Law : Statute laws are laws made by ordinary law-making bodies in a state. The laws made, for instance, by the Indian Parliament are statute laws. Nowadays statute laws constitute the great bulk of laws in most countries.

Common Law : Common law should be clearly distinguished from statute laws. While statute laws are made by legislatures, common law rests on custom or usage. Common law is, however, recognised and enforced by the courts in the same way as statute laws. Statute law is written law; common law is unwritten law.

(4) Ordinances : While the Legislature frames the statutes, ordinances are issued by the Executive under the authority granted by constitutional law. Ordinances have

the same force as statute laws. Usually, ordinances are issued only when the Legislature is not in session and are replaced by statutes within a prescribed period.

(5) Administrative Law : While in the English speaking countries, both officials and non-officials are subject to the same system of law, in continental countries public officers are subject to a separate system of law from private individuals. This system is known as administrative law. The subject of administrative law has been discussed below in some detail.

International Law : International law is the body of rules acknowledged by the general body of civilised states as obligatory on them in their dealings with one another. This subject has been dealt with below at some length.

Professor Holland has divided law into Public Law and Private Law. Public law deals with the structure and functions of the Government and regulates relations between the state and the subject. Private law regulates the relations between private individuals. In Private law, the state stands as an impartial arbiter and enforces the rights of the private individuals. In Public Law, the State is not only the arbiter but is also one of the interested parties . Prof. Holland has subdivided Public Law into : (1) Constitutional Law, (2) Administrative Law, (3) Criminal Law, (4) Criminal procedure, (5) the law of the state considered in its quasi-passive personality, and (6) the procedure relating to the state so considered.

Rule of Law and Administrative Law : Rule of law is a fundamental feature of the English .Constitution, while the system of administrative law is said to be a characteristic feature of the constitutions of Continental countries such as France and Germany. Let us note the difference between the two.

Rule of Law : The Rule of Law as it is understood in Britain and the United States means two things : (1) no person can be deprived of life, liberty or property except

for a breach of law proved in the ordinary courts, and (2) no person is above law, that is, all persons, regardless of their status and position, are equally liable to penalty for contravention of law. The first rule implies the absence of arbitrary power, while the second guarantees equality before the law. An essential principle of the English Constitution is that no person shall have any arbitrary power to arrest or punish. A man can be arrested only if such arrest is authorised by law. And a man may be punished for a breach of law, but he can be punished for nothing else. He must be, moreover, tried in ordinary courts. "The law of England knows nothing of exceptional offences punished by extraordinary tribunals. There are no special courts for the trial of crimes against the State." This is in sharp contrast to the position in countries under dictatorial systems of government where the dictator and his subordinate officials possess arbitrary power to arrest and punish individuals. The courts in such countries often decide cases not according to law but according to the dictates of the party in power.

Secondly, as has been indicated, the rule of law implies equality before the law. In Britain, all persons, form the Prime Minister down to the common man, are equally subject to the ordinary law of the land and are equally liable to punishment for contravention of law. Both officials and non-officials are tried in Britain in the same courts. In France and other continental countries, the officials are subject to a separate system of law, known as administrative law, and the claims of private individuals against officials or the state are heard and decided not by the regular courts but by a separate system of courts, known as administrative courts. The principle of equality before the law is, however, subject in Britain to the following exceptions : (1) The King (or the Queen) cannot be called to account for his private conduct in any court of law or by any legal process. As Dicey has observed, the King cannot be brought to trial even if he shoots the Prime Minister. He cannot be arrested.

His goods cannot be confiscated. No proceeding can be executed in the royal residence. (2) Because of the principle that the King can do no wrong, the Crown cannot be sued for tort (civil wrong). (3) In the absence of statutory provision to the contrary, the Crown servants can be dismissed at pleasure. No servant of the Crown can claim damages for wrongful dismissal. (4) Those claims which are, under the law, enforceable against the Crown, can be enforced not by an ordinary action but by the cumbrous process of the Petition of Right. (5) Although an ordinary employer is liable for wrongs done by his subordinates in course of employment, neither the Crown nor the head of a department is liable for wrongs committed by subordinate officials in course of their official duty. Every individual servant of the Crown is personally liable for his wrongful acts and obedience to orders of superior authority does not normally constitute a defence. (6) The Public Authorities Protection Act, 1893, as amended up to date, protects the acts of public servants from challenge in the courts after a short lapse of time. No action can be brought against a public servant unless it is commenced before the expiration of a specified period (from six months to one year) from the date on which the cause of action accrued. (7) Various issues affecting the rights of citizens are now decided by special tribunals appointed by Ministers or even by Ministers themselves. This subject has been discussed more fully in the chapters dealing with the English Constitution.

Rule of law as discussed above also prevails in India. The principle of equality before the law and the principle that no person can be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner have been written into the Constitution of India. As in Britain, however, the system of rule of law is subject to some exceptions in India—exceptions which only prove the rule.

Administrative Law: The difficulty of dealing with the subject of administrative law is that writers are not yet

agreed on what the term means. The term is sometimes used in a broad sense and sometimes in a narrow sense. (1) When used in the broader sense, administrative law means the body of rules which determine the organisation and duties of public administration and which regulate the relations between the administrative authorities and private citizens. This is the sense in which the term *droit administratif* is used in France. (2) When used in the narrower sense, administrative law means only the body of rules which govern the relations between the administrative authorities and private individuals. Dicey, the great English jurist, used the term administrative law in this sense.

Dicey maintains in his famous book, *Law of the Constitution,* that in France the relations between the public authorities and the private individuals are governed by a body of rules distinct from the ordinary law of the land. These rules constitute the administrative law or *droit administratif.* (Dicey, however, is wrong in using the term *droit administratif* in this sense for, as has been pointed out above; the term means in France the entire body of rules relating to administration.)

Administrative law, which is distinct from ordinary law, is enforced in France by a separate system of courts. This system, says Dicey, is in sharp contrast to the system of rule of law in Britain. Whereas in Britain both officials and non-officials are subject to the same law and are tried in the same courts, in France the officials are subject to a separate system of law and disputes arising out of relations between officials and private citizens are settled by a separate system of courts known as administrative tribunals. Dicey maintains that the English system provides far greater protection to the liberties of the citizens than the French system. The system of adjudication by administrative tribunals of cases of disputes between officials and private citizens means, according to Dicey, that the public authorities are themselves the judges of their own conduct. Such a system cannot ensure impartial judgment.

But Dicey has been proved to be wrong in this conclusion. In the first place, a close and careful study of the French system of administrative adjudication shows that it protects civil liberties no less effectively than the British system. The administrative tribunals in France maintain a high standard of impartiality and the law which they administer is mainly case law—law based on judicial decisions—which effectively safeguards the rights of the citizens. Secondly, Dicey's contention that both officials and non-officials are subject to the same law in Britain is not correct. Officials in every country, including Britain, possess powers and rights which private individuals do not possess. A private individual, for instance, cannot collect taxes, decide civil or criminal cases, draw up electoral rolls or search houses. But government officials can do all these things. Thirdly, many issues of a judicial and quasi-judicial character are nowadays settled almost in every country, including Britain, not by the regular courts but by administrative tribunals, and sometimes even by Ministers acting in a quasi-judicial capacity. The Ministry of Transport in Britain, for instance, decides appeals in regard to the granting of various kinds of licences. Similarly, the Ministry of Health hears and disposes of appeals relating to various matters affecting the rights of the owners of slum property. The old controversy as to the Rule of Law vs. the Administrative Law, which the influence of Diecy helped to keep alive for a long time, has become largely meaningless.

Law and Morality : Law and morality are closely inter-related. This becomes clear when we reflect that both law and morality are concerned with the regulation of men's relations with one another. Both aim at peace, happiness and perfection of the individual and society. The state itself is a supreme condition of morality. No moral life is possible except in a state.

A fundamental difference between law and morality is that law is concerned only with the external acts of men, and is not concerned with their thoughts, motives and

instincts as such. Law considers human motives and thoughts only in so far as they are manifested in external acts. Morality, however, is concerned not only with what men do but also what they think and feel. Covetousness, for instance, is immoral, but it is not illegal as such. Only when covetousness leads a person to do some acts in violation of the law that it comes within the domain of law.

Another difference between law and morality is that law is enforced by a determinate authority, while morality is enforced by an indeterminate authority. While the force of the state is the sanction behind law, the pressure of public opinion is the sanction behind morality.

Because a basic aim of morality is the purification of the human motives and elevation of human character there are many things which are immoral without being illegal. Anger, hatred and greed are immoral but they are not illegal as such. Lying is also not illegal except when it leads to a contravention of the law. But lying is regarded as immoral by every moral code in the world.

Again, there are certain acts which are illegal without being immoral. This is because law is primarily concerned with external acts and has to concern itself very often with questions of expediency. Suppose, a law lays down that persons using a particular road must keep to the left. Violation of the rule will certainly be illegal but not immoral.

The Laws of a country cannot fail to be greatly influenced by the people's notions regarding morality. In fact, a country's laws reflect the moral level of its people. An immoral people cannot be expected to create a good legal system. And a people with a high moral standard will be invariably found to have a system of laws based on high principles of justice. It is also interesting to note that in a country under foreign domination, where the government itself rests on an immoral foundation, the laws, speaking generally, cannot but be unjust and oppressive.

Law and morality are constantly acting and interacting on each other. There was a time when the custom of the sati (burning of widows) was not regarded as immoral. The practice was banned by law and after a few decades it came to be looked upon as immoral. And we everyday come across instances of things considered as immoral being declared illegal by the state. Even a few years ago, untouchability in India, though it was considered immoral by many, was not illegal. The Constitution of India has now made the practice of untouchability illegal. Article 17 of the Constitution says: "Untouchability is abolished and its practice in any form is forbidden." The state exists to ensure moral life to individuals. As morality progresses, law also progresses because the state tries to make the fruits of moral victories in society available to all.

There come moments in the life of every society when people begin to feel that laws are lagging far behind morality. This happens because people's moral ideas are subject to constant change while the basic structure of laws is comparatively rigid. At such times, a tussle ensues between the forces which stand for a radical alteration of the laws and the supporters of the status quo. Sometimes this tussle leads to violent revolutions that bring about a radical change in the legal system. Sometimes the change is brought about in a more peaceful way through gradual adjustment of the legal system to the prevailing moral ideas. The revolutions that have taken place in the world during the past fifty years as well as the vast changes in legal systems which this period has witnessed in many countries have been caused mainly by men's belief that the property laws did not conform to morality which demands that social wealth should be equally available to every individual member of the society.

International Law : International law is the body of rules which the general body of civilised independent states observe in their dealings with one another. International law, though it is called law, greatly differs from law properly

so called. We have seen that law means the body of rules enforced by the state to regulate the conduct of the citizens. The true character of international law will become clear if we compare it with the law of the state, both public and private. In private law, both parties are private individuals, the state enforcing their rights as an impartial arbiter. In public law, the state is not merely the arbiter, it is also one of the parties interested. In international law, however, the parties are independent states which are paramount and supreme and there is no higher authority to act as the arbiter and to enforce the rules. This remains true in spite of the establishment of the United Nations and the International Court of Justice. The United Nations is not a state; it cannot enforce international law as the state enforces its laws in relation to its citizens. Had the U. N. been a state, its member states would not be states but merely local units of a world state.

The subject of the United Nations has been discussed in a separate chapter.

International Law is the Vanishing Point of Jurisprudence : Jurisprudence is the Science of Law. It deals with law as it is commonly understood, that is, law of the state. Now, the fundamental characteristic of the law of the state is that it is a body of rules having behind it the sanction of the state's power. In international law, there is strictly speaking no such sanction. International law is not enforced by any sovereign political authority as law in the ordinary sense of the term is. There is, therefore, no place for international law in the Science of Jurisprudence. This is why Prefessor Holland has remarked that international law is the vanishing point of Jurisprudence.

International Law—Public and Private : International law may be divided into Public International law and Private International law. Public International Law is concerned with relations of states *inter se* when acting in pursuance of communal interest. The rules relating to war, peace and

neutrality come within the domain of Public International Law. Private International law on the other hand is a body of rules or principles which relate to the selection of appropriate territorial law for deciding any given question of private law. Suppose, a person of Indian nationality makes a contract with an American gentleman in London. If either of the parties wants to enforce the contract, where is the suit to be instituted? In England, America or India? Suppose, again, a foreigner dies in India? What law will determine the succession to his goods? Private International Law deals with questions like these. Commercial intercourse between the subjects of the different states is the chief factor that led to the growth of Private International law.

History of International Law: In the earliest times, there was no international law. The relations subsisting between states in those times were relations of perpetual hostility. Even the civilised Greeks carried on very little peaceful intercourse with their neighbours. Maritime trade, however, gradually led to the development of rules which may be described as the starting point in the growth of international law. The political horizon of Plato and Aristotle, the greatest of Greek philosophers, was limited by the city state. Some faint references to the idea of inter-state regulations are, however, found in their works. The idea was later developed by the Stoics who believed that everything in the world was governed by a universal law of reason.

The Stoic ideal of internationalism later passed to Rome. Two elements in Roman law greatly contributed to the development of international law. These are the Jus Gentium to which reference has already been made, and the idea of equality before the law.

Hugo Grotius, the Dutch jurist, is the founder of modern international law. His book, *On the Law of War and Peace*, is the first modern work on the subject. In this book, Grotius enunciated two fundamental principles as the basis of

international law. These are : (1) All states are equally sovereign and independent. (2) The jurisdiction of a state is absolute in its own territory.

It is interesting to note that almost always large-scale wars have been followed by a period of rapid development in international law. The great work of Grotius represented his psychological reaction to the devastation caused by the many wars of his time. World War I which was followed by the birth of the League of Nations and World War II which led to the establishment of the United Nations both greatly accelerated the development of international law.

Sources of International Law : The most important sources of modern international law are the works of the authorities on the subject, treaties and international conventions, and judgments in international cases.

Among the earlier writers on the subject the names of Grotius, Pufendorf, Leibnitz, Bynkershoek, Wolf and Vattel stand out as the most famous. And among the great modern authorities on international law are Wheaton, Manning, Westlake, Lawrence, Hall and Oppenheim. The opinions of these writers are considered as authoritative and very often, in cases of doubt, politicians accept them as final.

Treaties very often embody principles relating to international intercourse agreed upon by the various parties. They often lay down, explain or modify rules of international law and usage. They, therefore, constitute an important source of international law.

International Conventions are probably the most important source of international law in the modern world. A large number of important Conventions were reached at Hague Conferences which have been called " the parliament of mankind." The following are some of the Conventions concluded in Hague in 1907, which systematised international law on the subjects : Convention relating to the pacific settlement of international disputes ; Convention concerning the commencement of hostilities ; Convention concerning the

laws and customs of war on land ; Convention relating to the rights and duties of neutral powers and persons in war on land ; Convention regarding the laying of automatic submarine contact mines ; Convention regarding the bombardment by naval forces in time of war ; Convention concerning the rights and duties of neutral powers in maritime war ; Convention regarding the establishment of an International Prize Court.

A highly important Convention, namely, Convention on prisoners of war was concluded at Geneva in 1929. The Charter of the United Nations is an international Convention of great importance and lays down various rules of international law. It is on the basis of this charter that the U. N. intervened in the Korean war (1950-53).

Judgments of international tribunals like the International Court of Justice are another important source of international law. Besides these, there are some other sources of international law such as the history of wars and diplomacy and opinions of statesmen and diplomats. The laws of particular states are also a source of international law because some of these laws have international bearing. Municipal Laws relating to naturalisation of citizens, privileges of ambassadors and various admiralty and commercial issues have international bearings and form an important element in international law.

International Law and the Ideal of World State : International law, we have seen, is not properly speaking law because there is no sovereign authority to enforce it. And though the Charter of the United Nations gives authority to that body to enforce international law in certain circumstances, that authority is at best an imperfect one. It is circumscribed by conditions which place beyond its jurisdiction various kinds of international issues that might lead to international conflict. It cannot take action even in a case of conflict if any of the Big Five Powers (U.S.A., U.S.S.R., Britain, France and China) opposes such action. It cannot intervene in matters " which are essentially within

the domestic jurisdiction of any state," even if a state's policy in regard to such matters tends to disturb international peace. The U. N. is, therefore, not a super-state, as might be supposed. It does not enjoy sovereignty in the international sphere. Thus, the conclusion is inescapable that international law is not law properly so called.

What will happen when the ideal of world state comes to be achieved ? It is clear that in a world state there can be no international law in the true sense of the term. For when the ideal of the world state is attained, the sovereign and independent states of to-day will have ceased to be states and will be but non-sovereign units in a bigger state. Their relations will be subject to the law of the world state enforced by its sovereign authority. Thus when the goal of political unity of mankind is reached, international law will cease to exist. Professor Holland has truly remarked that if man's dream of the establishment of one universal state (civitas maxima) embracing all the independent states of the world is realised, it would mean not the triumph but the extinction of international law.

Is Law above the State : Law is made and enforced by the state. Law cannot be, therefore, above the state. If law were above the state, if, in other words, the state were subject to law, the state would cease to be sovereign, that is, it would cease to be a state. There are some writers, however, such as Duguit who hold that law is above the state. But these writers mean by the term law something very different from what is generally meant by it. Duguit, for instance, defines law as those rulers of conduct which people know they must observe in order to derive the benefits of social life. But this is a very extraordinary definition of the term. The great bulk of the political scientists use the term law to mean those rules of conduct which are framed and enforced by the state. And according to this definition, the state is the only source of law. Law, therefore, cannot be above the state.

We must remember, however, that the state is not the same thing as Government. While the state is not subject to law, the Government is subject to law. In all civilised and democratic states, both the Government and the citizens are equally bound by law. The Government cannot function except according to procedure established by law. If the powers and functions of the Government were not defined by law, the Government would be free to interfere with the liberties of the people according to its sweet will. It is to prevent the Government from unreasonably interfering with the liberties of the citizens that all democratic states have instituted elaborate systems of constitutional law clearly demarcating the sphere of govermental authority from that of individual freedom. A citizen of a democratic state can sue the Government claiming damages for unlawful infringement of his rights. The Governments of all democratic countries are thus subject to law. But these states are not subject to law. Nearly always it will be found that when a writer asserts that law is above the state, he confuses the state with the Government.

CHAPTER VII

LIBERTY

Meaning of the Term : In Political Science, liberty means, strictly speaking, absence of arbitrary restraint. It implies the maintenance of certain social conditions in which the individual is free to pursue happiness and can develop what is best in him. A man cannot, for instance, attain happiness if he is not free to move about and speak, if he is not safe from personal attack or if he is not free to enjoy the fruits of his toil. Liberty thus implies maintenance of social conditions which ensure a person freedom of movement, and personal security. Besides these, liberty also implies many things more, as we shall presently see.

Liberty is the product of rights. Without rights there cannot be any liberty. In Political Science, right means a legally enforceable claim on the conduct of others. When we say that a person has the right to move about, we mean that he can prevent others with the aid of the state from arbitrarily interfering with his movements. When we say that a person has the right to the fruits of his toil, we mean that if anyone tries to deprive him of those fruits without any legally valid reason, he can set in motion the state machinery to punish the wrong-doer. Rights are guaranteed by law and protected by the physical force of the state. Rights can exist only in a state.

Rights and Duties : Wherever there is a right, there is a corresponding duty. A person has the right to personal security means that others have the duty to refrain from attacking or injuring him. A person has the right to free speech means that others have the duty not to prevent him arbitrarily from giving expression to his views. Rights thus imply duties. In other words, rights are correlative with duties.

It should be clear, therefore, that liberty is not absence of restraint, it is absence of arbitrary restraint. There cannot be any liberty if everybody were free to do as he liked. I cannot have personal security if others were free to attack me at will. My neighbour cannot have the liberty to enjoy the fruits of his toil, if I were free to rob him of those fruits. Liberty is thus possible only in a situation where law imposes certain restrictions on the conduct of all members of society. Law is thus the condition of liberty.

No Right Can be Absolute: No right can be absolute. This should be clear from what has been said above. Take for instance, the right to move about. This right cannot be absolute because, if it were so, I would be free to enter other men's private apartments; I would be also free to walk into hospitals and cabinet rooms at all hours. Thus a person cannot be granted an absolute right of movement without curtailing or destroying some important rights of other private individuals and public authorities, such as the right to privacy, the right not to be unnecessarily disturbed and the right to deliberate secretly. Similarly, if I had the absolute right to move my hand, I would be free to injure and even kill others. Clearly I cannot be granted this right without destroying the right to life and security of others. If, again, a person's right to free speech were absolute, he would not be punishable if he incited people to acts of violence or if he made false statements calculated to damage some one's reputation. Clearly law cannot permit this.

Even a person's right to life cannot be absolute. In almost every country there are laws prescribing death penalty for certain kinds of offences which are regarded as very serious crimes from the social point of view. In India, a person can be deprived of life for the commission of murder. In times of war, again, a state has the right to compel able-bodied men to participate in the defence of the land and thereby expose them to attacks which may prove fatal.

Thus we see that no right can be absolute. All rights are circumscribed by limitations. And these limitations are imposed to maintain a balance between the freedom of the one and the freedom of the many, between the interests of the individual and the interests of society. The limitations are a device to maximise the total volume of available freedom and to distribute it among the largest number possible.

Under a system of absolute dictatorship or tyranny, the only free man is the dictator or the tyrant. For his will is not subject to any legal limitations, which means that everybody else's life and liberty are at his mercy. Liberty is a product of constitutional government under which all citizens including the public authorities are subject to law.

Liberty and Sovereignty : Sovereignty is the supreme power of the state over the citizens and the associations of citizens. Sovereignty, as we have seen, is legally unlimited. It is not subject to any legal limitations. It might be supposed, therefore, that sovereignty and liberty are antagonistic to each other. But actually it is not so. Law, it has been pointed out, is the condition of liberty. It is because the state is sovereign and can impose legal limitations on the conduct of all citizens and associations that people can enjoy liberty. To deprive the state of its sovereignty would mean reducing ordered social life to complete chaos and anarchy. And in such a situation there is no liberty for anybody excepting, perhaps the strongest and the most cunning. Far from being incompatible with sovereignty, liberty can exist only where there is a sovereign authority to regulate the conduct of all members of society.

Natural Rights : Like the theory of natural law, which has been already discussed, the doctrine of natural rights played an important role in the political thinking of earlier times, particularly in the seventeenth and eighteenth centuries. We have seen that advocates of the social contract theory like Hobbes, Locke and Rousseau believed

that in the state of nature men enjoyed certain rights which were their natural rights. What did they mean by the term "natural rights"? They meant certain rights that existed before society came into being or, as with Locke, rights that existed independently of society. Hobbes believed, for instance, that man has a natural right to enforce his will against others. Hobbes held that by social contract man surrendered all his natural rights to the sovereign. Locke believed, however, that the individual did not surrender all his rights to society by that contract but only surrendered so much of the rights as was necessary to secure the benefits of civil society. Thus, according to Locke, the individual retained some of his natural rights even as a member of the state. These natural rights are the rights to "life, health, liberty or possessions." These rights, Locke believed, are inherent in the individual. They exist independently of society.

This doctrine of natural rights has been rejected by modern Political Science. Rights can exist only where there is a sovereign authority to enforce them. They can exist only in a state. There were no rights before the state came into being. In other words, there could be no rights in the state of nature as conceived by the exponents of the theory of Social Contract.

A new orientation, however, has been given to the theory of natural rights by some modern writers, notably T. H. Green. By natural rights these writers mean those rights without which no individual can fully develop the best elements in his nature. They believe that it is the function of the state to maintain those conditions without which the individual cannot attain his best self. Without the right to life and personal security, for instance, no individual can develop what is best in him. These rights are, therefore, natural rights.

Professor Laski also subscribes to this theory of natural rights. He maintains that an individual cannot hope to

develop what is best in him unless he is guaranteed certain rights by the state, such as the right to free speech, freedom of association, the right to work, the right to an adequate wage, the right to leisure, the right to vote and to represent. These rgihts are, according to Laski, natural rights in the sense that without them the purpose of the state cannot be fulfilled. Rights, says Laski, "are prior to the State in the sense that, recognised or no, they are that from which its validity derives." In other words, Laski holds that the state can have a valid claim to the allegiance of the citizens only if it guarantees to them the rights which give them the opportunity to be their best selves.

Thus while the earlier advocates of the doctrine of natural rights explained these rights by reference to the origin of society, the modern advocates explain them in terms of the end or purpose of society. The difference between the two points of view is fundamental. One must be very careful, however, in using the term 'natural rights' lest it creates the impression that rights can exist independently of society.

Civil and Political Liberty : Liberty is usually divided into civil liberty and political liberty. Civil liberties are concerned with the civil relations of citizens. The following are some of the most important civil liberties : freedom of speech, freedom of association and assembly, right to life and personal liberty, inviolability of home, right to hold and dispose of property, freedom of movement, freedom of religious belief and conscience. Practically all democratic systems of government guarantee these liberties to the citizens. Usually in countries with written constitutions, provisions guaranteeing these rights are incorporated in the constitution itself. The Constitution of India, for instance, contains provisions conferring all the above-mentioned rights on the citizens. Some of the more important civil liberties have been discussed below in some detail. It is important to note that all civil liberties are subject to limitations imposed by the state in social interest.

Political liberty means the liberty to participate in the administration of the state. It implies three rights : (1) the right to vote ; (2) the right to represent and (3) the right to hold public offices. The citizens of a state are said to enjoy political liberty when they have the right to vote at elections, the right to stand as candidates and the right to hold public offices. Obviously, these rights cannot be universal. Neither children, nor men of unsound mind can be allowed to have these rights. Nowadays, in most of the democratic countries, the entire adult population, with some minor exceptions, enjoy these rights. Political liberty is really synonymous with democracy. Democracy has been defined as government of the people, by the people and for the people. The subject of democracy will be discussed later.

What is the connection between civil and political liberties ? They are closely inter-related and largely interdependent. Political liberties will be illusory if the people do not possess some important civil liberties, such as freedom of speech, freedom of association and assembly and freedom of movement. For people can neither exercise their vote intelligently, nor effectively make their influence felt at the seat of authority unless they are given the right freely to discuss the political issues and organise themselves in parties. Again, maintenance of political liberties in a state is the ultimate safeguard against arbitrary encroachment on the civil liberties by the people in authority. For maintenance of political liberties means that the government of the state is run and controlled by the elected representatives of the people . Under such a system, the laws cannot fail to reflect the popular will and to safeguard their liberties. Where, however, as in a dictatorship, the people do not have the right to vote freely and to alter the government in accordance with their desire, the people's civil liberties are at the mercy of the dictator who curtails or abrogates them at will. It is interesting to note that in democratic countries, such as India or Britain, where the people have the right to free vote, the laws guarantee and protect their civil liberties very

effectively. In a country like the Soviet Union, however, where the people do not enjoy the right to vote freely, some vital civil liberties, such as freedom of speech and association are practically non-existent. The fundamental liberty, says Jennings, is that of free elections and other liberties follow from it.

Political liberty and civil liberty, we thus see, are very closely inter-related.

Fundamental Rights : There are some rights which are regarded as fundamental. Without these rights, it is believed, the individual cannot fully develop his potentialities. In other words, the individual cannot attain his best self unless he is allowed to enjoy these rights. Among the rights which are widely regarded as fundamental are the following: freedom of speech and expression, freedom of movement, freedom of assembly and association, equality before the law, personal freedom including the right to life and the freedom of conscience and worship. Apart from these, the right to work, the right to an adequate wage and the right to leisure are coming to be increasingly recognised in all advanced countries as fundamental rights. There can hardly be any doubt that without these last-mentioned rights no individual can hope to develop the best in him. These rights have, however, not yet been formally recognised by the constitution of any country, except the Soviet Union. But the laws in the more advanced countries, such as Britain and America, guarantee the substance of these rights to their citizens. By an elaborate system of unemployment benefits, old age pensions and health insurance schemes, these countries have succeeded in giving their citizens a reasonable measure of economic security.

Since fundamental rights are essential to a healthy and decent existence, they ought to be available to all citizens irrespective of caste, creed, colour, sex or political affiliation. They ought to be equally available to the majority and the minority. As everyone knows, however, even the most democratic government is government by the majority who

are, therefore, in a position to deprive minorities of their rights. But fundamental rights should under no circumstances be denied to minorities, whatever may be their views and beliefs. For the minorities, as human beings, are no less entitled to a healthy and decent existence than the majority. And it is quite possible that some day the majority may get converted to the views of the minority. To ensure that the minorities are not deprived of fundamental rights by the passing whims of the majority in power, provisions embodying these rights are usually incorporated in the constitution of the country. Generally, it is not as easy to amend a constitution as an ordinary law of the land. In most cases, special procedures are required to be followed for effecting changes in the constitution. Secondly, the public mind in every country tends to invest the constitution with a peculiar importance and sanctity which make it impossible for politicians to think of lightly tampering with its provisions. Inclusion in the constitution of provisions guaranteeing fundamental rights thus provides a valuable safeguard against arbitrary infringement of those rights by the temporary holders of power. In fact, legally speaking, a right cannot be called fundamental unless it is guaranteed by the fundamental law of the land.

The Constitution of the United States confers on the citizens a number of highly valued fundamental rights. The Constitution of India also declares a large number of rights to be fundamental, and lays down that laws infringing these rights shall be void and inoperative. Among these rights are the right to free speech, freedom of movement, freedom of assembly and association, freedom of religion and conscience and equality before the law. The Constitution of the Soviet Union also embodies a large number of fundamental rights. The Constitution of the Weimar Republic of Germany contained an impressive list of such rights.

Paradoxically, in Britain there is no fundamental right in the true sense of the term. The British Constitution does

not declare any right to be fundamental. A basic principle of the British Constitution is supremacy of Parliament. Parliament can, by passing an ordinary law following the ordinary procedure, change or modify or abrogate any right. Rights in Britain are discovered on the principle that what is not illegal under the laws of the realm is legal. It must not be supposed, however, that the liberty enjoyed by the British people is less than that enjoyed by people in countries having written constitutions. Though the British constitution does not guarantee any fundamental right, the laws of the country maintain a system of democratic rights which make available to the British people a very large measure of freedom. In fact, people of few countries enjoy as much liberty as the people of Britain. Of course, the British Parliament has the power of modifying or taking away any right at any moment. But Parliament never thinks of arbitrarily interfering with the rights of the people. This is because love of freedom is deeply ingrained in the British people, and their free traditions are deeply rooted in their past history and culture.

It is important to remember that no right can be absolute and that even fundamental rights are subject to limitations.

Freedom of Speech and Expression : Freedom of speech and expression is regarded as of fundamental importance in every democratic country. In fact, without this right democracy cannot exist. It is the very life-breath of democracy. For government by popular will is possible only where the people can freely express their will. Where this right does not exist, the views of the people cannot influence the activities of the government; nor can they bring about a peaceful change of administration.

Freedom of speech and expression means the right to express one's views freely through the press and platform, and also to publish leaflets, booklets and books to propagate one's views. It includes the right to give expression to one's views through pictures, cartoons and posters. In America

it includes freedom of the air, that is, the right to propagate one's views through the radio. Freedom of speech and expression, it should be clear, includes the freedom of the press.

The following are the most important arguments in favour of the freedom of speech and expression.

(1) Without this right, the ideal of democracy—of the government of the people, by the people and for the people —cannot be realised. Unless people are free to express their views, they cannot influence the policies and activities of the Government so as to make them reflect their will. Without this right, the people cannot also hope to remove peacefully an unpopular Government from power and to set up a new Government in its place. For the power to bring about a peaceful change of administration presupposes an organised public opinion. And public opinion cannot organise itself where it has no right to express itself freely.

(2) The Government which does not grant freedom of speech to the citizens runs the risk of being overthrown by violent revolution. For such a Government cannot know the true feelings and desires of the people and cannot adjust its policies to their demands. Its policies, therefore, get more and more divorced from the real needs of the people till a moment comes when the people's patience is strained beyond endurance and a violent upsurge takes place. It is also a universal experience of mankind that where discontent does not find healthy channels of expression it goes underground and assumes unhealthy forms. Thus, to maintain freedom of speech and expression in a state is not only to ensure that discontent finds a healthy expression, but also to ensure that public opinion continually impinges on the policies of the Government and makes them gradually conform to the popular will. And where the Government's policies continually change in response to the popular will, violent upsurges become unnecessary and their risk is eliminated. Professor Laski has rightly said that freedom

of speech, with the freedom of assembly therein implied, "is at once the katharsis of discontent and the condition of necessary reform." One of the meanings of the term 'katharsis' (also spelt as 'catharsis') is the curing of a psychological abnormality by giving it conscious expression. What Laski has meant by the words just quoted is that freedom of speech eliminates discontent and promotes reform.

(3) Men are finite beings and their mental horizon is limited. We can never be certain that a particular view about a subject represents the truth about it, nor know exactly how much of the truth a particular view contains. Truth is discovered in society by the method of trial and error. To stiffle freedom of expression is to shut out the possibility of discovering the truth through discussion of all the aspects of a question and through trial and error. It is quite possible that the views of the persons in power in regard to a particular matter may not correspond to the truth at all. If there is no freedom of speech in the state, there will be no method of bringing about a change in such views. A state which denies freedom of expression to its citizens, therefore, blocks its own way to truth and progress. Such a state is soon overtaken by stagnation and decay.

History abounds with instances of minority opinions coming in course of time to be accepted by the majority. Heresies of yesterday are the accepted opinions of to-day. Such views of minorities as are intensely disliked by the holders of power might one day come to be accepted by the majority as reasonable and scientific. And social progress has often come through the acceptance by the majority of views which were at one time looked upon as heretical and obnoxious. Every state should, therefore, in its own interest maintain an atmosphere of free discussion in which diverse views are allowed to clash and conflict with one another. In such a conflict, it is obvious, the best and the most scientific views will ultimately survive and lead to social progress.

(4) Even if an opinion is found to be palpably absurd, the powers that be ought not to suppress it. For it is through clash with untruth that truth is revitalised and rejuvenated. Great truths and ideas require such rejuvenation from time to time. The modern Indian renaissance has come through the revitalisation of certain ideas and values cherished by India in the past.

Freedom of expression cannot be unlimited. It is easy to see that a person cannot be given the right to incite people to commit murder. Nor can anybody be allowed freedom to slander and defame persons whom he may happen to dislike. This is why freedom of speech and expression is in every country subject to restrictions imposed by laws relating to defamation, incitement to crimes, maintenance of public order, decency, morality and the security of the state.

Freedom of Assembly and Association : Freedom of speech and expression cannot be effective without the right to assemble freely to hold discussion on political and other issues, and the right to form organisations to propagate opinions and ideologies. In fact, freedom of speech and expression implies these two rights. Laws in every democratic country guarantee and protect these rights. Under a dictatorial system, however, these rights are not allowed to exist. Dictators do not allow criticism of their policies and do not tolerate anything that might weaken their authority. In Nazi Germany there was no freedom of expression except for the dictator and his party. And there was also no freedom of assembly and association. The Soviet Constitution does not grant its citizens freedom to organise political parties. Political power in that country is the monopoly of the Communist Party. Under such conditions there cannot exist freedom of speech in the true sense of the term. Although the Constitution of the Soviet Union formally grants the right to free speech, this right is illusory because the people have no right to organise themselves freely in political parties. This subject will be discussed in detail later.

Equality Before the Law : The right to equality before the law is regarded as of the first importance in every democratic country. This right implies that everyone is entitled to be treated equally by the state and that all persons are equally liable to penalty for contravention of law. In other words, equality before the law means that no law should discriminate unfairly between one citizen and another. Laws in most democratic countries, such as the U. S. A., the United Kingdom and India, guarantee this right to their citizens.

This principle does not, however, preclude enactment of group law. In every state, there are laws that are applicable exclusively to certain groups such as doctors, lawyers, shopkeepers and the like. But the principle demands that there cannot be any unfair discrimination between one member and another of the same group.

Nor does the principle forbid fair discrimination. A law relating to taxation, for instance, which taxes the rich at a higher rate than the poor, does not violate the principle of equality before the law. In short, the principle does not prohibit classification of citizens into different groups for taxation and other purposes. The basis of classification must, however, be a reasonable one.

Economic Freedom : Liberty has both a negative and a positive aspect. In its negative aspect it means absence of arbitrary restraint. In its positive aspect, it means presence of certain opportunities. Formerly the emphasis was almost exclusively on the negative aspect of liberty. Nowadays the emphasis has been gradually shifting towards the positive aspect. And everywhere the necessity of ensuring economic freedom to the masses is being increasingly recognised. Economic freedom relates to liberty considered in its positive aspect.

Economic freedom roughly means freedom from want. It implies the maintenance by the state of economic conditions in which every citizen enjoys economic security. A citizen may be said to enjoy economic freedom when he

is ensured the right to work, the right to an adquate wage, the right to assistance by the state in old age and in case of disability, and the right to leisure. To a person who does not enjoy these rights, civil and political liberties are meaningless. To a person, for instance, who is too poor to go to court to seek redress for wrongs done to him, most liberties are without any meaning. Freedom of speech is useless to a person who is too burdened with wants to take part in political discussion or too poor to publish his views in the form of booklets or books. Also, a person who has no time to study political issues in order to form an intelligent opinion on them can do very little with his right to free speech. The right to stand as a candidate in the elections has no meaning to a poor worker who has no money to meet the necessary election expenses. In a state, therefore, where economic freedom does not obtain, most rights become illusory.

It might be argued that in a modern state, the road is open to all to reach the highest positions and even the son of a poor worker, if he has sufficient ability, can rise high in the social scale and can even become, say, the Prime Minister of India. The reply is that innate ability is useless where there is no opportunity for the development of that ability. The son of a poor worker finds himself burdened at an early age with the necessity of earning to supplement the family income. He cannot give himself a good education. He does not find any opportunity to participate in political activities. It is quite possible that among the poor peasants and workers of India, for instance, there are many who were born with the abilities of a Nehru or of a Rabindranath, but they lacked the opportunities which Prime Minister Nehru or poet Tagore had to develop themselves and to be their best selves. In fact, in the absence of economic equality, it is not possible to discover who are really the ablest among us, just as in a race in which the competitors have an unequal start, it is not possible to say who are the best. Thus the provision of an open road to

all is not enough; everyone must be ensured the basic necessities of life. For without them, a person cannot develop his faculties and grow to his full moral and spiritual stature. The watchword of the poor and the down-trodden of the world to-day is: Not only an open road, but also an equal start.

Liberty and Equality : The concepts of liberty and equality are closely inter-connected. True liberty cannot exist where there is no equality. Liberty means liberty for all and not merely for some. It implies the maintenance of a system of rights which are essential to the development of the personality of the citizens. In a state in which there are vast inequalities of wealth and income, the state machinery is sure to be controlled by the richer classes and the laws are bound to be weighted in favour of the the rich. The richer classes have a far easier access to the seat of authority. They command vast powers of bribery and corruption. In elections, the candidates belonging to the richer classes enjoy considerable advantage over the poorer candidates. It is common experience how the power of the purse can greatly influence voting in constituencies in which the voters are poor and ill-educated. Everybody is familiar with the phenomenon of economic power converting itself into political power, of money obtaining control over the political machinery. In a society characterised by economic inequality, therefore, the state is dominated by the rich few, and the poor many are excluded from power. In such a state, the laws are sure to be such as favour the rich as against the poor. In such a state, most of the rights without which men cannot hope to get the most out of life will not be available to the poor. A state dominated by a few rich individuals will never ensure to the masses either a decent standard of living or economic security. Nor will it grant them civil liberties such as are essential to the full development of their selves—liberties like freedom of speech, freedom of assembly and association. The richer classes will always be afraid that to grant these liberties to the poor will mean enabling

the latter to challenge, and ultimately undermine, the authority of the former.

As has been already pointed out, civil and political liberties are meaningless to a person who does not enjoy economic freedom. In other words, unless a person is ensured the basic necessities of life like food, clothing and shelter as well as provision against the wants of the morrow, he cannot effectively utilise his civil or political liberties to his advantage. He cannot develop his faculties and attain happiness. He cannot fulfil his life.

This analysis makes it clear that without equality true liberty can never exist in a state. Equality does not, of course, mean mathematical equality of incomes or wealth. Equality means, fundamentally, two things. It means, in the first place, absence of special privilege for any section of the citizens. Secondly, it means the availability for all citizens of the means to satisfy the primary needs of life. The principle of equality demands that all men must be ensured the minimum food, clothing and shelter that are necessary for a decent existence. "I have no right to cake," says Laski, "if my neighbour, because of that right, is compelled to go without bread," Only when the primary needs of all have been met, should we think of allowing differences in income and access to the good things of life. And these differences should be made to relate to the social functions performed by the individuals concerned. A Prime Minister, for instance, should be enabled to have at his disposal a number of cars and even aeroplanes and to enjoy many other privileges not available to the common man because he cannot perform his functions properly unless he is allowed to have these privileges. Similarly, it may be necessary to give some special privileges to poets or the commanders in the army. But so far as the primary needs are concerned, the Prime Minister, the poets, the commanders and the common people stand on the same level. For no man can be a man in the true sense of the term, no man can be himself at his best, unless he can satisfy his primary needs.

In most modern states, the citizens are sharply divided into rich and the poor. It follows that in most of these states the liberty enjoyed by the masses is far from perfect. For, ultimately, the scope of the liberty available for the common people depends upon the degree of equality they enjoy. There can be no liberty without equality. There can be no democracy without socialism.

This truth is being increasingly realised in most modern states. It is tending to become an axiom of modern political thinking. As a result, most modern states, excepting the totalitarian ones, are advancing at a fairly rapid pace towards the goal of liberty and equality for the masses.

Liberty in the Modern State : What is usually meant by the term liberty is absence of arbitrary restraint. This is a purely negative conception of liberty. Liberty is, however, not only a negative thing, it is a positive thing also. It means not only the absence of certain kinds of restraint but also presence of certain opportunities. Liberty means the maintenance of those conditions, both positive and negative, which are essential to the harmonious development of the latent powers of individuals. A poor man may enjoy perfect freedom from arbitrary restraint but he cannot be said to enjoy true liberty if he does not get one square meal a day, if he is always haunted by a sense of insecurity or if his failure to feed or clothe his children properly keeps him always immersed in grief. For such a man cannot develop his personality. He cannot attain his best self. The world over, the right to economic freedom is being increasingly recognised as an essential ingredient of liberty. This is why the citizen of the modern state, speaking generally, enjoys a far larger measure of liberty than did his ancestors in the past.

In fact, the impact of the doctrine of economic freedom has been changing the very character of the state. The state in the past was what is known as the police state. Its chief function was to protect the individual from attack by other individuals and to protect his property from robbery or

damage, as well as to protect the citizens against foreign invasion. In other words, the function of the police state was to maintain internal order and to defend the country against external attack. The modern states, however, are no longer the police states of the past. They have become or are fast becoming welfare states. Besides protecting the citizens against internal disorder and external attack, the modern states are more and more taking upon themselves the task of promoting their welfare through some positive steps. In Britain, for instance, the state has ensured a very large measure of security to the citizens through the adoption of various social security schemes. Unemployed persons in Britain are entitled to a substantial weekly allowance. Unemployment does not, therefore, expose a person in that country to hunger and suffering as it does in this country. There is also a system of old-age pensions in Britain under which men and women over a specified age receive weekly pensions. Under the National Health Serivce Scheme, free medical, surgical and hospital care is provided for all citizens. The state also pays maternity allowances to non-employed women. It also pays an allowance to mothers for every baby born. Employed or self-employed mothers are entitled to greater benefits for birth of children. There is also a system of death allowances there to enable people to meet the funeral expenses. Thus, the state in Britain has largely eliminated insecurity from the lives of the citizens. In the United States, too, a number of social security programmes are in operation which ensure the people of that country a very large measure of economic freedom. In the Soviet Union, the state guarantees the right to work, the right to leisure and the right to education to all citizens. Through the adoption of various social welfare programmes, the Soviet State has banished economic insecurity from the land. The Soviet citizen to-day, irrespective of his station in life, can be sure of being provided by the state, from birth to death, with the minimum necessities of

life and of being protected by it against the common hazards of existence. In India and other economically undeveloped countries, economic freedom is still a distant goal. But in most of these countries, the governments have accepted economic freedom as the ultimate objective towards which all their economic policies should be directed. In India, we already see the introduction of social welfare measures on a limited scale.

Thus, liberty in the modern state is much wider and richer than it was in the states of the past. The modern state is playing an increasingly bigger role in the economic life of the people and making available to them an increasingly large measure of economic freedom. The poor and the down-trodden of the world are gradually lifting their heads. The disinherited step-children of the earth are slowly coming into their own.

It is important to note, however, that in the Soviet Union and other countries under dictatorial regimes, expansion of economic freedom for the masses has been accompanied by a severe curtailment of political freedom. There is no democracy in these countries. Political power in the Soviet Union is the monopoly of one party, the Communist Party. No other political party is allowed to exist in the state. And there is no freedom of speech and expression there in the true sense of the term. Liberty in the Communist countries is, in short, far more restricted in scope than in advanced democracies like Britain and the United States. For the full development of the personality of the individual, political freedom is as much necessary as economic freedom. The ideal of the modern state should be the establishment of a social order which combines political democracy with economic democracy and thereby ensures the conditions essential to the harmonious development of the human personality.

National Liberty: National liberty means national independence, that is, freedom from foreign control or

domination. It should be obvious that there is a close relation between national liberty and political and civil liberties. In a country under foreign domination, civil and political liberties can exist only in a very limited measure. An imperialist power does not allow the colonial people under its rule either the right to form their own government or full freedom of speech and association. For the granting of these rights can only mean the end of imperialist rule. The colonial peoples of the world, therefore, do not enjoy liberty in the true sense of the term, or they enjoy it only to a very limited extent. In other words, the conditions necessary for the full development of the human personality do not obtain in colonial countries. The ideal of liberty thus demands the banishment of the phenomenon of imperialism from the face of the globe. National freedom, in short, is integral to the ideal of liberty.

CHAPTER VIII

CITIZENSHIP

Definition of a Citizen: Citizens are persons who possess full membership in a political community. The citizens of a state are those persons who are its full members. Certain rights and duties go with citizenship. An adult citizen, for instance, has usually the right to vote. Non-citizens cannot claim this right. Again, a citizen has the duty to defend the state against foreign invasion. A non-citizen cannot be said to have that duty. The rights and duties of citizenship will be discussed in detail later.

In the city states in ancient Greece, only a small percentage of the total population was entitled to the rights and privileges of citizenship. In other words, the citizens constituted a small minority in those states, while the majority were slaves excluded from the privileges of citizenship. Similar was the case in the states of mediæval Europe. In those states, the population was divided into a small privileged class of feudal lords and a vast majority of serfs. In modern states, however, practically the entire population, excluding the aliens, consists of citizens.

Citizens and Aliens: The population in every modern state may be broadly divided into two categories—citizens and aliens.

The main difference between citizens and aliens is that citizens enjoy full membership in the state but aliens do not. Aliens are, therefore, not entitled to certain rights and privileges that go only with full membership in the state. Usually, aliens are denied the right to vote, the right to stand as candidates in elections and the right to hold public office. Citizens, it should be noted, owe allegiance to the state in which they reside; aliens owe allegiance to another state.

It must not be supposed, however, that the aliens in a state do not enjoy any right. Every modern state guarantees

a large number of rights to the aliens. Usually, aliens receive full protection from the state in respect of their person and property. The aliens have, correspondingly, a duty to obey the laws of the state in which they reside and to pay taxes according to those laws.

The Constitution of India, it is interesting to note, guarantees the following rights to both citizens and aliens: the right to life, personal liberty and property; equality before the law; freedom of religion and conscience. The right to vote, the right to election as a member of a legislature, the right to freedom of speech and expression, freedom of association and assembly and certain other rights are conferred by the Constitution exclusively on citizens.

Citizens and Voters: What is the difference between citizens and voters? All citizens are not voters. Only those citizens are voters who possess the required qualifications. In India, all citizens who are 21 or above are, with some minor exceptions, entitled to vote. Those Indian citizens who are less than 21 years of age are not entitled to vote. Thus, we may say that all voters are citizens, but all citizens are not voters.

Citizens and Subjects: A distinction is sometimes made between a citizen and a subject. A subject is merely governed; the citizen is not only governed but also governs. Thus a citizen is always a subject; but many subjects are not citizens.

Natural Citizens and Naturalised Citizens: Citizens may be divided into two categories— (a) citizens by birth and (b) citizens by naturalisation. The former may be called natural citizens; the latter are naturalised citizens. Naturalisation is a legal process whereby an alien, who has fulfilled certain conditions, becomes a citizen. Usually, the rights of a naturalised citizen are identical with those of a natural citizen, except in one or two matters in which natural citizens enjoy an exclusive privilege. In the United States, only a natural-born citizen is eligible for election as the

President. In India, however, any citizen, whether natural or naturalised, is eligible for election as the President provided he fulfils the other requirements for such election.

Acquisition of Citizenship: Broadly speaking, there are two ways of acquiring citizenship, namely, (1) birth and (2) naturalisation.

Birth—The most important mode of acquiring citizenship is by birth. The great bulk of the citizens in every state are citizens by birth. There are two general principles governing citizenship by birth. One is the principle of *jus sanguinis,* which regards parentage as the decisive factor; the other is known as the *jus soli,* according to which the place of birth is the governing factor. Some states such as France, Switzerland, Germany and Sweden have adopted the principle of *jus sanguinis* which is derived from the old Roman law. According to this principle, children of citizens, whether born inside or outside the state, become automatically citizens of the state; while the children of aliens born inside the territory of the state are regarded as aliens. Some other states, such as Argentina, have adopted the other principle of *jus soli.* These states regard the children born on their territory or within their jurisdiction as citizens, irrespective of whether their parents are citizens or aliens. While the children of their citizens, if born abroad, are regarded as aliens. Some states, such as Great Britain and the United States recognise both birthplace and parentage as alternative qualifications. These states, in other words, have adopted a combination of the two principles, *jus sanguinis* and *jus soli.* Under American law, all persons born on American soil and within its jurisdiction are American citizens, whether their parents are citizens or aliens (jus soli). Also the children of American parentage born abroad are American citizens (*jus sanguinis*). So, too, with Britain.

Of the two principles, *jus sanguinis,* or the rule of parentage, is the more logical. The principle of *jus soli* or the rule of the birthplace cannot be called logical because

it makes the accident of birthplace the criterion of nationality. In the modern world, the population of every state contains a substantial percentage of aliens who owe their allegiance to other states. Under the principle of *jus soli*, the children of these aliens born within the jurisdiction of the states in which they happen to reside temporarily would be regarded as the citizens of these states and not of the parent states. The principle of *jus sanguinis* is unqestionably the more equitable principle. But this, too, has its disadvantages. It is often difficult to prove a person's parentage.

Naturalisation—Naturalisation, as has been already pointed out, is a legal process whereby an alien is transformed into a citizen. In the narrower sense, naturalisation means the formal granting of citizenship by a state to a foreigner who has applied for it. In the wider sense, however, naturalisation includes all the various ways of acquisition of citizenship by an alien. Professor Garner says : "Naturalisation in the wider sense of the term includes the bestowal of citizenship on an alien in any manner whatever, whether through legitimation, adoption, the naturalisation of the children through the naturalisation of the parent, the naturalisation of a woman through marriage to a citizen, naturalisation through the purchase of real estate, through service in the army or navy or the civil service, through the operation of the law of domicile, or through annexation of foreign territory, etc." Naturalisation in the wider sense of the term may thus take place through— (a) grant on application, (b) marriage, (c) domicile, (d) option, (e) appointment as government official, (f) through annexation of foreign territory, (g) purchase of real estate and (h) legitimation. Let us now deal with these points in some detail.

(a) All states provide for the granting of citizenship to an alien on application. This is naturalisation proper and is differentiated from most other methods of acquisition of citizenship by the fact that it involves a direct conferment

of citizenship by the state. In case of naturalisation through marriage, legitimation and the like, grant of citizenship by the state is not direct but indirect. For admission to citizenship, the applicants for naturalisation are everywhere required to fulfil certain conditions. These conditions vary from state to state. Among the most usual requirements are the following: (1) a period of residence within the jurisdiction of the state; (2) a declaration of intention to become a citizen; (3) the taking of an oath of allegiance to the state; (4) testimony as to the goodness of the moral character of the applicant. In some states, as in the United States, the applicant is required to swear that he is not an anarchist and is not a member of any group teaching opposition to organised government. Persons belonging to such groups are, of course, refused American citizenship.

In certain states, the law of naturalisation makes discrimination on racial grounds. America is the most notable example. In America, only white persons or persons of African nativity or of African descent or descended from a race indigenous to the Western Hemisphere are entitled to be naturalised. Thus the naturalisation law in America excludes the Chinese, the Japanese, the Indians, or, in fact, nearly all Asians.

(b) It is a rule generally recognised among nations that a foreign woman marrying a citizen of a state becomes a citizen herself. This rule has its exceptions. An alien woman who marries an American does not thereby become an American citizen. She can become an American citizen only by naturalisation, but in her case the conditions are less stringent. Again, an American woman who marries a foreigner does not lose her American citizenship thereby. She can, however, renounce American citizenship and formally assume the citizenship of her husband's country.

(c) In certain states, domicile itself invests an alien with citizenship.

(d) Under the naturalisation law of some states, children of alien parentage are allowed option as to their

citizenship. If they choose to be members of that state, they become naturalised.

(e) Appointment in the army, navy, air force or civil service of some states makes aliens citizens of those states.

(f) Annexation of a foreign territory or acquisition of a foreign territory by treaty generally leads to collective naturalisation of all its inhabitants. In America the inhabitants of Louisiana were collectively admitted to American citizenship by a treaty in 1803. So were the inhabitants of Florida and Alaska in 1819 and 1867 respectively. Sometimes such collective citizenship is conferred on the inhabitants of a territory by a special Act of the legislature.

(g) Purchase of real estates operates to give citizenship in certain states, such as Mexico and Peru.

(h) By legitimation an illegitimate child of a citizen father and an alien mother becomes naturalised.

In Britain, naturalisation is distinguished from denization. Naturalisation is effected under an Act of Parliament, while denization is conferred by the Crown. Naturalisation invests an alien in that country with all the rights to which a natural-born citizen is entitled. But denization confers those rights only partially.

Usually naturalised citizens enjoy complete legal equality with persons who are citizens by birth. They are entitled to the same rights, and subject to the same obligations, as natural-born citizens. There are some exceptions to this general rule in some countries. In the United States, a naturalised citizen cannot become either the President or the Vice-President. A naturalised American citizen, again, is not entitled to American protection against public duties, such as military service, which may be imposed on him by the country of his former allegiance if he goes back to that country.

Loss of Citizenship: Citizenship, whether acquired by birth or by naturalisation, may be lost in certain circumstances.

A common way of losing citizenship is by adoption of a new citizenship. A person who becomes naturalised in a foreign state ceases to be a citizen of the country of his origin. Formerly, the United States and Britain held the theory, *Nemo potest exuere patrim,* which means: no one can give up his native citizenship. But the U. S. Congress passed an Act in 1868 which gave its citizens the right of expatriation, that is, the right of naturalising oneself in a foreign country and thereby divesting oneself of American citizenship. The British Parliament also passed an Act in 1879, which recognised the right of British nationals to become naturalised in foreign states. On such naturalisation, a person automatically loses his British nationality.

Marriage of a woman with an alien, as has been already stated, usually involves loss of citizenship. By such marriage a woman acquires the nationality of her husband and loses her former nationality. This rule has its exceptions, as in America. Desertion from military service involves loss of citizenship in many states. In some countries, conviction for certain serious crimes causes loss of citizenship. Acceptance of service under foreign governments, according to the laws of some states, operates to cause forfeiture of citizenship.

Absence from the country of one's birth or adoption for a long period of time usually brings about loss of citizenship unless there is a declaration of intention to continue the citizenship. A person naturalised in America, for instance, loses his American citizenship if he resides for three years in the country of his origin or for five years in any other country.

Laws of most states provide for re-admission to citizenship of persons naturalised abroad. This is known as repatriation or reversion of nationality. Thus a citizen of a modern state, speaking generally, enjoys the right of both expatriation and repatriation.

Citizenship in a Federal State: Usually, federal states have a system of dual citizenship. An inhabitant of such a

state possesses two different kinds of citizenship—one national, the other local. He is a citizen of the federal state as well as of the particular political unit in which he resides. Thus a person born in the United States and residing, say, in the State of New York is a citizen of the United States and also a citizen of New York.

The question arises which of the two kinds of citizenship is primary and which secondary or derivative. Formerly, some people in the United States used to hold that the citizenship of the States is primary, while that of the United States is derived from it. The controversy was resolved through the adoption of the fourteenth amendment to the U.S. Constitution which makes the national citizenship primary. The fourteenth amendment states: "All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Suppose a person has been born or naturalised at a place in the United States and is subject to the jurisdiction thereof; he becomes at once a U. S. citizen. He also becomes a citizen of the State in which he may choose to take up his residence, no matter whether he has been born or naturalised within the jurisdiction of the State.

In the Swiss federation, a person must first acquire the citizenship of a canton and then he becomes automatically a citizen of the federation. Thus in Switzerland, the local citizenship is primary and the federal citizenship is derivative. In Imperial Germany also, the state citizenship was primary and the federal citizenship derivative. Acquisition of federal citizenship in that state was possible only through the acquisition of state citizenship. Under the Weimar Constitution of Germany, the federal citizenship was made original and primary.

In India which has a federal system of Government, there is, however, only one citizenship—the Indian citizenship. There is, in other words, no local or State citizenship

in India. In the United States, where there is a system of dual citizenship, a State can discriminate in favour of its own citizens in certain matters, such as franchise and the holding of public office—two of the rights which always go with citizenship. No such thing is possible in India because there is only one citizenship, namely, national citizenship in the country. It is interesting to note that in the United States, it is the State Governments, and not the federal Government, who have the power to determine who shall have the right to vote even at national elections. In India, however, the Constitution itself has conferred the right to vote on all adult citizens (excepting those disqualified on the grounds of unsoundness of mind, non-residence and the like). And the Centre in India enjoys paramount power of legislating on all matters relating to elections, both national and State. As for the holding of public office, no State in India can discriminate against any citizen on the ground of residence. Only Parliament, the Central Legislature, can lay down residence qualifications in regard to any class of employment under a State Government. The Indian federalism differs very greatly from that of the United States or Australia. In fact, centralisation of power is far greater in the Indian federation than in any other federal system of government in the world.

Duties of Citizenship: The state is an instrument for the promotion of the common good. It is "a fellowship of men aiming at the enrichment of the common life." In fact, the state is essential to good life. No man can hope to live a good life or to attain happiness except in a state. Happiness is unattainable in a situation of anarchy or chaos except probably for a few strong and cunning individuals. By being citizens or members of the state we become entitled to the rights maintained by it, rights which give us an opportunity to achieve happiness and to realise the best in ourselves. In return for the benefits which the state confers on the citizens, it claims the performance of certain duties

by them These are the duties of citizenship. These duties are closely related to the benefits of social life. Unless the citizens performed these duties, they would soon cease to enjoy the benefits conferred by the state. Citizenship, for instance, involves the duty of obedience to law. If citizens refused to obey the laws of the state, very soon the state itself would dissolve in chaos leaving the citizens exposed to the dangers inseparable from conditions of anarchy. Citizenship, again, implies the duty to defend the state against foreign invasion. If the citizens declined to perform this duty, they would very soon pass under foreign domination and all their rights would be annihilated.

The most fundamental duty of citizens is to obey the law. Laws represent the common rules framed by the state for the promotion of the general welfare. Ordered social life will become impossible unless these common rules are obeyed. A citizen may sometimes find that he will gain some personal advantage if he breaks the law. But he will injure society if he violates the law. Not only will he infringe the freedom of other citizens by such conduct, but will encourage similar conduct on the part of others. And if the habit of disobedience and lawlessness becomes general, the structure of social life will go to pieces and everyone's freedom, including that of the law-breakers, will be jeopardised. No state can, therefore, tolerate violation of law. Every state provides for the punishment of the law-breakers to discourage commission of illegal acts. And it is a duty of citizens to see to it that law-breakers are brought to justice.

Even if a citizen comes to believe that a particular law is oppressive or iniquitous in character, he ought not to violate it or incite others to do so. He should try to organise public opinion in order to get it repealed or suitably modified.

Another fundamental duty of citizens is to give allegiance to the state. Allegiance means loyalty to the

state and preparedness to give it whole-hearted service. Allegiance demands (a) that the individual must defend the state against foreign attack, (b) that he must support the public officers in the performance of their duty and (c) that he must be prepared to serve the state by doing public duties such as the holding of public office, the exercise of franchise and the paying of taxes. Let us deal with these points one by one.

(a) All citizens must be prepared to defend the state against foreign attack. This means that all able-bodied citizens must be ready to serve in the armed forces of the country if the state becomes involved in war with other states, and to sacrifice their lives, if need be, in defence of the state. Many modern states, such as Britain and India, maintain standing armies, recruitment to which is made on a voluntary basis. In times of crisis, such as large-scale war, recruitment is made on a compulsory basis. This is known as conscription. In many other states, on the other hand, military service is compulsory. The Constitution of the Soviet Union, for instance, declares that " it is the sacred duty of every citizen of the U.S.S.R." to defend the country, and it lays down : " Universal military service is law." In countries, like the Soviet Union, where the system of compulsory military service prevails, all citizens, when they reach a certain age, are required to undergo military training for a period, so that they may effectively help the defence of the country in times of necessity.

In every modern state, however, there are many citizens, such as women and the old, who are not fit to undertake military service. Such persons must be prepared, in times of war, to undertake such non-military duties as help efficient prosecution of the war.

Desertion to the enemy, espionage or such other acts as tend to weaken the military power of a state are usually punishable with all the severity of the law and sometimes entail loss of citizenship.

(b) It is a duty of the citizen to support the public officers in the performance of their duties. Without such help and co-operation from citizens, it is not possible for the officers to perform their duties properly. Thieves, dacoits, murderers, hoarders, profiteers, black-marketers and other anti-social elements can be effectively dealt with only if the general body of citizens co-operate with the authorities in apprehending them and in bringing them to book.

(c) Voting at elections and the holding of public office are among the most important duties of citizens. Usually there is no legal obligation to vote at an election or to come forward to hold a public office. Yet the citizens have a moral obligation to exercise their franchise and to serve the state by holding jobs for which they are best fitted. By voting the citizen helps to elect a government that truly reflects the popular will. If the citizens do not care to vote, they can have no right to complain that the Government have failed to respond to the demands of the people.

Usually there is no dearth of candidates for such public offices as are highly paid or carry considerable prestige. But allegiance to the state demands that the citizens must also be ready to serve in public offices which are purely honorary or inadequately remunerated, or which do not confer much prestige on the holder. The affairs of no state can be properly administered unless a sufficient number of competent persons are available to man the administration. In Britain, the hundreds of the Justices of Peace who perform a highly important judicial function do not get any remuneration from the state. Yet there has never been any dearth of persons to hold these offices. The heated controversies and the clash of mean motives which often characterise the political field usually deter many highly competent persons from coming forward to offer themselves as candidates for political offices. But they would to do well to remember that unless good men entered politics, bad men will get hold of the state machinery and dominate society. For their reluctance to enter the political arena,

good men in every age have had to pay the price of being ruled by bad men.

Another highly important duty of the citizen is to pay the taxes. No Government can run the administration without taxation. A Government has to pay its officers, feed the army and keep it well-equipped for defence of the land, build and maintain offices, jails, hospitals and, in most modern states, to undertake big industrial, agricultural and other projects designed to promote public welfare, to run nationalised industries and operate social security schemes. These activities require money, which is raised mainly through taxation. Citizens should, therefore, regularly pay their taxes to the Government. It is, however, universal experience that citizens who always demand more and more service from the Government, are nowhere in the world equally enthusiastic about paying their taxes. Everyone complains when he has to pay the taxes. And almost everywhere a disquietingly large percentage of citizens try to evade payment of taxes. Influential bodies of men and vested interests too often put direct or indirect pressure on the Government to get their taxes reduced, whether such reduction is justified or not. All this shows that civic consciousness is as yet in an undeveloped stage among the great majority of people in the world. In fact, many of the internal problems of a state are at bottom a problem of developing the civic consciousness of the people. If all citizens were conscious of their civic responsibilities and performed their civic duties conscientiously, it would not be necessary for the state to maintain a police force or penal institutions and the problems of corruption, nepotism and, to a great extent, of economic injustice would be banished from it.

Is there a Right to Revolt? It has been pointed out that the most fundamental duty of the citizen is to obey the law. But is it to be supposed that disobedience of law is not justifiable in any circumstances? Should a person allow himself to submit to a law that is obviously unjust?

Should we not, when the Government becomes oppressive or tyrannical, revolt against it and try to overthrow it ? Is there no right to revolt ?

It should be clear, in the first place, that there can be no legal right to revolt. Law can never be expected to permit a person to break it. If there is a right to revolt, it must be an extra-legal right.

And there can be no question that citizens have a moral right to revolt in order to remove a tyrannical Government from power. This right is, however, to be exercised only as a last resort and when all peaceful and constitutional methods for removing the Government or bringing about the desired change in its policies have been exhausted. For a Government exists to further the common good by giving effect to the popular will. If a Government fails to promote the general welfare or ceases to represent the will of the people, it has no moral right to continue in power. The people have a right to remove such a government from power. And if they fail to bring about its removal through constitutional methods, they have a moral right to overthrow it by force.

As Laski says, a man's citizenship is the duty to contribute his instructed judgment to the public good. If a person becomes genuinely convinced that public good cannot be promoted except through revolt against the powers that be, it becomes his duty to give expression to that view and face the consequences. It becomes his duty to exhort people to rise against the Government and, if possible, to organise rebellion against it. It is only by performing this duty that a citizen can, in critical situations, contribute to the public good what is best in him. Mahatma Gandhi, probably the greatest man of this age, contributed to India and the world what was best in him mainly by preaching civil disobedience against the British regime in India. He electrified the whole nation by calling upon it to refuse to submit to unjust laws. Before embarking on

his Civil Disobedience Movement in 1930, he wrote a letter to the then Viceroy in which, after referring to the law and the peace the British were said to have given India, he said : "I repudiate this law and regard it as my sacred duty to break the mournful monotony of compulsory peace that is choking the heart of the nation for want of free vent."

Progress of a people has often come through revolt against the constituted authorities. America won her freedom through revolt against the British rule and thereby paved the way to her present prosperity and greatness. The French Revolution which overthrew the *Ancien Regime* in France in 1789 thereby not only freed from tyranny the common people of that country but greatly contributed to the progress of mankind as a whole. Freedom of India is the outcome of the exercise by Indian patriots of their moral right to revolt against a despotic foreign regime. Freedom has not only opened up before India the opportunity to build a happier and more prosperous nation, it has also enabled her to serve the cause of world peace and progress far more effectively than when she was an enslaved country and could not function independently in the international field.

It must be admitted that very often violence creates more problems than it solves. Violence provokes counter-violence and sometimes causes terrible suffering. Often violence results in the death of the most unselfish and energetic elements in the nation, such as youths and men of idealism. Sometimes it so happens that those who come to power through violence also rule by violence and set up a regime far more oppressive than the one they have overthrown. The Communist Party which came to power in Russia after the October Revolution of 1917 has built a political system under which suppression of civil liberties has gone much further than under the Tsarist regime. This is why people everywhere are beginning to have doubts as to whether violence can really lead to abiding welfare. Mahatma Gandhi preached the doctrine of non-violence.

He taught that bad means cannot lead to the achievement of good ends. Even the struggle against despotic Governments, he maintained, should be waged through non-violent methods. And he actually organised his epic struggle against the British rule on non-violent lines. Mahatma Gandhi thereby demonstrated the efficacy of non-violence even as a political weapon. But men have not yet found it possible to discard the use of force in their individual or social life. It is by the use of force that the state keeps the activities of anti-social elements in check. It would be impossible for the state to maintain law and order if it renounced the use of force. Just as the Government has the right to use force against the law-breaker, the people too have the right to use force against the Government if it denied them the rights without which they cannot realise the best in themselves.

The Problem of Obedience: It is common experience that the great majority of citizens in a state normally obey the laws of the state. They obey the orders of the Government without much scrutiny. Philosophers in every age have tried to explain this "striking phenomenon of a vast multitude owing allegiance to a comparatively small number of men." Two questions naturally arise in this connection: Why do men obey the state? Why should men obey the state? Let us deal with the first question first.

Hobbes maintains that men obey the state through fear. But this is an oversimplification of the problem. It is true that sometimes the fear of consequences makes people refrain from violating the law. A man plotting murder may think of the possible consequences of the crime and give up the idea. But fear has very little to do with many of the ordinary activities of life which are regulated by law. Men, speaking generally, buy railway tickets or pay the price of the goods purchased by them without consciously pondering the consequences they might bring upon themselves if they did not obey the law. The law is there and they just obey it. Again, most people refrain from stealing

others' property not because of fear of consequences but from habit.

This is why Sir Henry Maine holds that political obedience is based on habit. It is habit, rather than fear, which makes people obey the state. It is undeniable that this view about the nature of political obedience has a large basis of truth. Man is by nature a gregarious animal. He loves to live in society. He cannot live alone. His associative instinct which leads him to social life makes him habitually prone to the acceptance of the common rules without which social life would be an impossibility. Also, his herd instinct being strong, he usually does what he sees others do. The laws of the state are thus habitually obeyed by men. This analysis also points to the conclusion that the common man is not normally prone to violence or revolt. When he does revolt against the constituted authorities, it can be safely assumed that there is something fundamentally wrong with the state. Laski says: "Men cling so persistently to their accustomed ways that the departure from them implied in violence is almost always evidence of deep-seated disease."

Habit and fear, however, are not the only factors involved in obedience to the state. Men also obey laws because they think they ought to, because they think that they will serve their own interest by obeying the state. The function of the state is to promote the general welfare. Even men of ordinary intelligence can see that unless they obeyed the state, it cannot perform its function properly.

To conclude: The phenomenon of obedience to the state is not a simple but a complex one. Its roots lie deep in human nature. Man is a creature of both reason and instinct. His obedience to the state contains both rational and irrational elements. Habit and fear, which have their roots in some of the primary instincts of man, as well as rational considerations prompt him to obey the state. The proportion in which these elements are combined varies

from state to state and from age to age. It also varies according to the political consciousness of any particular people. The element of reason is greater where the political consciousness is more developed. The elements also act and react on one another. Reason makes a man follow a particular line of conduct but soon, through continual repetition, it becomes a habit with him. Obedience which is based on reason or mainly on reason has, however, a stronger foundation than the obedience which is based on mere habit. It cannot be swayed by mere slogans or appeals to irrational instinct. And men who obey intelligently contribute most to the life of the state.

As for the question why men should obey the state, it has been already discussed in the preceding pages. The state should be obeyed because it maintains conditions essential to good life, because, if we do not obey it, proper performance of that function would be impossible.

Education and Citizenship: There is a saying that a people gets the kind of government it deserves. If the citizens of a state are selfish and indolent, if they do not take an intelligent interest in the affairs of the state, they cannot expect good government. The government of such a state is almost sure to be dominated by wicked and cunning individuals. If, again, the citizens of a state are timid and ease-loving, they will lose their freedom sooner or later, and fall victims to foreign aggression. Without good citizenship, there cannot be good government. And without good government, it is not possible for the citizens to realise the best in themselves. The citizens must, therefore, conscientiously perform their civic duties if they are to develop their faculties fully and attain happiness in the true sense of the term.

The chief foes of good citizenship are—(a) ignorance, (b) indolence, (c) selfishness and (d) party spirit. People who are ignorant about their civic responsibilities cannot be expected to discharge those responsibilities. There are

hundreds of thousands of people in every country who, while not ignorant about their civic duties, are too indolent to perform them. Most of these people even do not record their votes at elections. The following remark which an American writer has made about the voters in America applies to the voters in most countries under the sun: "People in general are more insistent on having the right to vote than upon exercising this right. Threaten to take a man's voting privilege away, and he will fight like a gladiator to retain it. But give it to him, and he will often tuck it away in moth balls. There are millions of eligible voters who never register and millions more who register but do not go to the polls."

Selfishness is the chief obstacle to the building up of a healthy social life. A very large percentage of people in every state are extremely self-centred. They are utterly indifferent about the interests of their fellow-citizens. They take no interest in public affairs except when any law or executive action affects their personal interests. Naturally, such people cannot be expected to care about performing their civic duties. The greater the percentage of such people in a state, the lower the standard of civic life in it.

Apart from people who put self before the country, there are others who put party before the state. The latter do not hesitate to sacrifice the general interests of the state to gain some supposed advantage for their party or group. Blind followers of their party, they will vote for a worthless party candidate rather than a worthy non-party candidate. Not only that, they would not hesitate to take recourse to illegal and immoral means if they think they can thereby help the party's cause. However valued members they may be of their own party, they are bad members of the state. They will sacrifice the interests of the whole for those of the part. Not that party spirit is something that is bad in itself. As will be discussed later, party spirit has a valuable role to play in a democratic state. But it must

be kept within certain limits. In no case should the general interests of the state be subordinated to purely group interests. How to combat the problems of selfishness, ignorance, indolence and unhealthy partisanship which pervade the life of most modern states, often pervert their institutions, and tend to keep civic life at a low level ? The answer will be found mainly in education. By imparting the right kind of education, it is possible to develop the desired civic virtues and inculcate the requisite discipline in citizens. Of course, there are people who doubt the efficacy of education in improving character or in tackling the problem of selfishness. It is, however, a demonstrable truth that education can and does improve the character and habits of a person. Education must be, no doubt, of the right type. The kind of education which is imparted in the schools and colleges of India today and in most other countries aims solely at giving information and not at all at improving character. What is needed is a real man-making education which will develop not only the intellect but also the character—which will make a citizen fully appreciate the fact that his own good is inextricably bound up with the good of his fellow-citizens.

Another important point may be made here. No citizen can be expected to take an active interest in pubic affairs unless he is guaranteed by the state at least the minimum necessities of life. A person who has to toil all day to earn a bare living or a person who does not get even one square meal a day can have very little time or energy to understand public issues or to make himself interested in them. No state can justly demand the performance of civic duties from persons whom it has not enabled to live like men. "A state must give to men their due as men before it can demand, at least with justice, their loyalty."

Rights of Citizenship: Citizenship implies not only duties but also rights. The function of the state is to enable the citizens to live a good life. It must ensure the citizens

those rights which are essential to good life—rights without which they cannot be themselves at their best. These rights include the right to personal liberty, the right to vote, the right to election, the right to hold public office, the right to freedom of speech, movement and association, the right to work, the right to a living wage and leisure, the right to freedom of conscience and religion, the right to education and the right to equal protection of the law. These rights have been discussed in detail in the preceding chapter.

CHAPTER IX

CONSTITUTIONS

Definition of Constitution: The Constitution of a state is the body of rules, including binding conventions, which determines the structure, functions and the mutual relationship of the principal organs of government. Cooley, the American jurist, defined the constitution of the state as "the fundamental law of the state, containing the principles upon which the government is founded, regulating the division of the sovereign powers, and directing to what persons each of these powers is to be confided and the manner in which it is to be exercised."

"The Constitution of a state," says Gilchrist, "is that body of rules or laws, written or unwritten, which determines the organisation of government, the distribution of powers to the various organs of government, and the general principles on which these powers are to be exercised."

No State without a Constitution: There can be no state without a constitution. For a government cannot be established except on the basis of certain rules. It may be that the constitutions of some states are simpler than those of others. But there must be some kind of constitution in every state. Even in a state ruled by an absolute dictator, there is a constitution.

This becomes clear when one reflects that a regime of absolute dictatorship is based on the principle that all laws emanate from the dictator and that his orders are binding on everybody in the state. This principle is the constitution or the basic rule of the constitution of such a state. It has been rightly remarked by Jellinek that a state without a constitution would not be a state but a regime of anarchy.

It must not be supposed, however, that every state must have a written constitution. It is quite possible to conceive of a state in which the constitution consists entirely of

unwritten rules or customs. In fact, in the past there were many states in which the constitution consisted entirely, or for the most part, of customary or unwritten rules. In France and England of the fifteenth century the constitution was, for all practical purposes, nothing but a body of unwritten rules. The British Constitution is still very largely based on conventions.

Constitutions Classified: Constitutions have been classified as written and unwritten; evolutionary and *a priori*; flexible and rigid.

Sometimes constitutions are also classified as unitary and federal, democratic and dictatorial. But, strictly speaking, these terms refer to forms of government rather than to types of constitutions.

Written and Unwritten Constitutions: A very old classification is that which divides constitutions into written and unwritten types. A written constitution is one in which the provisions are embodied in a single formal written instrument or document. An unwritten constitution is one which consists of a mass of customs or usages which have not been reduced to writing or formally embodied in a document. The distinction is unsatisfactory, if not unreal. In all constitutions, at least of the modern world, there are both written and unwritten elements. In America, where the constitution belongs to the so-called written type, a vast mass of conventions have grown up alongside the written constitutional law. These conventions play an important role in the American constitutional system. One cannot understand properly the working of the American governmental system unless one studies these conventions along with the small document known as 'the Constitution of the United States,' and the judicial interpretations of its provisions. Again, though the British constitution belongs to the so-called unwritten type, a large part of the constitutional law in Britain has been reduced to writing, and is to be found embodied in Acts of Parliament. For instance, the

Habeas Corpus Acts, the Reform Acts, the Act of Settlement (1701), the Parliament Act of 1911 and the Parliament Act of 1949 are all parts of the British Constitution. Even the Magna Carta (1215) and the Bill of Rights (1689) constitute part of that constitution. Thus a so-called written constitution is not all written, nor a so-called unwritten constitution all unwritten.

Evolutionary and a priori constitutions: Constitutions have been classified by Sir Henry Maine as, first, historical or evolutionary and, second, *a priori*. To the first category belong constitutions which have gradually evolved through a long period of time. The most notable example of such constitutions is the British Constitution. And *a priori* constitutions are those that are "founded on speculative assumptions remote from experience." The constitutions of eighteenth-century France are typical examples of *a priori* constitutions. This classification also is not a satisfactory one. For what are called 'speculative assumptions' are always found to have been built on historical experience of some people or other; and once a so-called *a priori* constitution is brought into being, it begins to evolve in the same manner as a constitution of the so-called evolutionary type.

Rigid and Flexible Constitutions: Lord Bryce has classified constitutions as flexible and rigid. The relation which the constitution bears to the ordinary laws of the state is the basis of the distinction on which this classification rests. The constitutions which are subject to the same legal machinery as ordinary laws, and which can be altered in the same way as these laws are flexible constitutions. The most typical example of the flexible constitution is the British Constitution. A flexible constitution, it should be clear, stands legally on the same plane as other laws. It does not possess any higher legal authority than ordinary laws. Rigid constitutions are those which possess higher legal authority than ordinary laws and can be amended only by a special process.

In a state with a rigid constitution, an ordinary law becomes void and inoperative if it conflicts with the constitution. In other words, in such a state the validity of an ordinary law is judged by its consistency with the constitution. The constitutions of India, United States and Australia are examples of rigid constitutions. In each of these countries, the constitution stands over and above the ordinary laws of the land, and it can be amended only by a special process laid down by the constitution itself. The basic provisions of a rigid constitution are always embodied in a written document. It should be understood also that a rigid constitution usually emanates from a special authority. In India, it was the Constituent Assembly which framed the Constitution. The Constitution of the United States was framed by the constitutional convention which met at Philadelphia in 1787.

A flexible constitution is so called because it can be easily amended. The British Parliament can change any constitutional law of Britain by passing an ordinary law according to the ordinary procedure. A rigid constitution, as the name implies, cannot be easily amended. The Constitution of the United States, for instance, lays down such a difficult procedure of amendment that there have been so far only 22 amendments to the Constitution. In fact, (as the first ten amendments to the Constitution were adopted in 1791) the U. S. Constitution has been amended only twelve times during a period of over 160 years.

It must not be supposed, however, that all rigid constitutions are equally rigid. The rigidity varies from constitution to constitution. If one arranges the various rigid constitutions of the world according to the degree of rigidity, it will be found that the rigidity gradually shades into flexibility. At one extreme stand constitutions, such as that of the United States, which are extremely rigid. At the other end stand constitutions such as that of the Soviet Union which are almost as flexible as the British Constitution. In the middle are the Indian and one or two constitutions of a

similar character, which are neither too difficult nor too easy to change. The Constitution of the Soviet Union which theoretically belongs to the category of rigid constitutions is in practice, as has been pointed out, as flexible as the British constitution. The Soviet Constitution empowers the Central Legislature of the State to amend the Constitution by a two-thirds majority. But this special majority has no special significance in the Soviet Union. A one-party political system prevails in the Soviet Union which brings it about that even ordinary laws are usually passed there unanimously. Amendment of the Constitution does not, therefore, present the least difficulty or cause the least headache to the people in authority in the Soviet Union. And, in fact, the Soviet Constitution has been amended very frequently. Almost every session of the Central Legislature of the Soviet Union has effected some changes in the Constitution. The amendment procedures relating to some of the leading constitutions of the world have been discussed below.

Merits and Demerits of Rigid and Flexible Constitutions : One of the chief merits of a rigid constitution is definiteness. The rights of individuals and the limitations on the power of the Government are definitely laid down by its written provisions. There can be, therefore, no vagueness or uncertainty about them, as there can be where the constitution is of the unwritten or flexible type.

Closely related to this merit of definiteness is clearness and easy intelligibility. The masses can easily understand the main features and provisions of a rigid constitution. This is a great advantage. In a democracy, it is of the highest importance that common people should have a general understanding of the provisions of the constitution. Democracy can function properly only if the masses are conscious about their rights and duties and take an intelligent interest in public affairs.

A rigid constitution cannot be easily amended. It usually guarantees certain fundamental rights which, it is rightly

believed, should not be lightly tampered with to suit the passing fancies of the moment. In fact, it is to protect the constitution from being turned into a plaything in the hands of the group in power at any moment that its amendment is made difficult. A rigid constitution thus affords greater protection to the rights of the people than a flexible constitution which can be easily amended. It also gives greater stability to the structure of government. The provisions of a rigid constitution gradually come to be invested with a kind of sanctity, as it were, and to be treated with deference by the people. This makes it all the more difficult for selfish or power-loving individuals and groups to alter those provisions to suit their parochial interests.

A rigid constitution, by always focussing public attention on certain fundamentals of political life, acts, so to say, like a political school for the common people. It exerts a wholesome influence on their political thoughts and habits.

Rigid constitutions, however, are not free from defects. Their very rigidity sometimes becomes a source of weakness. This happens when a rigid constitution fails to adjust itself in response to the changing social needs and thereby retards progress. A constitution which lags behind time and which hampers progress cannot fail sooner or later to be scrapped. Such constitutions not unoften become the cause of violent upsurges and revolutions. It is not possible to obstruct forces of social change for an indefinite time. Unless change is allowed to take place in a peaceful way, it comes through violent upheavals which destroy not only the existing legal framework of the state but also much that is of great value to social life.

This defect of rigid constitutions points to the strength of flexible ones.

One great merit of flexible constitutions is elasticity and adaptability. Since a flexible constitution can be easily modified, they can be easily adapted to the changing needs of society. They can be altered without difficulty to meet the

demands of the people and to facilitate progress. And since their elasticity facilitates continuous and peaceful change, they eliminate chances of voilent upheavals. A flexible constitution easily survives crises which would destroy rigid constitutions. For, unlike a rigid constitution, it can be bent and twisted to meet the exigencies of critical situations. Flexible constitutions, says Bryce "can be stretched or bent so as to meet emergencies without breaking their framework; and when the emergency has passed, they slip back into their old form like a tree whose outer branches have been pulled aside to let a vehicle pass."

The chief defect of flexible constitutions is that they lack solidity and stability. As Bryce aptly remarked, flexible constitutions are in a state of perpetual flux, like the river of Heraclitus into which no man can step twice. The rights of the people and the powers of the authorities are, under a flexible constitution, subject to continuous change and there is always an atmosphere of uncertainty about them. Under such a constitution there are no fundamental rights at all, all rights being alterable through ordinary legislative procedure; and it is difficult for the common people to form even a general idea as to what their rights are because there is no single document embodying these rights. In Britain, for instance, where the constitution is a flexible one, the rights of the people lie scattered in a vast mass of laws, rules and regulations, and it is hardly possible for the common man to form even a rough idea about them without the help of an expert.

Going a step further, one may assert that to the common man a constitution that is flexible is something difficult to grasp. For such a constitution consists of legal provisions contained in a large number of statutes as well as conventions, all of which, again, are subject to constant change. It is also difficult for common people living under such a constitution to distinguish clearly between things that are of fundamental importance and things of lesser importance.

Rapid Growth of Rigid Constitutions: For reasons indicated above, common people everywhere prefer rigid to flexible constitutions. Particularly, the fact that such constitutions enable clear and definite limitations to be imposed on the power of the Government has led everywhere to a growing demand for them. In fact, to-day practically all countries have rigid constitutions. Strictly speaking, the British Constitution is now the sole surviving example of a flexible constitution. And even the British Constitution is becoming increasingly rigid because once certain important constitutional rights are embodied in Acts of Parliament, the public mind grows accustomed to them and gives resistance to all attempts at curtailing them.

Another cause favouring the rapid growth of rigid constitutions is the growth of federalism. In a federal government, the spheres of the central and local authorities have to be clearly and definitely demarcated. Such demarcation is not possible except in a rigid constitution.

It is significant that no state which has once adopted a rigid constitution has ever returned to the flexible type. Formerly a large number of states in Europe and Asia had flexible constitutions but they have all gradually adopted the rigid type and there is no reason to believe that they will ever switch over to the other type.

Essentials of a Rigid Constitution: A typical rigid constitution contains three sets of provisions: (1) provisions laying down the fundamental civil and political rights and imposing certain limitations on the powers of the government; (2) provisions dealing with the powers, functions and organisation of the government; (3) provision or provisions for the amendment of the constitution.

In the Constitution of India, Part III deals with the fundamental rights. This Part, however, does not contain all the fundamental rights guaranteed by the Constitution. Some of these rights, such as the right to franchise, are granted by provisions contained in other Parts. The great

bulk of the provisions of the Constitution relate to the powers, functions and organisation of the government which is of the federal type. These provisions are far more detailed in the Indian Constitution than in any other constitution of the world. The Indian Constitution is really the lengthiest constitution in the world. Article 368 of the Indian Constitution lays down the procedure of amendment.

The Constitution of the United States is probably the shortest constitution of the world. Yet it leaves out nothing essential. Containing only 4,000 words, the Constitution of the United States is a model of conciseness and logical arrangement. It ranks, says Bryce, "above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity and precision of its language, and its judicious mixture of definiteness in principle with elasticity in details."

Besides the three essential features mentioned above, provisions dealing with certain other matters are found in most rigid constitutions of the modern world. Thus the Indian Constitution contains a chapter dealing with certain directive principles which are not legally binding on the Government but which are, nevertheless, considered fundamental in the governance of the land, and the constitution declares that it shall be the duty of the state to apply these principles in making laws. The Constitution of the Soviet Union contains, apart from the three essential elements, provisions dealing with the arms, flag and capital of the state. Article 2 of the French Constitution (Fourth Republic) provides for the flag, the national anthem and the motto of the French Republic.

The Term "Unconstitutional" in Britain and India: The Constitution of India, it has been indicated, belongs to the rigid type, while the British constitution is a flexible one. The British constitution is based on the principle of sovereignty of Parliament. The word unconstitutional has, therefore, different meanings in India and Britain. When a

law in India is said to be unconstitutional, it is meant that the law violates the provisions of the constitution which is the fundamental law of the land. Such a law cannot be a valid one. When, therefore, a law in India is declared to be unconstitutional by the courts, it becomes void and inoperative. In Britain, however, no law made by Parliament can be unconstitutional in this sense. Since the British Parliament enjoys legal sovereignty, no law passed by it can be invalid. As soon as Parliament passes a law, it becomes binding on all concerned including the courts of the realm. No court can declare it void, however unreasonable or unjust it may be. The word 'unconstitutional' is, however, often used in Britain in debates, speeches and articles. Particularly, critics of a new measure proposed by the Government are often found to characterise it as unconstitutional. What they mean by the term unconstitutional is that if the proposed law is enacted by Parliament, it will be a violation of principles which have come to be regarded as of fundamental importance in the political life of the country.

In America, Australia, South Africa and in many other countries with rigid constitutions, the word 'unconstitutional' has the same sense as in India. That is, whenever a law is described as unconstitutional in any of these countries, it is meant that the law contravenes the provisions of the constitution and is, therefore, invalid.

How Constitutions are Created: Constitutions of the flexible and evolutionary type like that of Britain are not made; they grow. Rigid constitutions are, however, creations of conscious art. They are framed by the representatives of the people at a particular point of time. Usually rigid constitutions are framed by special bodies constituted for the purpose. The Constitution of India was made by the Indian Constituent Assembly. The present Constitution of France, that is, the Constitution of the Fourth Republic, was drafted by a Constituent Assembly and thereafter approved by the people at a referendum. The Constitution of the United States was framed by a

constitutional convention. The Constitution of the Weimar Republic of Germany, which came into existence after World War I, was drafted and adopted by a Constituent Assembly elected by the people.

Sometimes, constitutions are granted by a superior Government to a dependent and colonial country. The British Government have granted many such constitutions to colonial peoples within the empire. When India was under the British rule, more than one such constitution was granted to her by the British Parliament. These constitutions, however, never represent the popular will. They are granted by the superior authority to satisfy to some extent the popular desire for self-government and thereby to prevent discontent assuming serious proportions. The Dominions in the British Commonwealth, like Canada, Australia and South Africa, which were originally granted constitutions by the British Parliament, have now achieved complete self-government under the Statute of West Minster. They are now, for all practical purposes, fully sovereign states.

In the past written constitutions were sometimes granted by sovereigns to the subjects. Examples of such constitutions are those granted by the German princes to their subjects in the nineteenth century as well as the earlier constitutions of Japan, Russia, Turkey and Persia. These constitutions are known as 'octroyed' constitutions. They embody not the popular will but the fiat of the monarch. And they are subject to changes at the pleasure of the monarch. Very often they have been granted to prevent threatened revolt.

Amendment of Constitutions—Can there be an Unamendable Constitution ?: Before discussing how constitutions are amended, let us discuss the question whether there can be any such thing as an unamendable constitution. Some writers hold that the framers of a constitution can make a constitution unamendable by declaring that it, or some of its provisions, shall never be amended. But to hold that the

authors of a constitution can make it unamendable is to maintain that one generation has the power of binding all future generations by its fiat, which is an absurdity. None can validly claim the right of tying the hands of the posterity. The world belongs to the living and not to the dead. To maintain that a constitution can be unamendable is to assert that dead men have the right to rule over the living for all time.

An amendment adopted in 1884 to the Constitution of the Third Republic of France stated that the National Assembly should never entertain a proposal for the abolition of the Republican form of government. Article 95 of the Constitution of the Fourth Republic of France, that is, the present Constitution of France, also declares that the republican form of government shall not be the subject of a proposal to amend the constitution. Again, Article V of the Constitution of the United States, which sets forth the procedure of amending the Constitution, says that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." These provisions of the French and American constitutions are regarded by some writers as unamendable. But, as has been pointed out, an unamendable law or constitution means government by the graveyards. The people of France and America have certainly the right to amend these provisions of the fundamental laws of their states whenever they may think it necessary. As Munro says, "it is impossible to conceive of an unamendable Constitution as anything but a contradiction in terms. For a Constitution is a manifestation of popular sovereignty; and one generation of the people can hardly impose, for all time, a limitation upon the sovereignty of future generations."

The Various Methods of Amending Constitutions: It has been already stated that a flexible constitution is amendable by the same legal process as the ordinary laws. The British Parliament makes and amends both ordinary laws and constitutional laws by the same process. "The

statutes which govern the succession to the throne are changed in the same way as statutes which regulate the sale of intoxicating liquors." The result is that in Britain, the distinction between ordinary law and constitutional law is not very clear and well-marked. Often an ordinary law in Britain may contain provisions which are of great constitutional importance.

In states with rigid constitutions, however, the distinction between constitutional law and statute law is very well-marked. For a rigid constitution can be amended only by a special procedure. Broadly speaking, there are five different methods of amending a rigid constitution. These are as follows: (1) The power of amendment may be vested in the ordinary legislature but may be made subject to a special procedure, such as a special majority. (2) The amending power may be vested in a special body. (3) Amendment may be made subject to ratification by local authorities. (4) Proposals for amendment may be required to be submitted to voters for approval and adoption. (5) The voters themselves may be given power to initiate proposals for amendment and thereafter adopt them at the polls. It must be understood that often two or more of these methods are found combined together. Sometimes a constitution prescribes two alternative methods for its amendment. Let us now discuss these methods, one by one, in a little more detail.

(1) The Soviet Constitution vests the amending power in the Central Legislature, which is known as the Supreme Soviet of the U.S.S.R., and prescribes a two-thirds majority for the adoption of the proposed amendments. In Norway, the Parliament can propose amendments to the Constitution and, if ratified by it by a two-thirds majority in a session following the next election, the amendments are considered adopted. In Sweden, a proposal to amend the Constitution may be made by the Parliament, and it becomes part of the Constitution on being passed by Parliament by ordinary majority after a general election has taken place. In India,

most of the provisions of the Constitution can be amended by Parliament acting by itself. A proposal to amend the Constitution may be initiated by either House of Parliament and becomes part of the Constitution if it is passed in each House by a majority of the total membership and not less than two-thirds majority of the members present and voting and is, thereafter, assented to by the President. Some provisions of the Indian Constitution, including those relating to distribution of powers, require for their amendment ratification by at least one-half of the autonomous States, while there are a few provisions which Parliament can amend by a simple majority vote. Thus the amendment procedure in the Indian Constitution represents an attempt to strike a balance between extreme rigidity and extreme flexibility by combining three different methods.

(2) Sometimes the amending power is vetsed in a special body. The Constitution of the United States provides for the creation of such special bodies. The Congress is required, on the application of the legislatures of two-thirds of the States, to call a convention for proposing amendments, which become part of the Constitution on being ratified by conventions in three-fourths of the States or by the legislatures of three-fourths thereof. The Constitution of the United States lays down two alternative methods, both for proposing and ratifying amendments to the Constitution, which are to be presently discussed.

(3) In federal constitutions amendments are often made subject to approval or ratification by local authorities. The Constitution of the United States, as has been just pointed out, lays down two alternative methods for both proposing and ratifying amendments. An amendment to the Constitution may be proposed either by the Congress by a two-thirds majority or by a special convention to be called by the Congress on the application of the legislatures of the two-thirds of the States. In either case, the amendment will become part of the Constitution when ratified by the legislatures of three-fourths of the several States or by conventions

in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Thus the Constitution of the United States provides four alternative methods for amendment. But, so far, all amendments to the Constitution, excepting the twenty-first, have been made by only one of these methods—they have been proposed by the Congress and ratified by the State legislatures. Only in the case of the twenty-first amendment, ratification was made by conventions instead of the legislatures of States.

As has been already noted, some specified provisions of the Indian Constitution cannot be amended except with the consent of at least one-half of the legislatures of the autonomous States.

It should not be supposed that ratification of amendments by local authorities is invariably provided for in all federal constitutions. The Constitution of the U.S.S.R. vests the amending power solely in the Central Legislature, which can, therefore, change any provision of the Constitution acting entirely by itself.

(4) Sometimes amendments are required to be submitted to the popular vote. This is known as the constitutional referendum. The constitutional referendum exists in Australia and in as many as forty-six States of the United States. In Australia amendments proposed by the Parliament must be submitted to the electors and become part of the Constitution if approved by a majority of all the voters in the Commonwealth and by a majority of voters in a majority of States. In forty-six States of the United States proposed amendments to the Constitution are compulsorily required to be submitted to the voters for approval.

(5) In at least thirteen States of the United States of America, ordinary voters have the power to initiate proposals for amendment of the constitution by means of a petition. If the petition bears the requisite number of signatures, the proposal is submitted to the electors, without any action by the legislature being necessary, and, if approved by a majority of electors, is considered adopted.

CHAPTER X

FORMS OF GOVERNMENT

The so called Forms of State: Many writers speak of forms of states and classify them as monarchies, aristocracies, democracies and the like. A little reflection will, however, show that this is a classification of governments and not states. The words monarchy, aristocracy, democracy refer to forms of government and not forms of states. Strictly speaking, all states are alike in their essence. The essential constituent elements of a state are population, territory government and sovereignty. So far as these elements are concerned, there is no essential difference between a state with a monarchical form of government and a state with a democratic form of government. Of course, states may be classified according to the size of territory and population as big states, small states and the like but such classification has little value for Political Science.

Professor Garner, in his famous book on Political Science, dwells at length on forms of states but even he admits that classifying states on the basis of forms of government is an unscientific one. Says he: "Modern political science and practice clearly distinguish between the two things (*i.e.*, state and government), and consequently a classification of states on the basis of forms of government rests upon a confusion of the two. Consistency and scientific logic therefore require that such classifications be placed in their proper category and labelled as classification of 'governments' and not of 'states'."

States are sometimes classified according to the degree of their independence as non-sovereign, part-sovereign and sovereign states. But this too is an unscientific classification because the so called non-sovereign, part-sovereign states are not states in the true sense of the term, sovereignty being an essential element of a state.

Classification of Governments: Different writers have given different classifications of forms of government. The basis of classification has varied widely. The same writer has often adopted a two-fold or three-fold criterion of classification. The most common bases of classification have been (1) the number of persons in whom the supreme power is vested and (2) the character of governmental organisation. Thus, on the basis of the number of presons controlling the supreme power, governments have been classified as monarchies, aristocracies and democracies. By applying the second principle, governments have been classified as unitary and federal, cabinent government and presidential government and the like.

Forms of government, however, vary so greatly that no single basis of classification can be regarded as the best or most scientific. What adds to the difficulty of classification is that often similarities of form conceal marked dissimilarities of substance. Theory is sometimes widely at variance with practice. The government of Britain, for instance, is monarchical in form, but in reality is a democratic government in the truest sense of the term. Again, governments are not static but dynamic entities. The governmental forms are undergoing constant change. The classification which may be scientific today may cease to be so fifty years hence.

Aristotle's Classification: One of the oldest classifications of governments is that of Aristotle. (Aristotle, however, did not distinguish between the state and the government). Aristotle's classification is based on two principles. In the first place, he classified governments according to the number of persons who exercised the supreme power. His second basis of classification is the end of the government. By applying the second principle he classified governments as true or normal, and perverted. The normal or the true government is one that pursues the good life, while perverted governments are those which subordinate the public good to the selfish interests of those in authority. Each of these two types, normal and perverted, may take three forms

according to the number of persons in whom the supreme authority is vested. Thus, monarchy, aristocracy and polity are the normal or true forms of government. Each of these forms of governments aims at promoting the public good. In a monarchy the supreme power rests in the hands of a single individual, in an aristocracy it rests in the hands of the few and in a polity it is exercised by the many. Corresponding to each of these forms is a perverted one. When the monarch rules with a view to his selfish interest the government becomes a tyranny. When the supreme power rests in the hands of small class the chief aim of whose rule is the promotion of their private and parochial interests, the government becomes an oligarchy. And democracy is the government of the many ruling with a view to their selfish interests.

Thus according to Aristotle, democracy is a perverted form of government, the corresponding normal type being polity. Polity is government by the many ruling with a view to the promotion of the general welfare. The nearest modern equivalent of the term 'polity' is 'constitutional democracy'. Aristotle's classification of forms of government, it should be noted, rests on a quantitative as well as a qualitative principle —on the number of persons controlling supreme power as well as the end of the government. The following table will clearly explain his two-fold criterion of classification :—

Form of government	*Normal form*	*Perverted form*
Rule of One	Monarchy	Tyranny
Rule of Few	Aristocracy	Oligarchy
Rule of Many	Polity	Democracy

Modern classifications: Jean Bodin, the first modern political philosopher, divides governments into monarchies,

aristocracies and democracies according as the supreme power rests in the hands of a single individual, a minority of citizens or a majority. Hobbes adopts Bodin's classification. Locke classifies governments on the basis of the number of persons who exercise the legislative power. When this power is exercised by the majority, the government is a democracy; when a few individuals exercise this power, the government is an oligarchy, and where a single individual has the power of making laws, the government is a monarchy. Hobbes, however, confuses the government with the state, but Locke is careful enough to distinguish between the two.

Rousseau classifies governments as monarchies, aristocracies and democracies on the basis of the number of men who conduct the government. He classifies aristocracies, again, into three forms—natural, elective and hereditary. According to Rousseau, elective aristocracy is the best of the three forms, while hereditary aristocracy is the worst. He also believes that there may be governments of the mixed type, that is, governments which combine monarchic, aristocratic and democratic elements.

Bluntschli, the German-Swiss writer, who does not, clearly distinguish the government from the state, adopts Aristotle's classification but adds a fourth form, theocracy. Theocracy is a form of government in which the ruler is supposed to interpret the will of God.

Professor Marriott, the noted English writer, adopts a three-fold basis for classifying governments. By applying the test of distribution or concentration of powers, he classifies governments as unitary and federal. In a unitary type of government, the entire governmental power is vested in a single centre. In such a government the local organs like the provincial and district authorities are created by the Central Government. In a federal government, on the other hand, the governmental power is distributed by a constitution between a central government and a number of local

governments. In a federal system, therefore, the local governments do not owe their existence to the will of the central government and are not alterable by the latter. Marriott's second criterion is flexibility or rigidity of constitutions. The constitution is flexible where the ordinary legislature has the power of framing and altering the constitution. It is rigid where it cannot be so made or changed. Marriot's third basis of classification is the relation between the executive and the legislature. The executive may be superior to, co-ordinate with or subordinate to the legislature. If the executive power is superior to the legislature, the government is despotic. Where it is co-ordinate to the legislature, as in the United States, the government is presidential or monarchical in type. If the executive is subordinate to the legislature, the government is cabinet government or responsible government. Britain is an example of cabinet government. The Ministry in Britain is responsible to the lower house of the legislature that is, the House of Commons, which has the power to remove the Ministry from office if it fails to carry out the wishes of the legislature. In the United States, however, where the government is of the presidential type, the Congress has no power to remove the President from office even if he flouts the wishes of the people. The American President enjoys a fixed term. By applying Marriott's criteria, we may say that the government in Britain is unitary, flexible and cabinet government, while the government in the United States is federal, rigid and presidential in type.

Burgess adopts four criteria of classification. In the first place, he classifies governments as primary or representative on the basis of the identity or non-identity of the state with the government. Where the entire body of citizens meet together to frame the laws and regulations, we have government of the primary type. Where the government is carried on by organs exercising delegated authority on behalf of the people, it is a representative government.

Practically all civilised countries today have some form or other of representative government. Burgess's second basis of classification is the nature of official tenure. On this basis he classifies governments as hereditary or elective. But this classification, as has been pointed out by Garner, has little value because there has never been a government in which the governing class as a whole is either hereditary or elective. Burgess's third canon of distinction is the relation of the executive to the legislature. On the basis of this principle, he classifies governments as cabinet and presidential governments. The cabinet government is one in which the executive is responsible to the legislature or one branch of it, as in Britain or France. The presidential government is characterised by an executive that is not responsible to the legislature, as in the United States. The fourth basis of classification adopted by Burgess is the concentration or distribution of governmental power. From this standpoint, governments are classified as unitary and federal. By applying these criteria to the Indian government, we may say that it is a representative, elective, cabinet and federal government.

With Professor Leacock, a fundamental basis of classification is whether the governmental power is derived from the will of the people or not. He thus divides all governments into two basic categories, despotic and democratic. The democratic government is sub-divided into limited monarchy and republic. A limited monarchy is a government which has a personal sovereign as its nominal head, while a republican government is characterised by an elected executive head. Each of these two forms, monarchy and republic, is sub-divided into unitary and federal types which, again, are further sub-divided as parliamentary and non-parliamentary.

Monarchy: Monarchy is the form of government in which the supreme authority rests in the hands of a single individual. Monarchies are usually classified as absolute monarchy and limited monarchy. Where the monarch

enjoys absolute and unlimited authority in laying down the law, in interpreting and executing it, the government is an absolute monarchy. The will of the absolute monarch is law. Absolute monarchy is probably the oldest form of government. It prevailed in most of the early societies. The French government under Louis XIV was an absolute monarchy. Louis XIV is said to have once declared: "I am the state." (l'etat c'est moi). This statement accurately sums up the position of an absolute monarch, because his will is the law of the state. This form of government has become practically extinct. Absolute monarchy is to be found to-day in no civilised country in the world.

Limited monarchy is a form of government in which the authority of the monarch is limited by written or unwritten constitutional law. History affords numerous examples of governments which were formerly absolute monarchies having been gradually transformed into limited monarchies. The pressure of public opinion and popular movements has often compelled monarchs to submit to limitations on their power. Under the pressure of public opinion, monarchs have sometimes granted written constitutions, as in Russia under the Czars. The most notable examples of limited monarchy in the modern world are Britain, Norway and Sweeden. In fact, all the surviving monarchies in the modern world are limited monarchies. And these monarchies are in reality democratic governments because in all of them the monarch has been reduced to the position of a nominal head. The government of Britain, though a limited monarchy in form, is one of the foremost democracies in the modern world.

A monarchy may be hereditary or elective. A hereditary monarchy is one in which the ruler inherits the throne according to a fixed principle of succession. Most monarchies in the past were hereditary monarchies. In an elective monarchy, on the other hand, the monarch is chosen by election. The early Roman kings used to be elected. The system of electing kings also prevailed in Poland. The

emperors of the Holy Roman Empire were chosen by a small electoral college. While the British monarchy is hereditary, it is, in the ultimate analysis, based on the elective principle because Parliament regulates the law of succession at its pleasure.

Merits and Demerits of Monarchy: Let us first deal with the merits and demerits of absolute monarchy. The chief merits of absolute monarchy is simplicity of organisation, singleness of purpose and ability to act quickly. The absolute monarch, being under no obligation to consult others or to obtain anybody's consent before taking decisions, can always act swiftly. And his decisions are usually marked with a singleness of purpose hardly attainable in any other system of government. Hobbes maintained that absolute monarchy is the best form of government. The resolutions of such a monarch, said he, can only be subject to the inconstancy of human nature while those of an assembly are subject to a further inconstancy arising from disagreement between its members. Even Rousseau, a democrat, admitted that absolute monarchy possessed a certain element of strength which was not possessed by any other system of government. In such a government, said he, "all the springs of the machine are in the same hand, all look to the same end." In no other form of government, according to him, "a slight effort produces a greater action."

Absolute monarchy is undoubtedly the best form of government for uncivilised societies or societies in which the political consciousness of the people is in an undeveloped state. For such people lack the capacity to judge public issues intelligently or to participate in the management of public affairs. The fact that this form of government prevailed in all primitive societies shows that this was the most natural system of government for such societies. By maintaining law and order in them and creating conditions for a civilised existence, absolute monarchy contributed

greatly to the development of civilisation and to human progress. Mill was of the opinion that benevolent despotism like that of an Akbar or a Charlemagne is the best possible government for politically undeveloped peoples.

The chief defects of absolute monarchy are the following: First, an absolute monarch is found almost always to subordinate the general interests of the people to his personal and private interests. To satisfy his personal whims and desire for glory, an absolute monarch has often plunged the entire kingdom in untold suffering. Secondly, a system of absolute monarchy is not conducive to the growth of intelligent citizenship because, under such a system, citizens are not allowed freely to participate in the management of public affairs. Absolute monarchy means absolute denial of freedom to the citizens. Under such a system, only one man is free, namely, the monarch; the rest of the population is unfree. Free and harmonious development of human personality can hardly take place in such an atmosphere. Thirdly, absolute monarchy promotes habits of extravagance and ostentation. Fourthly, it begets arrogance and superciliousness towards inferiors, and a cringing and servile spirit towards persons in authority. Fifthly, a system of absolute monarchy in which succession to the throne is governed by the hereditary principle leaves too much to chance. Whether the monarch who is to wield the destinies of millions will be a really capable and good man or not depends, under this system, purely on accident. And the result has often been disastrous. If one analyses the records of history, one cannot but reach the conclusion that the ratio of incompetent, selfish monarchs to really capable and benevolent sovereigns has been more than ten to one. "No race of kings," remarked Jefferson, "has ever presented above one man of common sense in twenty generations."

As Bryce pointed out, Spain, for three centuries following the abdication of Charles V, had no reason to thank any of her kings. And it has been estimated that for

nearly one hundred years France was ruled by kings who had not attained the age of 21 at the time of accession to the throne.

As for limited monarchy, its merits and defects depend largely on the distribution of powers between the monarch and the representatives of the people. In all modern limited monarchies, the monarch is only a nominal head, all real power being exercised by the elected representatives of the people. The monarch in Britain, for example, is little more than a figure-head and a symbol. But the symbol is not without value. The institution of monarchy is deeply loved and cherished by millions of people in that country and this helps to strengthen their bond of loyalty and attachment to the state. It also helps to foster a sense of security among the people. In times of crises the monarch can, by his personal example, exert a great influence on the mind of the common people and thereby act as a powerful instrument for rousing public enthusiasm and strengthening people's determination to combat the crisis. The office of the head of the state, it is believed, should be kept above all partisanship and group rivalry. This can be possible only in a limited monarchy where the succession to the high office is regulated by a fixed hereditary principle. Where the head of the state is elected, the office is bound to be surrounded by ambitions, passions and party rivalry.

Aristocracy: Aristocracy is rule of the few. It is a form of government in which the supreme authority rests in the hands of a few individuals. There may be various kinds of aristocracy—aristocracy of wealth, aristocracy of culture and education, aristocracy of birth. As has been already pointed out, Rousseau classified aristocracies as natural, elective and hereditary. A natural aristocracy is a system in which the government is conducted by persons who are fitted to rule by their natural ability. An elective aristocracy means government by a few leaders chosen by the people, while a hereditary aristocracy is one in which

governmental power is exercised by a small class on the principle of heredity.

The Greeks meant by the term 'aristocracy' government by the best. 'Aristos' is a Greek word meaning the best. Formerly the aristocratic government used to be regarded as the best type of government. Nowadays, however, the word 'aristocracy' is generally used to mean a government by a small class in its own interest. In popular speech, the two words 'oligarchy' and 'aristocracy' have become convertible terms, both being used to describe a government in which the supreme power is controlled by a small class which subordinates the common good to its own group interest. Aristotle, as has been already noted, regarded aristocracy as a normal type of government and oligarchy as a perverted one. By aristocracy Aristotle meant government by the best people in the general interest, while by oligarchy he meant government by the few (usually the wealthy) in their own interests.

Merits and Defects of Aristocracy: One of the chief merits of aristocracy is that it discourages sudden and radical changes in the governmental system, which not unoften cause much dislocation and suffering in the state. Aristocratic governments are almost always conservative governments. These are characterised by a great veneration for past traditions and distrust of rash political experiments. Under a monarchical system of government, the happiness of millions depends on the personal whims of a single individual, while in a democracy policies relating to matters vital to the well-being of the state are often determined by the passions of the multitude. An aristocratic government steers clear of these two extremes and ensures ordered administration and slow evolution through the method of trial and error. Secondly, an aristocratic government attaches great importance to experience and ability in the running of public affairs. Public servants in an aristocratic government are always found to be men of considerable experience and training. In fact, an aristocracy always

creates traditions which help the growth of ability and experience among the members of the ruling class and thereby keeps the state well-supplied with political competence.

While aristocracy as a system of government has undoubted virtues, its defects are by no means negligible. It has been the experience of men through the ages that the ruling class in an aristocracy has almost always conducted government for its own benefit rather than for the benefit of the people. It has always tended to look upon its own good as the good of the state, and has built up a system of special privileges for itself. Thus aristocratic governments have meant privileges for some and exclusion from privileges for the many. Secondly, however efficient an aristocratic government may be, by excluding common people from power it hampers the growth of their personality, and makes them morally stunted. Common people, under such a system, tend to look upon the rulers as born to govern and upon themselves as born to be governed. They slowly lose the power to act and think for themselves. In the third place, the inherent conservatism of aristocratic governments sometimes becomes a great barrier to social progress. "There never was an aristocracy", remarked Laveleye, "more devoted to liberty and more fitted to govern than that of England, yet it opposed every extension of the suffrage and often in legislation it sacrificed the interests of the people to its own privileges." A fourth defect of aristocracy is that it usually produces an arrogant temper of mind among the members of the governing class. Fifthly, aristocracy, because of its love of traditions and conservatism, discourages the development of original personalities who, by striking out new lines of thought and movement, have always made possible new advances in civilisation. Lastly, it is difficult to find a suitable selective test by which those who are best fitted to govern can be sifted out from the rest of the population and placed at the helm of affairs. The tests of birth and wealth are highly unsatisfactory ones. For there

is no inherent connection between birth or wealth and political ability. The poorer classes have often produced men of high political competence, while the great bulk of the wealthy men of any community have, generally speaking, been invariably men of low political calibre. There is also no guarantee that the son of a competent father will always be a competent man. In fact, more often than not, the sons of capable politicians are found to be men of little worth. Thus while there will be much to be said in favour of a government that is really conducted by the best, there has hardly ever been such a government in history. All aristocracies known to history have tended to degenerate into mere aristocracies of wealth or birth and have shown all the defects and weaknesses mentioned above.

All Governments are in a sense Aristocratic: Whatever may be the defects of aristocracy as a form of government, there is no denying the fact that all governments are in a sense aristocratic. This will be clear if one considers the following points.

(1) In the past when the franchise was limited to a small section of the population, political power rested in every country in the hands of small class. All governments in the past were, therefore, aristocratic governments. Even under a monarchical system in the past, the monarch had to depend greatly on a small class of vassals or feudal lords in conducting administration, putting down revolts and in defending his kingdom against foreign attack. This small class of feudal lords thus shared the supreme political power with the monarch and it is their support or opposition which often decided the fate of the monarch himself.

(2) In all modern democracies, the law-making power rests in the hands of a small number of elected representatives of the people. It is this small number of persons, and not the entire body citizens, who frame the laws of the state. And these persons are supposed to be men of competence and best fitted to perform the function of law-making on

behalf of the people. Here is something that is essentially aristocratic in character. A democratic system of government, particularly in states of the modern world with their huge populations, would be unworkable if it did not combine with its democratic features this aristocratic element, namely, the system of law-making by elected representatives of the people, who are supposed to be best fitted for the task. The people of an average modern state are too numerous, and generally too ignorant, properly to perform the function of legislation. Laski has aptly remarked: "A democracy.... must, if it is to work, be an aristocracy by delegation. But the fact of delegation is vital."

(3) It is common experience that in every society there is always a small number of men possessing a very high degree of intelligence and ability, and it is they who ultimately determine the opinions of the people and the policies of governments. As Bryce pointed out, "in all assemblies and groups and organised bodies of men, from a nation down to the committee of a club, directions and decisions rest in the hands of a small percentage, less and less in proportion to the larger size of the body, till in a great population it becomes an infinitesimally small proportion of the whole number. This is and has been true of all forms of government, though in different degrees." Take, for instance, the Indian National Congress. If one studies its history, one will be forced to the conclusion that since its birth the basic policy and programme of this organisation have always been shaped by not more than half a dozen leaders, while during long periods of its history its ideology has been moulded by the convictions of a single individual of supreme ability and vision, like Gandhi or Nehru. The dominant roles played by Lenin and Stalin in the past in moulding the policy and programme of the Communist Party of the Soviet Union are also well-known. The parts played by Mr. M. A. Jinnah in the creation of Pakistan and by Mustafa Kamal in building up modern Turkey are notable examples of the kind of influence which men of extraordinary ability exercise on the

thoughts and activities of common people. And examples of this type, which can be easily multiplied to any extent, prove beyond the shadow of a doubt that the world is really governed by a handful of persons. All governments, whatever be their form, are controlled by this microscopic minority, and are, therefore, partly aristocratic.

Democracy: Democracy has been variously defined as the rule of the many, rule of the majority, rule of the people. The word is derived from the Greek word 'demos' which means the people. The literal meaning of the word democracy is, therefore, rule of the people. Bryce says that "the word democracy has been used ever since the time of Herodotus to denote that form of government in which the ruling power of a state is largely vested, not in any particular class or classes, but in the members of the community as a whole." According to Abraham Lincoln, democracy is government of the people, for the people, and by the people. Democracy is of two types—(1) direct or pure democracy and (2) indirect or representative democracy.

Direct Democracy: In a pure or direct democracy, the will of the state is directly expressed and formulated through the people. In many of the ancient city states of Greece and Rome the whole body of citizens used to meet together to discuss the affairs of the state and to make laws. These states were direct democracies. But this system of government is practicable only in small states. In practically all modern states, the population is too big for the citizens to participate directly in the work of deliberation or legislation. It is important to remember that in the city states of Greece, the citizens often constituted a minority in the total population, the majority being slaves who did not possess the rights of citizenship. Thus these states were direct democracies only in relation to the citizens. Considered in relation to the total population, they were aristocracies.

The only surviving examples of direct democracy in the modern world are some of the cantons in Switzerland and a

few local bodies in one or two states. In a few of the smaller cantons of Switzerland, the entire body of adult male citizens meet together, generally once in a year, in a sort of "open-air-parliament" (Landesgemeinde) to elect officers, to vote taxes and to adopt regulations. In some of the smaller parishes of England, the parish meeting exercises some powers relating to the management of parish property and sanitation. This is the only example of direct democracy in modern England.

The states in which the referendum and the initiative exist may be said to possess a modified form of direct democracy. These are devices which enable the voters directly to participate in the work of law-making. These will be discussed in a later chapter. The system of referendum exists in Australia, most of the states in the United States and in Switzerland. The initiative exists in some of the American states and also in Switzerland.

Representative or Indirect Democracy: Representative democracy is one in which the will of the state is formulated or expressed, not directly by the people themselves, but indirectly by their chosen representatives. Practically all modern democracies are of this type. The citizens in modern states are too numerous directly to participate in law-making or in deliberating on public affairs. They, therefore, elect their representatives who exercise the function of law-making and conduct the administration on their behalf. The representative principle appears to have originated in mediaeval England, but representative government in the proper sense of the term existed nowhere in the world till the middle of the nineteenth century. It might be supposed that a government cannot be called a representative government unless all its branches, executive, legislative and judicial, are conducted by elected representatives of the people. There is, however, not a single government in the world which is representative in this sense. The phrase 'representative government,' as it is generally understood

nowadays, means a government in which the legislative branch at least is popularly elected.

Merits and Defects of Democracy: The strength and weakness of democracy and various other related topics will be discussed in the next chapter.

Classification as Monarchy, Aristocracy and Democracy Unscientific: The classification of governments as monarchies, aristocracies and democracies has become inadequate and unscientific for modern governments. For, in the first place, absolute monarchy has disappeared from the civilised world. Secondly, the limited monarchies of the modern world are really democracies. And aristocracies in the old sense do not exist today anywhere, while an aristocratic element is found in all forms of government. It is also easy to see that if one strictly applied this classification to modern governments, Britain will be bracketed with the Russia of the Czars, although Britain is in reality a democracy while Czarist Russia was an absolute monarchy. This classification will also put Britain and United States or France and Norway in two separate classes although all of them, in spite of external dissimilarities, are democracies.

No single basis of classification, as has been already made clear, can be an adequate and satisfactory one for modern governments. But there is no doubt that classifications such as unitary and federal, parliamentary and presidential, democratic and dictatorial are far more satisfactory ones in modern times than the old classification of monarchies, aristocracies and democracies.

Cabinet and Presidential Governments: The system of government known as cabinet government is one in which the real executive is responsible to the legislature or one branch of it for its acts and policies. (This system is also known as 'parliamentary government' or 'responsible government'.) Examples of cabinet government are Britain, India, France, Canada, and many other countries besides them. In presidential government, on the other hand, the real executive

is not responsible to the legislature and is not removable from office by it. The most notable example of presidential government is the United States.

In Britain, where the cabinet system prevails, the cabinet which is the real executive is responsible to the House of Commons, the lower House of Parliament. The Constitution of India also makes the Council of Ministers of the Government of India responsible to the lower House of the Indian Parliament which is known as the House of the People. On any clear indication—such as a vote of censure or defect of an important measure—that the cabinet (in Britain) has lost the confidence of the House of Commons, the cabinet either resigns or dissolves the House and appeals to the country (that is, orders new elections). If the elections return the cabinet to power once again, it continues in office. If the cabinet is defeated in the elections, it resigns before the new Parliament assembles for its first session. The position is the same in India. If the House of the People clearly expresses its want of confidence in the Council of Ministers, it must either resign or dissolve the House and order fresh elections. Thereafter it must abide by the verdict of the voters.

In the United States, where the presidential system obtains, the President is not responsible to Congress, nor are his ministers. The President's term of office is fixed by law and even if he forfeits the confidence of Congress, he cannot be removed from office by the latter by a vote of 'no-confidence' or the turning down of his proposals. Congress can, however, remove a President from power by impeachment. Under the Constitution of the United States, the President and his ministers can be impeached for "treason, bribery or other high crimes and misdemeanours." But this drastic method of removal from office is not resorted to except in very extraordinary circumstances. Only one among the American Presidents has been impeached so far, and even in that case the impeachment did not result in conviction.

The power of dissolution is a fundamental feature of cabinet government. Wherever the system of cabinet government prevails, the cabinet or the ministry enjoys the power of dissolving the legislature or the popular branch of it and to order fresh elections. Often, this power is exercised by the cabinet when the legislature expresses its want of confidence in it. The cabinet in Britain has the power to bring about the dissolution of Parliament. In India, the Council of Ministers can dissolve the House of the People. (It cannot dissolve the Council of States, the upper House of Parliament, which is a permanent House.) The Constitution of India, of course, formally vests the power in the President, but the President is to exercise this power on the advice of the Council of Ministers. In Britain also, this power is formally vested in the sovereign but is exercised on the Cabinet's advice. In France, the power of dissolution is subject to so many conditions that it is difficult to exercise it and is seldom exercised. The power of dissolution is a method of resolving conflicts between the executive and the legislature by appealing to voters. By giving people the opportunity frequently to express their will on important issues, it ensures close correspondence between the will of the people and the will of the legislature. The power of dissolution is incompatible with the fundamental principle of the presidential system of government. An executive that is not responsible to the legislature cannot be, obviously, given the power to dissolve it. This power does not, therefore, exist in the United States; Congress cannot be dissolved before the expiration of its term which is fixed by law.

The Merits and Demerits of the Cabinet and the Presidential Systems of Government: The cabinet system of government is characterised by interlocking of the executive and the legislature. In other words, in the cabinet system, the executive and the legislature are inextricably linked with each other. The cabinet usually consists of the leaders of the party which commands a majority in the legislature. Sometimes the cabinet is chosen from a group

of parties commanding such majority, when it is called a coalition cabinet. The cabinet members function as the heads of the administrative departments and collectively the cabinet formulates the policies of the government, frames almost all important legislations and with the help of its majority in the legislature gets them passed. The cabinet also frames the budget and gets it passed by the legislature. It is responsible to the legislature for the proper functioning of the administrative machinery. The cabinet thus links together the executive and the legislative branches of the government. And one of the chief merits of this system is that it enables the government to act as a directing force in the legislature and to get enacted laws which are necessitated by the requirements of administration. Under a presidential system, on the other hand, there is no such directing force in the legislature and there is no guarantee that laws recommended by the executive will be passed by the legislature. In the United States, it often happens that the party to which the President belongs is a minority in Congress. Moreover, the executive in the United States cannot directly introduce any measure in Congress; strictly speaking, there is no such thing as an official Bill in the United States. When the Administration wants to get any law passed by the Congress, it requests some friendly party member in Congress to introduce a Bill on the desired lines. And there can be no certainty, as can be under the cabinet system, that the Bill will be passed by the legislature or that, if it is passed, it will be passed in the form desired by the Administration.

Secondly, the cabinet system ensures that the government is formed only by men of outstanding ability. The ministers in a cabinet government are almost invariably leaders of the majority party, and men without ability can never rise to the position of leadership. Particularly, men of inferior intelligence and ability can never hope to rise to the office of the Prime Minister, because it is only the acknowledged leader of the party in power who is chosen for this high office. The cabinet ministers in Britain are

usually party leaders. In forming his cabinet, the Prime Minister in Britain cannot leave out oustanding party members who have been elected to Parliament because he has to depend constantly on the support of all sections of the party members in order to carry through the official measures. In the United States, the ministers are only servants of the President who appoints or dismisses them at will. The ministers are also debarred from being members of Congress. Under such a system, there is hardly any guarantee that only men of proved ability will be called to the offices of departmental heads.

Thirdly, under the cabinet system, the members of the legislature can maintain a continuous supervision over governmental affairs through questions, interpellations and the like and the ministers have to be constantly on the alert to meet criticisms of the legislature. The ministers, under this system, are almost always members of the legislature and have to take their seats in the legislature along with other members. They have, therefore, constantly to face questions and criticisms, which helps to keep the government always on the right track. In the United States, the ministers cannot be members of the legislature (the Congress), and have no right to speak on the floor of either House of Congress. They may be, of course, called upon by Congressional committees to give evidence before them in connection with any proposed measure. But they do not have to face a continuous barrage of questions and criticism, such as the ministers in a cabinet government are subjected to. It may be noted in passing that in Britain a minister cannot address a chamber of which he is not a member. The Constitution of India, however, gives the ministers the right to address both chambers of Parliament.

Fourthly, under the cabinet system, the legislature can not only maintain a constant supervision over the executive departments, it can also turn the ministry out of office if it refuses to carry out the wishes of the legislature or adopts

policies not approved by the majority of the elected representatives. Under a presidential system, on the other hand, the executive is not responsible to the legislature and cannot be turned out before the expiration of its term, however unpopular may be the policies pursued by it. This is a great defect of the presidential system.

Fifthly, cabinet government is party government, one party being in power and another in opposition. There is constant tussle between the government and the opposition in the legislature and also outside it. This has a very great educative value. Each party has to maintain constant alertness to defend itself against the attacks of the other. It has to prepare its case with great care and to make its arguments as convincing as possible.

Among the chief defects of the cabinet system is that it intensifies party spirit and causes much wastage of time and energy. In the legislature, the opposition often opposes merely for the sake of giving opposition. It, speaking generally, opposes both good and bad measures. It attacks and criticises the Government even when there is very little reason for doing so. It develops a peculiar habit of mind which makes it react negatively to most of the measures sponsored by the government and policies adopted by it, irrespective of whether they are good or bad. As a result, an incessant battle goes on throughout the country in press and on platform, not to speak of the legislature, much of which is unnecessary and causes an avoidable wastage of national energy. In the second place, the cabinet system not unoften reduces the legislature merely to an organ of registration of decisions made by the cabinet. The cabinet frames all important measures and with the help of the majority it commands in the legislature, gets them enacted into law exactly in the form it desires. The party system enables the cabinet to turn legislation into an automatic process, so that it is the cabinet that becomes the real legislature and the legislature becomes a mere rubber-stamp.

In short the Cabinet system often gives rise to what may be called Cabinet dictatorship. Referring to the dominant position the Cabinet occupies in the constitutional system of Britain, Lowell remarks that "to say that at present the cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration."

It must be admitted, however, that with the growing complexity of life, it is becoming increasingly difficult for big legislative bodies properly to perform the function of legislation without expert guidance. As for the drafting of laws dealing with complex economic or other issues, it cannot certainly be done by an assembly of several hundred persons, such as the House of Commons in Britain or the House of the People in India.

Thirdly, in a country where there are a large number of political parties, the cabinet system of government makes for political instability. In France, for instance, where a multiplicity of parties function in the political field, the cabinets are necessarily coalition cabinets and are usually very short-lived. The life of a cabinet in France often depends on the whims of a small party which can bring about its fall at any moment by refusing to support it because the cabinet's proposals on a particular issue has not been to its liking. The French cabinets, as a result, "rise and fall with distressing rapidity and the conduct of the government is characterised by instability and lack of continuity of policy."

As for the presidential system, some of its defects have been already noted. It has been pointed out that, under this system, the legislature has no power to remove an executive from office before the expiration of its term even if it flouts the will of the people. Secondly, the system is characterised by lack of any guiding and directing force in the legislature. It is difficult for a presidential executive to have laws passed according to its requirements. The President or his cabinet in the United States has no power to initiate any legislation directly. Thirdly, deadlocks frequently arise between the

executive and the legislature under this system. The great defect of this system is that it is based on the theory of separation of powers, that is, on the theory that the executive, legislative and judicial branches of government must be kept separate and independent of one another. The functions of legislation and execution are, however, naturally inter-related and to place them in independent hands, as is done under a presidential system, means to make it difficult for a government to function smoothly. In the United States, the executive and the legislature are often at odds with one another, which greatly hampers smooth functioning of the governmental machinery. Separation of the executive and legislative powers has also resulted there in a deplorable division of governmental responsiblity. When things go wrong, both the executive and the legislature try to shift the blame on each other's shoulders, the executive charging the legislature with failure to pass laws necessitated by the situation, and the later accusing the former of negligence in the performance of its administrative functions.

One great merit of the presidential system, however, is that it can function with great efficiency in times of crises. A crisis such as a war or economic depression calls for concentration of powers in a few hands. And in such a situation, the executive head of a presidential government can function like a dictator. During the two World Wars, President Wilson and President Roosevelt wielded almost dictatorial powers. In a cabinet system, a ministry has to constantly think of the possible reactions of the legislature to policies it intends to adopt and even in an emergency the possibility of its removal from office by the legislature for adoption of policies not approved by the latter is always there. This is why even in a situation of crisis, a ministry, under the cabinet system, is cautious about adopting policies which may mean an unusual departure from tradition. But the executive head of a presidential government, such as the American President, does not have to face this difficulty. To meet a crisis he can immediately adopt whatever measures

are called for by the situation without bothering much about the possible reactions of the legislature to such policies. He can quickly take decisions of far-reaching importance and thereby arrest deterioration of a situation that has become already bad. Since, in times of difficulty, the entire nation looks to him for leadership, usually the legislature too complies with his demands in such times with the result that he becomes a virtual dictator and can gear the entire state machinery to one single objective of tiding over the crisis.

For reasons already noted, a cabinet government can hardly function with the desired degree of efficiency in situations of emergency. But as was shown during the two World Wars, the cabinet system is possessed of sufficient flexibility to enable it to adapt itself to the exigencies of critical situations. In Britain, during the two World Wars, the existing cabinets were replaced by "war cabinets" of very small size and the entire conduct of the war was placed in the hands of these small groups. In fact, a 'war cabinet' in Britain exercises dictatorial powers during the period of the crisis. Gilchrist has justly remarked that "it is always possible for Cabinet governments to take dictatorial powers to themselves in times of crisis. When they are given such powers by the legislature, they are in a stronger position than presidential governments, because they are confident that the legislature is behind them."

Unitary and Federal Governments: In a unitary system of government, the entire governmental power is vested in a single central organ or organs. The local organs of authority, under this system, derive their powers from the central authority which creates such organs or alters them at will. Where, on the other hand, the governmental power is distributed by a constitution between a central authority and a number of local organs, we have a federal system of government. The main difference between the two is that whereas, under the unitary system, the local organs owe their existence to the central authority, in a federal system the local organs derive their powers and existence from the

constitution and are not dependent on the will of the centre for such powers or for their existence. In other words, in a federal system, there is a constitutional division of powers between the central and local organs and they cannot encroach on each other's sphere of jurisdiction. In a unitary system, on the other hand, there is no such constitutional division of powers and the central authority enjoys the power to create, alter or abolish the local organs. Among the notable examples of the unitary system of government are Britain and France, while examples of the federal system are United States, Australia, India and Canada.

The federal system of government will be studied more fully in a subsequent chapter.

Republican Government: Formerly the term republic meant a government of any kind which did not possess a hereditary king. But, nowadays, a republican government means two things, namely, (1) that it has no hereditary king and (2) that the government is conducted by the elected representatives of the people or that it is a democratic government. In short, a republican government nowadays means a democratic government with an elective head. Government by an elected dictator would not in these days be called a republican government, although formerly the term was freely applied to such governments. Nor will the term be applied now to a democratic government with a hereditary head. The government of Britain which has a hereditary monarch as its titular head cannot, therefore, be placed in the category of republican governments, although it is a democratic government in the truest sense of the term. A government such as that of Britain is usuallly termed nowadays a constitutional monarchy. Notable examples of the republican form of government are United States, India, and France.

Even now the word republic is, however, used sometimes in the narrower sense of a government without a hereditary king. Thus the preamble to the Constitution of

India declares that India is a "Sovereign Democratic Republic." The use here of the term 'democratic' as an adjective of 'republic' makes it clear that the latter word has been used in the narrower sense.

"What does" says Munro, "the average American understand by a republican form of government? The essentials, as he understands them, are a chief executive chosen by the people, either dirctly or through their representatives, and an elective law-making body. Most Americans do not look upon any government as republican in form unless the people elect and control both branches of it, executive and legislative. Where the legislature is composed of two branches, moreover, the popular control must extend to both branches. An hereditary chamber, even though it be secondary to the elective branch of the national legislature, is regarded by Americans as un-republican."

Dictatorship: Dictatorship is a form of government in which the entire power of the state is concentrated in the hands of a single individual—the dictator. The dictator is the source of all law. Everyone else in the state is subject to his will and authority.

Formerly persons who succeeded in gaining control of the armed forces would assume dictatorial powers. Dictators in the past were almost invariably military leaders like Napoleon or Cromwell. A modern dictator is the leader of a party that has seized the state machinery and suppressed all rival political organisations. Thus whereas old-time dictators based their rule mainly on the allegiance of the armed forces, a modern dictator bases his authority mainly on the loyalty of a political organisation. Hitler used the Nazi party, of which he was the supreme leader, to build up his dictatorship in Germany. Mussolini based his dictatorial rule on his leadership of the Fascist party. Stalin who was the supreme leader of the Communist Party of the Soviet Union also used to be regarded by many as a dictator like Hitler or Mussolini. Modern dictatorships are totalitarian systems,

that is, systems characterised by complete subordination of every aspect of life to state authority.

Dictatorship, it is easy to see, is the very antithesis of democracy. It is complete negation of democracy. Whereas democracy is the rule of the people, dictatorship is the rule of one man. In a dictatorship the people have no voice in the political affairs of the state and are assigned the passive role of carrying out the orders of the dictator. Under such a system, proper development of the human personality is almost an impossibilty.

The word dictatorship is sometimes used to denote the exclusive domination of a single class. Thus Marxists speak of dictatorship of the proletariat. The Marxian doctrine of proletarian dictatorship will be examined later.

Bureaucratic Government: By bureaucratic government is meant government by bureaux or administrative departments. A government is called a bureaucracy when its policies are determined by the administrative departments or the heads of such departments. The government of India under the British rule was largely a bureaucratic system of government, for the I. C. S. officials who headed the departments were the real policy-makers in that government and it is they who controlled the entire governmental machinery. Even now when India has become free and the state policies are supposed to be determined by the elected representatives of the people, the heads of administrative departments have a large hand in the shaping of those policies. Ministers, who are in most cases men without administrative experience, have to depend greatly on the advice and assistance of the experienced permanent officials in formulating their policies. This enables the officials to exert a very great influence on those policies. Moreover, when a policy has been decided upon, it is in the hands of the permanent officials that its execution lies. And how a policy affects the life of the people depends greatly on how

it is actually carried out. Often good policies fail to lead to the desired result because of faulty or inefficient execution.

"In a wider sense", says Garner, "it (bureaucratic government) means any government the administrative functionaries of which are professionally trained for public service, and who generally enjoy permanency of tenure, promotion within the service being partly by seniority and partly by merit."

But whether the term is taken in the strict sense or in the wider sense, it must be admitted that all governments are partly bureaucratic. For everywhere permanent officials have a large share, direct or indirect, in the formulation of policies. And professional training for public service, whether in a large or small measure, is an essential feature of every governmental system in the world.

Among the chief merits of bureaucratic government is that it discourages rash experimentation in the conduct of public affairs, for the mind of the permanent officialdom is always characterised by a deep love of tradition and it is always distrustful of sudden innovations. In a bureaucracy, great emphasis is laid on training and experience, and it goes without saying that administraton of public affairs ought to be placed in trained and experienced hands.

The defects of bureaucracy, however, outweigh its merits. A bureaucratic government is characterised by excessive formalism or redtapism. A bureaucratic machinery moves at an extremely slow speed. Files and petitions often travel for months, and even years, from department to department and through various administrative strata before a final decision is taken thereon. Even in cases requiring urgent action the bureaucratic machinery moves at its usual, leisurely pace with the result that sometimes, when a decision is taken at last, it becomes too late for effective action. Bureaucratic systems tend to make a fetish of routine and to underrate fundamental principles of government. "The disease", said Mill, "which afflicts bureau-

cratic governments and of which they die is routine. They perish by the mutability of their maxims and still more by the universal law that whatever becomes a routine loses its vital principle."

Theocracy: Strictly speaking, a theocratic government is an absolute monarchy in which the ruler is supposed to be the direct interpreter or instrument of the will of God. In the past, the Jews looked upon their king as the instrument of God; the government of their state was, therefore, a theocracy. In the modern world, however, there are few states in which the monarch is looked upon as an instrument of God. Nowadays, the word theocracy is often used indiscriminately to characterise any state in whose public affairs religion plays an important part. The Mahomedan States of the Middle East are thus referred to as theocracies because their laws are based on the Koran. Pakistan is also called a theocracy because it was created to satisfy the demand for self-determination of a religious minority in undivided India and because its constitution, according to its leaders, is to be based on the principles of Islam.

Ideocracy, Gerontocracy, Plutocracy, Ochlocracy, Aurocracy', 'Pigmentocracy', 'Pedantocracy': According to Plato, the perfect state is one that is governed by perfect knowledge or reason. Such a state does not, of course, exist on earth. It exists, so to say, in the realm of ideas. It is, in other words, an ideal which constitutes a standard by which the actual, historical states are to be judged. This ideal state, governed by the sovereign idea or reason is termed by some writers as Ideocracy. Plato appears to think of Ideocracy sometimes as the rule of an all-wise individual and sometimes as the rule of a few extraordinarily developed personalities.

Gerontocracy means government by old men. This form of government exists among some of the primitive tribes of Australia who exclude young men (as well as

women) from political activity, public affairs being entirely controlled and conducted by the tribal elders. Gerontocracy is really an aristocracy of elders or aged men. The term gerontocracy is sometimes used in denunciation to characterise any government which is dominated by aged persons.

Plutocracy is rule of the wealthy. It means, in other words, aristocracy of wealth. The word is nowadays used in a bad sense, being employed to mean rule by the vested interests or a few extremely rich individuals in their own interests. The governments in all capitalist countries are to some extent plutocratic.

Ochlocracy means mob-rule. Ochlocracy is thus a perverted form of democracy. Where public policies are shaped by the passions of the multitude or by demagogues pandering to the lust and prejudices of the masses, the government is said to be an ochlocracy. Some of the critics of democracy assert that this form of government is nothing but mob-rule; to them both the words, democracy and ochlocracy, mean the same thing.

'Aurocracy' means rule of gold, that is, rule by the wealthy. Thus 'aurocracy' and plutocracy are convertible terms.

The word 'pigmentocracy' is a term of derision, which is sometimes used to mean domination by the white races over the coloured ones. (The colouring matter of the skin is called pigment.) Thus the present government in South Africa, a country in which a small minority of white men dominates over a vast majority of coloured population, is sometimes referred to as a 'pigmentocracy.' As a matter of fact, this form of government prevails over by far the greater part of the African continent.

By 'pedantocracy' is meant government by functionaries who show a pedantic adherence to certain fixed rules or maxims in running the administration. A bureaucracy is sometimes characterised as a 'pedantocracy.'

Succession of forms of Government: Early writers believed that changes in the forms of government took place in a certain natural order of succession. Political development in all states, they belived, must follow this fixed line of evolution. According to Plato, the order of succession was as follows: first, ideocracy or rule of reason; ideocracy is succeeded by timocracy or rule of the military, which in its turn is replaced by oligarchy or rule of the wealthy; oligarchy is followed by democracy; and democracy degenerates into tyranny. According to Aristotle, the course of political evolution started from monarchy. Monarchy is followed by aristocracy, which passes gradually into oligarchy. The latter in course of time degenerates into tyranny and the next stage of political development is democracy. Later writers like Polybius and Machiavelli also believed in a similar fixed order of succession of political forms. According to Schleiermacher, the noted German writer, the order of development was: first democracy, second aristocracy and finally monarchy. This order, it will be seen, is the reverse of that of Aristotle. Bluntschli maintained that the course of political development started from theocracy which passes into monarchy. The latter is succeeded by aristocracy which is in course of time replaced by democracy.

Modern writers, however, do not believe in this theory of succession of governmental forms. Experience has proved conclusively that there is no fixed law governing the succession of forms of government. Monarchies are sometimes seen to be replaced by democracies, instead of aristocracies. And sometimes aristocracies are found to be succeeded by monarchies, instead of democracies, and so on. In the modern world monarchies have in most cases been replaced by democratic forms of government, thereby disproving the theory of Aristotle, as well as that of Bluntschli, regarding the course of political evolution of mankind.

There is, however, one tendency in the political affairs of mankind which partakes of the character of natural laws. Everywhere, politics seem to swing, like a pendulum, from one extreme to another. Radicalism and conservatism, democracy and dictatorship, militarism and pacifism, seem to follow each other with almost cyclic regularity, just as day follows night and summer alternates with winter. The roots of this striking phenomenon probably lie more in the hunman mind than in the external reality. Political scientists have not yet succeeded in fully explaining this phenomenon, this pendulous oscillation of things in the realm of government.

CHAPTER XI

DEMOCRACY

Democracy—A Many-Headed Concept: Democracy is a many-headed concept. We have already briefly dealt with democracy as a form of government. But democracy has been conceived not only as a form of government but also as a form of society and as an ethical ideal. Writers often speak of economic or industrial democracy and social democracy, and discuss their relation with political democracy. Thus the word 'democracy' is used in various senses and to describe various things. But why is the word used to denote a number of different concepts ? Because underlying all these concepts is one fundamental idea, the idea of equality of all human beings and the right of every individual to be treated equally regardless of colour, creed or caste. The ideals of political democracy, economic democracy and social democracy are all based on recognition of the dignity of human personality and of the right of every individual to have freedom to realise the best in him. These ideals are but different aspects of one fundamental ideal, and it is difficult to attain any one of them while ignoring the others. In other words, these ideals are integrally interrelated and inseparable from one another. True political democracy cannot exist where there is no economic or social democracy ; a society divided into the rich and the poor and into various social classes, higher and lower, can never establish political democracy in the true sense of the term. Nor can a society in which there is no political democracy establish economic democracy in the true sense. Complete social equality is, again, unattainable except in a society in which people enjoy the right of voting and at least a substantial measure of economic equality.

The various concepts denoted by the term democracy are being discussed here under the following headings: (1)

democracy as a form of government, (2) democracy as a way of life and (3) economic democracy.

Democracy as a Form of Government: As has been already noted, democracy as a form of government means rule of the people. It is a system of government in which all adult citizens have the right to participate, directly or indirectly, in the conduct of public affairs. Modern democracies are indirect or representative. It is the elected representatives of the people who carry on the work of government in a modern democracy, the people retaining an ultimate control over them. A modern democracy is, speaking generally, characterised by the following features: universal adult franchise, an elective legislature, civil liberties and multiplicity of political parties. Britain, United States, France and India, for instance, which are all democracies, have all these features in common.

Since democracy means rule of the people, it necessarily implies freedom of expression. The people cannot exercise control over the state machinery unless they are free to express their will. Freedom of expression, again, can be effective only if there is freedom of assembly and association. Isolated individuals cannot effectively make their voice felt at the seat of power. Freedom of assembly and organisation is thus integral to democracy.

Freedom of expression also implies the right to education. Without a certain measure of education, intelligent understanding of political affairs is hardly possible. And without such understanding of the problems involved, no intelligent opinion can be either formed or expressed. Democracy can be real only if the state provides for all citizens a system of education which properly equips them for the performance of their civic duties.

Popular government also presupposes the right to vote freely, the right to represent and the right to hold public office. To ensure free voting there must be a system of secret ballot.

Personal freedom and equality before the law are also essential to democracy. A man cannot freely participate in political activities nor give free expression to his views unless he is protected by the state from violence, and against unfair discrimination by authorities who enforce the laws.

As has been explained in a previous chapter, the right to vote and freedom of expression become illusory unless the people are guaranteed the right to work, the right to an adequate wage and the right to leisure.

No government, therefore, can be called truly democratic which does not guarantee the following rights: Freedom of speech and expression, freedom of assembly and association, personal freedom, freedom of conscience, equality before the law, the right to vote by secret ballot, the right to represent, the right to hold public office ,the right to work, the right to an adequate wage and the right to leisure.

Freedom of speech and expression is, however, the most fundamental of all these rights. It is the very life-breath of democracy. It is the cornerstone of popular government. Where this freedom exists, all other rights are sure to come sooner or later. Freedom of speech and expression means that every citizen in the state whether he belongs to the majority or the minority is free to express his views. It is quite possible that the views of a minority may one day be proved to be scientific and come to be accepted by the majority. A true democracy is, therefore, characterised by toleration of views and the right of minorities to convert the majority. This is what fundamentally distinguishes democracy from distatorship. In a distatorship, there is no freedom of expression in the true sense, and all views which differ from those of the holders of power are suppressed. While criticism is the very soul of democracy, distatorship bases itself on the suppression of criticism. To criticise the dictator means to invite ruthless repression and, ultimately, liquidation.

Democracy as a Way of Life: Democracy as a way of life is based on faith in the principle of equality of all men and recognition of the dignity of human personality. The democratic way of life is characterised by toleration, mutual respect and fraternity. People who have adopted the democratic way of life will not be intolerant of any views, nor try to suppress the views of a minority by force. They will try to arrive at a decision through free discussion and criticism of all points of view. They will be mutually respectful and helpful. They will not raise any artificial barriers of distinction between human beings. They will not allow the existence of special privilege or economic inequality in their society. They will recognise everybody's right to freedom of conscience and religion. Political changes in such a society will be always effected through the method of discussion, compromise, trial and error rather than through violence or subversion. A democratic society will try to make available to every citizen freedom and opportunity to grow according to the law of his being, and to be himself at his best.

Slavery and imperialism are incompatible with the democratic way of life. Both slavery and imperialism imply forcible subordination of one group of human beings by another and are thus based on the denial of the basic principle of democracy, namely, equality of all human beings. It is also a lesson of history that imperialism abroad destroys liberty at home. A state which holds in subjection a foreign people by force cannot hope to build up a democratic society for itself. People in such a state are sure to be divided into privileged and underprivileged classes.

Finally, war and militarism are antagonistic to the democratic way of life. Both of these phenomena are rooted in force, in the law of the jungle, and are antithetical to the spirit of democracy which believes in the dignity of the individual and sacredness of human life. War is destructive of liberty. A country involved in war can hardly tolerate criticism. In war-time every government is compelled to

impose drastic restrictions on vital civil liberties like freedom of expression, freedom of movement, freedom of assembly and personal freedom. War brings death and destruction to millions of homes and leaves behind it untold suffering. The weapons of destruction have been so greatly perfected by modern science that an outbreak of war means now-a-days destruction of the right to live of hundreds of thousands.

The question may be asked whether a democartic way of life can exist under an undemocratic form of government. Historical evidence shows that it is possible to attain the democratic ideal to some extent in social life even under a monarchial system of government. Ancient India, for instance, achieved considerable success in basing her social life on the democratic ideal in spite of the fact that government in those days was mostly monachial in form. She was able to do this because her religion preached the divinity of man. It taught that man is but a manifestation of the Spirit, the ultimate Reality. It called upon people to look upon every human being as God Himself. Such a conception of human life could not fail to promote a democratic spirit and a democratic way of life among the ancient Indians. In later ages when the caste system degenerated into rigid social divisions, the old democartic spirit largely evaporated from Indian life. But even in these ages, life in India was marked by a spirit of tolerance and freedom of thought unknown in the countries of the west. The existence side by side of various religions and religious sects none of which tried to impose its views on others was itself a conclusive evidence that India believed in the democratic way of life, the principle of 'live and let live'.

Nevertheless, the fact remains that democracy as a way of life cannot be attained fully except under a democratic form of government. For only under such a government can the individual hope to have all those rights guaranteed which are essential to the full development of his personality.

Only such a government can rouse in the masses full consciousness of their own dignity as human beings.

Economic Democracy: Economic democracy means essentially two things. In the first place, it implies that the state guarantees to every individual freedom from want. This roughly means that every able-bodied citizen is guaranteed the right to work and the right to an adequate wage, and is insured against the natural hazards of sickness and old age, as well as against accidents. "The obvious corollary of the right to an adequate wage is the right to reasonable hours of labour," says Laski. In other words, every citizen must be ensured sufficient leisure to enable him to pursue cultural interests and to develop himself. "The right to an adequate wage does not imply" says Laski, "equality of income; but it does, it may be urged, imply that there must be sufficiency for all before there is superfluity for some." The primary needs of every individual must be met before society allows the satisfaction of less urgent needs of some. Every person in short, must be ensured the minimum food, cloth and shelter without which a healthy decent existence is not possible, before some people are allowed to live in luxury.

Secondly, economic democracy means democracy in the sphere of production. This means that the workers have a share in the making of those decisions concerning production which vitally affect them. Under a capitalist system, speaking generally, all decisions relating to production of goods and productive processes rest in the hands of a microscopic number of persons who are the proprietors, managers or directors of industrial concerns. But this system condemns the workers virtually to the position of slaves who have no voice in making decisions which vitally affect their interests. How unjust and undemocratic this system is becomes clear if one reflects that the decisions taken by a few industrialists regarding a change in the technique of porduction may throw thousands of workers out of employment. Workers can never be free in the true

sense of the term unless industrial government is placed on a democratic basis, that is, unless workers are given a share in the control of industries.

As has been explained in a previous chapter, political rights can never be real unless the citizens enjoy a substantial measure of economic freedom. Political democracy becomes meaningless where it is not accompanied by economic democracy.

Democracy, Ancient and Modern: Democracy was widely prevalent in ancient Greece. Many of the Greek city states used to be governed by assemblies of citizens. The most notable among these cities is Athens where democracy attained a high development. Athenian democracy reached the height of glory in the age of Pericles (fifth century, B.C.). Democracy also existed in ancient Rome for a long time. The democratic form of government was fairly widespread in ancient India. The Vedic King functioned under the control of a Sabha and a Samiti. The **Arthashastra** of Kautilya mentions a number of kingdoms as democracies such as those of Kurus and Panchalas, Madrakas and Lichchavikas.

Democracy as it prevailed in ancient times was, however, fundamentally different in character from modern democracy. The main differences between ancient democracy and modern democracy are the following:

Firstly, democracy in ancient times was direct, whereas modern democracy is indirect or representative. Direct democracy was made possible in ancient times by the small size of the states. Such democracy is unthinkable in modern states with their vast size and populations.

Secondly, practically no division existed between the executive and legislative branches of government in ancient democracies. Both were in the hands of the whole body of citizens. In modern democracies, however, there is at least some measure of separation between the executive and legislative branches.

Thirdly, while modern democracies have the party system as one of their basic features, there was no party organisation in the ancient democracies.

Fourthly, a fundamental difference between ancient and modern democracy is that in the former a large section of the population was excluded from citizenship. In ancient Greek democracies slaves constituted a very large percentage of the population. And slaves did not possess the rights of citizenship. In Athens, the number of slaves was double that of citizens, being one hundred thousand and fifty thousand respectively. In fact, the ancients believed that no democratic government could be successful unless it was based on the institution of slavery. The citizens could not hope to have sufficient leisure to devote themselves to the management of public affairs if they had to bear the burden of the work of production and distribution.

Fifthly, in Greek democracies, the public functionaries were mostly chosen by lot, and usually for a short term. This method coupled with the principle of ineligibility for re-election ensured that a very large number citizens took their turn in public service. In modern democracies, however, only a small percentage of citizens can ever hope to hold public office.

Another fundamental difference between the ancient Greek democracies and modern democracis is that whereas in the former the individuals were supposed to live for the state, in the latter the state is supposed to exist for the individuals. The conception of personal rights of citizens was unknown to Greek democracy, all rights being state rights. In modern democracies, the rights are personal rights and laws provide safeguards against infringement of the rights by either individuals or governmental authorities. It should be clear, therefore, that the Greek democracy lacked the philosophical foundation of modern democracy—the conception of equality of human beings and the dignity of man irrespective of colour, creed or caste.

History of Modern Democracy: Seventeenth century England, it has been rightly said, may be regarded as the birthplace of modern democracy. The Great Rebellion against the absolutism of Charles I which led to his execution by his subjects in 1649 and the Glorious Revolution of 1688-89 which resulted in the deposition of James II broke the back of absolutism in England and laid a firm foundation for the growth of democracy. At the end of the 17th century, England was the only country in which the power of absolutism was definitely overthrown.

On the virgin soil of America, which was free from old traditions and the evil of social stratification, the tree of democracy had a steady growth. The democratic doctrine of John Locke, the English philosopher, the revolutionary ideas preached by Rousseau, the French writer, as well as by the Encyclopaedists of France powerfully stirred the American mind. The writings of Thomas Paine, an Englishman, was also a great contributory factor in strengthening America's faith in democracy. The American Revolution (1776-81) which ended the rule of the British Crown over the colonies and gave birth to the great American Republic is a landmark in the history of struggle for democracy. It led to the establishment of a great democracy based on the faith " that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

The American Revolution fired the enthusiasm of French revolutionaries who saw in it a glorious example of a successful popular revolt against an unjust monarchy. In 1789 took place the French Revolution which proclaimed its flaming faith in democracy by the three words: Liberty, Equality and Fraternity. The French Revolution destroyed a corrupt monarchy and a privileged aristocracy, and established a republic. Immediately after the Revolution, the representatives of the people issued a Declaration of the Rights of Man which proclaimed that " all men being born equal should have equal rights."

The Congress of Vienna (1814-15) marked the beginning of a period during which democracy seemed to have been finally defeated by reaction. But very soon the spirit of democracy reasserted itself in the July Revolution of 1830 in France which swept Charles X off the throne. The English Reform Act of 1832 represented a great victory for the democratic cause for it transferred the political power from the landed aristocracy to the middle classes. The Revolution of 1848 overthrew the French monarchy once again and established the Second Republic. The year 1848 also saw a number of popular revolts in various parts of Europe. In that year was also issued the Communist Manifesto, by Marx and Engels, which gave a call to the working classes to seize power, to overthrow the existing social order based on private property and to establish socialism. The revolutionary message of democracy and the doctrine of socialism as formulated by Marx and Engels soon spread all over the world and began to inspire movements for reform, and to release forces of revolution.

World War I constitutes another land-mark in the struggle for democracy. It was really a democratic world revolution. It resulted in the destruction of reactionary monarchical regimes in Eastern and Central Europe. It quickened the democratic consciousness of common people everywhere, which led to a vast extension of the suffrage. It is interesting to note that in Britain women received the right to vote for the first time in 1918, while it was in 1920 that women in the United States were enfranchised on a nation-wide scale. The war unleashed revolutionary forces alll over the world which had their greatest triumph in the Russian Revolution of 1917. The Russian Revolution represents the first successful attempt by the working classes to seize political power in a state. The war also infused a new impetus into India's struggle for democracy. The first mass upheaval against the British rule took place in India under the leadership of Mahatma Gandhi in 1921.

World War II carried the cause of democracy to glorious victories in various parts of the world. It released forces which led to the attainment of independence by India, Burma and Indonesia within a few years of the end of hostilities, and establishment of the People's Republic of China in 1949. In Europe, however, the War put back the clock of democracy over a vast area. A number of countries in Eastern Europe such as Hungary, Poland and Rumania passed under the domination of the Soviet Union during the War and Czechoslovakia followed suit in 1948. The present governments of these countries, which are controlled from Moscow, can by no means be said to represent the popular will.

Criticism of Democracy: The main charges which the critics of democracy bring against it are the following:

(1) Rule of the people means the rule of ignorance. Maine, Lecky, Faguet and many other writers maintain that democracy is inevitably the rule of the incompetent and the untrained. Intelligence, they hold, resides with the few, not with the many. To place the governmental power in the hands of the many is to allow the ignorant and the unfit to rule over society, which cannot fail to injure the best interests of the people.

(2) Democracy means unbridled emotionalism in political affairs. The mass mind is extremely irrational and susceptible to emotions. Questions requiring calm and cool consideration tend to be decided in a democracy by passions and emotions of the multitude.

(3) Social progress, some critics point out, has always come from an intelligent minority. Progress, says Le Bon, is a function of aristocracy. Democracy which puts mediocrity and ignorance in power blocks the way to social progress.

(4) In this age of growing social complexity, governmental affairs cannot be successfully administered except by specialists. Special knowledge is required at every step in the conduct of public affairs. But in a democratic form of government, specialists have little chance of being placed at

the helm of affairs. People elect to positions of power only those who pander to their prejudices and cater to their selfish desires. In other words, democracy gives power to demagogues and skilful electioneers, not to specialists. In fact, democracy discourages specialisation itself.

(5) In a democracy, leadership itself degenerates to a low level. Since common people follow only those who listen to them and voice their desires, men of inferior calibre are raised to the position of leadership, while men of superior calibre do not find any scope for utilising their talents in the service of society. Leadership thus tends to sink to a low level in a democracy, till leaders become little more than replicas of the mass mind. R. A. Cram maintains that in no field of human endeavour, neither in art, nor literature, nor religion, are modern leaders comparable to those of earlier ages. "Democracy", says he, "has achieved its perfect work and has now reduced all mankind to a dead level of incapacity where great leaders are no longer wanted or brought into existence, while society is unable, of its own power as a whole, to lift itself from the nadir of its own incapacity."

(6) Democracy cannot function without party organisation, because, without guidance and leadership, vast numbers of people can neither formulate opinion nor take concerted action. But once parties come into being, real power passes into the hands of party leaders and, as social organisation grows more complex, more and more power is concentrated in the hands of these leaders. In most cases, the party leaders use their power to serve their own ends. They play upon the sentiments of the masses and exploit their irrational fears and prejudices to keep themselves in power. They use the press to exercise a subtle control over the mass mind, which enables them to pass off their own opinions as the opinion of the public. The evil of nepotism continually grows in magnitude in a democracy, for the party leaders try to put their own men, whether efficient or not,

in all key positions in order to strengthen their hold upon the governmental machinery. Thus, strange as it may seem, a democracy inevitably degenerates into an oligarchy—the rule of a few cunning party leaders. The party system also gives rise to certain evils peculiar to democracy such as Tammany and gerrymandering. (See below)

(7) Another serious defect of democracy is the lavish expenditure of money in elections. Candidates with large fortunes enjoy too great an advantage over poorer ones. Money rather than talent determines the results of elections. Democracy is, therefore, not the rule of the people but the rule of the wealthy.

(8) In a democracy, money perverts legislation and administration. The wealthy classes use their economic power to corrupt legislatures and administrators to further their selfish ends. They secure the passing of such laws and the adoption of such administrative measures as will, directly or indirectly, increase their wealth or power. They prevent the passing of such measures as, however beneficial they may be from the national point of view, may adversely affect their group interests.

(9) Democratic government is slow and inefficient. In times of crisis, democracy means disaster. The very essence of a situation of emergency is need for prompt action. Democratic processes with their endless debates do not lend themselves to expeditious action. When a democratic state is involved in a war, it has to choose between disaster or suspension of normal democratic processes. Naturally, it chooses the latter alternative. The very fact that democracy becomes unworkable in times of war or other similar crises shows its inherent weakness as a form of government.

(10) Democracy is inherently fragile. Democratic governments are unstable.

Fascist and Nazi Attack on Democracy: Fascism rejects the idea that people can govern themselves. Common people

it maintains, have neither political ability nor vision. Their mental horizon is limited by their immediate needs and interests and they cannot discern the true destiny of the nation. They are too preoccupied with their private affairs to perform properly the work of government. Only a small elite minority is fit to govern, and even if it is a minority of one, it has the right and duty to govern the people, if necessary, against their will. The ideas of popular sovereignty, democracy, equality and civil liberty and all such things are enfeebling creeds which must be cast aside so that a virile and effective system of government may be set up on the basis of the subordination of the will of the multitude to that of the natural leaders. These leaders alone can properly understand the national destiny. They alone can truly represent the nation. In Fascist Italy, these natural leaders of the nation—the elite of the population—were identified with the Fascist leaders among whom Mussolini stood supreme. The Fascist Government in Italy was, in the final analysis, a dictatorship of one man, Mussolini, supported by a party hierarchy. It was a system which was the very negation of democracy.

The Nazi Government in Germany under Hitler was also equally undemocratic. It was in essentials exactly similar to the Fascist Government in Italy. The Nazis also rejected democracy and the doctrine of equality. Going one step further than the Fascists, the Nazis held that it is the Supreme Leader, the Fuhrer, who alone is capable of guiding and ruling the nation. The Fuhrer symbolises the unity and the true spirit of the people. He alone has a mystical insight into the true laws of development of the nation. He alone can develop the forces latent in the nation. The people must, therefore, obey the leader. In short, a basic feature of Nazism is the cult of the superman. Hitler was looked upon by the Nazis as a superman gifted with a mystical insight and super-natural wisdom. Such a doctrine, needless to say, completely rules out democracy and substitutes in its place a dictatorship based on complete subordination of every other

will in the state to the will of the Fuhrer. The Nazi Government headed by Hitler was a one-man dictatorship.

The doctrines of Fascism and Nazism will be dealt with more fully later. Suffice it to say here that both of them represent an attack on democracy because they reject the idea that people are capable of self-rule and assert that only a small minority endowed with superior intelligence and insight are fit to rule. And this minority, they maintain, has the right to impose its rule on the people, whether they like it or not, because it understands the laws of the people's life better than the people themselves.

Defence of Democracy: The champions of democracy maintain that democracy, with all its faults, is still the best form of government yet invented by man. They rightly assert that democracy is the most human and humane form of government, that it is based on the highest principles of justice. Their arguments may be summarised as follows:

(1) Popular welfare is the test of governments, and applying this test one finds that democracy promotes the welfare of the people as well as any other form of government. It performs the chief functions of government, namely administration of justice, maintenance of order, defence against foreign attack and promotion of public good through the adoption of positive welfare measures as efficiently as any other form of government. In fact, democracy brings greater good to greater numbers than any other form of government. History shows that exclusion from power means exclusion from privilege. In all forms of government other than democracy the masses are excluded from power which results in their exclusion from privilege also. In a democracy, however, political power rests in the hands of the masses who utilise this power to create conditions for a healthy and decent existence for themselves. Democracy thus necessarily results in the improvement of the lot of the common man and in the greatest good for the greatest number. In the past kings and aristocracies utilised

their political power to build up exclusive systems of privileges for themselves, while the masses lived a life of unremitting toil and passively carried out the orders of the rulers. To-day, democracy by admitting the common man to a share in political power is breaking down the old systems of special privileges and making available to all, irrespective of caste, colour or station in life, means of a richer and fuller life. Through democracy, the disinherited step children of the earth are coming into their own. Democracy has already succeeded in increasing the sum-total of human welfare.

(2) Though other forms of government might secure good government as such, democracy is the only form of government which promotes the development of personality and character of the common man. In all other forms of government, the common people are condemned to a passive role. They merely carry out the behests of the rulers. They are not allowed to participate in the making of decisions which vitally affect their lives. Such a system can neither foster self-respect in the common people nor develop their character or intelligence. Democracy is the only form of government which recognises the personality of the common man, gives him self-respect and placing political responsibility upon him helps the development of his latent powers. Dewey, Ellwood Hobhouse, Jordan and a large number of other writers see the vindication of democracy in the opportunity it creates for the development of the human personality. Even if democracy meant, which it does not, inefficient government, it would still be the best form of government by reason of the fact that it treats human beings as human beings and regards them all as equally entitled to the opportunities which are essential to the full development of their personality.

(3) Democracy is not the rule of the incompetent and the ignorant, as is alleged by some critics, such as Maine, Lecky and Cram. For the people, in a democratic system, determine only the broad policies and leave the details of the policies, as well as their execution, to specialists. The

people or their representatives decide, broadly speaking, *what* is to be done, and leave it to experts to decide *how* it is to be done. The people decide the question *what*, while the experts decide *how*. The people concern themselves with ends, while the experts determine the means. And it is the people who are the best judges of the ends of government policies, for the aim of those policies is promotion of their welfare. They alone can have the most intimate experience of their own joys and sorrows. They know better than anybody else what adds to their happiness and what makes them suffer.

Secondly, the idea that the common people are dull, unintelligent, selfish and narrow-minded is wrong. In spite of their intellectual limitations, they have a certain natural wisdom and shrewdness which make them good judges of leaders. They are also, speaking generally, simple, honest, unsophisticated and possess a more or less balanced outlook on life. What they lack in special knowledge, they make up to some extent by their natural shrewdness and balanced judgment. Mecklin has justly remarked that common people have a strong moral sense which gives their opinion great validity where great moral issues are concerned. Lincoln, the greatest American ever born, had a deep faith in the intelligence of the common man. Some people, said he, could be befooled for all time and even all the people could be befooled for some time, but all the people could not be befooled for all time. "Remember," says Lin Yutang, "only one thing: the experts have all the facts, while the people have all the judgment. . . . I have a feeling that God always works through the mob." This is, of course, an exaggeration, but it serves to emphasise a truth the importance of which can hardly be exaggerated. While there may be some among the common people who are absolutely idiotic, the general average possesses enough common sense to judge men and affairs correctly.

Nor must one forget that through education of the right kind it is possible to raise greatly the level of understanding.

of the masses and to broaden their intellectual horizon. In many of the western countries where the problem of illiteracy has been nearly wiped out through a planned educational programme, the general level of citizenship has been raised to a substantially higher level.

(4) Democracy is certainly not without its defects. But which form of government is free from defects ? Some of the evils which are supposed to be peculiar to democracy, such as extravagance and the perverting influence of money on legislation and administration, are found in all forms of government. Of course, there are one or two evils that are peculiar to democratic forms of government, such as undue influence of party organisation. But every form of government has faults peculiar to itself. Aristocratic governments are extremely conservative and unresponsive to the demands of the people. They care more for increasing and safeguarding the privileges of the holders of power than for the welfare of the masses. Under a monarchical system of government, the welfare of millions is made dependent on the whims of a single individual. Democracy is free from these defects. Bryce has justly remarked that democracy has opened some new channels " in which the familiar propensities to evil can flow, but it has stopped some old channels, and has not increased the volume of the stream."

(5) As for the argument that men are born with unequal abilities, advocates of democracy never deny this fact. They never assert that men are biologically equal. What they emphasise is that every man has an equal right to attain his best self. Everyone cannot be a Shakespeare or a Gandhi. But everyone has an equal right to the opportunities without which he cannot develop himself fully. And the common man, on the evidence of history, can never expect to have such opportunities unless he has a share in running the government. The advocates of democracy point out further, and rightly, that unless everyone is ensured an equal opportunity to make the most of himself, it is not possible to discover who is the best and most competent nor

who are superior to whom. In short, democracy does not deny the fact of biological inequality; it only insists on equality of opportunity.

(6) The fact that democracy is tending to spread continuously is also very significant. The world has already outgrown the era when men could feel enthusiasm for monarchical or aristocratic forms of government. To-day the question is not whether there should be democracy at all, for democracy has come to stay and is spreading; the question is rather how to make democracy function more and more efficiently and how to cure it of its defects.

Communist states of the modern world are, of course, characterised by absence of democracy, but in each of these countries the holders of power have been obliged to build up a gigantic machinery of coercion in order to keep themselves in power, which is an indirect tribute to the democratic ideal. It reflects an awareness on the part of the rulers of these countries that the people will never stop fighting for democratic rights unless held down by an overwhelming force.

(7) The fact that even communists, who do not believe in democracy, say that it is under a communist system that people can enjoy real democracy is also very significant. Thereby they indirectly admit that the democratic ideal, the ideal of popular government, is unassailable.

(8) Democratic government, far from being unstable, is in reality the most stable government. Popular discontent is the breeding ground of revolutions, and where the masses are excluded from power and privilege they are sure to be discontented. In a democracy where the masses enjoy political rights, they can, by using those rights, peacefully bring about changes in the social and economic conditions. In a true democracy, therefore, discontent can never assume explosive forms and the need for violent changes does not arise.

(9) Bryce, one of the greatest champions of democracy, has remarked that it is up to the antagonists of democracy to suggest something better to take its place. Democracy may be open to various objections, but a better system of government is yet to be invented by mankind.

Is India a Democracy ?: A dispassionate analysis of the present political system of India is sure to lead to the conclusion that India is a democracy.

In the first place, the Constitution of India, which is the fundamental law of the land, enfranchises the entire adult population of the country without distinction of caste, creed or sex and guarantees the civil and political rights which are considered essential to freedom. All adults in India to-day, with the minor exception of those disqualified by unsoundness of mind or crime, have the right to vote. The citizens have also been granted the right to stand for elections and to hold public office and these rights have not been made subject to any kind of property qualifications. The citizens have been granted freedom of speech, freedom of movement, freedom of assembly and association. And the constitution says that only reasonable restrictions can be imposed on them, the courts being the final judges of what is reasonable and what is unreasonable. The Constitution, further, guarantees equality before the law and freedom of conscience and religion. It prohibits the passing of *ex post facto* laws, traffic in human beings and forced labour. A feature of the constitution which is considered undemocratic is the provision relating to preventive detention which permits such detention even in normal situations. But the power of preventive detention has been circumscribed by some vital safeguards which have been further reinforced by the Preventive Detention Act.

The working of the Constitution during the past few years has proved beyond the shadow of a doubt that the constitutional guarantees are no mere paper rights. The rights are real. Anyone who reads the Indian newspapers

cannot fail to be struck by the wide measure of freedom of expression which the people are enjoying to-day. The Government's policies are daily subjected to criticism by innumerable parties and organisations. And along with responsible, sober and constructive criticism, an appallingly large volume of irresponsible, destructive and tendentious criticism is daily poured on the powers that be. The multiplicity of parties is an adequate proof that freedom of organisation guaranteed by the Constitution is a very real freedom in the country. The courts in India have been jealously protecting the rights of the individual and the number of laws that they have already invalidated on the ground of their inconsistency with the constitutional provisions is pretty large. "No citizen", says Laski, "enjoys genuine freedom of religious conviction until the state is indifferent to every form of religious outlook from Atheism to Zoroastrianism." Judged by this test, the religious freedom being enjoyed by the Indian people leaves very little to be desired. The state in India is a completely secular one and looks upon religion as an entirely private affair of the citizens.

The spirit of tolerance, of 'live and let live' is the very essence of democracy. And, as has been pointed out, from times immemorial the culture of India has been characterised by a spirit of tolerance unknown to the western culture. India has tolerated all varieties of faith and spiritual outlook and has allowed them to exist side by side. As a result, the culture of India has itself been federal in character, a unity comprising a wide diversity. Fortunately for the people of the country, in spite of prolonged subjection to foreign rule and the impact on her civilisation of a less tolerant culture from the West, this precious spiritual heritage of India has not been completely destroyed, though it has been seriously damaged. The finest product of this democratic element in the culture of India is Mahatma Gandhi whose doctrine of love and non-violence epitomises the very essence of the democratic faith. It is also not accidental that

free India's foreign policy is based on the principles of peace, friendship and non-interference. This policy represents, in its essence, a democratic approach to international problems. All this, together with the fact that the biggest democratic election in the history of the world was peacefully held in India in 1951-52, though the electorate was 90 per cent illiterate, shows that the old democratic traditions of India are still extant and constitute an active force in the life of the people. Democracy, it is said, is more a matter of habits and traditions than of written documents. Judged by this test, Indian democracy, as the above analysis shows, is based on firm foundations.

As for the undemocratic elements in India's culture which have been vehemently criticised by foreign observers, these are being gradually eliminated from her life as a result of the impact of modern ideas of equality, as well as of conscious efforts on the part of the enlightened sections of her population to get rid of them. For instance, the caste system, which has always been a target of attack by Western critics as the very negation of the democratic ideal—and the system as it developed in later ages was certainly undemocratic—has been already breaking down. The old caste prejudices have considerably weakened, inter-marriages are more frequent and the equality of political, civil, and economic rights for all citizens has been acting as a great levelling force. The Constitution of India has declared the abolition of untouchability and its practice has been made punishable by law. The state has also been making special efforts to ameliorate the conditions of the backward classes including the aboriginal tribes and to raise them, educationally and economically, to the level of the rest of the population.

India has, of course, not yet been able to establish economic democracy in the land. But this could hardly be expected, seeing that she freed herself only a few years ago from a foreign rule based on economic exploitation—a rule extending over a period of nearly two hundred years. The

Government of India, however, has already taken up in right earnest the task of raising the living standards of the people. Its economic programme aims at increasing the national wealth and placing the system of distribution on a more equitable basis through a series of Five-Year Plans. The First Five-Year Plan was inaugurated in 1951. The pace of economic development is expected to be accelerated as these Plans begin to yield results and, assuming that this development continues uninterrupted, India may be expected during the foreseeable future to advance considerably towards the goal of economic democracy. What is of the first importance to note is that political democracy having been established in India, that is, political power having been placed in the hands of the people, the most essential condition of progress towards economic democracy has been already created in the country. The Government's economic programme, the various social welfare legislations enacted by it and the Estate Duty Act which aims directly at reduction of economic inequalities clearly indicate that the Indian economy has been moving, however slowly, towards the goal of greater distributive justice for the masses.

Paying a tribute to the fairly smooth functioning of democracy in free India, which is in sharp contrast to conditions prevailing in some other countries of South-East Asia, a foreign journal wrote in June, 1954 that the Indian Parliament was "the one institution of its kind in Asia which is working in an exemplary way." It added: "Pericles said that Athens was the school of Hellas. Sri Nehru without boasting may say that Delhi is the school of Asia."

Democratic System *versus* **Communist System:** While Communism differs in some fundamental respects from Fascism and Nazism, the Communist system of government is as undemocratic as the Fascist and Nazi systems. Like the latter, the Communist system is characterised by the following features: (1) absence of freedom of speech and organisation; (2) one-party rule; (3) violent and ruthless

supression of opposition; (4) totalitarianism, that is, domination by the state over all aspects of the life of the people including production, distribution, art, education, literature, scientific activities and also religion; (5) absence of free elections.

In the Soviet Union and other Communist countries, political power is the monopoly of a single party, the Communist Party. No other parties are allowed to exist. And attempts at the formation of parties are ruthlessly suppressed. Opposition to, and criticism of, the government are not tolerated. People are not allowed to exercise their votes freely. In the Soviet Union, for instance, the Government do not allow more than one candidate to stand in a constituency. Only one candidate is nominated for each constituency, and the people are asked to vote for him. The nominees are in most cases members of the ruling party or supporters of the regime. Every communist state maintains an extensive system of espionage to keep constant watch over the activities as well as on the psychological tendencies of the people so that opposition to the regime, whether in thought or action, may be quickly nipped in the bud. In schools, colleges, universities, factories as well as in the market place, members of the ruling party constantly spy on the people and report to the authorities. Education is subjected to a thorough-going control of the state. In fact, the Communist state uses education as an instrument of indoctrination and regimentation of thought. In other words, education is used as a lever to drive people's thoughts and mental habits into channels favourable to the regime so that the people may gradually come to idolise the regime and the very possibility of opposition is effectively removed. The state also controls all aspects of economic life. The Communist economy is characterised by the ownership and control of practically cent per cent land and capital by the state, which means in practice that the leaders of the communist party completely control and dominate the economic life in the state. Under such a system, there can be but one employer

in the state, namely, the Government which is practically the same thing as the party. Under a Communist system, the functions of legislation, execution and adjudication are concentrated in the hands of the party, the government and the party being only two different aspects or names of the same thing.

Thus the Communist system is the very negation of the democratic system (though the Communists sometimes claim that their system alone is democratic in the true sense of the term). Under a Communist system, the people have no real freedom. They do not enjoy the right to form or change the Government according to their desire. They have no freedom to express their will. The Communist state is dominated by a small minority, the leaders of the Communist Party.

(The theory of Communism will be discussed in a subsequent chapter.)

Gerrymandering and Tammany: Two of the evils peculiar to democracy are gerrymandering and Tammany.

Gerrymandering is the practice of demarcating the constituencies in a such a way that the dominant political party gets the maximum possible advantage out of it, while the other parties are put to a corresponding disadvantage. The practice of gerrymandering is as old as democracy but the word was coined in America where the evil had at one time assumed serious proportions and is even now widely prevalent. "The practice of gerrymandering", says Munro, the noted American author, "is very old; it took its name from Governor Gerry of Massachusetts, who first sanctioned one of the most flagrant cases of partisan district-making (*i.e.*, delimitation of constituencies) in that state. Thereby he set a fashion which persisted for many years, and has not yet entirely disappeared. By adding one town or county and taking off another, by shaping the district (constituency) in some distorted way, so that its nearest resemblance may be to a starfish or lizard, it is often possible to make the area

yield a comfortable majority for the candidate of the right political party. The hostile voters, on the other hand, can be 'hived', or massed, into a few districts which are likely to go to the opposition party anyhow. In a word, the art of gerrymandering is to spread the majorities of your own party over as many districts as possible and concentrate the strength of your opponents into as few districts as you can."

The practice of gerrymandering is not unknown in India. Speaking in Parliament in December, 1952, the Law Minister of India made an admission that there had been gerrymandering in some cases of delimitation of constituencies for the first general elections in India (1951-52) under the Constitution. This could be easily done because delimitation of constituencies had been made subject to the approval of Parliament, which enabled the majority party to have certain constituencies demarcated in such a way as to suit their partisan interests. With a view to preventing the evil, the entire work of delimitation has now been placed in the hands of an independent body, the Delimitation Commission, whose orders are final on this matter.

The evil of Tammany took its name from the Tammany Society of New York which was notorious at one time for political corruption. "To perpetuate itself in office", says Lippmann, "Tammany makes as large a number of voters as possible dependent upon the public treasury. It is not necessary that they should be a numerical majority . It is sufficient to collect a compact minority who live on public money; it will normally prevail over the amorphous majority who are divided in their allegiance and vague or indifferent as to what they want. The compact minortiy of job-holders and direct beneficiaries together with their dependents and friends, normally constitute a solid and dependable basis of political power. This power is then used, in the first instance, of course to satisfy this compact minority. The 'machine' will protect its supporters against all other interests. But if it is securely entrenched with its own adherence, it is open and ready to do business with public

utilities, landlords, contractors and any other organised interests."

Conditions Essential to the Successful Functioning of Democracy: Certain conditions are essential to the successful functioning of democracy.

In the first place, successful working of democracy presupposes a fairly high development of political consciousness and the sense of civic responsibility among the people. Unless the people can understand the political issues and properly discharge their civic duties, the machinery of democracy cannot work. Unless, again, the people maintain constant vigilance in respect of their rights, they are sure to lose those rights sooner or later. Eternal vigilance, it has been rightly said, is the price of liberty. Unscrupulous politicians will deprive the people of their rights, if the latter become indifferent about them or fail to discharge their civic duties of voting at elections and criticising the authorities for abuse of power or infringement of liberties. But a higher development of political consciousness is hardly possible without education. A universal system of primary education of the right type is thus an essential condition of successful democracy. It must be an education that develops not only the intellect but also the character, that not only makes the citizen conscious of his rights but also develops in him a sense of duty to the community.

A written constitution is also, speaking generally, another essential requisite for the success of a democratic form of government. For a written constitution is easily intelligible to the common people. Such a constitution also makes possible a clear demarcation of the limits of the legislative and executive power. It thus provides greater protection to liberty than an unwritten constitution. Usually written constitutions are more difficult to change than unwritten ones. They, therefore, prevent sudden gusts of public opinion from sweeping away vital safeguards and guarantees. It is important to note, however, that Britain

which is one of the foremost democracies in the world has an unwritten constitution. Democratic traditions are so deeply ingrained in the British people that the absence of a written constitution has not prevented them from building up a successful democracy in their country. This brings us to our third point.

It is difficult to build up or work democracy with success in a country which lacks democratic traditions. After World War I, which destroyed the German monarchy, a highly democratic form of government was established in that country—it came to be known as the Weimar Republic. Hitler subverted this government in 1933 and set up a dictatorship in its place. The ease with which Hitler destroyed democracy in Germay is at least partly explained by the absence of democratic traditions in the country. Again, one of the causes of the absence of democracy in modern Russia is that the Russian people never enjoyed democratic rights in the past and, so, hove failed to develop a genuine love for democracy. Students of history know how the first two French Republics were subverted and replaced by undemocratic forms of government, and through how much travil democratic traditions were built up in that country.

A certain measure of economic democracy is essential to the proper functioning of political democracy. In a state in which there are extreme inequalities of wealth, money can exert an undue influence on the democratic institutions and prevent them reflecting the true will of the people. But, on the other hand, economic democracy can never be built up unless the people can exercise control over the political machinery. Political democracy and economic democracy are greatly inter-dependent. Once the people get a share in the running of the government, they are sure to utilise that power to build up economic democracy.

Fortunately for us, the framers of the Indian Constitution were fully aware of the conditions essential to

the successful working of democracy. This awareness on their part is reflected in the Constitution itself. Part IV of the Constitution lays down certain Directive Principles which, the Constitution says, are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." These principles, broadly speaking, aim at the establishment of a social order based on justice, social, economic and political. One of the provisions of this Part of the Constitution directs: "The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Another provision says that the State shall strive to direct its policy towards securing "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good" and "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment." This Part directs further that the State shall endeavour to secure to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. And there is hardly any doubt that the Government of India has been striving its best to translate these principles into reality. It has passed a number of social welfare legislations. The Estate Duty Act passed by it aims at reduction of inequalities of wealth through taxation of property passing upon death. The Government has embarked on a vast programme of economic development the goal of which is the building up of a socialist pattern of economy in the country. It has also been expanding educational facilities at a rapid pace.

CHAPTER XII

THE THEORY OF THE SEPARATION OF POWERS

The Functions of Government: The functions of a modern government fall naturally into three categories—the legislative, the executive and the judicial. Corresponding to these functions there are three organs of government, namely, the Legislature, the Executive and the Judiciary. The Legislature makes the laws. The Executive executes those laws. And the Judiciary decides questions relating to the application of the laws in individual cases.

Aristotle was the first political writer to distinguish between the three functions. Aristotle divided governmental functions into the deliberative, the magisterial and the judicial, corresponding roughly to the legislative, the executive and the judicial of the modern classification.

In early societies, however, there was no clear distinction between these functions because the king was the sole law-giver, the chief executive and the supreme judge. Even in ancient Greece, as has been already noted, there was no clear distinction between these three functions. The Assembly in Athens performed not only legislative functions but also executive and judicial ones. The position was similiar in ancient Rome where the comitia which was mainly a legislative body exercised certain executive and judicial functions, while the magistrates whose duties were predominantly executive exercised certain legislative and judicial powers.

In mediæval times also, there was very little distinction between the legislative, executive and judicial powers. The king was regarded as the supreme law-giver, executor and judge. With growth in complexity of governmental affairs, these three functions began to be gradually distinguished and assigned to separate organs, and a time came when separation of these functions began to be looked upon as an

essential condition of liberty. Words and phrases coined in mediæval times when all these functions were concentrated in the hands of the ruler survive to this day when they have ceased to correspond to reality. Thus laws in Britain are still 'king's laws', justice is 'king's justice', the ministers are "servants of the crown", and the navy is His Majesty's navy.

The Theory of the Separation of Powers: The theory of the separation of powers states that the three functions of government, namely, the legislative, the executive and the judicial should be assigned to separate organs of government. In other words, these functions should be exercised by different bodies of persons and these bodies should be independent of each other. According to this principle, the Executive should never legislate, nor adjudicate. The Legislature should never execute its laws nor decide questions relating to their application in individual cases. And the Judiciary should never make or administer any law.

The origin of this theory may be traced to a distant past. Polybius, the Greek historian of Rome, praised the balance of power in the Roman Government between the Senate (Legislature), the Consuls (Executive) and the Tribunes (Judiciary). The first modern writer to state the theory is Bodin, the sixteenth century French author. But the theory received its classific formulation at the hands of the French writer, Montesquieu. In his famous book *the Spirit of the Laws*, which was published in 1748, Montesquieu wrote: "In every government there are three sorts of power: the legislative, the executive... and the judiciary power. When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive."

Blackstone, the great English jurist, also stressed the principle of separation in his book, *Commentaries*. "In all tyrannical governments. . . . The right of making and of enforcing the laws is vested in one and the same man, or are in the same body of men; and whenever these two powers are united together there can be no liberty. Were (the judicial power) joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges . . . . Were it joined with the executive, the union might soon be an overbalance for the legislative."

The Great Influence of the Theory: The theory of the separation of powers exerted at one time a great influence on political thought and practice. Its influence in America and France, particularly, has been remarkable. The principle of separation was, so to say, a political axiom to the makers of the American Constitution. Madison who was one of the most distinguished members of the Convention which framed the U. S. Constitution, who , in fact, is regarded as the Father of the U. S. Constitution, said: "The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few or many, and whether heriditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." Hence, the framers of the American Constitution based their scheme of government on the principle of separation of powers. The legislative, executive and judicial powers have been placed in the hands of the Congress, the President and the Courts respectively, and these organs have been made, as far as possible, independent of each other. The Congress has no power to remove the President from office; the President cannot introduce legislation in the Congress; and the judges are irremovable by the executive. Since, however, an absolute separation of powers is not possible, the framers of American Constitution provided lines of connection between the three branches of government, which have been discussed below.

The influence of the theory on the revolutionaries of France was also very great. The Declaration of the Rights

of Man which was issued immediately after the Revolution (1789) stated that a society in which there is no separation of powers has no Constitution at all. And the Constitution which was framed after the Revolution and brought into operation in 1791 was based on this principle of separation.

Criticism of the Theory: The theory implies that the three functions of government can be placed in water-tight compartments and kept absolutely separate from one another. An absolute separation of functions is, however, neither possible nor desirable. The government is after all a unity, its different functions being organically inter-related. Any attempt to effect a complete separation of legislative, executive and judician functions is bound to lead to deadlocks and a breakdown of the governmental machinery. Even in America where the theory has been applied to a far greater extent than in any other country, the three organs of government are far from being absolutely independent of each other. The President can veto the legislations passed by the Congress, which, again, can override the veto by a two-thirds majority. The appointments made by the President are subject to approval by the Senate; the President can negotiate treaties but they do not become valid unless approved by the Senate. And the Congress has been given the power to fix the salaries of the judges and to remove them by impeachment.

The functions of legislation and execution are, in particular, so closely inter-related that attempts to entrust them to independent authorities are bound to prove harmful. It is difficult to ensure proper execution of the laws unless the Executive is made answerable to the Legislature. And it is also difficult to make laws answer to the actual needs of administration unless the Executive has an effective voice in law-making. In America where the Executive is not responsible to the Legislature and cannot directly participate in law-making, deadlocks arise frequently between the two branches of government. The Congress is often at odds with

the President. Such deadlocks cannot but be harmful to the best interests of the nation. The logic of facts has already largely bridged the gap left by the authors of the Constitution in the structure of the American government. Through the development of the party system, the Executive and the Legislature in America have been, in practice, brought into closer relation with each other. The party system serves as a device to ensure that the political party to which the President belongs commands a majority in the Congress so that laws may be enacted to suit the requirements of administration. Not that the President's party always succeeds in securing a majority of the seats in Congress. But this happens very frequently—frequently enough to enable the governmental system to function with a fair measure of efficiency.

The cabinet system of government is the very negation of the principle of separation of powers. For, under this system, the Executive is made responsible to the Legislature. The Legislature can remove the Executive from office if the latter ceases to enjoy its confidence. In fact, the Executive, under the Cabinet system, is but part of the Legislature itself. And this relationship perfectly corresponds to the realities of governmental affairs. It is interesting to note that the English system of Government was Montesquieu's favourite type. He believed it to be a good illustration of the principle of separation. But even in his time, there was far less separation of powers in the Government of England than Montesquieu believed.

The theory of separation of powers appears to suggest that the three organs of government are co-equal. This is, however, far from being the case. The Legislative organ is superior to the other two. The Legislature lays down the rules which the Executive is to execute and the judges are to apply in individual cases. The Legislature, broadly speaking, defines the limits within which the other two organs must function.

The growing complexity of life in modern times is tending to make the theory more and more obsolete. The sphere of governmental activities has been rapidly expending and this has been obliging modern governments to entrust to the Executive, more and more, functions essentially legislative and judicial in character. Now-a-days, the Legislature very often lays down the general rules on a subject and authorises the Executive to frame regulations for applying those rules to particular cases. This is known as delegated legislation. Delegated legislation arises, essentially, out of the circumstance that the Legislature cannot foresee all possible contingencies and provide for each of them. With the growth of social welfare legislation, again, the Executive is being more and more entrusted with the function of taking decisions that are judicial or quasi-judicial in character. This is known as administrative adjudication. The subject of delegated legislation and administrative justice has been discussed with illustrations in some of the subsequent chapters.

It is highly important to note that each branch of government at once exercises, to some extent at least, all three functions of government. Every executive act involves judgment. An executive official has to judge whether the step he is going to take is in conformity with law or not. The judge, again, in interpreting the law, modifies it or fills in gaps left by the law. The judge, therefore, always legislates to a limited extent. The Legislature is also often called upon to sit in judgment over the conduct of the Executive and to decide whether to remove it from office or not.

The Value of the Theory: In spite of the fact that the theory of the separation of powers, as stated by Montesquieu and Blackstone, has serious defects, it contains a substantial element of truth the importance of which can hardly be over-emphasised. While an absolute separation of the governmental functions is an impossibility, a certain measure of

separation between the functions is absolutely essential to freedom. Concentration of all three functions in the hands of one person or the same body of persons cannot fail to lead to the destruction of all freedoms in the state. Under Fascist and Nazi regimes, all powers are concentrated in the hands of one individual or the same body of rulers.

Communist states are also characterised by the concentration of entire governmental power in the hands of the Communist party, which means, in practice, the leaders of the party. The result is that the individual has no real freedom in Fascist, Nazi or Communist States.

While it is neither really possible nor desirable to separate the two functions of legislation and execution, separation of the executive and judicial functions is absolutely essential to the maintenance of freedom. The judges should be made, as far as possible, independent of the Executive. In all democratic systems of government, the constitution and the laws ensure the judges a large measure of independence of the Executive.

Cabinet Governments and the Theory of Separation of Powers: So far as separation of the Executive and the Legislature is concerned, Cabinet Governments or Parliamentary Governments, such as those of Britain and France, are, so to say, a repudiation of the theory of the separation of powers. In a Cabinet government, the Executive is in reality a committee of the Legislature and is responsible to it. The Legislature can remove the Executive from office at will. In almost all democratic countries with the Cabinet system of government, however, the judicial and executive functions are clearly demarcated and separated from each other. In Britain, India, Australia and Canada, for instance, the judges are greatly independent of the Executive. Owing to the existence in France of what is usually known as the system of *droit administratif,* the separation between the judicial and executive functions cannot be said to be a rigid one in that country.

Pointing to the position of the Lord Chancellor in Britain, some have expressed doubts as to how far the Judiciary in Britain enjoys real independence of the Executive. And it has to be admitted that the Lord Chancellor's position represents a complete rejection of the principle of separation of powers. The Lord Chancellor is a member of the Cabinet (the Executive), a member of the House of Lords (the Legislature), is chief judge in the Chancery division of the High Court of Justice and in the Court of Appeal (Judiciary) and also presides over the House of Lords both in its legislative and in executive sessions. But experience shows that this peculiar position of the Lord Chancellor does not in practice affect the independence of the judges in Britain, which is very real.

Presidential Governments and Separation of Powers: We have already seen that the extent of the application of the theory in Presidential governments is far greater than in the Cabinet system. In the American presidential system, as has been noted, the Constitution rigidly demarcates the legislative, the executive and judicial powers and places them in the hands of independent authorities. But certain extra-constitutional developments such as the party system, patronage and the like have now brought the legislative and executive branches of the American government into closer relation to each other. These developments may be said to represent the protest of politics against attempts to separate what are essentially inseparable.

Separation of Powers and Communist Theory of the State: In Communist countries, the exercise of political power is the exclusive privilege of the Communist Party. No other party is allowed to exist. The Communist party organisation is, moreover, highly centralised, and the government is totalitarian in character. An inevitable result of such a system is concentration of all power in the hands of a few party leaders, which rules out separation of powers. It is the party leaders who have the ultimate control of all legislative, executive and judicial powers.

Communist theoreticians do not hide the fact that there is no separation of powers in a Communist system of government. In fact, they reject the theory of the separation of powers itself as purely bourgeois claptrap. The state, they maintain, is nothing but an instrument in the hands of the dominant economic class to hold down other classes and to exploit them. In a capitalist society, the state is a machinery in the hands of the bourgeoisie, the dominant economic class, to exploit the working classes. The bourgeois theoreticians, in their attempt to hide this class character of the capitalist state, have invented various fictions. One of these false theories is the theory of separation of powers. This theory is a clever device intended to mislead people and to make them believe that political power is being exercised so as to secure justice and liberty for all, whereas, in reality, it is being exercised to serve the interests of the dominant class, the bourgeoisie. The Communist state, these theoreticians say, is frankly based on the principle of the dictatorship of the proletariat, which means that all three powers, executive, legislative and judicial, is exercised according to the will of this class, the proletariat. In other words, the Communist regime is based on the principle of centralisation of powers and not on that of separation of powers which, according to Communists, is based on a false theory. (For criticism of the Communist theory of the state see ch. XXIII).

The Constitution of India and Separation of Powers: The Constitution of India sets up a Parliamentary system of government in the country (both at the Centre and in the States). And, as we have seen, Parliamentary form of government is characterised by responsibility of the Executive to the Legislature. The Executive under this system, is a committee of the Legislature and is removable from office by the latter. The Executive, under the parliamentary system, also enjoys the initiative in legislation, all important legislation emanating from it. This system is a complete repudiation of the principle of separation of powers, so far as the Executive and the Legislature are concerned. In

India, therefore, as in Britain, the relationship between the Executive and the Legislature is built not on the principle of separation but on that of conjunction.

The Constitution of India, however, recognises the principle of separation of judicial functions from executive ones. It lays down provisions designed to ensure to the judges of the Supreme Court and the High Courts a large measure of independence of the Executive. The Constitution itself fixes the salaries for these judges and makes them chargeable on the Consolidated Fund of the Centre, or the States, as the case may be, thereby ensuring that they cannot be voted upon by the Legislature. The salaries, allowances and other privileges of a Supreme Court or a High Court judge cannot be varied to his disadvantage after his appointment (except in a financial emergency). He cannot also be removed from office except by an order of the President passed after an address from each House of Parliament has been presented to him for such removal on the ground of proved misbehaviour or incapacity. The Constitution requires a special majority for the presentation of such an address to the President. No discussion, says the Constitution, shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. And no such discussion, it says further, shall take place in Parliament except in connection with a motion for presentation of an address to the President for the removal of the Judge in question. Thus the Constitution protects the Judges of the higher courts against both executive and legislative interference in the performance of their duties.

Under the British regime, there was no separation between the executive and judicial functions in the lower streta of the Indian administration. The District Magistrate exercised both judicial and executive functions. Free India inherited this highly unsatisfactory administrative set-up, and at the time of the framing of the Constitution the old

system of district administration was continuing all over the country. The Constitution, therefore, directs: "The State shall take steps to separate the judiciary from the executive in the public services of the State" (Art. 50), thereby giving recognition to a principle which is considered essential to the maintenance of liberty. Already the two functions have been separated in certain parts of the country, while steps are under way in other parts to give effect to the constitutional directive.

CHAPTER XIII

THE LEGISLATURE

The Most Important Organ: The Legislature is the most important of the three branches of Government. There must be laws before the Executive can perform the function of execution or the Judiciary its function of applying laws to given cases. Apart from the constitution, it is the Legislature which decides what the Executive is to do and the limits within which it must confine its activities. Similarily, the Legislature lays down the rules which are to be enforced by the Judiciary and delimits its sphere of work. Sometimes the Legislature passes laws nullifying the effects of judgments pronounced by Courts.

The Functions of the Legislature: The primary function of the Legislature is legislation or law-making. The Legislature frames the rules which the Executive is to execute and the Judiciary to apply in particular cases. This function of legislation involves fundamentally two things—deliberation and the drafting of the law in suitable language. The Legislature has to deliberate on the public affairs and then to embody its decisions in properly worded rules.

Deliberation is not a function of the Legislature alone. Innumerable individuals and organisations are every moment deliberating on public affairs and their opinions are being daily expressed through various agencies such as the press, the platform, the pulpit and the like. The Legislature which is supposed to represent the entire nation brings to a focus all these opinions and gives them a legislative shape. Thus the laws as they finally emerge from the deliberations of the Legislature represent the will not merely of the Legislature as such but of the entire nation. The Legislature is thus a mechanism by means of which the nation centralises its will and then expresses it in the form of laws.

Besides legislation, a modern legislature usually performs various other functions, electoral, judicial, executive and financial. In India, the elected members of Parliament together with the elected members of the State Assemblies form the electoral college for the election of the President. Similarly, the French Parliament forms the electoral body for choosing the President of the French Republic. In United States, the Constitution imposes on the House of Representatives the duty of choosing the President in certain specified circumstances and on the Senate of choosing the Vice President in similar circumstances.

As for executive functions, the U. S. Senate performs two important executive functions, namely, that of confirming appointments made by the President and of approving treaties. The power of impeachment, that is, of preferring charges as distinct from the power of trying impeachments is also an essentially executive power. In the United States, the House of Representatives has the sole power of impeachment in the federal sphere. In India, either House of Parliament may impeach the President.

The power of trying impeachments is essentially a judicial power. In the United States, the Senate enjoys the sole power of trying federal impeachments. In India, either House of Parliament can act as the court for trying an impeachment of the President provided the other House has preferred the charge.

Every Legislature performs certain vital financial functions. It not only decides how much money is to be raised for carrying on the work of government but also how it is to be raised. It decides, further, how much money is to be spent by each department and for what purposes. In short, the Legislature controls the finances of the government.

In parliamentary governments, the Legislature controls the Executive. It exerts this control through questions, interpellations and no-confidence motions. The Executive,

under the parliamentary system, can stay in office only so long as it retains the confidence of the Legislature.

In a cabinet system of government, the Legislature also performs an important selective function. Usually, under this system, only those persons who have proved their ability over a long period through their work as members of the Legislature can hope to rise to the ministerial office. Laski says: "Certainly whatever may have been the defects of the House of Commons, what has been called its selective function has been amazingly well done. It has proved character as well as talent. It has measured the hinterland between oratorical quality and administrative insight with much shrewdness. I know of no alternative method that in any degree approaches it . . . . . The average American President represents, at the best, a leap in the dark; his average cabinet rarely represents anything at all. But the average member of an English cabinet has been tried and tested over a long period in the public view."

The Legislature, finally, is a forum for the expression of public opinion. The representatives of the people ventilate the grievances of the people in the Legislature and express their opinion on important public issues including foreign affairs The Indian Parliament, for instance, holds debates from time to time on foreign affairs. Such debates have little connection with the legislative business of Parliament but they afford an important opportunity to all sections of the members to express their opinions on the foreign policies of the Government. The Legislature receives petitions from the people and its committees often invite representatives of various interests likely to be affected by legislation to appear before it to express their views on the proposed measures.

Organisation of Legislatures—Unicameral and Bicameral Systems: Today most countries have bicameral or double-chambered Legislatures. The Parliaments of France, Britain and South Africa, and the federal Legislatures of India, the United States, U. S. S. R., Australia, Canada and Burma are

all bicameral bodies. The Legislatures of all States in the United States, with the sole exception of Nebraska, and of seven Indian States are also double-chambered. In Australia, all state legislatures except that of Queensland are bicameral.

The bicameral principle used to be regarded at one time as an axiom of Political Science. It was believed that the experience of France, Britain and the United States with single-chamber legislatures proved conclusively that such legislatures made for hasty and ill-considered legislation. France experimented with the unicameral system for a few years after the Revolution. It was, however, found unsatisfactory and abandoned in favour of the bicameral system in 1795. This system continued until 1848, when the unicameral system was revived but only for a short interval. England also experimented with the single-chamber system during the Commonwealth period but it was found unsatisfactory and was abandoned. In the United States, the legislative organ of the Confederation, which existed before the creation of a federal state under the present Constitution, was a single-chambered Congress. The Congress had not functioned in a satisfactory manner, which was the reason why almost all the members of the Convention which framed the U. S. Constitution favoured the creation of bicameral legislature for the federation. A number of other States such as Mexico, Equador, Portugal and Peru which experimented with the unicameral system ultimately abandoned it and established bicameral Legislatures. The experience of these states, it was widely maintained, proved conclusively that legislative processes under the unicameral or single-chamber system are sure to be marked by violence and instability, and to be subject to all kinds of passions, prejudices and intrigue. The double-chamber system, it was held, prevents the danger or hasty legislation. A double-chambered legislature is far less susceptible to passions and excitement of the moment than a single-chambered legislature. As a result of this conviction, the double-chamber system tended to be universal.

Recently, however, there has been a strong reaction against the bicameral system among a section of political scientists and among common people in many countries. It is argued that second chambers cause unnecessary delay in legislation, that they unnecessarily increase expenditure, and often become instruments in the hands of vested interests who use them to retard the pace of social progress. It is further argued that if the second chamber is elected on the same basis as the first, it becomes a mere duplication of the latter, and if elected on any other basis or is based on the principle of nomination, it gives representation to interests or elements which usually oppose the forces of progress. The arguments for and against second chambers, will be presently examined. Suffice it to say here that the bicameral principle has now ceased to be regarded as a political axiom which it was once believed to be. And if some of the latest constitutions of the world have provided for bicameral legislatures, the explanation is to be found, perhaps, not so much in any conscious preference for the double-chamber system as in the force of tradition. The fact that the legislatures in all the constituent republics of the Soviet Union and in 17 out of 27 States in India are unicameral is significant. (Seven Indian States have bicameral legislatures, while three States have no local legislature as yet.) The State legislatures in Burma are also single-chambered. The cantons of Switzerland, all the Canadian provinces except Quebec, and most of the Central American States have unicameral legislatures.

The Lower Chamber: It has become almost a universally recognised principle that the Lower Chamber of a bicameral legislature should be a popularly elected house. And almost everywhere the members of the Lower Chamber are elected on the basis of direct, equal and universal adult suffrage, voting being by the secret ballot. Formerly property and other qualifications used to be prescribed in all countries as requirements for voting for election to both Lower and Upper Chambers. With the spread of democracy, property and other undemocratic qualifications

have been abolished in practically all states, at least so far as the Lower Chamber is concerned, so that the entire body of adult citizens in almost every state has come to enjoy the right of voting for the Lower or the popular Chamber. It should be noted, however, that non-citizens, persons having unsound mind and criminals are as a rule excluded from the vote.

It is also another universally recognised principle that the tenure of the members of the Lower House should be limited or, in other words, that there should be periodic elections for the Lower House. It is easy to see that if the tenure of the members is unlimited or very long, they would soon lose touch with their constituencies and it would be difficult to enforce their responsibility to the electorate. The practice in this matter varies from state to state. In at least one American State (New Jersey), the term of office of the members of the Lower Chamber is one year, while in most of the States in that country the term is two years. The members of the House of Commons in Britain have a five-year term. In India, both at the Centre and in the States, the members of the Lower Chamber have a term of five years. In Britain, India and other countries having a cabinet system of government, however, the Executive enjoys the right of dissolution, which means that it can bring about the dissolution of the Lower Chamber at any time before the expiration of its period of office. But under a Presidential system, as in America, the members of the legislative chambers (both Lower and Upper) have fixed terms, that is, they remain in office for a period fixed by law.

Usually, under a cabinet system of government, the Executive is made responsible to the Lower Chamber of the Legislature. In Britain, India, Canada, Australia and France, for instance, the Ministry is responsible to the Lower Chamber. Under the cabinet system, the Lower House not only controls the Executive but also controls the finances of government.

The Upper Chamber—Constitution and Functions: There is as yet no universally recognised principle for the constitution of the Upper Chamber. And the practice in this matter varies widely. In some states, the Upper House is directly elected, while in some others it is indirectly elected. In some states, again, the Upper House is constituted on the hereditary principle or on the principle of nomination. Many states combine two or more of these methods.

The British House of Lords, the oldest Upper Chamber in the world, is predominantly a hereditary House, over nine-tenths of the members sitting in the House by hereditary right. Formerly the House of Lords possessed considerable legislative powers but these powers have been progressively curtailed until the House has become today a shadow of its former self. The House of Lords has practically no voice in financial matters. A Bill relating to the imposition and application of taxes cannot be introduced in the House of Lords; and Money Bills passed by House of Commons and sent up to the Lords cannot be amended by the latter. (Money Bills are public Bills containing only provisions relating to taxation, appropriation, debt, audit and certain other financial matters.) As regards other Bills, too, the power of the House of Lords is very limited. In case of disagreement between the House of Lords and the House of Commons, the latter can over-ride the former by following a certain procedure, the Lords having the power only to delay the passing of the measure by a maximum period of one year. Thus the House of Lords has no power in financial matters, while in regard to non-financial Bills it has only a suspensory veto, but no power to prevent legislation proposed by the Commons.

The Upper House of the French Parliament, known as the Council of the Republic, is indirectly elected—a little less than one-sixth of the members being elected by the Lower House, the National Assembly, and the rest being elected by electoral colleges constituted on a territorial basis. As regards the powers of the Council of the Republic, it is

probably the weakest Upper Chamber in the world. It has no power in relation to the actual enactment of laws. The Constitution of the Fourth Republic, that is, the present constitution of France, says: "The National Assembly alone shall vote laws. It may not delegate this right." Thus, the Council of the Republic has no part to play in the passing of a legislative measure. It may, however, suggest measures and may give its opinion on measures passed by the Lower House, the National Assembly. But these suggestions and opinions may be rejected by the National Assembly if it disapproves of them. The Upper Chamber of the French Parliament is thus more an advisory body than a legislative chamber. If the National Assembly decides to pass any measure, the Council of the Republic can neither prevent the former from passing it, nor can it effect any amendment in its provisions. The Council can at most delay the passing of the measure by a few weeks.

While the Upper Chamber of the French Parliament is probably the weakest Second Chamber in the world, the American Senate is perhaps the most powerful of such bodies. The total number of members of the Senate is 96. The Senate is supposed to represent the interests of the states as such. All states have, therefore, been granted equality of representation on this body, each state electing two members. Formerly the members of the Senate used to be chosen by the state legislatures. Since 1913, they are directly elected by the voters in each state. The term of office of the Senators is six years. One-third of the members retire every second year. Elections for the Senate have, therefore, to be held every two years. The Senate enjoys almost co-equal legislative powers with the Lower House of Congress, the House of Representatives. Only in financial matters its powers are slightly less than those of the House of Representatives. The U. S. Constitution says: "All Bills for raising revenue shall originate in the House of Representatives." But while the Senate cannot originate revenue Bills, it has power to amend such Bills and thereby to

originate, for all practical purposes, new revenue-raising measures. The Senate enjoys important executive powers. Appointments made by the President are subject to the Senate's approval, and all treaties have to be submitted to it for ratification. The Senate also enjoys the sole power to try impeachments. The American Senate, therefore, wields far greater powers than the British House of Lords, or the Indian Council of States, or the Australian Senate, not to speak of the French Council of the Republic. The position of a Senator carries with it far greater prestige than that of a minister of the national government. And among the members of the Senate are always to be found men of outstanding ability and character. No President can neglect the opinion of the Senate on any issue. And it has been justly remarked that the Senate " is the master of the House of Representatives; it is even able to make the House give way on matters like finance and the tariff."

The Upper House of the Australian Parliament, which is also known as the Senate, is composed of 36 members. Each of the six states in the federation elect six members. The units of the federation thus enjoy, as in America, equality of repersentation on the Senate. The members of the Senate are dircetly elected by voters in each state. One-half of the House is renewed every three years. The position of the Senate is much inferior to that of the Lower House, known as the House of Representatives. While the Senate enjoys equal powers with the Lower House in regard to ordinary Bills, the Senate can neither originate nor amend Bills relating to taxation and appropriation. In case of final disagreement between the two Houses on any measure, the Governor-General may dissolve both Houses simultaneously. And if the deadlock continues after the elections, a joint session of the two Houses may be convened at which a law may be passed by an absolute majority. Since the total membership of the Lower House is roughly double that of the Senate, the views of the former are sure to prevail at a joint session.

The Upper Chamber of the Indian Parliament is known as the Council of States. The Constitution says that the Council of States shall consist of 12 members to be nominated by the President and not more than 238 representatives of the States. The representatives of the States are to be chosen by the State Legislative Assemblies. (In three States in which there is no Legislative Assembly as yet, the members are to be chosen by electoral colleges.) And the 12 nominated members must be persons having special knowledge or experience in respect of literature, science, art and social service. The members of the present Council of States total 219 (including the nominated members). One-third of the members retire every two years. The Council of States is a permanent House and is not subject to dissolution. The position of the Council is definitely inferior to that of the Lower House, the House of the People. The Ministry has been made responsible to the Lower House alone. The Council has very little control over financial matters. The demands for grants are not submitted to its vote. No financial Bill can be introduced in the Council of States. And Money Bills passed by Lower House are required to be transmitted to the Council for its reccommendations. If such a Bill is not returned to the Lower House within fourteen days, it is to be deemed to have been passed by both Houses. If it is returned within the said period with the Council's recommendations, the Lower House may either accept or reject those recommendations, whereupon the Bill is to be deemed to have been passed by both Houses. In case of final disagreement between the two Houses, the President may convene a joint session of the two Houses of Parliament, at which a law can be passed by a majority of the total number of members present and voting. As the size of the Lower House is more than double that of the Council, the views of the former are sure to prevail at such joint sessions. It is interesting to note that although the Council of States is supposed to repersent state rights, the states do not enjoy equality of representation on this body;

they have been given representation more or less on a population basis.

The Upper House of the Canadian Parliament, which is styled the Senate, is a wholly nominated body. Its members are appointed for life by the governor-general on the recommendation of the Cabinet. The total number of Senators is 96—Ontario and Quebec have 24 members each; Nova Scotia and New Burnswick 10 each; Manitoba, Alberta, British Columbia and Saskatchewan 6 each and Prince Edward Island 4. The Senate has no power to initiate Money Bills and it always confines itself to formal confirmation of such Bills when they come up from the Lower House. It can originate other Bills, amend measures coming from the Lower House and even reject such measures. The Senate is, however, not a very active legislative body and the public pay very little attention to its proceedings. There is no provision for resolving a deadlock between the two Chambers, except that the Governor-General has the right to appoint 8 additional Senators—a right which has never been exercised.

The Second Chamber Issue—Arguments For and Against: The question of a second chamber has been for long a subject of controversy among political scientists and the issue cannot be said to have been finally settled yet. Arguments advanced by advocates of the bicameral system may be summarised as follows:—

(1) A second chamber prevents hasty and rash legislation. It serves as a brake on the wheel. It interposes delay between the introduction of a measure and its final passage and thereby helps to cool passions and excitement. It ensures that laws are adopted only after proper consideration of all the pros and cons. In short, a second chamber exerts a steadying influence on the governmental machinery. Writers like Lecky maintain that the single-chamber system is "the apotheosis of democratic rashness." Single-Chamber Government, in their opinion, is characterised by

rash and precipitate legislation. Such a system is sure ultimately to bring disaster on the state. Lecky says: "There is certainly no proposition in politics more indubitable than that the attempt to govern a great heterogenous empire simply by such an assembly must ultimately prove disastrous, and the necessity of a second chamber to exercise a controlling, modifying, retarding and steadying influence has acquired almost the position of an axiom."

(2) A second chamber helps consideration of every question from various points of view. Four eyes see better than two, says Bluntschli. A second chamber not only postpones but also revises.

(3) The existence of a second chamber is a safeguard against arbitrary infringement of rights. It is a barrier against tyranny and oppression. A legislative assembly has an innate tendency to grow tyrannical. We need a second chamber to protect the rights of the people against the despotism of a single chamber.

(4) Another advantage of having a second chamber is that it enables us to give representation to special interests and classes in the Legislature. Such representation is necessary to make the Legislature a well-balanced body. By giving representation to the propertied classes in the second chamber, we can ckeck to some extent the evil effects of the excessive enthusiasm of the popularly elected chamber for curtailing property rights.

(5) A second chamber enables us to bring into the Legislature men who have attained eminence in various spheres of life but who are unwilling to contest elections because of the trouble involved.

(6) In a federal government, a second chamber affords a means of giving representation to the units of the federation. In America and Australia the states enjoy equal representation in the Senate. This provides a safeguard against the danger of a few big and populous states dominating the Legislature, and thereby making the rights of the smaller

states extremely insecure. Without the safeguard which a second chamber affords against the tyranny of a few big states, small states will hardly dare unite with big ones to form a federation.

These are the main arguments usually put forward in favour of second chambers. The advocates of the single-chamber system advance the following arguments in rebuttal:

(1) The popular chamber represents the will of the people, and it is according to the will of the people that laws should be made. To have a second chamber means only to confuse the popular will, to create unnecessary discord and division and to prevent the will of the people clearly reflecting itself in laws. As the French publicist Sieyes put it, "if a second chamebr dissents from the first, it is mischievous; if it agrees with it, it is superfluous."

(2) It may be argued that a second chamber has functions other than merely agreeing or disagreeing with the first; by interposing delay between the introduction of a measure and its adoption it makes possible proper consideration of all the aspects of the questions involved. But the reply to this argument is that no important legislation in modern times is anywhere finally adopted before its main principles have been discussed and debated on the platform and in the press for months and sometimes years. The necessary checks, therefore, lie in the very process of modern legislation and the conservatism of the masses. The provisions of the Hindu Code Bills, for instance, were discussed for years in our country. The question of the creation of a separate State of Andhra was debated for years before the Andhra State Act, 1953 was passed. Similarly, the question of reform of the House of Lords was discussed for over a generation before the Parliament Act, 1949 was passed.

(3) A second chamber means wastage of time in useless debate. Criticism in a second chamber is mostly a repetition of that made in the first.

(4) A second chamber often affords an opportunity to the vested interests to send their representatives in substantial numbers to the legislature and thereby to retard social progress.

(5) It is difficult to devise a satisfactory method of constituting a second chamber. If a second chamber is elected on the same basis as the first, it becomes a mere duplication of the first. If it is indirectly elected, the vested interests get a chance of sending their representatives to it in considerable numbers. Indirect election lends itself easily to corruption. In fact, some political scientists maintain that "of all methods of maximising corruption, indirect election is the worst." Formerly the members of the Senate in the United States used to be indirectly chosen, and this resulted in the members in most cases being nominees of great business interests. The Constitution of the United States had, therefore, to be amended and the system of indirect election replaced by that of direct election. Constituting a second chamber on the principle of nomination, as in Canada, is to give a chance to the party in power to pack it with its own men. And a hereditary chamber like the British House of Lords is simply an outrage on the democratic ideal because the members of such a chamber never represent anybody except themselves.

(6) A second chamber makes possible the shifting of responsibility from one chamber to another. When things go wrong in the legislative sphere, each chamber may hold the other responsible for it. If, however, the legislature consists of a single chamber, responsibility can be definitely fixed.

(7) The bicameral system is characterised by "log-rolling" between the two chambers.

(8) Ministerial responsibility can be more readily enforced under the single chamber system. In a cabinet system of government, it is confusing to have a second

chamber to which the cabinet is not responsible and whose adverse votes it can ignore.

(9) Even in a federal system of government, a second chamber is of doubtful utility. For although the second chamber of a federal Legislature is supposed to represent state rights, it is usually seen that voting takes places in both chambers on party lines. Congressmen in the Indian Council of States vote in much the same way as Congressmen in the House of the People. Communists and Socialists also argue and vote on their respective party lines in both Houses.

(10) A second chamber unnecessarily increases the expenses of government, the salaries and allowances payable to the members of the chamber amounting annually to a considerable sum of money.

(11) Experience shows that wherever there are two chambers one or other always takes the lead. "One or other will therefore come to be the centre of importance, and to that chamber political talent will invariably gravitate."

The Most Successful Second Chamber in the World: Probably the most successful second chamber in the world is the American Senate. The Senate is said to be one of the outstanding successes of American political system. Debates in the Senate always compel attention of the entire nation. No President dare neglect the opinion of the Senate on any important issue. On most questions of importance, the Senate's view prevails over that of the Lower House, the House of Representatives. The position of a Senator is an object of great ambition in the country. It carries with it far greater prestige than the office of a federal minister. A Senator can approach the President whenever he wishes. A Senator "is confident that any pronouncement he makes is national news." Among the members of the Senate are always to be found men of outstanding ability and character. The Senate is the most vital check against Executive

despotism. The position of importance which the Senate occupies in the American political system is due mainly to the following factors :

(1) The Senate enjoys not only co-equal powers with the Lower House in the legislative sphere, it also enjoys important executive and judicial powers. All important appointments, administrative, judicial and diplomatic, made by the President must be submitted to the Senate for its confirmation. And no treaty can become law unless ratified by a two-thirds majority of the Senate. The power of trying impeachments has also been vested in the Senate.

(2) The Senate is small in size, its total membership being only 96. This makes possible effective discussion and debate. It also enables the members to develop intimacy among themselves and to present a solid front on important issues. The smallness of the Senate's size has also resulted in the growth of a strong corporate sentiment among its members in regard to their rights and privileges.

(3) The members of the Senate have a comparatively long term of office. While the members of the House of Representatives serve only two years, a Senator's term of office is six years, and very often a Senator is re-elected more than once. A Senator thus stays in office for a period sufficiently long to enable him to learn thoroughly the methods of legislation as well to grasp clearly the main political and economic issues. The length of his term also enables him to make an impression on the national life.

(4) An amazing freedom of debate obtains in the Senate. This freedom is no doubt sometimes abused but it gives the minorities a chance to compel consideration of their views and to hold up action till the public has had an opportunity of clearly expressing itself on the question at issue.

The Bicameral System in India: It is difficult to feel satisfaction with the bicameral system as established by the Constitution of India at the centre and in some of the States.

Let us first deal with Central Legislature in India, which is known as Parliament. In a federal system of government, the Upper Chamber of the federal legislature is supposed to represent the state rights, and to serve as a safeguard against the tyranny of a few big and populous states. This is why in Australia and the United States, the constituent states enjoy equality of representation, irrespective of their size and population, in the Upper Chamber of the Federal Legislature, which in both countries is known as the Senate. In India, however, the States have been represented more or less on the population basis in the Upper Chamber of Parliament, the Council of States. The result is that in both Houses of Parliament a small number of big States hold the majority of seats. In fact, as Parliament is constituted at present, six big states can control the Ministry at the centre as well as the entire federal legislative policy.

The members of the Council of States, the twelve nominated members apart, are indirectly elected, and indirect election is very much susceptible to corruption.

The Council of States has practically no power in financial matters. And as regards other matters, the Constitution provides that a joint session may be held in case of final disagreement between the two Houses, which means that the Lower House, being double the size of the Council of States, can override the latter if it so chooses.

It must also be said that the way the Council has functioned so far has not justified its existence.

The same is true of the Upper Houses in the State Legislatures. Only seven States possess Upper Houses. The majority of the States have unicameral legislatures and there is no evidence that they are any the worse for not having second chambers. The composition of the Upper Houses of a bicameral State Legislature (known as the Legislative Council) is as follows: one-third is elected by the Lower House, one-third by local bodies, one-twelfth each by teachers and graduates and the remaining one-sixth is

nominated by the Governor, that is, by the party in power. In spite of this varied composition, voting takes place usually on party lines. And although the nominated members are required to be recognised specialists in the fields of literature, science, art, co-operative movement and social service, partisan considerations rather than considerations of ability or competence have been the determining factor in the making of nominations. The debates in the Legislative Council, speaking generally, are found to repeat the same arguments as those adduced in the Lower Chamber. While the Council has practically no voice in financial matters, it has no power to prevent legislation proposed by the Lower House even in other matters. By following a certain procedure the Lower House can independently pass a legislation. It is highly significant that already in two or three States having bicameral legislatures there have grown up a strong public demand for the abolition of the Council but in none of the States with unicameral legislatures has the public opinion so far expressed itself in favour of the creation of a second chamber.

How Deadlocks are Avoided: Wherever there are two chambers either the Constitution or conventions provide for the avoidance of deadlock between the two chambers. In most countries the possibility of deadlock in financial matters is avoided by giving the second chamber a nominal voice in such matters. And as regards non-financial legislation, there is provision in some countries for joint sessions in case of disagreement between the two chambers, while in others the Lower House is given power to pass a legislation alone by following a specified procedure. In some countries, again, there are machineries for effecting compromises between the two Houses. In Britain, in case of final disagreement between the two Houses of Parliament in regard to any Bill (other than a Money Bill), the House of Commons can enact a measure alone by passing it in two successive sessions in not less than one year's time. In India, the President can convene a joint session if the two

Houses finally disagree on any measure. At such a joint session, a law may be passed by a majority of the total number of members present and voting. In Australia, in case of disagreement between the two Houses of Parliament, both Houses may be dissolved and if the disagreement persists even after the elections, a joint session may be held at which a law may be passed by an absolute majority. In all these states, namely, Britain, India and Australia, the possibility of deadlock over financial measures has been averted by denying the Upper House any effective voice in financial matters. In the United States, where the two Houses of Congress enjoy, for all practical purposes, co-equal powers in both financial and non-financial matters, deadlocks between the two Houses are avoided by means of a conference committee. On this committee, the two Houses are represented by two groups of members, each group voting as a unit. The two groups discuss the points of disagreement and arrive at a compromise. "In these compromises the Senate has a reputation for getting the better of the bargain. And this is not surprising, for the Senate is usually represented on conference committees by stronger personalities, by men of greater skill in bargaining."

Legislative Procedure: Legislative procedure will be discussed in detail in connection with the study of governments. Its main features may, however, be broadly outlined here. In the English-speaking countries and in India the procedure of legislation are similar in all essentials. The main stages through which a Bill has to pass before it is placed on the Statute Book are the following: (1) introduction of a measure, (2) first reading, (3) a second reading when the Bill is usually referred to a committee, (4) a third reading, (5) sending to the other chamber (where the Legislature is a bicameral one) where the Bill has to go through the same process as in first chamber, (6) forwarding of the Bill to the Executive which may approve or veto the Bill. In some countries the Constitution provides for a procedure whereby a vetoed Bill may be again passed by

the Legislature and made an Act. This is known as over-riding the veto.

A Bill is introduced in a House by a member of that House. In a cabinet system of government, all important Bills, speaking generally, are framed and introduced by the Government; each official Bill is introduced by the Cabinet Minister concerned. In a Presidential system of government, there can be no official Bill strictly so called because the Government, under this system, have no right to introduce measures directly in the Legislature; it can, however, get measures sponsored by it introduced into the Legislature through the help of some party member.

The first reading stage is a merely formal one. Often the name of the Bill is read out and the first reading is over. The first reading stage is followed by a second reading. At this stage a debate is held and the Bill is thereafter referred to a committee. After the committee stage comes the report stage when the committee submits its report to the chamber. Usually a Bill undergoes amendments in the committee stage. The report stage is followed by a third reading when the Bill is finally passed or rejected. Thereafter the Bill is sent to the other chamber (if the Legislature is a bicameral one) and the same process is repeated once again. After a Bill has been passed by the chamber or chambers of the Legislature it is forwarded to the head of the Executive who may approve or disapprove of it. If assented to by him, the Bill becomes law, and if vetoed by him the Bill either dies or is again passed by the Legislature, sometimes by a special majority required by the constitution, whereupon it becomes law.

Committees of Legislatures: Legislative chambers are usually too big and unwieldy bodies for detailed consideration of all measures that come before them. The volume of work which modern Legislatures have to handle is also too big to permit of consideration of every detail of every measure by the whole House. This is why the task of

considering the details of Bills is usually delegated by Legislative Chambers to committees. These committees, which are usually small in size, consider the measures referred to them and then submit their report to the House which then considers the modifications and amendments suggested by the former. As a rule, only members of the Legislature are appointed on these committees, and the members of the various parties are represented on them in more or less the same proportion in which they are represented in the House concerned. The party in power thus always commands a majority in the committees.

Almost all Legislatures of the world maintain some standing or regular committees. Apart from these standing committees, special or select committees are very often appointed to consider particular Bills. Select Committees pass out of existence on completion of their task. The standing committees, however, are appointed for a specified period of time and continue to exist till the expiration of that period.

In some Legislatures measures of certain categories are as a rule considered by committees of the whole House. A committee of the whole House consists of its entire membership. The only difference between the house sitting as such and the house sitting as a committee of the whole is that in the latter the procedure is less formal and there is greater freedom of debate.

The character and functions of standing committees vary considerably. It is important to note the following points of difference between the standing committees in Britain and those in America: (1) The standing committees maintained by the American Congress deal with specified types of Bills, each committee specialising in a particular subject. There are, for instance, committees on foreign affairs, appropriations, judiciary, inter-state and foreign commerce, agriculture, labour and so on. All Bills relating to any of these subjects are referred for consideration to the particular committee

concerned. In Britain, however, the standing committees are not committees on any definite subject. Bills are indiscriminately referred to them so that a standing committee may be, and usually is, required to consider Bills relating to a wide variety of subjects, (All Bills relating exclusively to Scotland are, however, referred to the Scottish committee). It is noteworthy that whereas the House of Representatives in America has at present 47 standing committees, the House of Commons in Britain maintains only four such committees. (2) All Bills referred to the Standing Committees of the British Parliament are required to be reported out. But in America most Bills "die in committee." When a committee in any American legislature fails to be impressed by the merits of a measure it simply refrains from reporting it and the Bill dies, that is, is permanently pigeonholed. There is, of course, a procedure whereby a Bill may be taken out of the hands of a committee and brought to the floor of the House but the procedure is difficult and is rarely resorted to. It has been estimated that roughly 80 per cent of the measures referred to committees of the House of Representatives "die in committee." (3) Although the committees of the British Parliament can introduce changes in a measure, they cannot alter the basic principles or features of a Bill. The committees in American legislatures, however, frequently change Bills beyond recognition and sometimes present what are practically new Bills. (4) It is a normal practice for American committees to hold public hearings. Advocates and opponents of a measure are allowed to present their views at these hearings. But public hearings are practically unknown in Britain or any other European country. (5) In America there is a rigid method of determining the ranks of committee members and the chairmanship of an important committee is a very covetable position. The chairman of such a committee wields considerable influence over legislation. In Britain no such importance is attached to the question of the rank of committee members, the chairman of a standing committee

being usually designated by the Speaker from a panel of chairmen named by himself.

The Speaker: The officer who presides over the Lower House of a Legislature is usually called the Speaker. The office of the Speaker is one of great honour and dignity. He maintains order in the House. He preserves decorum. He can make disorderly members withdraw from the House. He can adjourn the House if disorder gets out of control. He interprets the rules of procedure and enforces them. He decides points of order. While speaking, the members address the Speaker, not the House. He puts questions and announces the results of voting. The Speaker never participates in the debates. He never votes except in the case of equality of votes, which is called a tie. The Speaker breaks a tie by giving his casting vote. The Speaker is always expected to perform his functions with complete impartiality.

In Britain, the Speaker of the House of Commons is nominated by the Party in power and is thereafter elected by the House. In the United States, the Speaker is selected by the caucus of the majority party and is thereafter elected by the House. In Britain, the Speaker is an absolutely non-partisan figure. As soon as a member is elected the Speaker, he ceases to take part in active politics. He does not attend party meetings. He does not maintain any connection with party clubs or newspapers. He never discusses any party issue in public. The Speaker is allowed to be re-elected to Parliament from his constituency without any opposition, that is, his seat is not contested. And, once in office, the Speaker is re-elected automatically whichever party may be in power. Thus a Speaker with conservative antecedents is automatically re-elected when the Labour Party comes to power and vice versa.

In America, however, the Speaker is not a non-partisan figure but frankly a party man. The Speaker in America is expected to use his position to serve the interests of his

party without being, of course, grossly partial or scandalously unfair to the opposition. The Speaker's office in Britain is more dignified and commands greater respect than that of his American counterpart.

In India the Constitution lays down that the Speaker, both at the centre and in the States, shall be elected by the members of the House concerned. As in other countries, the Speaker must be a member of the House. This means in practice that a member belonging to the majority party is elected Speaker of the House. The Speakers of the various Indian Legislatures have already built up an honourable tradition round this office. They function, speaking generally, with a fair measure of impartiality. The Speaker's office in India, however, is yet to raise itself to the dignity of its British counterpart. The convention has not yet grown in India of letting the Speaker be elected uncontested. Nor can a Speaker count on automatic re-election to the office.

DIRECT LEGISLATION

What is Direct Legislation? Direct legislation means legislation directly by the voters. Laws in the modern world are usually made indirectly, that is, by representatives elected by the voters. The representative system, however, is not free from defects. It is easier to corrupt a small number of representatives than the general body of voters. Legislation, under the representative system, thus often becomes subject to various corrupt influences. Also, the representatives often lose touch with the voters and fail to reflect their will accurately. Sometimes, under the representative system, the minorities fail to get themselves represented in the legislature and are thus denied voice in legislation. These are the reasons why the constitutions of some modern states provide for direct legislation by the people in addition to the usual system of indirect legislation. There are two methods of direct legislation—the initiative and the referendum.

The Initiative—The initiative is a device by which the voters themselves may draft a legislation and adopt it, or they may compel the legislature to adopt or introduce a certain kind of legislation. The usual initiative procedure is as follows: A proposed law or constitutional amendment is drafted by some person or organisation and a petition is drawn up urging its enactment. A required number of signatures (usually a certain percentage of the voters) is then obtained. The petition is thereafter submitted to a designated official who scrutinises it, and if it is found that the requisite number of signatures has been obtained, the measure is submitted to the voters. If the required majority of voters support the measure, it is considered as passed. Sometimes it is required that the proposed law must be first submitted to the legislature and, in such cases, the proposed measure does not go to the voters unless the legislature fails to pass it. Where the proposal goes directly to the voters without prior submission to the legislature, the initiative is called the direct initiative. Where it has to be submitted to the legislature first, it is called the indirect initiative. The initiative exists in Switzerland and some of the American States.

The Referendum—The referendum is the system by which a measure may be submitted to the voters by the legislature or a measure passed by the legislature may be withheld from going into force until the voters have had an opportunity to express their opinion on it. The referendum may be compulsory or optional. It is compulsory where all laws of a particular type are required to be submitted to the voters; it is optional where it is brought into operation on the petition of a specified number of voters. The referendum which relates to ordinary laws may be called the statutory referendum, and that relating to constitutional amendments may be called the constitutional referendum. The constitutional referendum exists in forty-six American states where it is also compulsory—the legislature in each of these states must submit every proposed constitutional amendment to

the voters. In Switzerland, constitutional referendum is compulsory both in the federal sphere and in the cantons. In Australia also, all proposed constitutional amendments are required to be submitted to voters. Statutory referendum also exists in Switzerland; it is optional in the federal sphere and in some of the Cantons. In a number of Cantons, the statutory referendum is compulsory, that is, all laws proposed by the legislature must be submitted to the voters. In those Cantons in which laws are made by the Landsgemeindes—Assemblies of all adult male citizens—there is, it should be obvious, no need for referendum at all.

While the initiative gives the people the right to propose legislative measures, the referendum gives them the veto power over legislation. In Switzerland the referendum has proved to be not a revolutionary but a conservative weapon. There the people have wielded this weapon more often to reject than to pass laws.

Arguments for and against Direct Legislation: The main arguments put forward in favour of the system of direct legislation are the following: (1) Direct legislation by the initiative and the referendum makes democracy more democratic. Legislators often succumb to corrupt influences but the common voters are too numerous to be corrupted. Legislators also often lose touch with their constituents and fail to represent their views properly. Direct legislation ensures accurate reflection of the popular will by the laws. (2) Direct legislation gives the minorities a chance to make their influence felt. It happens not unoften that the minority point of view goes without representation in the legislature. Direct legislation enables the minorities to influence the course of legislation by mobilising and pooling their votes in suport of, or against, proposed measures. (3) Direct legislation is a weapon in the hands of the people, which they can utilise when the legislatures fail to carry out the popular will. The very existence of this weapon keeps the legislative bodies in good behaviour. The knowledge that the people have the

power to reverse their decisions makes the legislatures very careful about their work. Direct legislation thus prevents representatives from becoming misrepresentatives. (4) Direct legislation has a very great educative value. The people take very little interest in the work of legislative bodies. As a result, they usually remain in the dark about the character and content of the laws that are made by their representatives and feel no responsibility for them. When, however, they are called upon to vote on a measure they have necessarily to give some thought to the questions at issue and to listen to the arguments for and against. To enlist the support of the voters, the supporters and opponents of a measure put forward their respective points of view through the press and on the platform, and the questions are discussed in clubs, homes, eating houses and on the radio. All this has a high educative value for it enlightens the minds of the voters and quickens their political consciousness.

The following are the arguments usually put forward against the system of direct legislation: (1) Direct legislation means that the voters are called upon to say Yes or No in regard to a proposed measure. They are asked either to accept the measure as a whole or reject it as a whole. Legislation is, however, too complex a job to be done by this method. It involves compromise, adjustment and balancing of opposed interests. This cannot be done by merely saying Yes or No. An initiated measure, particularly, cannot be amended at all. Again, since no one can express his opinion on complex issues by merely saying Yes or No, there is no real expression of the popular opinion when questions go on the ballot. Direct legislation, therefore, far from making democracy more democratic, makes it less so. (2) Direct legislation, secondly, weakens the foundation of civil liberties. Certain rights, regarded as of fundamental importance, are usually incorporated in the constitution to ensure that these are not altered by the momentary whims of the majority. In a state where the system of direct

legislation prevails, unscrupulous politicians can, by cunningly playing upon the sentiments and emotions of the common voters, easily have the constitutional guarantees altered. (3) Direct legislation unnecessarily adds to the burden of the voters who have to attend to their own business and have little time to spare for the work which ought to be done by whole-timers. (4) Direct legislation gives a distinct advantage to the richer people who can spend large sums on propaganda. Just as almost any commodity, good or bad, can be sold by persistently advertising it, any legislative proposal can be 'sold' to the people provided sufficient money is spent on propaganda and for a sufficiently long time. Since poorer people lack resources to propagate their points of view adequately, the laws under a system of direct legislation reflect in most cases not the will of the people but the will of the wealthy people who constitute usually a small minority in the total population. (5) Contrary to popular belief, direct legislation is not legislation by the people but by a minority of the people. For, the percentage of the voters who cast their votes at an election is seldom more than 50 or 60 . And since a majority of those who record their votes decide the issue, direct legislation means legislation by 30 to 35 per cent of the total electorate—that is, legislation by a minority.

The Constitution of India, it is interesting to note, does not contain any provision for direct legislation. The voters in India can neither directly initiate a legislative measure, nor can they directly veto a measure passed by the legislature. Absence of provisions for the initiative and the referendum is regarded by some people as one of the major defects of the Indian Constitution. Judging from the experience of other countries, however, it is difficult to believe that direct legislation would make the laws in India more democratic than they are today.

CHAPTER XIV

THE ELECTORATE AND REPRESENTATION

Modern Democracy and Representation: Modern democracy, as has been already pointed out, is indirect democracy or representative democracy. Under this system, the voters, instead of directly participating in law-making, elect representatives to perform the function of legislation on their behalf. In modern states with their large populations it is simply impossible for the entire body of voters to meet together to discuss the affairs of the state and to frame laws. The system of representation is thus indispensable in modern democracies. The constitutions of some states, however, as we have seen, combine the representative system with a system of direct legislation. The modern methods of direct legislation, namely, the initiative and the referendum, have been already discussed.

Franchise and the Electorate: Franchise means the right of voting. And persons who are qualified to vote are collectively called the electorate. The electorate, in short, is the body of voters taken as a whole. It has been already stated that all citizens are not voters. Only those citizens who possess the right of franchise are voters . The electorate includes only a fraction of the citizens. This fraction used to be very small in the past when the franchise was very limited everywhere. With the extension of franchise, the size of the electorate has gradually increased till at present, in most democratic countries, it has come to include practically all adult citizens. The electorate in India today constitutes roughly fifty per cent of the total population.

Extension of Franchise and Universal Adult Franchise: Formerly, the franchise was everywhere the exclusive privilege of a small minority . The requirements laid down by law for the exercise of the vote were such that only a small minority could fulfil them. A common requirement was

possession of a certain amount of property or payment of a specified amount of tax. Women, again, were almost everywhere excluded from the vote. As a result of property and sex qualifications the great bulk of the adult population of the state would be excluded from the vote. Property qualifications were based on the theory that only those who own property have a stake in the country and that those alone should have the vote who have such a stake. John Stuart Mill held that the Assembly which voted the taxes should be elected only by those who paid something towards the taxes. If people, Mill argued, who did not themselves pay taxes were allowed to vote grants, they would have every motive to be lavish and none to economise. Tax qualification, it should be noted, is essentially a kind of property qualification.

Exclusion of women from the franchise used to be justified on the ground that if women entered politics, home and family life would deteriorate.

The growth of the democratic movement has led in all parts of the world to a steady extension of the franchise. The nineteenth century witnessed a vast expansion of the franchise in England and America. By the end of that century, the great bulk of the adult male population of these countries were enfranchised.

At the beginning of the twentieth century, however, women were still without the vote in Britain and the greater part of America. By the end of the third decade of this century, women had been admitted to the franchise on equal terms with men in both Britain and America. At present, in most democratic countries, the system of universal adult franchise prevails. Practically every adult citizen in a democratic country now enjoys the right to vote. In most countries the qualifying age is twenty-one. In the Soviet Union the qualifying age is eighteen. Universal adult franchise, though called universal, does not mean that all adults without any exception enjoy the right of voting.

Everywhere, speaking generally, the following classes are excluded from the vote: non-citizens, criminals and persons disqualified on the ground of unsoundness of mind and illegal practice at elections. The following extract from the Constitution of India will clearly explain the meaning of the term universal adult franchise: "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election." (Art. 326).

Arguments for and against Universal Adult Franchise: The principle of universal adult suffrage seems today to be but an axiom of the democratic theory. That every adult person, who is not disqualified on the ground of unsoundness of mind, crime and the like, should have the vote appears to be a self-evident proposition. There was a time, however, when even the most democratic person was afraid to advocate adult suffrage, and the principle was generally looked upon as foolish and dangerous. It is as a result of a long movement that adult suffrage has come to be generally accepted and established. In most countries the extension of the franchise was effected by stages. And almost everywhere women were admitted to the franchise long after the entire adult male population had been enfranchised. In Britain and the United States, for instance, practically the entire adult male population had been enfranchised before women were granted franchise on the same terms as men.

Among the nineteenth century opponents of the principle of universal adult franchise were Macaulay, John Stuart

Mill, Maine, Lecky, Sidgwick and Bluntschli. Their main argument against adult suffrage was that it would mean rule by the ignorant masses. Enfranchisement of the ignorant masses, Bluntschli held, would mean state suicide. Macaulay maintained that universal suffrage was sure to lead to decay of culture through the rule of incompetence. Universal suffrage, said Laveleye, the Belgian writer, would lead to the " loss of liberty, of order and of civilisation." And Mill said : " Universal teaching must precede universal enfranchisement."

The argument, however, that adult franchise is sure to lead to rule by the ignorant and the incompetent has been rendered obsolete by the introduction of free and compulsory education in the advanced countries. In the more advanced countries like Britain, the United States, France, Germany and the Soviet Union nearly cent per cent people are now literate.

The chief arguments in favour of adult franchise are the following : (1) The principle of adult suffrage is a corollary to the principle of equality. Restricted franchise means denial of equality. Adult franchise is the only method whereby all adult citizens can be enabled to enjoy equality of political rights. (2) Adult franchise is the only method of ensuring representation of the entire population by the Legislature. (3) Adult franchise helps the growth of a healthy political life. For adoption of adult franchise obviates the need for special franchises, reservation and the like for particular classes or interests and thus discourages the formation of political groups on the basis of sectional or communal interests. It promotes the growth of parties on the basis of real political issues.

India and Adult Franchise : Under the British rule, the franchise was entremely limited in India. Even under the Government of India Act, 1935, the last constitution to be granted by the foreign rulers, the franchise was circumscribed by various property and other qualifications so that only about 14 per cent of the population enjoyed the right

of voting. After the attainment of freedom, the Constitution of India introduced at one stroke the system of adult franchise thereby conferring the right of voting on practically the entire adult population in the country. In Britain, United States and many other countries, the people had to carry on a movement for a long time, sometimes a century or so, before the powers that be could be made to accept the principle of adult franchise. Extension of franchise in all these countries was effected by stages. In India, however, the system was introduced immediately after the attainment of freedom. Thus India, in this vital sector of democracy, covered at one jump the distance which most of the advanced countries took decades, and often a century, to travel.

Woman Suffrage: It is a corollary to the theory of democracy that women should be given the franchise on the same terms as men. For this theory states that no government can justly claim the right to rule unless it is based on the consent of the governed. Since women are governed equally with men by the government, they should enjoy an equal right with men in choosing the persons who are to exercise governmental power. In other words, women should have the same right of voting as are granted to men.

Though this principle of woman suffrage seems a self-evident proposition to us today when we have become used to the sight of women voting at elections along with men in most countries, there was a time when the idea of enfranchising women would be strongly opposed and ridiculed. Until the middle of the nineteenth century, women had not acquired the right to vote in any country. A movement for the enfranchisement of women had started at the time of the French Revolution but it gained momentum only after the middle of the nineteenth century. John Stuart Mill was one of the earlier advocates of woman suffrage. He pointed out that the question of sex was entirely irrelevant to political rights, just as difference in the colour of hair had nothing to do with these rights. As a result of the powerful advocacy

of woman suffrage by Mill and others, women began to be admitted to the franchise in a number of countries during the second half the nineteenth century. Today women enjoy equal right to vote with men in almost all countries.

The main arguments which used to be put forward by the opponents of woman suffrage are the following: (1) The bearing of children and the rearing of families are woman's peculiar function and if she entered politics it would not be possible for her to perform these functions properly. Participation in politics by women would, therefore, adversely affect home life and would be seriously detrimental to human welfare. (2) Participation in politics will unsex women and destroy all feminine virtues. (3) If women are enfranchised, they may often choose to vote differently from their husbands and other male members of the family, and this will cause discord and unhappiness in the family. And if women vote according to the dictates of their husbands or other male members, that will merely mean a duplication of the votes of the latter. (4) Women have no right to demand the franchise because they are incapable of performing all the civic duties which devolve on men. They cannot, for instance, serve in the army or the militia.

The advocates of woman suffrage answered these arguments thus: (1) Difference of sex has nothing to do with political rights. Women are, of course, physically different from men. But nobody has been able to prove that the physical or intellectual constitution of women renders them incapable of exercising the franchise properly. Difference of sex cannot be, therefore, a rational ground for denial of the franchise to women. (2) Secondly, if the franchise were restricted to men alone, women would always be subjected to unjust and discriminatory legislation. Women should be given the vote as a means of self-protection. Government of both men and women, it has been rightly said, should not be government by men alone. Laws will never fully recognise or safeguard women's rights unless women were enabled to make their voice felt in legislatures.

and thereby influence legislation. (3) The argument that participation by women in political life of the state will interfere with their domestic duties is fallacious. Very little time is needed to record one's vote. (4) Women's civil disabilities have disappeared in many countries and are fast disappearing in others; women today can own property and enter into contracts. The arguments which were used in the past to justify these disabilities are the same as those that were put forward to justify denial of political rights to them. Removal of civil disabilities of women has knocked the bottom off those arguments. (5) Women are today receiving education equally with men and entering various trades and professions. They are competing with men in various spheres and walks of life. They have thereby proved themselves to be as capable of exercising the franchise as men. (6) Enfranchisement of women will introduce a purifying and ennobling influence into the political life. Since women excel in the qualities of the heart, they will, if enabled to participate in politics, infuse in them a new stream of love and sympathy for the downtrodden. They will elevate the tone of public life by quickening the sense of decency and fairplay all around. Wherever women have been admitted to the franchise, their influence has been an important factor in securing the enactment of social welfare legislation in regard to matters like child labour, public health, employment of women in mines and factories and prevention of the evil of adulteration of foodstuff.

The movement for the enfranchisement of women achieved its first victories in the latter half of the nineteenth century. In Britain, women were given the ballot in municipal elections in 1869. In the same year the movement won its first victory in America when women in the territory of Wyoming were admitted to the suffrage. At the time of the outbreak of World War I, women in about a dozen American States had been enfranchised, but women in Britain had not yet been given the parliamentary franchise. The war gave a great impetus to the movement for the political enfranchise-

ment of women. Women in America, Britain and many other countries played during the war an important role that greatly helped the cause for which these countries were fighting. They served in offices, factories and in many other ways rendered a superb service to their nations. As a result, at the end of the war, the movement for their political enfranchisement acquired an irresistible momentum. In 1918 women in Britain were admitted to the parliamentary franchise, and in the United States the 19th amendment to the constitution, which was passed in 1919 and came into effect in 1920, declared: "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of sex." Thus under the 19th amendment to the U. S. Constitution women were enfranchised on the same terms as men. In Britain, however, women were not given the franchise on identical terms with men in 1918. The Representation of the People Act, 1918 which enfranchised them placed the age requirement for women at 30, while that for men was 21. They were also subjected to some property qualifications not applied to men. An Act of 1928 placed men and women on an equal footing in parliamentary elections. Thus in Britain at present every adult person of either sex, who is 21 years of age or over, and is not otherwise disqualified, is entitled to vote.

Since the end of World War I, the spread of woman suffrage has been rapid. In Germany women were admitted to equal suffrage with men in parliamentary elections by the Weimar Constitution (1919). The Constitution of the Irish Free State (1922) gave the ballot to men and women on identical terms. The Soviet Constitution of 1918 conferred equal suffrage on men and women. Between the end of World War I and 1931, women in many other European States obtained the ballot on a footing of equality with men. In France, however, women were without the vote till 1944-45 when it was first introduced by a number of decrees. The Constitution of the Fourth Republic (1946) confers equal suffrage on men and women. In Switzerland, women have

still no vote. A proposal to confer the franchise on women was rejected by the National Council, the Lower House of the Swis Parliament, as late as June, 1950. Women in most of the Latin American states remain still unenfranchised.

In India, under the Constitution of 1935, the ratio of women voters to men voters was 1 to 4.5. The Constitution of free India has introduced universal adult suffrage, thereby enfranchising men and women on identical terms. The total electorate in India at the time of the general elections of 1951-52 was roughly 176 millions, and about half the voters were women.

Educational Qualification: Formerly, in many states, one of the requirements for voting was a literacy or educational qualification. Illiterate people, it was argued, should not be given the right to vote. Persons who cannot read and write cannot be expected to exercise the franchise intelligently. In an oft-quoted passage in his Representative Government John Stuart Mill wrote: "I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read, write, and I will add, perform the common operations of arithmetic....universal teaching must precede universal enfranchisement. No one but those in whom an *a priori* theory has silenced common sense will maintain that power over others, over the whole community, should be imparted to people who have not acquired the commonest and most essential requisites for taking care of themselves, for pursuing intelligently their own interests, and those of the persons most nearly allied to them."

The argument for a literacy or educational qualification is basically sound. The ballot is a weapon whose capacity for both good and evil is equally great. To place it in the hands of people who do not know how to use it properly is almost sure to result in serious injury to the national interests. Unscrupulous politicians can easily sway the minds of ignorant multitudes by pandering to their passions. It is easy for politicians to distort the truth and indulge in false

propaganda to achieve their personal ends when they know that the voters have no clear understanding of the political issues and lack the information necessary to distinguish truth from falsehood. Thus, to enfranchise the illiterate means to enthrone the unscrupulous.

Formerly the main argument against the principle of adult franchise was that it would enfranchise a vast mass of illiterate men and women. This argument began to lose its force with the spread of education among the masses. At present in almost all advanced countries in which adult franchise prevails, the great bulk of the voters are literate.

The Constitution of India, which came into effect on January 26, 1950, has introduced the system of adult franchise in this country. All persons who are 21 or over, and are not otherwise disqualified, are entitled to be registered as voters for elections to the Lower House of the Indian Parliament and the Legislative Assemblies of the States. And it is to these Houses that the Governments at the centre and in the States are, respectively, made responsible by the Constitution. But about 90 per cent of the voters in India are illiterate, which means that the ultimate control of governmental power has been placed in India in the hands of persons the great bulk of whom are illiterate. The framers of the Constitution were fully aware of the danger of giving the vote to illiterate people and were anxious that free India should rapidly expand educational facilities. So, they incorporated in Part IV of the Constitution, which deals with the "Directive Principles of State Policy", the following directive: "The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Eighteen States of the United States have a literacy requirement. Some of them require that the voters should be able to read. Others require that they should be able both to read and to write. In New York State it is required

that voters who cannot present a certificate of graduation from the fifth grade of an elementary school must be able to read a paragraph of simple English and answer questions based on it.

Property Qualification: Formerly, as has been pointed out, political theorists used to hold that none but the property-owners should have the vote because they alone have a stake in the state. And most states in the past had a property requirement. Only persons who owned a specified amount of property could vote. It used to be argued against the principle of property qualification that inherited property is no index to a person's ability. It used to be further pointed out that it is unjust to exclude from the franchise persons who are able but who have lost property through misfortune. The most fundamental argument against property-owning tests is that economic inequalities in society are the result of an unjust social system. To exclude from the vote persons who find themselves without property as a result of an unjust economic system means to subject them to a further injustice. Restriction of the franchise only to property-owners means, moreover, to perpetuate a regime of privilege and the existing stratification of society into rich and poor, 'haves' and 'have-nots'.

A tax-paying test, as distinguished from a property-owning test, used to be insisted on by many states in the past. The main argument in favour of a tax-paying test was that persons who did not pay taxes themselves should not have the power to impose taxes or to determine how the revenue derived from taxes should be utilised. "It is important", said John Stuart Mill, "that the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed." "The voting of taxes" he argued, "by those who do not themselves contribute is a violation of the fundamental principle of free government; representation should be co-extensive with taxation.

In India, before the attainment of freedom, there were various kinds of property-owning and tax-paying requirements. The Constitution of India has swept away all those requirements and has introduced the system of adult franchise. Even for the Upper Houses, which are elected on a limited franchise, there is no property or tax-paying requirement. In Britain, the franchise was based on property-owning and tax-paying qualifications till the year 1918 when the Representation of the People Act abolished these requirements completely for male voters. (Women who were enfranchised for the first time in that year continued to be subject to property and tax-paying requirements till 1928 when they were placed on an equal footing with men in Parliamentary elections.)

While property and tax-paying tests have been abolished in most of the states in America, a few states till continue to maintain a tax qualification. Eight of these states have a poll-tax requirement. This requirement is primarily a device to exclude Negro voters from the polls. "Negroes in large numbers," says Munro, "neglect to pay the poll-tax, especially when white tax collectors put no pressure on them, even to the extent of sending a notice. Those who do pay it often lose or mislay the tax receipt, which must be produced at election time." And those who are in arrears in respect of the payment of the poll-tax are required to clear all dues as a condition of registration as voters. But this in most cases they find it impossible to do. By this poll-tax device several millions of Negroes are effectively prevented from exercising the franchise. It may be noted here that the fifteenth amendment to the Constitution of the United States abolished discrimination on racial grounds in matters relating to the franchise. The states, therefore, cannot now directly exclude the Negroes from the franchise, as they used to do formerly. But what they cannot do directly they do indirectly by means of poll-tax, literacy and some other requirements. These requirements exist, however, in a comparatively small number of states.

The swelling tides of the democratic movement have already swept away property and tax-paying requirements from most states of the world. People in these states no longer vote as property-owners or tax-payers as they did in the past. They vote as persons. It is interesting to note, however, that the great bulk of voters in almost all countries are tax-payers. For taxes in most states nowadays include a large number of indirect taxes like sales taxes, purchase taxes and excise taxes. Whoever purchases any of the taxed commodities becomes a tax-payer.

Plural and Weighted Voting and the Principle of 'One Man One Vote': The principle of 'one man one vote' is a corollary to the modern democratic theory. This theory is based on the doctrine of equality which states that all citizens are entitled to equal rights and privileges. It follows from this that every person shall have one vote only and none more than one vote. The principle of 'one man one vote' has now been accepted both in theory and practice all over the world. In all countries, speaking generally, the voters today enjoy equality of suffrage, each voter having one vote only.

Formerly, however, some countries had an unequal system of suffrage, known as the system of weighted voting. Under this system, some classes of people were given more votes than others, or proportionately greater representation than others. In Belgium, for instance, there was in the past a system of weighted voting which gave one vote to every male citizen 25 years of age; one additional vote to every man who was 35 or over and had legitmate offspring and paid five francs in taxes; two additional votes to citizens 25 years of age who possessed certain educational qualifications or held certain offices. No one, however, was allowed more than three votes.

In some of the German States, including Prussia, an unequal system of suffrage prevailed before World War I. This system gave the richer classes a preponderance of

representation in the Legislatures. In the Soviet Union, prior to 1936, the electoral system was weighted in favour of the town-dewellers. The system was so organised that, whereas the rural Soviets could send delegates to the All Union Congress at the rate of one delegate for 1,25,000 inhabitants, the urban Soviets could send one delegate for about 50,000 to 60,000 inhabitants. The Soviet Constitution of 1936 replaced this system of unequal suffrage by an equal one.

One form of weighted voting is known as plural voting. Under the system of plural voting, certain individuals receive more than one vote. (Sometimes the two terms 'weighted voting' and 'plural voting' are used synonymously.) A notable example of plural voting is the system which prevailed in Britain until of late. This system allowed a voter to vote in more than one constituency if he possessed the requisite qualifications. "If he slept in Kensington, had an office in the City of London, and maintained a country place in Surrey, he was entitled to vote in all three places." Sometimes a person would be entitled to vote in as many as half a dozen constituencies. The Representation of the People Act, 1918 restricted the number of votes an elector could cast at a given election to two. He could vote in the constituency in which he resided and also in another constituency if he maintained in the latter land or other premises of an annual rental value of £10 for purposes of trade, business or profession. The Representation of the People Act of 1948 completely abolished plural voting in Britain by laying down that "a person shall not be entitled....to vote in more than one constituency."

India and the Principle of 'One Man One Vote': As has been already stated, the Constitution of India has introduced universal adult franchise in the country. The elections to the House of the People (Lower House of Parliament) and the Legislative Assemblies of the States, says the Constitution, shall be held on the basis of adult suffrage. And the Representation of the People Act, 1950

lays down that, so far as elections to these Houses are concerned, no person shall be entitled to be registered in the electoral roll for more than one constituency, or to be registered in the roll for any constituency more than once. Thus the Constitution and the laws in India ensure that in elections to the popular chambers every adult, who is not otherwise disqualified, shall be entitled to one vote only and none to more than one vote. In other words, free India has based her elections to the popular chambers on the principle of 'one man one vote'.

It is interesting to note, however, that in elections to the State Legislative Councils (Upper House), persons possessing the requisite qualifications can vote in more than one constituency, not in the same capacity, of course, but in different capacties. Among the categories of persons who enjoy representation on these bodies are teachers, graduates and members of local authorities. A teacher who is also a graduate is entitled to be registered as a voter in both a teachers' constituency and a graduates' constituency. And if he is at the same time a member of a local authority, he can also get himself registered in a local authorities' constituency. Thus we see that the Indian electoral system permits plural voting to a limited extent in elections to the Upper Houses of State Legislatures. This does not, however, constitute a breach of the democratic principle as the Upper House is by far the less powerful of the two Houses of the State Legislature and can be, in case of final disagreement between the two Houses, overridden by the popularly elected Lower House.

Argument against Weighted Voting: The chief argument whereby the system of weighted voting used to be supported in the past was that some people are better qualified to vote, or have a greater stake in the country, than others. John Stuart Mill was among the notable advocates of weighted voting. Votes of highly educated people, he held, should be given greater weight than those of others. This would be,

in his opinion, a "counterpoise to the numerical weight of the least educated."

But even assuming for argument's sake that some people's votes should count for more than others' in the conduct of public affairs, it is difficult, if not impossible, to devise a satisfactory method of weighting votes. How to ascertain, for instance, how much greater weight should be assigned to the vote of a graduate as compared to the vote of a less educated person? If, again, an extra vote is given to members of the learned professions, cannot the same be claimed by persons who have acquired special skill and efficiency in other avocations such as farming, mechanical work and the like? Education and political sagacity, moreover, do not always go together. It is often found that men having strong common sense but no formal education are better judges of men and affairs than many of their educated brethren. In fact, the difficulties of devising a satisfactory system of weighted voting are almost insurmountable.

With the rapid spread of education, it should also be noted, the old argument for weighted voting is being rendered more and more obsolete.

Electoral Districts or Constituencies: For the purpose of elections, the territory of a state is usually divided into electoral districts or constituencies. Broadly speaking, there are two methods of doing this. One method is to divide the territory into small districts, each district choosing one representative. Another method is to divide the territory into comparatviely large districts, each choosing a number of representatives in proportion to its population. The first of these methods is known as the single district method or *'scrutin d'arrondisscment* (a French term meaning voting by arrondissement, or district). The other method is called the general ticket method or *scrutin de liste* (a French phrase meaning list voting). Sometimes, a combination of the two methods is adopted to meet special requirements.

Generally, electoral districts are so demarcated as to make them as far as possible equal in population. Since

population changes constantly, electoral districts have to be redelimited from time to time. Without such periodic redemarcation, the constituencies soon become greatly unequal in population and bring about inequality in the ratio of representation as between different areas. Redelimitation of electoral districts is also called redistribution of seats. In all countries such redistribution is effected on the basis of census figures. In India, the Constitution itself lays down that the representation of the several territorial constituencies in the House of the People and the Legislative Assemblies of the States shall be readjusted on the completion of each census.

Advantages and Disadvantages of the Single District Method: The single district plan has several obvious advantages. In the first place, it simplifies the problem of administration and makes the counting of votes easy. Secondly, it secures variety in representation. Under the general ticket method, the more powerful interests are likely to dominate the whole show and to capture all the seats. But if the constituencies are small, the weaker parties and interests get a good chance to return their representatives from areas where they enjoy support. Thirdly, the single district method enables the representative to develop and maintain fairly close contacts with his constituents and thereby to keep himself well-informed about their opinion on all important issues, as well as changes in such opinions.

It is argued by some that a great disadvantage of the single-district plan is that it encourages the growth of particularist views in politics. It narrows the horizon of the representatives. The need for securing votes tends to make them subordinate the general interests of the nation to the local interests. This is, however, far from being the case. Matters of purely local importance are nowadays coming more and more to be dealt with by local authorities. Members of Legislatures are required to deal only with issues affecting the general interests of the people. The question of their putting local interests above general interests does

not arise at all. At least such conflict of interests can arise only over a very limited field. Again it is also not a fact that, as is believed by some people, the single-district method seriously limits the field of choice of the voters. Usually electoral laws do not require that the candidates must be residents of the constituencies from which they seek election. In practically all countries any person, whether he resides in the constituency or not, can stand for election, if he is otherwise eligible. Thus the voters' field of choice is nowadays co-extensive with the whole state.

It must not be understood, however, that the single-district system is a perfect system, a system without any defect whatsoever. Like every other system of election, it has its defects. A serious defect from which this system suffers is that minorities, under this system, cannot secure representation in proportion to their voting strength.

But, with all its defects, this system has been found in practice to be the best one for election to the lower or popular chambers. The single-district plan is the general rule in both Britain and the United States. In India, too, the majority of the constituencies for election to the House of the People (federal lower chamber) and the Legislative Assemblies of the States are single-member of ones. In the first general elections (1951-52) under the Constitution, besides the single-member constituencies, there were a large number of double-member constituencies and two three-member ones. These double-member and three-member constituencies were necessitated by the reservation of seats, provided for in the Constitution, for the Scheduled Castes and the Scheduled tribes. In every double-member constituency, one of the seats was a reserved one, the other being a general seat. Similar was the case with the two three-member constituencies. But for the reservation of seats made by the Constitution for the Scheduled Castes and the Scheduled Tribes, all House of the People and Assembly constituencies could be made single-member ones.

Direct Election and Indirect Election: When the representatives are directly elected by the voters, it is called direct election. In indirect election, on the other hand, the representatives are chosen by an intermediary body which has been elected by the voters. The following are some notable examples of indirect election: The President of India is indirectly elected. The Constitution of India lays down that the President shall be elected by an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the State Legislative Assemblies. The Upper House of the Indian Parliament, called the Council of States, is an indirectly elected body. It is elected by the elected members of the State Legislative Assemblies. (In each of the three States in which the Legislative Assembly does not yet exist, a special electoral college elects representatives to the Council of States. A few members of the Council are nominated by the President.) One-third of the members of the Legislative Council, the Upper House of the State Legislature in India, is elected by the members of the Lower House, the Assembly—another example of indirect election. The Upper House of the French Parliament, which is known as the Council of the Republic, is also indirectly elected. It is elected partly by special electoral colleges and partly by the Lower House, the National Assembly. Formerly members of the U.S. Senate, the Upper House of Congress, used to be indirectly elected—by the state Legislatures. In 1913, the U.S. Constitution was amended to replace this indirect system by a direct system of election.

Indirect election, it is argued by some, helps to prevent electoral contests being decided purely by popular passion. By interposing delay between the casting of votes by the primary electors and the choosing of the representatives, it acts as a check on popular passion. It acts "as a sieve through which the election fever passes." Secondly, it is also argued, indirect election places the actual choice of

representatives in the hands of an abler body of electors and thereby ensures the election of a better type of representatives.

In practice, however, indirect election has proved to be unsatisfactory, at least for lower or popular chambers. Indirect election tends to make people apathetic towards political issues. Since they do not directly elect their representatives, nor can exert direct control over them, they tend to become indifferent about elections and political questions. Indirect election also lends itself easily to corruption, for it is easier to corrupt a small body of electors than a large one. "Of all methods of maximising corruption," says Laski, "indirect election is the worst." In a country with a well-developed party system indirect election is sure to be reduced to a mere formality. For in such a country the intermediate electors are elected under pledges to support particular party candidates. They become, so to say, merely so many ballot papers cast in favour of this or that candidate. They exercise no judgment in choosing the representatives. They vote according to their pledges. The Constitution of the United States, for instance, lays down an indirect system of election for the offices of the President and the Vice-President. But the presidential electors in America have been reduced to the position of ballot papers. They vote according to party pledges.

At present there is no lower chamber in the world which is indirectly elected. Some upper chambers are, however, elected, either wholly or partly, on the basis of indirect suffrage. Indirect election for upper chambers which have only limited powers of legislation or are mere revisory bodies does not go against the democratic principle. In fact, to have a system of direct election for such bodies means putting an unnecessary burden on the voters.

Territorial versus Functional Representation: Territorial representation means representation based on territorial divisions. Functional representation means representation based on professions, occupations or vocations. The Lower

House of the Indian Parliament, the House of the People, for instance, is elected on the basis of territorial representation. A notable example of functional representation is to be found in the provincial Legislative Assemblies in India as they existed under the Government of India Act, 1935. Most of those Assemblies had a certain number of seats reserved for the representatives of commerce and industry, landholders and labour.

Advocates of the principle of functional representation argue that the system of territorial representation is a highly artificial one. It is bassed on the idea that the inhabitants of a particular locality constitute a more or less homogenous group and have a community of interests in all important matters. Nothing could be farther from the truth. A doctor in one part of the country has a greater community of interests with a doctor in another part than with an industrial worker who lives a few yards from his place. The principle of territorial representation cannot, therefore, secure a fair representation for all social groups and interests in the Legislature. A doctor cannot truly represent the interests of the working-class population in his constituency, nor can a lawyer adequately represent the doctors or farmers in his constituency. To ensure that the membership of the Legislature reflects the actual balance of interests in society, representation should be based on vocations or interests instead of territorial divisions. Among the advocates of functional representation may be mentioned Duguit, M. Leroy and G. D. H. Cole. All of them maintain that the functional principle alone can ensure the constitution of a truly representative Legislature and is thus in greater accord with the democratic principle than the system of territorial representation.

A noteworthy experiment in functional representation was the National Economic Council in Germany, constituted after World War I under the Weimar Constitution. It consisted of 326 members, of whom 68 represented the agricultural

and forestry interests, 68 represented the industries, 30 consumers, 36 handicrafts, 44 commerce, banking and insurance, 6 gardening and fisheries, 16 Government officials and liberal professions and 24 Government nominees. The Council had no legislative power. It was mainly an advisory and initiating body. The Constitution required that all important measures relating to social and economic matters should be submitted to the Council before they were introduced in Parliament. The Council also could present bills to Parliament for its consideration. Similar advisory economic councils existed in some other European countries, including France and Poland between the two World Wars. But nowhere did these bodies function satisfactorily.

The principle of functional representation has been severely criticised by many writers. And there is undoubtedly much force in the arguments of these critics. (1) In the first place, it is rightly pointed out, the system of functional representation encourages people to think always in terms of group interests and to put these sectional interests above the general interests of the nation. Everybody, under this system, will think of the part, and nobody will think of the whole. This can only lead to disastrous consequences. (2) Secondly, functional representation limits the horizon of the representative who looks upon himself not as a representative of the nation but as that of a particular class or interest. Such a situation cannot fail to lower the character of the Legislature and retard progress. (3) A House consisting of representatives of various vocational groups and interests can never function effectively as a law-making body. Debates in such a House are bound to degenerate into interminable clashes of conflicting views making more and more difficult the working out of agreed solutions on the issues that call for legislation. Functional representation, in other words, tends to make the Legislature a debating society. It means paralysis of legislation. (4) It sharpens class conflict. (5) Representation on a functional basis also tends to multiply the number of economic and professional groups in society

and thus unnecessarily increases the volume of conflict and bitterness in social life. For as soon as representation is given to an economic or social group, it begins to break up into smaller groups, each clamouring for separate representation or a large share in the representation given to the bigger group. (6) It is extremely difficult, if not impossible, to apportion equitably the representatives among the various vocational groups. Let us suppose that there are 8,000 doctors, 20,000 lawyers and 2,000,000 industrial workers in a state. How to decide how many members each of these groups should have in the Legislature ?

All these are arguments, it should be noted, against the principle of functional representation in legislative bodies and not against consultation of functional groups by legislative authorities on measures affecting their interests. Even the critics of the system of functional representation concede the necessity of associating professional and vocational bodies, in an advisory capacity, with the work of law-making.

Basis of Representation: Nearly everywhere it is the total population, and not the number of voters or adults, which is taken as the basis of representation. And the total population, it should be noted, includes both citizens and aliens, adults and minors—that is, both voters and non-voters. Article 81 of the Constitution of India which provides for representation in the House of the People says that " there shall be not more than one member for every 500,000 of the population." Similarly, Article 170 which provides for representation in State Legislative Assemblies says: " The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of population of that constituency." It further lays down that there shall be " not more than one member for every seventy-five thousand of the population." Thus in either case representation has been based on the total population and not the total number of voters; and constituencies are delimited on this basis. Each of the existing single-member constituencies for election to the House of the People contains a population

of 7.2 million, but the number of voters varies from constituency to constituency.

REPRESENTATION OF MINORITIES

Problem of Representation of Minorities: Usually, the person receiving the majority of votes at an election is declared elected. But under this system of majority representation, minorities cannot secure adequate representation. Let us suppose that in a single-member constituency A and B, two persons belonging to two different political parties, receive 8,000 and 7,999 votes respectively. A will be declared elected, which means that the party to which B belongs will go unrepresented and all their votes will be wasted. Under this system it also often happens that a minority of voters return a majority of the representatives in the Legislature. For if A, B and C, three candidates contesting in a single-member constituency receive 5,000, 4,500 and 4,000 votes respecitvely, A will be elected although he has received only 37 per cent of the votes cast. In the 1951-52 general elections to the House of the People, the Lower House of the Indian Parliament, the Congress received 44.4 percent of the total number of votes cast but won 74 per cent of the seats, while the Socialist Party which received 10.23 of the total poll got less than 3 per cent of the seats.

Where the constituencies are single-member ones, the system of majority representation is likely to result in some parties going entirely unrepresented. If one big party, for instance, commands a 51 per cent electoral majority in all the constituencies, all the other parties will go without representation.

The democratic principle, however, demands that the minority point of view should have representation in the Legislature equally with the majority point of view. "In a really equal democracy," says Mill, "every and any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives; but a minority of electors

would always have a minority of representatives. Man for man they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege: one part of the people rules over the rest: there is a part whose fair and equal share of influence in the representation is withheld from them, contrary to all just government, but, above all, contrary to the principle of democracy, which professes equality as its very root and foundation."

Various methods have been devised to ensure that the minorities get a fair share of representation in the Legislature. These methods are: (1) systems of proportional representation such as the Hare system and the List system; (2) the cumulative vote system; (3) the limited vote; (4) reservation of seats and (5) functional representation. It should be understood that, speaking generally, minorities get a better chance of representing themselves in the Legislature under a system of multi-member constituencies than under the single-member constituency system.

Proportional Representation: The system of proportional representation is an electoral device designed to ensure representation of all sections of public opinion in proportion to their voting strength. Under systems of majority representation, particularly the single-member district system, some parties get proportionately greater representation than others, while some may not be represented at all. The system of proportional representation ensures that if, for instance, of three parties contesting an election, one gets 50 per cent of the votes cast and the others 30 and 20 per cent respectively, they will get representation in the same ratio, that is, 50 : 30 : 20.

The idea of proportional representation seems to have originated towards the close of the eighteenth century. It was discussed in the French National Convention of 1793. The idea was given a practical shape in 1851 by an Englishman named Thomas Hare in a book entitled the *Election of*

Representatives. John Stuart Mill, in his book *Representative Government,* strongly commended the system proposed by Hare and called it "one of the very greatest improvements yet made in the theory and practice of government." Carl Andrae, the Danish Minister of Finance, introduced the system in Denmark in 1855. The systems of proportional representation commonly in vogue are what are known as the Hare System, the Andrae System and the List System. All of them have the same underlying principle.

The Hare System: The Hare System, so called after the name of Thomas Hare, is popularly known as the "Single Transferable Vote." This system is widely prevalent and has been adopted by India for elections to the Upper House of Parliament, as well as to the Upper Houses of State Legislatures. The President and the Vice-President of India are also elected according to a variant of the Hare System. There are many variations of this System, all of which are, of course, based on the same principle. The basic features of this system may be described as follows: The constituencies are delimited on the general ticket method ,each constituency choosing a number of representatives. The names of the candidates in each constituency are made to appear on a ballot paper and the voter votes by placing the figure 1 against the name of the candidate for whom he votes. This indicates the voter's first preference. (The voter can place this figure against the name of one candidate only, although there are more members than one to be elected.) As regards the other candidates, the voter marks his preferences by putting the figures 2, 3, 4 etc. against their names. These indicate his second choice, third choice, fourth choice and so on. All candidates who secure a certain number of votes, known as the quota, are declared elected. The quota is determined by dividing the total number of valid votes by the number of seats plus one, and then adding one to the quotient. If, for example, the number of seats in the constituency is 4 and the total number of valid votes 50,000, then

the quota will be $\frac{50,00,0}{4+1}+1=10,001$. (If there is any fractional remainder, it is disregarded.) At the first count, only the first preference votes are taken into account. All candidates who secure the quota or anything above it are declared elected. If there are seats still remaining unfilled, the surplus votes (that is, votes in excess of the quota) of the successful candidates are transferred to the candidates still in the run on the basis of the second or succeeding choices; and all those who with the help of these votes reach the quota are declared elected. If there are seats yet to be filled after the surpluses have been transferred, candidates who have polled the least number of votes are eliminated and their votes transferred to the continuing candidates on the basis of the second or succeeding choices. And this process is continued till all seats assigned to the constituency are filled.

The Andrae System is similar to the Hare System, except that the quota in this system is obtained by dividing the total number of valid votes by the number of seats to be filled. In the example taken above, the quota under the Andrae System will be $\frac{50,00,0}{4}=125,00$.

The List System: Under the List System, each party presents a list of candidates for acceptance by the voters. The voter votes primarily for a party; in voting for a party list he accepts the order of preference previously determined by the party; even if he is permitted to express his preference for individual candidates, he is not allowed to go outside the party list. Thus while under the Hare System, the voter enjoys complete freedom of choice with respect to individual candidates, under the List System he does not do so. A voter, however, may cast as many votes as there are seats to be filled, and his votes are counted in favour of the party of his choice. The total number of votes polled by each party is then divided by the quota and the result gives the number of seats to which each party is entitled. Let us suppose that

the number of valid votes polled in a seven-member constituency is 98,00,0, and that the votes polled by each party are as follows : Congress 44,000 ; Socialists 35,000 ; Communists 15,000 ; Jana Sangha 3,000 ; Forward Bloc 1,000. The quota in this case is 98,000 divided by 7 plus one, or 14,001. By dividing the votes polled by each party by the quota we find that the Congress gets 3 seats, Socialists 2 seats and Communists 1 seat. One seat, however, still remains to be filled. Since the Socialists have the largest fractional quota, this remaining seat would go to them.

The List System prevails in a number of European countries including Switzerland, Denmark, Norway and Sweden.

Both the List and Hare Systems of proportional representation are equally popular and almost equally in vogue.

Merits and Defects of Proportional Representation: Proportional representation prevails in a large number of countries such as Norway, Sweden, Switzerland, Finland, Denmark, Ireland and France. The Indian Constitution has adopted the system of proportional representation for elections to the Upper Houses of State Legislatures as well as the Upper House of Parliament, the Central Legislature. The chief merits of proportional representation are the following: (1) It ensures representation to all important sections of public opinion in proportion to the voting strength. It thus makes the Legislature correctly reflect the actual state of public opinion. It is most suitable for countries inhabited by a number of racial or national minorities. (2) In periods of transition when great legal and constitutional changes are effected, every section of public opinion ought to be enabled to have its point of view properly considered. Proportional representation best answers the needs of such times. (3) Proportional representation enables us correctly to ascertain the relative strength of the various groups and parties. It sometimes happens that a party claims to

represent the whole of a paritcular class of people such as a section of the working class population or the members of a profession or a religious minority. By proportional representation the truth of such claims can be easily tested, and every minority placed in the proper perspective in the political life of the country.

The chief defect of proportional representation is that (1) it tends to multiply groups and parties. (2) By increasing the number of groups in the Legislature, proportional representation often makes coalition governments inevitable. Since coalition governments are proverbially unstable, proportional representation exposes the country to dangers inseparable from unstable administrations. (3) Proportional representation, thirdly, encourages "minority thinking" and often leads to class legislation. It tends to create an atmosphere in which everybody thinks only about the interests of his own group and nobody thinks about the general interests of the people. The parts are given so much importance that the whole tends to be forgotten. The political groups and parties do not feel the necessity of formulating their programmes in such a way as to appeal to the majority of the people, people of different religious and social outlook, as well as those of different racial origin. The appeal is made in every case to a particular class or section. This brings it about that the result of the election becomes a confused mass of sectional opinions, rather than a clear national mandate on a few basic issues. Thus, proportional representation not only encourages sectarianism in politics, it confuses the voice of the electorate on the large national issues. (4) Another defect of the system is that it cannot be easily understood by the voter or easily worked by the returning officer. (5) Big and unwieldy constituencies, which are inseparable from proportional representation, constitute another defect of the system. The larger the size of the constituency, the greater the election expenses of the candidate. In a big constituency, moreover, the personal touch between the representative and the constituents is

difficult, if not impossible, to maintain. (6) Proportional representation is open to another objection, namely, that no satisfactory system of by-election has yet been devised for this system of election.

The gravest of all objections to which the system of proportional representation is open are, of course, the first and second objections mentioned above—that it gives rise to a multiplicity of parties and a weak executive. It is because of this defect that it has not found universal favour. In Britain, in 1918, the Speaker's Conference recommended the system of proportional representation for Parliamentary elections. But Parliament rejected the recommendation. There can hardly be any doubt that adoption of the system of proportional representation would have led to the break-up of the two-party system in Britain and rendered the British Executive as unstable as its French counterpart. The framers of the Indian Constitution, while adopting this system for election to the Upper Chambers, deliberately avoided doing so for the Lower Chambers. This was a wise decision. The Constitution of India has made the Governments, both Central and State, responsible to the respective Lower House. Had elections to the Lower Chambers been based on the system of proportional representation, it would have given rise to weak and unstable governments both at the Centre and in the States.

Cumulative Vote: Under the system of cumulative vote, the voter has as many votes as there are seats in the constituency, and he may distribute them among the candidates in any manner that he sees fit. He may give all his votes to one candidate or distribute them among several candidates. This system is successful in securing minority representation. Even a small minority, under this system, gets a fair chance of returning at least one candidate by "plumping" its votes, that is, giving all its votes to one candidate. The system of cumulative vote, however, does not secure proportional representation. There is often much wastage of votes under this system. Minority candidates

not unoften get far more votes than are necessary for their election.

The Limited Vote: Another method of securing minority representation is what is known as the limited vote. Under this system, the voter has a smaller number of votes than there are seats in the constituency, and he is not allowed to give more than one vote to any candidate. If, for instance, there are three seats in the constituency, the voter may be allowed two votes only; if there are five seats, the voter may be allowed three votes and so on. Under this system, the minorities get a fair chance of representing themselves. This system, too, however, does not secure proportional representation.

Minority Representation in India: In the past, when India was under the British rule, the minorities were given representation through a system of separate electorates and reservation of seats. There were separate electorates for Muslims, Anglo-Indians and Indian Christians. There were also special constituencies for the representation of industry, commerce and working class interests. The foreign rulers had introduced the system of separate electorates not out of solicitude for the welfare of the minorities but to create divisions among the people and to prevent them from building up national unity. The separate electorate system was, in short, an instrument specially designed by the foreign rulers to further their 'divide and rule' policy. And the system introduced into the body politic of India a virus of communalism which ultimately resulted in the partition of the country.

The Constitution of free India has swept away at one stroke the entire system of separate electorates as well as the system of functional representation which prevailed under the British rule. It has introduced, instead, a uniform system of joint electorates and universal adult franchise for election to the popular Chambers. There is no special provision for the representation in these Chambers of any minority, communal or functional, excepting certain backward classes

known as the Scheduled Tribes and Scheduled Castes. The Constitution provides for the reservation of seats for these backward classes in the population ratio. But this reservation has been granted for a limited period, namely, a period of ten years from the commencement of the Constitution. And the representatives of these classes, it is important to note, are to be chosen in joint electorates and not in separate ones.

As for the Upper Chambers, the Federal Upper Chamber is elected indirectly—by the members of the Legislative Assemblies of the States, a few members, who must be specialists, being nominated. And the membership of the Upper Chambers in the States consists of the following—members elected by the Lower House, representatives of local authorities, representatives of teachers, representatives of graduates and a few nominated members (who are required to be specialists). Thus the Constitution of India, while it enfranchises all classes of people, does not provide for the representation of any communal, racial or linguistic minority as such. A minor exception to this rule has been made in the case of the Anglo-Indian community. The President has been empowered by the Constitution to nominate not more than two members of the Anglo-Indian community to the House of the People, the Lower House of Parliament, if, in his opinion, the community has not been adequately represented in that House. Similarly, a Governor or a Rajpramukh of a State may, if in his opinion the Anglo-Indian community has not been adequately represented in the Legislative Assembly, nominate such number of members of the community to the House as he may consider appropriate. As regards functional representation, the only functional group which enjoys representation as such a group is teachers who have been granted a fixed quota of seats in the Upper Chambers in the States.

SOME OTHER METHODS OF VOTING

The Block Vote: Under this system, the constituencies are plural-member ones, and the voter has as many votes

as there are seats in the constituency but he cannot give more than one vote to any one candidate. Candidates receiving the highest number of votes are declared elected. The Block Vote, which is also known as the Compulsory Distributive Vote, has all the merits and defects of the single transferable vote. A party commanding the support of 51 per cent of the voters can be sure, under this system, of capturing all the seats. Under this system, minorities are often grossly under-represented. The Block Vote has been adopted in India for elections in plural-member Assembly constituencies, as well as plural-member House of the People constituencies. Section 63 of the Representation of the People Act, 1951 says: "In plural-member constituencies other than Council constituencies every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate."

The Second Ballot: The second ballot is a system designed to ensure that the successful candidates command the confidence of the majority of the voters in their constituencies. Under this system successive elections are held with a view to eliminating the weakest of the candidates each time until one of them receives an absolute majority of the votes cast. Suppose four candidates, A, B, C and D have received 5,000, 4,000, 3,000 and 2,500 votes. Since none of them has received an absolute majority of the votes cast, this system will make necessary a fresh ballot among A, B and C, the weakest candidate dropping out of the picture. Let us suppose that the result of the second poll is as follows: A 6,000 votes; B 4,000 votes and C 4,500 votes. Since none of the candidates has yet polled an absolute majority of the votes, a third poll will be necessary. This time the contest will be confined to A and C, B dropping out of it. Let us suppose that at the third poll A receives 7,000 votes and C 7,500 votes. C will be declared elected.

This system is most unsuitable for national or municipal elections because it taxes very much the patience of the

electors and is also very expensive. This system is followed for the selection of candidates for the U.S. Presidentship at the national conventions of the Democratic, Republican and other major political parties in America.

The Alternative Vote: Under this system the elector, in a single-member constituency, marks his choice on the ballot paper in order of preference. If none of the candidates receives an absolute majority of the votes cast at the first count, the candidate lowest on the poll is eliminated and his votes are redistributed according to the second choices. And this process is continued till one of the candidates receives an absolute majority of the votes cast. It will be seen that the alternative vote achieves the same object as the second ballot without entailing the trouble of holding more than one election. The alternative vote is really the single transferable vote applied to a single-member constituency.

While the second ballot and the alternative vote remedy to some extent the defects of the simple majority system as applied to single-member constituencies, they do not remedy one of its basic defects—they do not protect the minorities.

ROLE OF THE REPRESENTATIVE

Relation of the Representative to his Constituents: There are, broadly speaking, two theories as to what the function of a representative should be. One theory is that the representative is a delegate or agent of his constituents and must act purely as their mouthpiece. He must always obey their instructions and record their will and can have no freedom to exercise his own judgment in any matter. The second theory is that the representative is not a delegate of his constituency but a representative of the nation. He is elected not to represent the particular interests of his constituency but the general interests of the nation. He cannot be bound by any instruction of his constituents and possesses full freedom of deliberation and voting.

The theory that the representative is a mere delegate of his constituents was the generally prevalent view in the early stages of the development of the representative system. This view, however, was discarded in England in favour of the other theory even before the end of the seventeenth century. In France, this was abandoned at the time of the Revolution (1789). The French Constitution of 1791 stated that the deputy should not be the representative of any particular district but of the entire nation and that no instructions should be given him. Today the electoral laws of some of the European states lay down the same principle. Article 91 of the Swiss Constitution states that the members of the two Houses of the Federal Assembly "vote without instruction." It thus expressly rejects the theory that the representative is a mere mouthpiece of the constituents. Although opinions still differ as to the proper function of a representative, it is the second theory, namely, that the representative represents the general interests of the nation and should not be bound by instructions from his constituents, is the generally prevalent view in modern times. The second theory, in other words, represents the modern conception as to the role of the representative.

The main objections to the delegate theory are: First, the Legislature deals with the general interests of the people and not the particular interests of any district. The delegate theory would result in the representative placing greater emphasis on the local rather than on the general interests. Second, to bind the representative by instructions would be to deter men of real ability from serving in the Legislature. Third, it is not possible for an unorganised mass of voters to send instructions to the representative, particularly on complex issues. Fourth, the average voter is not interested in every law that is brought before the Legislature, nor is he competent to give an opinion on matters of a technical character. Fifth, it would be impossible to carry on the work of legislation if every representative had first to

to consult, or obtain instructions from, his constituents. Lastly, it may also be argued that the representative system itself is based on the assumption that the representative would be an abler man and more qualified to look after public interests than the average elector. The electors should, therefore, choose able men and not try to bind them with instructions. To quote the words of Macaulay, the electors ought "to choose cautiously, then to confide liberally."

Most political writers agree that representatives should be allowed freedom of judgment. Edmund Burke was one of the staunchest critics of the delegate theory. His address to the voters of Bristol in which he defended certain unpopular votes he had given in the House of Commons as their representative has become famous. "I maintained", said he, "your interests against your opinions. A representative worthy of you ought to be a person of stability. I am to look indeed to your opinions; but to such opinions as you and I must have five years hence. I am not to look to the flash of the day." "The representative" Burke declared, "should be a pillar of state, not a weathercock on the top of the the edifice exalted for his levity and versatility and of no use but to indicate the shiftings of every fashionable gale."

It would be, however, extremely unreasonable to take the position that the representative has the right completely to ignore the views of the electors or to break his election pledges. Certainly, as Laski has remarked, he is not entitled to get elected as a free trader and to vote at once for a protective tariff. A correct view as to the function of a representative, it appears, lies somewhere between the two extremes represented by the two theories discussed above. A representative in the true sense of the term sshould try to ascertain the views of the majority of his constituents on the larger issues confronting the nation and to give expression to those views in the Legislature, while

reserving to himself independence of judgment and action in regard to the less important matters or matters of detail, as well as matters on which his constituents have no clear opinion. One thing also is clear. If the views of the representative on any important matter have changed so greatly that he can no longer keep the pledges he gave in respect of that matter at the time of his election, he ought to resign.

The growth of political parties has introduced in every country a new element into the problem of representation. Nowadays candidates are elected to Legislatures mostly on party tickets, that is, as a member or supporter of this or that political party. This means that the representative enters the Legislature pledged to support the programme of his party as well as to carry out such directives as the party may issue from time to time. This "reduces the representative to the role of a conduit pipe or telephone wire through which the views and commands of the party are communicated to the Legislature." The party system has thus robbed the modern representative, almost completely, of freedom of judgment and of voting. He has become a mere party puppet. His vote is determined neither by his conscience nor by his constituents. He speaks and votes as he is told by the party leaders.

Recall: The right of recall may be defined as the right of voters to remove a representative who has failed to fulfil his trust. It is a political instrument designed to ensure continuous enforcement of the representative's responsibility to the electorate. The Constitution of the Soviet Union provides for the right of recall. The new Constitution of China also confers this right on the voters. The right of recall exists in some of the Swiss cantons. It also exists in some of the states in the United States of America. Eleven of these states provide for the recall of the Governor, while in six even the judges can be recalled. The Constitution of India, it is noteworthy, does not confer this right on the

voters. A non-official Bill to amend the Indian Constitution so as to provide for the right of recall was defeated in Parliament by a large majority in December 1954.

In countries where this right exists, the usual procedure for recalling a member is as follows: A petition for removal is drawn up and circulated for signatures. When the requisite number of signatures have been obtained (usually a specified percentage of the registered voters), the petition is submitted to the authorities. An election is then held to decide the matter. If the majority of the voters vote in favour of the proposal for recall, the representative stands removed from his office. Otherwise, he continues to serve.

The right of recall ought to be looked upon as a weapon to be held in reserve for emergencies rather than for routine use. If used frequently, it can only result in keeping the voters in a constant state of turmoil and make the tenure of representatives very much uncertain. And uncertainty of tenure tends to deter able and competent men from coming forward to serve in the Legislature. The right of recall, it should also be noted, is incompatible with the theory which regards the representative as a representative of the entire nation rather than of his particular constituency.

CHAPTER XV

THE EXECUTIVE

The Two Senses in which the Term is used: The Executive, as has been pointed out, executes or carries out the laws. The term 'executive' is used in two senses. When used in the narrower sense, the term denotes the heads of the executive departments. The President and his cabinet, for instance, constitutes the Executive in the United States, while in Britain the Executive is the Prime Minister and his Cabinet colleagues. In India, the Prime Minister and his collegues constitute the central Executive, while the State cabinet headed by the Chief Minister is the Executive in each of the autonomous States.

When used in the broader sense, however, the term 'executive' signifies the whole body of officials, from ministers down to police-constables and tax-collectors, that are concerned with execution of the laws. In this sense, the Executive includes all government officials except the members of the Legislature and the Judiciary.

In this chapter we shall be concerned with the Executive in the narrower sense.

Nominal Executive and Real Executive: A discusion about the nature of the Executive must start with a distinction between the nominal Executive and the real Executive. In Britain, where the government is carried on in the name of the Queen, the real executive power is exercised by the Cabinet. The Queen is the nominal Executive in Britain and the Cabinet the real Executive. In France, the President who does not exercise any real power is the nominal Executive, while the Cabinet is the real Executive. "The Executive power" says the Constitution of India, "shall be vested in the President." But the Indian President cannot exercise any power—not at least in normal situations—

except with the advice of the Central Cabinet. Thus the President is not the real Executive in the federal sphere in India; he is the nominal Executive, the real Executive being the Cabinet headed by the Prime Minister.

Principles of Organisation of the Executive: "The executive function", says Garner, "differs essentially in its nature from the legislative function and consequently it must be organised on principles which are very different from those upon which the legislature is constituted." The function of the Legislature is to deliberate and to legislate, while that of the Executive is to execute. For deliberation and legislation, it has been rightly said, two heads are better than one; for administration, one head is better than two. Most political writers agree that the legislative power should be vested in a numerous body, while the executive power should be vested in the hands of a single person. The essential requisites for efficiency in the discharge of executive functions are quickness of decision, singleness of purpose and secrecy. These are best secured by vesting executive power in the hands of a single person rather than in the hands of a body or assembly. "Plurality in the organisation of the Executive tends to conceal faults and destroy responsibility." The responsibility of a board or assembly becomes, in practice, nobody's responsibility. And when things go wrong, the members of such a body usually try to shift the blame on each other's shoulder. It is also difficult to maintain secrecy if executive decisions have to be taken in meetings attended by a large number of persons. In the past the executive power used to be reposed almost everywhere in the hands of a single person—emperor, king, president and the like.

There are, however, some historical examples of the plural form of Executive. In Sparta there were two kings. In Rome there were for a long time two consuls with co-equal powers. In France, after the Revolution, some of the Executives were organised on the principle of plurality, which, it was hoped, would be a safeguard against tyranny.

In Switzerland there is a plural Executive. The Swiss Constitution vests the executive power in the Federal Council which is elected by the two legislative chambers sitting together and consists of seven members. One of these members is nominated by the Federal Assembly as the President of the Confederation. But he has no more real power than any of his colleagues. He is merely the chairman of the Council. The main advantage claimed for the plural form of Executive is that it furnishes greater safeguard against tryanny and abuse of power by the Executive. The members of a plural Executive can act as a check on each other's ambitions and love of power while there is no such check where the entire executive power is concentrated in the hands of a single person. Secondly, it has been argued, and correctly, that a plural Executive is likely to possess a higher degree of ability and wisdom than a single Executive. Executive acts often involve the exercise of judgment and careful consideration. Executive functions can be, therefore, more wisely performed by a body of persons than by a single Executive.

Under the cabinet system of government, it is important to note, the Executive is organised on the principle of plurality. The Cabinet which is the real Executive under this form of government consists not of one person but of a number of persons. And the continuing spread of the cabinet system of government in the world proves that the critics of the plural form of Executive exaggerated its evils.

Nevertheless the fact remains that unity of purpose is an essential requisite for efficient discharge of executive functions. Under the cabinet form of Executive this unity is achieved through party discipline and through the dominant role assigned to the Prime Minister. The Prime Minister not only enjoys the power to choose his colleagues but can also have a minister removed for insubordination or indiscretion. In times of emergency, the Prime Minister is given dictatorial powers. The chief reason for the success of the plural form of executive in Switzerland is to be found

in the traditions of the people. But even there the executive work is organised under a number of departments and each member of the Federal Council is placed in charge of a department. This shows that it has not been possible for the Swiss Republic to discard altogether the principle of the single executive.

As regards the powers of the Executive, it is dangerous to make the Executive either too powerful or too weak. A too powerful Executive is likely to become tyrannical and destroy the liberties of the people. A weak Executive means weak and unstable administration, which exposes the state to the dangers of internal disturbance and external attack. The Executive should thus be given sufficient powers for ensuring a strong and stable administration. But its powers must not exceed the limits of safety.

The term of the Executive should be neither too long nor too short. Too long a term tends to make the Executive irresponsible and results in abuse of power. Too short a term is likely to result in weak and unstable administration. An extremely short tenure also means that the office must be continually occupied by inexperienced men, for it is not possible for any person to acquire the necessary experience about the executive functions, which are difficult and complicated, within a very short period. In countries in which the Executive is directly elected, a short tenure for the executive results in frequent elections which seriously disturb the normal life of the people. An Executive having too short a tenure, finally, does not feel interested in introducing policies which it cannot mature. Considering all these matters, it appears that the best period of power for an executive is not less than four, nor more than five years.

How the Executive is chosen: There are, in general, three different methods of chosing the executive: first, hereditary succession; second, election, which may be of three types—(1) direct election by the people, (2) indirect election by the people, and (3) election by the legislature;

and third, selection or nomination. Dictators who are the real Executives as well as the real Legislatures in states ruled by them do not fall in either of these categories and form a class by themselves.

The hereditary Executive exists in Britain, Norway, Sweden, Japan and a few other countries. The chief merit of the hereditary principle lies in the fact that the masses usually feel a greater reverence for a hereditary monarch than for an elected Executive. A hereditary monarch is thus a powerful means of securing the loyality of the people and attaching them to the government. The principle of hereditary succession also places the highest office in the state beyond the sphere of ambitions and jealousies of the political leaders. This is one of its greatest advantages.

But the chief defect of the hereditary principle is that it leaves too much to chance. Heredity cannot be a rational criterion for judging ability. It does not provide any guarantee at all that the person chosen for the executive office will be a man of ability or character. The hereditary principle of selection belongs to the political past of mankind. It is a survival of a past age. It seems to be marked for extinction. All the hereditary Executives in the world today are nominal Executives. They have no real power.

The Executive is directly elected by the people in a number of South American States, such as Argentina and Chile. In the states of the United States, the Governor, who is the Chief Executive, is also directly elected by the people. The main arguments in favour of direct popular election are that it stimulates the interests of the people in public affairs and that it is far more democratic than any other method. The main defect of this system is that common people seldom possess the ability to judge the qualifications of a candidate. Demagogues have a greater chance of getting elected under this system than men of real ability and worth. Direct popular election also causes large-scale demoralisation and corruption, as well as tremendous excitement all over the country. In fact, the countries where this

method of choosing the executive prevails can never fully get rid of the election fever. The period between the elections is spent in canvassing and every question is judged with reference to its probable effect on the election prospects of this or that party.

In some countries the executive is indirectly elected by the people. The most notable example is the United States. The President of the United States is elected by an electoral college, the members of which are directly elected by the people. But the election of th U. S. President is indirect in form only. It is direct in substance. The members of the electoral college are elected under party pledges to support this or that candidate. They are mere party puppets having no freedom to exercise their judgment in casting their votes. They are, so to say, mere ballot papers cast by the voters for the candidates of their choice. The framers of the U. S. Constitution intended that the presidential electors would exercise their judgment in choosing the President. But they have long since ceased to do so. Thus the growth of political parties has transformed what was originally intended to be indirect election into direct election. The main argument in favour of indirect election of the Executive is that if the immediate choice is confined to a small number of capable persons it would lead to a more intelligent choice. Secondly, it is also argued that the system of indirect election affords a means to avoid the tumults and excitement inseparable from direct election. The principal argument against the method of indirect election is that in countries in which political parties are well organised indirect election is likely to be turned into what is in reality direct election. As has just been explained, this is exactly what has happened in the United States. The method of indirect election also easily lends itself to corruption.

Election by the Legislature is the method followed in France, Switzerland, India and some other countries. The Swiss Federal Council is elected at a joint sitting of the two

Houses of the Federal Assembly. The French President is elected at a joint meeting of the members of the two chambers of Parliament. The President of India is elected by an electoral college consisting of the elected members of the two Houses of Parliament and the elected members of the State Legislative Assemblies. The advantage claimed for election by the Legislature is that it leads to a wiser choice than if the selection is made by direct popular election. The chief objection to this method is that it opens the door to bargains and intrigues between the Executive and the Legislature.

Some writers also argue that the method of selection by the Legislature violates the principle of separation of powers. It should be noted, however, that in a parliamentary system of Government the Executive is virtually, though not formally, chosen by the Legislature. Whatever, therefore, the theoretical objections against the system of selection by the Legislature, the working of the parliamentary system of government has not, it must be said, demonstrated the validity of such objections.

The method of nomination is followed in appointing the governors-general and governors of the British Dominions and colonies. But it should be noted that these functionaries are either nominal executive heads or subordinate officials appointed by an authority which wields the real executive power.

The Executive Powers: There is some difference of opinion among political writers as to the powers which properly belong to the executive branch of government. Broadly speaking, the powers usually exercised by the Executive in a modern state may be classified into the following categories: (1) diplomatic power, which relates to the conduct of foreign affairs; (2) administrative power, which relates to the carrying out of the laws and the administration of the government; (3) military power, which relates to conduct of war and defence of the country;

(4) judicial power, which relates to the granting of pardon, reprieve, amnesty and the like; (5) legislative power, which relates to legislation.

(1) The diplomatic power may be further sub-divided into (a) the power to represent the state in its relations with foreign states, (b) the power to appoint and receive diplomatic agents and (c) the power to conclude treaties. Now, in all states it is the Executive which represents the state in its relations with foreign states. And the head of the government exercises everywhere the power to appoint diplomatic representatives to foreign states and to receive those accredited by foreign states. Where the titular head of the government is a mere nominal head, this power of appointing and receiving diplomatic representatives is exercised by him with the advice of the real Executive. In the United States, appointments made by the President to diplomatic offices are subject to confirmation by the Senate. In India, Britain and most other states, however, these appointments do not require confirmation by the Legislature or any branch of it.

As for treaty-making power, it has been rightly said that it is neither purely executive nor purely legislative in character. In the United States the Constitution requires that all treaties must be submitted to the Senate for ratification. So, though the American President enjoys full power to negotiate treaties, these do not become valid till they have received Senatorial confirmation. In Britain, the Cabinet enjoys both the power of negotiating and of ratifying treaties. The position is the same in India. The Constitution of India does not require treaties to be submitted to Parliament for its concurrence. The Central Executive in India is thus both the negotiating and ratifying authority. The Indian and British Parliaments, however, indirectly paticipate in treaty-making through their right to approve or reject legislation which may be necessary to put a treaty into effect. In France, peace treaties, commercial treaties, treaties involving national finances and territory, as well as

treaties relating to the personal status and property rights of French citizens abroad require ratification by a legislative act.

(2) The administrative power includes the power to appoint, remove and direct officers. In most states, these powers are subject to limitations imposed by the constitution and the laws. In the United States, for instance, all higher appointments made by the President are subject to confirmation by the Senate. In almost all states today recruitment to public services is regulated by laws providing for selection through competitive examinations. The administrative power also includes the power to issue ordinances, as well as rules and regulations such as are necessary to regulate the details of the execution of laws.

(3) Everywhere the military power is vested mainly in the Executive. This power includes the command of the military forces of the state and the power to conduct war. In Britain the Executive also possesses the power to declare war. In the United States, Congress alone can declare war. In France, the assent of both chambers of Parliament is necessary to a declaration of war. "War may not be declared", says the Constitution of the Fourth Republic (the French Constitution), "without a vote of the National Assembly and the concurrent opinion of the Council of the Republic." But whether or not the constitution makes the power to declare war subject to approval by the Legislature, the Executive in no country can declare war unless it has the support of the Legislature behind it. For it is the Legislature and not the Executive that controls the means for the prosecution of the war. The constitutions of most states provide for the assumption of extraordinary powers by the Executive in times of war or large-scale internal disturbances. Almost everywhere the Executive can suspend some of the constitutional guarantees in times of war. In India, the Constitution empowers the Executive to suspend during wars and internal disturbances—and even before the

actual occurrence of war or such disturbances, if the President thinks that there is imminent danger thereof—some of the most important civil rights including freedom of speech, freedom of movement, and freedom of association and assembly.

(4) Everywhere the Executive is vested with the power to grant pardons, reprieves, respites or remissions of punishment of persons convicted by the courts of crime. The main purpose of this power is to correct judicial errors and to temper justice with mercy. A general pardon, granted to a large number of offenders, is called an amensty. In some countries the executive's power of pardon includes the power to grant amnesty. In others, as in France, amnesty cannot be granted except by a law. As a rule, the power of pardon does not extend to cases of impeachment. The reason is obvious. Impeachment is a device to try and remove high executive officials guilty of criminal acts. If impeachments are not excepted from the power of pardon, an executive convicted by impeachment would pardon himself.

(5) The legislative powers of the Executive have been separately discussed below.

The Relation of the Executive to the Legislative Power: Though the theory of the separation of powers enjoins strict separation of the spheres of the Executive and the Legislature, it is, as has been pointed out, neither possible nor desirable to separate completely the sphere of the Executive from that of the Legislature. In all states the Executive is given certain powers to participate in the work of law-making, and the Legislature enjoys certain powers of control over the Executive. Everywhere, in other words, the spheres of the Executive and the Legislature are inter-related. The relation between the executive and legislative branches of government is, however, not the same everywhere. It varies. And it is this relationship which distinguishes the cabinet and the presidential forms of government from each other.

In countries having the cabinet system of government, the Executive is given the power to summon and prorogue the Legislature. It is also vested with the power of dissolving the Legislature, and ordering fresh elections. The Executive, under this form of government, acts as the main directive force in the Legislature. It usually initiates all important legislative measures and pilots them through the Legislature. It also enjoys the power of approving or disapproving measures passed by the Legislature. In countries having the presidential form of government, the Executive cannot summon the Legislature except for special sessions, and cannot usually adjourn it except in the case of disagreement between the two houses as to the time of adjournment. The time for the beginning of regular sessions is fixed in these countries by law. The Constitution of the United States, for instance, says: "The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day." Thus, in countries having the presidential system of government, the Legislature automatically assembles on the date fixed by the Constitution or law. The Executive in a presidential form of government cannot dissolve the Legislature before the expiration of its term. The Legislature in such states remains in existence for its full term, no more, no less. A presidential Executive, while it can recommend measures for the consideration of the Legislature, cannot directly introduce legislative measures in the Legislature. It can, however, disapprove acts passed by the Legislature, a power which is known as the veto power.

In all states the Executive is required to furnish information to the Legislature on matters concerning the pubilc affairs of the country. Without such information no Legislature can perform its function properly. Nowadays, the Legislature is found everywhere to delegate its legislative authority to the Executive in a considerable measure. Often the Legislature lays down the broad outlines of

a law and empowers the Executive to frame rules to regulate matters of detail. This is known as delegated legislation. The phenomenon of delegated legislation is a result of the growing complexity of modern life which makes it impossible for a Legislature to foresee and provide for all possible contingencies.

The Veto Power: In all states the Executive is given power to approve or to disapprove measures passed by the Legislature, its approval being essential to the validity of a legislation. This executive power to disapprove measures passed by the Legislature is known as the veto power. The main purpose of the executive veto is to prevent hasty and ill-considered legislation, and to prevent encroachments by the Legislature on the powers of the Executive. In Britain, the veto power of the Crown is absolute, that is, it cannot be over-ridden by the Legislature. But this power has not been exercised by the Crown for a long time and may now be considered a dead letter.

In fact, wherever there is a cabinet system of government, the veto power tends to fall into disuse. The reason is obvious. In a cabinet system of government, normally no legislative measure can be passed unless it is supported by the Cabinet which controls a majority in the Legislature. And a Cabinet can never think of advising the executive head to veto a law that has been passed with its support. This explains why the President of India, who enjoys the veto power under the Constitution, has not exercised that power on even a single occasion since the Constitution was brought into force. In France the veto power has not been used even once during the past eighty years.

In most states the veto power of the Executive is qualified, that is, it can be overridden by the Legislature. In the United States, the President's veto can be overridden by a two-thirds majority in Congress; that is, if a vetoed measure is repassed by Congress by a two-thirds majority it becomes a valid law. In France, the President's veto is

merely suspensive in character. By using this power, he can only compel a reconsideration of the measure by Parliament; but a repassage of the measure by Parliament by an ordinary majority makes it a valid law. The position is the same in India. In the states of the United States the Governor's veto power can be overridden by the Legislature by a prescribed majority—usually two-thirds or three-fifths.

Types of Parliamentary Executives: The British Cabinet and the French Cabinet: It has been already pointed out that the parliamentary system of Government is characterised by responsibility of the Executive to the Legislature. But all parliamentary Executives are not similar in all essentials. Both Britain and France have the parliamentary system of government, but the position of the Cabinet in Britain differs greatly from that the French Cabinet. Three important points should be noted in this connection.

(1) In Britain the Cabinet plays a guiding and directive role in relation to Parliament. In France the constitutional system completely subordinates the Cabinet to Parliament which controls and determines the policies of the government. "French temperament", says Garner, "is not especially favourable to the smooth working of the cabinet system. In Great Britain there is a disposition on the part of Parliament to allow itself to be guided and directed by the ministry, the Parliament contenting itself with the ultimate right of control. In France, on the contrary, the respective roles of Parliament and ministry are reversed: the ministry instead of leading and guiding the Parliament is itself controlled by the chambers even in respect to the details of administration and legislation." Garner wrote this many years ago, long before the birth of the Fourth Republic (1946). But the description still holds good, except that the Cabinet has been made responsible under the constitution of the Fourth Republic to only the Lower Chamber of Parliament, known as the National Assembly, and not to both chambers as in the Third Republic. The National Assembly dominates the political life in

France. It controls the Ministry and the policies of the government. Once the National Assembly decides upon any course of action it can compel the Ministry to accept it or to resign. To emphasise the predominance of the National Assembly in the constitutional system, the Constitution of the Fourth Republic requires that the Prime Minister (the President of the Council, as he is called) shall be designated afresh at the opening of each legislative session and must come before the Assembly for a vote of confidence. The Constitution also lays down that neither the Prime Minister nor any other Minister shall be formally appointed until the Prime Minister has received a vote of confidence from the National Assembly. This is in sharp contrast to the British practice. A confidence vote is not necessary to the formal appointment of the British Prime Minister.

(2) One of the fundamental characteristics of the parliamentary system of government, apart from ministerial responsibility to the Legislature, is the power of the Executive to dissolve the Legislature or the popular branch of it. The dissolution is essentially a method of arbitration by the people on conflicts between the Executive and the Legislature. In a typical parliamentary system, the Executive can dissolve the Legislature in case of sharp difference of opinion between them and can appeal to the people, that is, order fresh elections. This enables the Executive to ascertain whether the Legislature truly reflects the popular will or not, and it enables the people to exercise an almost direct control over the governmental policies on all important issues. Though the French Constitution expressly provides for dissolution, the power of dissolution is circumscribed by so many limitations as to be made ineffective. The result is that in cases of conflict between the Government and the National Assembly dissolution cannot take place, and the people cannot arbitrate. In such cases, therefore, the Ministry faces the alternatives of resignation or subordination of its will to that of National

Assembly. This analysis makes it clear that political power in France is exerciesd not so much by the people as by the Legislature. The French Constitution, we may say, sets up not so much a parliamentary system of government as Government by the Assembly, in which all power is concentrated in the hands of the Assembly, the Ministry being only an executive agent appointed by it.

(3) One of the most unfortunate features of the French political life is ministerial instability. The French Governments are proverbially short-lived. The average life of a French Government in post-war France has been less than six months. This ministerial instability is attributable to three factors. In the first place, multiplicity of parties in France makes coalition governments unavoidable. And coalition governments, representing as they do a compromise between divergent points of view, can seldom be stable. Secondly, the difficulty of bringing about a dissolution of the Legislature greatly contributes to instability of the Governments in France. This point has been explained above. Thirdly, the French people are temperamentally distrustful of strong executives and are averse to giving the Cabinet a dominant position in the governmental mechanism. The British people, on the other hand, though not less democratic in any way than the French, believe in stable and efficient administration. The two-party system which prevails in Britain also greatly contributes to governmental stability.

The American President and the British Prime Minister: Both the American President and the British Prime Minister hold positions of topmost authority in their respective countries. Both of them owe their office to popular election, but whereas a country-wide election is held for the office of the American President, the British Prime Minister is returned from one of the constituencies of the House of Commons like any other member of this House and is subsequently made the Prime Minister because of his being

a leader of the majority party. (Nowadays the British Prime Ministers are chosen from amongst the members of the House of Commons alone.) Both of them wield tremendous powers. And in times of emergency the powers of both are greatly increased.

While, however, the powers of the British Prime Minister are based on convention, the powers of the American President are defined by law. The result is that the British Prime Minister's powers are in many respects more unfettered than those of the President who has to function within clearly defined limitations imposed by law. The President of the United States is, again, elected for a fixed term of four years, while the British Prime Minister is not so elected.

Since the Ministry in Britain is responsible to the House of Commons, the Prime Minister with all his colleagues can be removed from office by the House if it ceases to have confidence in that body. On any clear indication that the House of Commons has lost confidence in the Ministry, the latter must resign in a body or dissolve Parliament and order fresh elections. The Congress in the United States cannot, however, remove either the President or his Cabinet even if the majority of members in both Houses of Congress are opposed to their policies. This difference results from the fact that whereas the American Government is of the presidential type, the British governmental system is of the parliamentary type.

Another important result flowing from this structural difference between the two governments is that the British Prime Minister plays a highly important, sometimes a dominant, role in law-making, while the President of the United States has little power over legislation though he can indirectly weild an influence over it. The British Prime Minister not only sits in Parliament, he is the leader of the Government side which commands a majority in the House of Commons. All important laws

emanate from the Ministry. The Bills are drafted according to the decisions of the Cabinet and are introduced into Parliament by the Ministers on behalf of the Government who get them passed with the help of the official majority. In all these processes the Prime Minister who is the leading figure in the Cabinet takes an important and direct part. The Prime Minister is thus in a position to determine, more than any other person in the realm, the character and content of the laws passed during his tenure of office. The American President, on the other hand, is neither a member of the Legislature nor has any power of directly introducing any law on behalf of the Government. Very often, however, Bills which have been actually drafted by the departments under the direction of the President or his Cabinet are introduced by their party members in either House of Congress, but unless the Government party commands a majority in Congress such Bills have little chance of getting passed.

The American President can, however, determine the policies of the governmnt indpendently of the advice of his Cabinet officers. The Cabinet officers are mere servants of the President who can appoint or dismiss them at will, and accept or reject their advice as he pleases. The Prime Minister of Britain cannot, however, normally disregard the advice of other Cabinet Ministers in formulating official policies. The government can only remain in power so long as it commands a majority in the House of Commons. The Prime Minister has, therefore, to show great deference to the views of his Cabinet colleagues who are influential members of the party because, unless he does so, there may be splits in the party and the Cabinet may lose the support of the majority.

In the field of foreign affairs, the British Prime Minister enjoys far greater powers than the American President. This is due to the fact that in Britain the Cabinet enjoys the power of both negotiating and ratifying treaties. In America, on the other hand, the President possesses only

the power to negotiate treaties and has no power to ratify them. The Senate is the ratifying authority in America.

This analysis shows that while both the British Prime Minister and the American President wield tremendous power, each is more powerful than the other in some fields. The American President, for instance, enjoys far greater discretion than the British Prime Minister in taking decisions in the field of executive action, while the latter is more powerful than the former in the legislative sphere. Attempts to find out who is the more powerful of the two are thus bound to be fruitless.

The British Prime Minister and the Prime Minister of India: The position and powers of the Prime Ministers of Britain and India are very much alike. This is mainly due to the fact that in both countries the parliamentary system of government prevails. Like the British Cabinet, the Central Cabinet in India is responsible to the Lower House of Parliament, known as the House of the People. Just as the British Prime Minister can be unseated with his entire Ministry by Parliment by passing a vote of no-confidence, the Prime Minister of India with his entire team can be similarly removed from office by Parliament in the event of its loss of confidence in that body. Like the British Prime Minister, the Prime Minister of India, too, forms the Ministry. It is on the Prime Minister's advice that the President of India appoints the other Ministers.

The powers and functions of the British Prime Minister are entirely based on convention. The powers of the Indian Prime Minister have a definite legal basis, though they are not elaborately defined by any law. "There shall be a Council of Ministers", says the Constitution of India, "with the Prime Minister at the head to aid and advise the President in the exercise of his functions." The Constitution further says: "The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister." The

Constitution expressly imposes on the Prime Minister the duty of (1) communicating to the President all decisions of the Council of Ministers relating to administrative affairs and proposals for legislation, (2) furnishing such information on these matters as the President may call for, and submitting for the consideration of the Council of Ministers, if the President so requires, any matter on which a decision has been taken by a Minister but which has not been considered by the Council. These provisions of the Constitution thus definitely lay down (1) that there shall be a Prime Minister who is to be appointed by the President; (2) that the Prime Minister shall head the Council of Ministers, that is, be its leader, (3) that the Prime Minister shall choose his colleagues in the Ministry and (4) that the Prime Minister is to be the main—if not exclusive —channel of communication between the President and the Council of Ministers. On this broad basis of law a large super-structure of conventions seems to have been already raised to give the Indian Prime Minister a position of supremacy in the governmental set-up of the country very similar to that enjoyed by his British counterpart. The Indian Prime Minister, presumably, presides at Cabinet meetings and guides the deliberations of this body. Since the constitutional position of the Indian President is more or less like that of the British Sovereign, the Prime Minister of India, more than any other person in the country, determines the legislative policies of the Central government. He also plays a dominant role in foreign affairs. The present foreign policy of India is entirely a handiwork of Prime Minister Nehru.

Unlike the British Prime Minister, his Indian counterpart can speak in both Houses of Parliament. The Indian Prime Minister speaks on all imprtant Bills. He intervenes in the debate whenever any important issue is discussed or raised. His statements on the general policies of the government are regarded as the most authoritative. Since, as in Britain, the Ministry in India is responsible to the Lower

House of Parliament which also exercises control over finance, it is highly probable that the Indian Prime Minister will always be a member of the Lower House of Parliament and owe his position, like his British counterpart, to being the leader of an influential party.

The French President and the American President: The offices of the French President and the American President present a sharp and interesting contrast. The French President is elected by the members of the two Houses of Parliament sitting together as the Congress. He is thus indirectly elected. The scheme of election to the office of the American President, on the other hand, is indirect in form only but direct in substance. If one ignores the form and confines one's attention to the substance, one might say that the American President is directly elected by the people. The term of the French President is seven years and that of the American President four years. In both countries the Constitution imposes a limit of two terms on the presidential tenure. The French Constitution does not prescribe any age or other requirement for eligibility for the presidential office but no member of any family that ever reigned over France is eligible. The U.S. Constitution lays down the following requirements for eligibility for the office of the President: (a) the candidate must be a natural-born citizen, (b) he must have attained the age of thirty-five years and (3) must have been fourteen years a resident in the United States. Both the American and French Presidents are removable by impeachment. But whereas the French President can be impeached only for high treason, the American President can be impeached for "treason, bribery, or other high crimes and misdemeanors." In America, the House of Representatives has the sole power to impeach, while the Senate has the sole power to try impeachments. Under the French constitution, the power of impeachment is vested in the National Assembly (the Lower House of Parliament), and the power of holding the trial is vested in a High Court of Justice elected by the

National Assembly at the opening of each legislative session.

As regards powers and functions, the office of the French President is a direct antithesis of that of the American President. Whereas the American President is both the titular and the real Executive and is one of the most powerful functionaries in the world, the French President is a mere nominal head. The French Constitution confers on the President a long list of powers but says that every act of the President must be countersigned by the Prime Minister and another Minister. The result of this provision is that it is the Ministry, which is responsible to the Lower House of Parliament, that enjoys the real authority, while the President cannot act except on its advice. In the United States, however, the Ministers are mere servants of the President who can appoint and remove them at will and accept or reject their advice as he pleases. The American President is thus supreme in the executive sphere, while the French President is little more than a ceremonial figurehead—"a prisoner in an iron cage." The record of the official acts of a French President, it has been aptly remarked, consists of nothing but an autograph collection. Perhaps the only power conferred by the Constitution upon the French President which he can exercise without obtaining the consent of his Ministers is the power to send his resignation to Parliament. Sir Henry Maine wrote many years ago: "There is no living functionary who occupies a more pitiable position than a French President. The old kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French neither to reign nor yet to govern."

The French President, however, symbolising as he does the majesty of the Republic, commands great respect and

can, if he is a man of personality, wield considerable influence over governmental affairs. When party passions run high, as they do too often in France, the President can exert a very wholesome, moderating influence.

The American President and the President of India: The American President is indirectly elected by an electoral college. The President of India is also elected in a similar way. But whereas in America a special electoral college is formed for presidential election, in India the elected members of both Houses of Parliament and of the Legislative Assemblies of the States form the electoral college for the purpose. It is interesting to note that the Constitution of the United States expressly debars the members of Congress, the senators and representatives, from being chosen as presidential electors. To be eligible for election as the President of India, a person must be a citizen of India and must have completed the age of thirty-five years. In America the corresponding requirement is that the person must be a natural-born citizen, must have attained the age of thirty-five years and must have been fourteen years a resident within the United States. The American Constitution provides for the impeachment of the President; the Indian Constitution also contains a similar provision. But whereas in America it is the Upper House, the Senate, which has the sole power of trying impeachments, in India either House of Parliament can exercise that power provided the other House prefers the charge. The Constitution of India provides that a person who has held office as the President shall be eligible for re-election to that office. Formerly, the American Constitution also did not put any limitation on re-election of a former President. In America, however, a convention had grown up—mainly because the first President, Washington, had declined a third term—that no President was to stand for more than two terms. The convention had been long respected till President Roosevelt broke it by standing for

a third term in 1940. Now, however, an express constitutional bar has been put on the election of a President for more than two terms. The twenty-second amendment to the American Constitution which became law towards the end of February, 1951, provides that no President of the United States shall be elected for more than two terms.

As regards the respective powers of the American President and his opposite number in India, the first thing to be noted is that whereas the American President presides over a weak centre, the Indian President presides over a strong centre. Particularly, the powers given to the Indian President to suspend the autonomy of the States in times of crises are such as are not enjoyed by the American President. In financial emergencies, the Indian President can reduce the salaries and allowances of all government officials, whether of the States or of the Union, including the salaries and allowances of the Judges of the Supreme Court and the High Courts. And apart from these emergency powers, the President of India has been given a formidable list of other executive, financial and legislative powers. He can declare war and conclude peace. He can, like the American President, veto laws made by Parliament. Such veto can, however, be over-ridden by a simple majority in Parliament, whereas in America it requires a two-thirds majority in Congress.

In spite of the frightening list of powers vested in the President of India, it is clear, he is far less powerful than the American President who is said to wield "the largest amount of authority ever wielded by any man in a democracy." For the President of India must exercise almost all, if not all, his powers under the Constitution on the advice of the Ministry, which is responsible to the Lower House of Parliament. In America, the Cabinet officers are mere servants of the President. They are not responsible to Congress, nor have they any power to speak on the floor of the Congress. The President dominates the American

scene like a colossus. Compared to him the Cabinet officers have very little importance. "The President", says Laski, "in a word, symbolises the whole nation in a way that admits of no competitor while he is in office. Alongside his, the voice of a Cabinet officer is, at best, a whisper, which may or may not be heard." The American President has the power of determining the policy of the Government independently of the advice of his Cabinet officers who are some mere helpers appointed by him. All policies are identified with him. "A decision of the Supreme Court is regarded as adverse to *his* policy; a defeat in Congress is a blow to *his* prestige; the mid-term congressional elections affect *his* policy, for good or ill. No one thinks of them in terms of their effect upon his Cabinet."

Here in India, however, the fact that the Constitution sets up a parliamentary form of government in which the Cabinet is responsible to the Lower House of Parliament severely limits the sphere of presidential discretion. Here the President cannot normally disregard the Cabinet's advice which, under the scheme of the Constitution, would control the majority in the Lower House and would pilot all important legislation through Parliament. The Cabinet is responsible not to the President but to the Lower House of Parliament, and it can hardly accept responsibility for a policy of which it is not the author or with which it is not in agreement. If the President refuses to accept any advice of the Cabinet, the latter may resign and confront the President with the necessity of finding an alternative Cabinet which it would be almost impossible for him to do. For the new Cabinet too must be a body enjoying the support of majority in the Lower House. Thus by resigning its office the Cabinet can create a deadlock which the President cannot resolve except by dissolving the Lower House and appealing to the country. But such a course is hazardous for him to take because if the same parties are returned at the next elections, it would mean a clear verdict of the people against him.

In a Cabinet system of government the role of the President is necessarily reduced to a minimum, and the same factors that have reduced the French President to the position of a mere ceremonial figurehead have brought it about that the President of India cannot normally exercise any power except on the advice of the Ministry. Thus at least so far as the normal day-to-day affairs are concerned, the President of India is, like his French counterpart, a figurehead. Whether he can have some real power to exercise in abnormal situations like war or external invasion remains to be seen. But if the experience of the working of the Indian Constitution so far is any guide in this matter, the conclusion is inescapable that the position of the Indian President is in no way different from that of the French President. Thus the position of the Indian President is, like that of his French opposite number, the direct antithesis of the American President's position. The office in India which is comparable, in respect of powers and functions, to the office of the American President is not that of the President but of the Prime Minister.

The French President and the Indian President: The offices of the French President and the Indian President have a family resemblance to each other. Both these dignitaries are heads of states having the parliamentary system of government. And this, as will be presently explained, is the governing fact about both of them.

Both the French and Indian Presidents are indirectly elected. The French President is elected by the members of the two Houses of Parliament jointly meeting as the Congress. The Indian President is elected by an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. The Indian President has a five-year term, while his French counterpart has a seven-year term. But while the Indian Constitution does not impose any limitation on the re-eligibility of the President, under the French Constitution no President can be re-elected more than once. The

French Constitution does not lay down any age or any other similar requirements for eligibility for the presidential office, but it says that no member of any family that has ever reigned over France shall be eligible for the office. As for the Indian Constitution, it lays down that no person shall be eligible for election as President unless he is a citizen of India, has completed the age of thirty-five years and is qualified for election as a member of the House of the People. The President of India can be removed from office by impeachment for violation of the Constitution. The French President can be impeached for high treason. In India, either House can try the impeachment provided the other House prefers the charge. In France, it is the Lower House of Parliament, the National Assembly which has the sole power of impeachment, while the trial is to be held by a High Court of Justice elected by Parliament at the opening of each legislative session.

The fact that both in India and France the government is based on the parliamentary system has reduced the role of both the Presidents to that of a nominal head. The French President is a mere ceremonial figurehead having no power to act except on the advice of his Ministers. The Indian President also does not enjoy any real power in respect of normal day-to-day administrative affairs. It is also very doubtful whether he can exercise any real power in abnormal situations, that is, situations of crises calling for the exercise of the emergency powers vested in him by the Constitution. The fact that the veto power of the Indian President has not been exercised even on a single occasion since the Constitution came into force only re-inforces the conclusion that in regard to powers and functions the Indian President stands on the same constitutional footing as the French President.

It must be said, however, that at least in form, if not in substance, the position of Indian President is more exalted than that of his French counterpart. The Constitution of India formally vests in the President the executive power

of the Indian Union, thereby making him, at least in name and form, the head of the administrative system. But the French Constitution (Fourth Republic) places the power of execution of the laws in the hands of the Premier and not the President. Thus, even in form, the French President is not the head of the administrative structure. Secondly, the French President cannot, under the present constitution, formally appoint the Prime Minister or the other Ministers until the person designated by him as the Prime Minister receives a vote of confidence from the Lower House of Parliament (the National Assembly). And the French Constitution requires that the Premier-designate shall come before the National Assembly for such a vote of confidence at the beginning of every legislative session. In India, however, the Constitution does not require any prior vote of confidence for the appointment of the Prime Minister by the President. The provisions of the French Constitution in regard to this matter are based on the theory that the Executive is a mere agent or servant of Parliament, while the Constitution of India assigns to the Executive a guiding role in relation to Parliament. Thirdly, the Constitution of India confers on the President the power of making ordinances and also provides for enactment of Acts by him in certain circumstances. The French President, however, does not enjoy the ordinance-making power even in theory. (Under the Third Republic, the President was the head of the administrative system at least in name and enjoyed the ordinance-making power.)

The Swiss Executive: The Swiss Executive is *sui generis*, that is, it forms a class by itself. It belongs neither to the parliamentary nor to the presidential type.

The Swiss Federal Executive, which is known as the Federal Council, consists of seven members elected for four years by the two Houses of the Swiss Parliament in joint session. The Federal Council is completely renewed after every general election of the National Council, the Lower

House of the Swiss Parliament. Usually the Federal Councillors are elected from amongst the members of the Legislature, though the Constitution does not bar outsiders from being so elected. Not more than one member can, however, be chosen from the same canton. After election, a Federal Councillor must vacate his seat in the legislature. The Councillors have the right to speak, but not to vote, in both Houses. The Council drafts almost all important legislative measures and submits them before Parliament for consideration. Each Federal Councillor heads an administrative department. The Federal Council determines the policies of the Government. It conducts foreign affairs. It enforces laws and decrees of the Confederation. It ensures the internal and external security of Switzerland and the maintenance of its independence and neutrality.

Parliament elects a member of the Federal Council as the President and another as the Vice-President for a term of one year. The President is called the President of the Confederation.

The Swiss Executive differs from the parliamentary type of executive, like that of Britain and France, in some fundamental respects. (1) In the first place, the Council does not go out of office when a Bill sponsored by it is rejected by Parliament or when any administrative policy advocated by it is disapproved by the latter. In other words, the Council is not responsible to Parliament in the sense in which the British and French Cabinets are responsible to the Lower House of the respective Parliaments. The Council has a fixed tenure and cannot be removed by an adverse vote of the legislature. When any Bill sponsored by the Council is thrown out by Parliament, or any policy adopted by it is opposed by the latter, the Council merely submits to the will of the legislature and takes steps to carry out its directives. The theory of the Swiss Constitution is that the Executive is only an agent or servant of the Legislature. It is subordinate to the Legislature and not co-ordinate with it. (2) In a parliamentary system of Government, the Cabinet

enjoys the power to dissolve the legislature and to appeal to the voters in the event of a sharp difference of opinion between itself and the latter. This right of dissolution is essentially a right to appeal from the legal to the political sovereign. In Switzerland, the Executive does not enjoy this right. Thus while the Swiss Parliament cannot dislodge the Executive, the latter cannot dissolve the former. (3) Thirdly, in a parliamentary Government, the Cabinet is usually a homogenous body or at least committed to a common programme or policy. In Switzerland, however, the Executive is not formed on this principle. The persons elected to the Council never belong to the same party, nor are they required to have a common policy. Policy decisions are taken by a majority. What fundamentally distinguishes the Swiss Executive from a presidential executive is the fact that the former is a mere agent of the legislature, while the latter is a body independent of the legislature and a co-ordinate branch of Government.

The Swiss Executive is a plural executive in the true sense of the term. Though the Federal Council has a President, he has no greater powers than any of his colleagues. His position is like that of a chairman of a committee. The President presides over the Council and has a casting vote in the case of a tie. Thus the Swiss President is not a *primus inter pares* like the British Prime Minister. While the British Prime Minister can choose and dismiss his colleagues, the Swiss President has no such power. The position of the Swiss President also contrasts sharply with that of the American President. The American President is both the titular and real Executive, while the Swiss President is a mere official head having no greater power than any of his colleagues. The former has a four-year term, the latter a one-year term. The American President can appoint or dismiss his Cabinet officers at will, the Swiss President has no such power. The former has no access to the Legislature, the latter has.

The Executive in Totalitarian States: In totalitarian regimes the entire executive, legislative, and judicial power is concentrated in the hands of a party or rather the leaders of the party. Where the party has one supreme leader commanding unquestioning allegiance of the party members, the government becomes a dictatorship. A dictator is not only the real executive but also the real legislature as well as the real judiciary. He packs the legislature with his own men, appoints his own followers to all important administrative posts and purges the administrative machinery of all opposition elements, with the result that all branches of administration function according to his directives and give effect to his will. The laws reflect primarily his will and they are executed as he wants them to be. And judges also give effect to his will in deciding cases.

Nazi Germany and Fascist Italy were typical dictatorships. In one the will of Hitler and in the other that of Mussolini was law. In the Soviet Union under Stalin also, it is rightly believed, the system of government was essentially a dictatorship, with Stalin having the last word in all matters of policy and administration. It is interesting to note that though Stalin wielded dictatorial power in the Soviet Union since about 1927 till his death in March 1953, it was only in 1941 that he became the Prime Minister of the state. Before that time he never held any of the topmost offices in the governmental hierarchy. This makes it clear that in a modern dictatorship, the dictator can hold the reigns of power without holding any executive office in the governmental structure. The fact is that a modern dictatorship is characterised by one-party rule and a very close integration of the party and the government. The leader who can control the party can control the government without holding any executive office in the government and without having his dictatorial position formally recognised by law. For over thirty-years till his death Stalin held the post of General-Secretaryship of the Communist Party. And it was the control over party affairs which this position gave him

that enabled him to raise himself to a supreme position in the party and in the state.

Growth in the Power of the Executive: For the past sixty or seventy years there has been a steady increase in the power of the Executive in all democratic governments. And simultaneously there has been a corresponding decrease in the power of the Legislature and the Judiciary. In fact this tendency towards increase in the power of the executive branch of the Government at the expense of the legislative and judicial branches is one of the characteristic features of politics in the modern world. The main factors that have contributed to this increasing concentration of powers in the hands of the Executive are the following:

(1) Technological progress, growth of population and the growing complexity of life have necessitated a gradual expansion of governmental activities. And expansion of the sphere of governmental functions has inevitably resulted in increasing accumulation of power in the hands of the executive authorities.

(2) Transformation of the police state into the welfare state has been the greatest single factor in the growth of power in the hands of the Executive. Formerly the state was concerned solely with the police functions of maintenance of law and order and protection of the country against external attack. To-day the state has been assuming an increasingly important role in the economic life of the people with a view to promoting their welfare through control over the processes of production and distribution. Every state now exerts control, whether in a smaller or larger measure, over production and prices. It regulates conditions of work in factories. It regulates industrial relations. It builds hospitals and schools. It carries on various kinds of public health activities. It even owns and runs factories for production of commodities considered essential to the life of the community. It operates various kinds of social insurance schemes. In short, the state now-a-days controls a far

greater sector of the life of the community than it did in times past with the result that the powers in the hands of the Executive have multiplied enormously.

(3) In these days of growing social complexity, it is impossible for the Legislature to lay down laws covering all circumstances and contingencies. In most cases, therefore, the Legislature frames laws in general terms and empowers the Executive to frame rules and by-laws to regulate the details of their application. This delegation of legislative power by the Legislature to the Executive has greatly increased the power of the latter. The volume of delegated legislation tends to increase in every country almost yearly, and this affords an indication as to the growth in the power of the Executive.

(4) For reasons stated above, an increasingly large number of judicial and quasi-judicial functions are also being delegated to the executive branch of government. This too has been a contributory factor in increasing the power of the Executive.

(5) Development of the party system is another factor contributing to the gradual accumulation of power in the executive branch of government. Governments have to face organised opposition in legislatures. This makes them demand unquestioning obedience from their followers in voting on legislative measures and demands for grants. Tightening of party discipline means a corresponding curtailmet of the freedom of ordinary members and concentration of power in the hands of the leaders. And it is the party leaders who, it should be remembered, hold the topmost executive offices when the party comes to power.

(6) Finally, war has contributed no little to the increasing concentration of power in the executive branch of government. Exigencies of war can never be met properly except by concentrating all power in the hands of a few persons. In wartime, many of the civil rights also have, of

necessity, to be suspended. War thus always brings about a vast expansion of the powers of the Executive. Although many of the special and emergency powers conferred on the Executive in wartime are withdrawn in times of peace, some of these powers continue to be retained by it. For Governments are very tenacious of power. Once given a new power, they fight to retain it by inventing all sorts of excuses. Every war, as a result, leaves the executive more powerful than it was before.

CHAPTER XVI

ADMINISTRATION

What is Administration? Administration is the process of applying the laws enacted by the Legislature. Law-making, it should be obvious, is only half the story. The other half is translation of the law into action. Administration is thus of the essence of government. Every modern Government has to maintain a vast administrative machinery to carry out the laws enacted by the Legislature. For one legislator there are hundreds of administrative officials in each state. All officials concerned with the carrying out of laws, from the head of the state and Ministers down to clerks, peons, constables and tax-collectors, are parts of the administrative machinery.

Law-making and Administrative Officials: In theory the administrative officials are concerned with only the administration of the laws, while legislators are concerned with the making of laws. But in practice the functions of the two groups overlap to some extent. Administrative officials participate in the process of law-making to some extent, while legislators sometimes have to perform functions essentially administrative in character. In formulating policies and in drafting legislative measures embodying those policies, the Ministers everywhere have to depend greatly on the advice of permanent administrative officials. These officials thus determine to some extent the character and content of the laws. And since it is not possible for legislators to frame laws covering all possible cases that may arise, laws are often framed in general terms and the Executive is empowered to supplement them by framing rules for the application of the laws in concrete cases. In other words while the Legislature provides the outline, the Executive is authorised to fill in the details. This rule-making power is in reality exercised by the administrative

officials for the Ministers can seldom have the experience needed for the framing of the rules. These rules, it is important to note, are also laws, though subsidiary in character, and affect the life of the citizens as much as the provisions of the statutes framed by legislative bodies. Administrative officials, it will thus be seen, exercise legislative power to no small extent. This exercise of legislative power by the administrative authorities is known as delegated legislation. In every modern state the volume of delegated legislation far exceeds the volume of statutes enacted by the Legislature.

The fact is that the functions of legislation and administration are essentially inseparable. This fact finds frank recognition in a cabinet system of government. Almost always, the Cabinet sponsors and pilots all important legislative measures. And the members of the Cabinet head the administrative departments. The Cabinet thus controls both administration and legislation, subject, of course, to an ultimate control of the Legislature.

Just as administrative authorities exercise legislative power to a considerable extent, legislative bodies also sometimes exercise power essentially administrative in character. The U. S. Senate, for instance, enjoys the power of confirming appointments made by the President and of ratifying treaties.

How Should Public Officials be chosen? The Development of the Civil Service: It has been very aptly remarked that laws are no better than the men who administer them. A law may be perfect from the theoretical point of view, but if it is badly administered, it will fail to achieve the desired result. Instead of doing good, it may actually injure the interests of the people. Efficient administration of the laws presupposes a body of competent and honest administrative officials. Great care must, therefore, be taken to see to it that the persons appointed to public offices are men of competence and integrity.

Formerly, almost everywhere, public employment was purely a matter of patronage and favouritism. Politicians, when they would come to power, would fill administrative offices with their own relatives, followers and supporters regardless of considerations of capacity or competence. Appointments were thus made not on the basis of knowledge or competence but as rewards for political support or for personal considerations. As a result, public services were, in those days, swamped with inefficient and worthless men, and the administration was of poor quality. Slowly the idea gained ground that public officials should be recruited on the basis of knowledge and competence tested in formal examinations. The demand for the introduction of the "merit" principle gradually became vocal and the movement ultimately culminated in the setting up of civil service commissions in most states for the recruitment of personnel for the public services through open, competitive examinations. To-day the merit system prevails in almost all countries, personnel for the great majority of public offices being chosen through open, competitive examinations.

The Civil Service in Britain: In the past, in Britain, as in most other countries, public services used to be dominated by political and personal favouritism. Appointments would go invariably to the relatives and supporters of the persons in power. The movement for civil service reform gained its first victory in 1855 when a civil service commission consisting of three persons was set up to hold examinations for recruitment of personnel to junior positions. In 1870, the open competitive examination was made obligatory throughout the service. Since then recruitment and promotion to all administrative posts, excepting those at the bottom of the scale and a few at the top, have been governed by the merit principle. The posts at the bottom of the hierarchy to which the principle is not applied are concerned with functions of a purely routine character. And the officers at the top who stand outside the scheme include mainly the Ministers.

The civil service in Britain includes at present the following four categories of officers: (1) the Administrative Class, (2) the Executive Class, (3) the Clerical Class and (4) the Clerical Assistant Class. Of these the first represents the top-most grade while the others represent the next three grades, from top downwards. The Administrative Class is called the brain of the service. It consists of a body of highly competent public servants numbering some 4,000 and it is this class that contributes most to the high quality of the British administrative services. The civil servants are "centrally recruited through the Civil Service Commission and centrally controlled by the Treasury, which is the mouthpiece of the government in relation to the administration and constitutes the legislative authority for the civil service as a whole." Members of the Civil Service Commission are appointed by the Crown and hold office, 'subject to the Queen's pleasure', till the age of retirement. The Treasury enjoys the power to frame regulations in regard to the salary, pensions, number, rank and promotion of civil servants. Even the rules framed by the Civil Service Commission for admission to the service are subject to Treasury approval. The Permanent Secretary of the Treasury is called the Head of the Civil Service.

The civil servants, of course, do not include the labourers in government arsenals, docks, and industrial establishments. And, it must be added, the public corporations like the British Overseas Airways Corporation (B.O.A.C.), the British European Airways Corporation (B.E.A.C.) and the National Coal Board recruit their personnel directly and not through the Civil Service Commission and are largely independent of Treasury control as to both personnel and salary scales.

The Spoils System and the Civil Service in America: Formerly, in America, when a new administration came to office, it removed all public officials and appointed in positions thus vacated its own followers. The system which came to be known as the spoils system was based on the idea that public offices are spoils of victory, to be distributed among workers

in a successful political campaign. Andrew Jackson, who was first elected President in 1928, adopted the spoils system as a national policy. The system was, however, already prevalent in some of the states. In Jacksonian days and for the next fifty years , says Munro, " the spoils system had a recognised place among the practicalities of American policies. It smeared all branches of administration—national, state and local. Virtually all positions in the government service were treated as booty, to be parcelled out among the stalwarts after each election. When a new administration came in, virtually all who had government jobs went out, making room for a fresh swarm of pay roll patriots. Post offices in towns and villages throughout the land became ambulatory; in each quadrennium they moved from one end of the Main street to the other, following the politics and preferences of the postmaster. Nowhere in the government service during these years did personal competence count for much. Applicants for public employment were not asked to state what they could do but what they had done—for the party."

This highly obnoxious system used to be supported by various arguments. (1) It was argued that political parties were essential to democracy and so it was the duty of governments to support and strengthen political parties. This could be done only by rewarding party workers with places on the public pay roll when the party came to power. (2) Secondly, it used to be pointed out that the spoils system made the government truly responsible. When the people elected a new administration, " they voted for a change all the way down the line, not merely for a change at the top." If men at the top are to be held responsible for carrying out the popular mandates, they should not be asked to do this through subordinates whom they have not appointed and in whom they have no confidence. (3) " The spoils system, again, was lauded as a truly American way of doing things; it gave everyone a chance to serve the country in peace as well as in war." (4) Permanence of tenure in public office

breeds corruption. The spoils system provides a safeguard against this evil.

The spoils system had so greatly corrupted American political atmosphere that political workers came to look upon public office as something to which they had a natural right—a right which must not be violated by any political leader. Things came to such a pass that in 1881 President Garfield was assassinated by an office-seeker whose demands had been refused by him. This shocked the whole country and roused the conscience of America to the need for reform. In 1883 Congress passed America's first comprehensive civil service law. This act has come to be known as the Pendleton Act. The American movement for civil service reform, it must be added, drew much of its inspiration from the British reform in this sphere, which came a generation earlier.

At present, recruitment for the majority of the national administrative officers is made through a system of open, competitive examinations held by a body known as the federal civil service commission. The commission consists of three persons appointed by the President and confirmed by the Senate. The spoils system, however, still persists to a very large extent in American politics . One-third of the federal employees, it has been estimated, still remain outside the merit system. "Despite all the progress of the past sixty years, there are more federal positions exempt from the civil service laws to-day than there were when the first civil service law was passed in 1883." The position in the states also is much the same. Despite the introduction of the merit principle in the state administration, the spoils system still occupies an important place in it.

Difference between the British and American Systems of Civil Service Examinations: In America the civil service examinations are of a practical character; they are framed so as to test the fitness of the candidates for specific categories of posts. In Britain, on the other hand, the examinations aim at measuring the candidates' intellectual abilities

and attainments, their general promise for the future. In Britain the civil service can be entered only at an early age (in no case beyond the age of 24); in America, speaking generally, men and women of practically all ages can enter the service provided they can prove their fitness for the posts. "There is something to be said, of course," says an American author, "for both the American and British concepts. The American is more democratic; it exacts little of the beginner in the way of cultural equipment, and it affords a haven for men and women of all ages who are presumably fitted to do some particular form of clerical or other work. This, however, is about all that can be said for it. The British system is less democratic. But it attracts to the public service men and women who, on the average, not only are younger and more energetic and flexible than American appointees, but far better fitted by education, and perchance by native capacity as well, to become progressively able, useful and responsible servants of the State."

Public Service Commissions in India: Public Service Commissions, as has been indicated, are now-a-days regarded as essential in a democratic system of government. Their chief function is to hold competitive examinations for recruitment to the public services. They ensure that only persons having the requisite training and competence are chosen for appointment to the public offices. Along with the Judiciary and the Audit Department, the Public Service Commissions of a state help to maintain purity and efficiency of the administration.

The Constitution of India provides for a Union Public Service Commission and State Public Service Commissions. It also empowers Parliament to provide for the appointment of a Joint Commission for two or more States if they decide to have such a Commission.

The Chairman and other members of the Union Commisison are appointed by the President who also determines their number. The President is also the appointing

authority for the members of a Joint Commission. The Governor or the Rajpramukh of a State appoints the Chairman and other members of the State Commission. The Constitution lays down that as nearly as may be at least one-half of the members of every Public Service Commission must be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State.

The chief function of the Public Service Commissions is to conduct examinations for appointments to the services of the Union and the States. Moreover, in respect of civil services and posts, the Public Service Commissions must be consulted on the following matters: methods of recruitment; principles to be followed in making appointments; promotions and transfer; disciplinary matters; claims for injuries or defence of legal proceedings.

To ensure that the members of the Public Service Commissions may not be subjected to pressure by either the Executive or the Legislature, the Constitution lays down certain provisions which make these bodies greatly independent of both. A member of a Public Service Commission cannot be removed from office except by the President. And the President can remove a member on the ground of misbehaviour, only if the Supreme Court, on a reference made to it by the President, has, after an enquiry, reported that he ought to be removed on any such ground. A member of a Public Service Commission may, however, be removed from office by the President if he (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is, in the President's opinion, unfit to continue in office by reason of infirmity of mind or body.

A member of the Union Public Service Commission holds office for six years or till he attains the age of 65. The term of office for the members of the State Commissions is also six years but in their case the upper age limit is 60.

The same provision applies to a Joint Commission. As a safeguard against corruption, the Constitution provides that the Chairman of the Union Commission, on ceasing to hold office, shall be ineligible for further employment either under the Central Government or any State Government. Other members of the Union Commission, as well as the members of the State Commissions including their Chairmen can, on ceasing to hold office, serve only on a Public Service Commission and can hold no other office. No member of a Public Service Commission is eligible, on the expiration of his term, for reappointment to that office.

The Union, the State and Joint Commissions are required to submit annual reports on the work done by them to the President or the Governor or the Rajpramukh as the case may be. These reports must be laid before the appropriate legislatures together with a statement of reasons, in respect of cases in which the advice of the commission concerned was not accepted, for such non-acceptance.

The All-India Services: The old Indian Civil Service has now been replaced by the Indian Administrative Service. The old Indian Police Service has also been replaced after the attainment of freedom by a new service of the same name. The I.A.S. and the I.P.S. are the two most important of the All-India Services. Formerly, the I.C.S. officers used to be appointed to all the higher offices in the executive, judicial and political branches of the administration. The Indian Administrative Service is intended to serve the same purposes except that of providing officers for holding judicial offices. There is a training school in Delhi, known as the Indian Administrative Service Training School, which gives training to I.A.S. probationers.

Every year the Union Public Service Commission holds a combined competitive examination for recruitment to the following all-India Services: Indian Administrative Service, Indian Police Service, Indian Foreign Service, Indian Forest Service, Indian Audit and Accounts Service, Military

Accounts Service; Indian Railway Accounts Service, Indian Postal Service and a number of other services. Candidates for the competitive examination for most of these services must be between the ages of 21 and 24. For candidates belonging to Scheduled Castes and the Scheduled Tribes and for certain categories of Government servants the upper age limit has, however, been fixed at 27 years.

The All-India Services Act, passed by Parliament in 1951, regulates the recruitment and conditions of service of persons appointed to the All-India services.

The All-India services are under the ultimate control of the Central Government but are divided in most cases into state cadres, each under the immediate control of a State Government.

The Central Secretariat Service: The Government of India decided on the constitution of what has come to be known as the Central Secretariat Service in 1948. This service embraces all posts in the Central Secretariat from an Assistant up to an Under Secretary, excepting those excluded with the consent of the Ministry of Home Affairs. It also includes some posts in the attached offices. The service comprises, from top downwards, the following four grades: Under Secretary, Superintendent, Assistant Superintendent and Assistant. Recruitment to the posts of Assistants is partly by promotion from the cadre of clerks, partly through open competitive examinations held by the Union Public Service Commission. As for the next higher grade, that of Assistant Superintendent, 50 per cent of the posts are filled by promotion and 50 per cent on the basis of the combined examination for the I.A.S. and the Central Services Class I. The posts of Superintendent and Under Secretary are selection posts and are filled by promotion.

The State Services: The State Services are controlled by the State Governments. Recruitment is made mainly through open competitive examinations held by the Public

Service Commissions of the States. The services provide the personnel for manning the various public services of the States. Some of the higher administrative posts are reserved for members of these services, just as some of the topmost positions in the administrative hierarchy are reserved for members of the I.A.S. and the I.P.S.

Security of Tenure for the Civil Servants: In almost every democratic country, the constitution and the laws provide for a reasonable degree of security of tenure for the civil servants. The Constitution of India also guarantees security of tenure to the civil servants. Under the Constitution, no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State can be dismissed or removed by an authority subordinate to that by which he was appointed. Nor can such a person be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This privilege is denied to (i) those convicted on a criminal charge, (ii) persons in regard to whom the dismissing authority is satisfied that it is not practicable to give them an opportunity to defend themselves and (iii) persons in regard to whom the President or the Governor or the Rajpramukh is satisfied that in the interest of the security of the State it is not expedient to give them such an opportunity.

The Permanent Civil Servant and the Political Executive in a Cabinet System of Government: Both Ministers and the permanent civil servants are parts of the administrative machinery. But whereas the Minister is a political official, the civil servant is not. The civil servant cannot stand for election to a legislature. And usually he is not permitted to make political speeches, or to publish a party newspaper, or to serve on a party committee or print partisan articles or books. He is required to be politically neutral. He is expected to serve under all governments, irrespective of

party affiliation, with equal loyalty. He has, of course, the right to vote at elections and he can freely exercise this right. A dutiful civil servant "serves with equal fidelity under governments of different hue, merely watching the stream of political life flow past him without ever dipping into it except to vote."

The Minister, again, is, in most cases, an amateur, while the civil servant is either an expert or in the process of becoming one. Usually, when a person first becomes a Minister he has had no experience about the work with which his department is concerned. And, while in office, he has to spend so much time in attending to his parliamentary, party and social duties, that he can acquire little more than a general idea about the work of his department. Very often he is transferred from one department to another and this makes it all the more difficult for him to acquire a thorough knowledge of administrative work.

Should Ministers be Experts? This question is often asked by students of politics and discussed by political writers. While some persons are of opinion that laymen innocent of the technicalities of administrative work should not be permitted to hold ministerial offices, the great majority of writers give their verdict in favour of the present practice in countries having the cabinet system of government. In these countries, it is well-known, laymen are not only permitted to be Ministers, the great majority of them usually belong to this category. The following reasons are advanced in favour of this practice. (1) The business of the Minister is to interpret the popular will and to frame policies in accordance with it. He is concerned with the question *what*, and not with *how*. The Minister provides the democratic element in the administration; the civil servant provides the bureaucratic. Both elements are essential—"one of them to make a government popular; the other to make it efficient."

(2) In each department numerous types of work are simultaneously carried on, each requiring a high degree of

technical proficiency. Neither a Minister nor any other person can be a master of all.

(3) The Minister has to see that the staff carries out the policies in the proper manner. And this function can be performed much better by a layman from outside than by a departmental expert. Coming from outside he is in a better position to view the public interests as a whole than a departmental expert accustomed to see things from a purely departmental point of view. He can, therefore, keep the department within its proper sphere.

(4) Less friction is likely to result if the work of experts is supervised by laymen than if it is done by experts.

Principles of Administrative Organisation: It is hardly possible to lay down a set of principles regarding administrative organisation that would be applicable in all circumstances and in all states. Practice in this matter varies widely. The British and the American administrative systems differ in respect of some of the fundamental principles underlying their organisation. Nevertheless there are one or two principles which appear to be universally applicable.

According to Laski, the organisation of an administrative system should be based on the following principles. In the first place, the distribution of work between the various departments should be made not by persons but by services. Let us make this point clear. We might have a department for children, a department for the aged, a department for the unemployed, each department catering to the varied needs of the particular group with which it is concerned. The department for children might deal with all matters relating to the health and education of children, as well as their housing and recreation facilities. Similarly, the department for the unemployed might deal with the matters relating to vocational training for the unemployed, as well as matters relating to their health, housing and the like. But no efficient system of administration can be built on this plan. For, under this arrangement, every department will have to provide a

variety of services, and every service will be duplicated in every department; each department, for instance, will have to concern itself with certain problems of education, problems of housing, health activities. No specialisation can be possible under this plan by any department and the quality of administrative services, as a result, will be poor. The distribution of work should, therefore, be by services. In other words, there should be a department for health, a department for education, a department for agriculture, one for industry and so on, each department providing a particular service for all classes of people. This plan will help specialisation and make for efficiency of the services. The principle of departmental organisation by services is one of universal application. This principle is followed in all countries.

The next question that arises is how each department is to be organised. According to Laski there are five clear principles which should be observed in organising a department. (1) There must be a Minister responsible to the legislative assembly for the work of a department. This will help fixation of responsibility. "The Legislative Assembly must always be able to point to a particular individual and demand from him a justification of departmental policy." (2) Secondly, there must be special provision in each department for adequate financial supervision. This implies that an important official must be made responsible for all payments made by the department and for explaining in terms of cost all proposals which emanate from it. This officer and the staff will, so to say, act as a watchdog of the taxpayer. (3) Thirdly, every ministry should have attached to it a committee of members of the Legislative Assembly. Such a committee would act as a consultative organ. It should have regular meetings with the Minister at which his policies are freely discussed and explained. It should have the power to initiate inquiries in the department. To it should be submitted all ordinances which have to be issued by the executive without immediate legislative sanction. It should

have, of course, no power to determine policy or dictate methods, for these are strictly ministerial functions. As Laski puts it, the business of such a committee will be, like that of the King of England, to advise, to encourage, and to warn, with the addition that, in the process, it would also learn. Committees of this type would also be a valuable means of bringing to the Legislature a difinitely competent opinion about the working of the administrative process. Thus through the setting up of such committees the members of the Legislature would be brought into an organic relationship with the executive departments . (4) There must be, fourthly, a definite arrangement for inter-departmental co-operation. For a Government is after all an organic unity, and without close inter-departmental co-operation it can never function smoothly and efficiently. (5) There must be, lastly, special provision for research and enquiry. Effective policy-making presupposes accurate knowledge of the factors involved. Provision for systematic research is thus of fundamental importance in an administrative system.

It is important to note that a presidential system of government is characterised by the absence of ministerial responsibility, the first of the principles mentioned above. In the United States which has a presidential system of Government, the Ministers are not responsible to the Legislature. They have also no access to the Legislative Chambers. They are responsible to the President who, again, is independent of the Legislature. It might be supposed that the cabinet system of administration is superior in every respect to the presidential system. But no system is without its merits. One great merit of the presidential system of administration is that by vesting the functions of execution and legislation in separate and independent authorities it prevents too great a concentration of powers in the hands of a few persons. In a cabinet system the entire executive and legislative power sometimes get concentrated in the hands of the Cabinet and the Legislature is reduced to a mere rubber-stamp.

Public Opinion and Administrative Authorities: What should be the relation between the public and the administrative authorities? Administrative processes with which public officials other than the political executive are concerned should be kept outside the sphere of politics. This does not mean that members of the public including politicians should not criticise the permanent officials. They should freely criticise their faults and foibles and expose corruption in their ranks. But neither politicians nor other members of the public should directly interfere with their work. Such interference would undermine discipline and would be fatal to efficiency of the administration. Instead of directly interfering with the administrative processes, the public should put pressure on the political executive to remedy the defects and deficiencies thereof. If the political executive fails to do so, it may be removed at the next election. The public interest demands that the administrative services should be run smoothly, efficiently and uninterruptedly and there must not be any discrimination against any person or group in the application of the law. This cannot be ensured unless the public officials are politically neutral. Politicians should, therefore, take care to see to it that the public officials are not dragged into the political arena. And, like the traditional Indian wife, the public officials, for their part, must not look beyond their 'husband'—the political executive responsible to the people.

The public should, however, be brought into organised relation with the administrative authorities at the policy-determining level. With each Ministry should be associated an advisory body consisting of representatives of the various professional, industrial, cultural and other bodies—such bodies as are specially affected by the policies of the Ministry or are particularly competent to give advice on matters with which the Ministry has to deal. These advisory committees will bring to the Ministries a fund of practical knowledge and experience to which neither the officials nor the Ministers can pretend. They will always keep the administration

informed about the public reaction to its policies and how particular interests are being affected by them. They will thus help greatly in successful formulation of policy by enabling the administration to base it on the practical knowledge of all the factors involved. These committees should have the following functions: (1) They should be entitled to prior consultation on all proposed bills. (2) They should be consulted on general administrative policy. (3) The committees should have the power to make suggestions in regard to the adoption of new policies or revision of existing policies. (4) They should be entitled to consultation in respect of the rules and regulations that are issued by the departments in exercise of the delegated legislative authority.

Delegated Legislation: The subject of delegated legislation, that is, legislation by administrative authorities in exercise of power delegated by the Legislature, has been already referred to. This will be further discussed in some detail in connection with the study of the British Constitution.

CHAPTER XVII

THE JUDICIARY

The Function of the Judiciary: The function of the Judiciary is to apply the law to individual cases. By applying the law, the courts decide civil disputes and punish crimes. They ascertain and enforce rights. They protect the weak from injury. They shield the innocent. They prevent abuse of powers by the administrative authorities. The Judiciary thus performs a function that is essential to freedom. It has been justly remarked that there is no better test of the excellence of a government than the efficiency of its judicial system. Judicial processes are what essentially distinguish civilisation from barbarism.

In countries with rigid constitutions the Judiciary is usually the final interpreter of the constitution. It decides questions relating to the limits of the respective spheres of the Legislature and the Executive. In some of these countries, such as India and the United States, the Judiciary enjoys the power of invalidating laws that contravene the constitution.

Apart from the strictly judicial functions, the Judiciary in most countries are entrusted with certain functions of a non-judicial character. The power of appointing trustees, receivers and guardians is often vested in courts. In some countries the courts give advisory opinion on questions of law or fact submitted to them by the Executive. The Constitution of India, for instance, requires the Supreme Court to give its opinion on questions of law and fact submitted to it by the President.

Appointment of Judges: Qualifications that are essential in a judge are independence, legal knowledge, honesty and fair-mindedness. Efficient and impartial administration of justice cannot be ensured unless the judges, besides possessing the necessary legal knowledge, enjoy a reasonable degree

of independence of the Executive and are free from pecuniary temptation. The method of choosing judges should be such as ensures the selection of persons possessed of the requisite qualifications.

Broadly speaking, there are three different methods of choosing judges: (1) Election by the people, (2) election by the Legislature, and (3) appointment by the Executive.

Election by the people: In most of the States in America the judges are chosen by popular election. In the Soviet Union, the lowest courts, known as the People's courts are similarly elected. The system of popular election of judges, however, has not found general favour. Even in the United States, the federal judges are not chosen by this method. They are appointed by the President with the consent of the Senate. In some of the states also the judges are either elected by the Legislature or appointed by the Governor. There is little doubt that of the three methods of choosing judges, popular election is the worst. Common voters are seldom qualified to select the right type of men for holding judicial offices. Secondly, judicial competence and the skill for winning votes do not usually go together. Persons who are best qualified to hold judicial offices often make poor candidates. In America it happens not unoften that persons possessing superior judicial acumen are defeated at the elections and men of inferior calibre elected. The method of popular election has also another great disadvantage. It tends to undermine the independence of the judges, particularly if their tenure is a short one, as is the case in many American States. A judge who knows that his re-election depends on the popularity of his decisions can hardly perform his function with the desired degree of independence. Popular election, moreover, means in most cases selection by party bosses and a judge selected on partisan considerations can seldom possess that impartiality and independence which are so essential for proper performance of the judicial function.

Election by the Legislature: In a few American states, the judges are elected by the Legislature. The judges of the Federal Court in Switzerland are elected by the Federal Assembly, the Swiss Parliament. The Supreme Court of the U.S.S.R. is elected by the Supreme Soviet of the U.S.S.R. for a term of five years. The Supreme Courts of the constituent Republics of the Soviet Union are also similarly elected, that is, they are elected by the Supreme Soviets of these Republics. In fact, all courts in the Soviet Union, excepting the lowest which are popularly elected, are elected by the Soviets of the corresponding levels. The method of election by the Legislature has also been found to be unsatisfactory. Experience shows that a Legislature's choice is likely in most cases to be influenced by partisan considerations. The method is also likely to result in parcelling out of the judicial positions among political parties and divisions of the state. Needless to say, political considerations are the last ground on which any person should be elected as a judge. In the Soviet Union, it should be noted, all judges are in reality selected by the leaders of the Communist Party whose decisions are thereafter merely rubber-stamped by the Legislatures, composed as they are of members and supporters of the same party.

Appointment by the Executive: Appointment by the Executive is the method followed in the great majority of the states in the world. This has been found to be the most satisfactory method of choosing judges. It has been found that in making appointments, the Executive selects the best available persons—persons best fitted for discharging the duties of the offices concerned. Usually it seeks the advice of men holding high judicial offices before it makes such appointments. Not that the system always works perfectly. It does happen sometimes that appointments are made by the Executive on partisan considerations. But it has been found in practice that this method is less susceptible to partisan favouritism than the method of election by the Legislature.

Removal of Judges: The principle of independence of the Judiciary demands that judges should not be easily removable. On the other hand it is imperative that there should be some provision in the constitution or the laws for removal of corrupt judges. Formerly, in Britain, the King could remove the judges at will. Judges could hardly have independence under such a system. The system was later abolished by an Act of Parliament which laid down that the judges could not be removed by the Crown except on an address by both Houses of Parliament. The Constitution of India provides that no judge of the Supreme Court or any High Court shall be removable except by the President and only after an address has been presented to him by both Houses of Parliament urging such removal on the ground of proved misbehaviour or incapacity. The Constitution requires a special majority for the presentation of such an address. In the United States, the judges of the Federal Courts can be removed only by impeachment. And in all states of the United States, except three, the judges are removable by impeachment. But in addition to this method, there are other methods whereby a state judge may be removed. In some states, the judges of lower courts may be removed by those of higher courts; in others, the judges may be removed by the Governor at the request of the Legislature or by a joint resolution or address of the Legislature. In continental Europe, the general rule is that a judge can be removed only by the court of which he is a member or by the highest court sitting as a disciplinary tribunal. In France, under the new constitution, the judges cannot be removed except on the recommendation of the Superior Council of the Magistracy.

Tenure of Judges: In the United States, the judges of the Fedearl Courts including the Supreme Court are appointed to hold office during good behaviour, that is, they serve so long as they do not misbehave. This means that they have, for all practical purposes, a life tenure. In Britain, Canada, Australia and South Africa also, the good behaviour

tenure is the rule, the judges being irremovable except on an address by the two Houses of the Legislature praying for such removal on the ground of misbehaviour or incapacity. In India, the judges serve during good behaviour, subject to an age limit for retirement. In the individual states of the United States, the judges are in most cases elected for limited terms which vary from two to twenty-one years. In France the judges can be removed only for misconduct and only on the recommendation of the Superior Council of Magistracy, which means that they enjoy to all intents and purposes life tenure. Thus we see that the good behaviour principle, subject to an upper age limit in some countries, is practically universal. The most notable exceptions to the rule are the states of the U.S.A. and the U.S.S.R., where the system of limited terms prevails.

Organisation of the Judiciary: Everywhere courts are organised on a hierarchical pattern with the right of appeal from the lower to the higher courts, the highest court having the powers of final decision.

Usually civil cases are handled by one set of courts while criminal cases are handled by another, the highest court being the final court of appeal for both categories of cases. Civil courts deal with disputes between private citizens, or between private citizens and the government, in regard to matters involving their legal rights. Criminal courts deal with cases involving crimes. In criminal cases, the state is almost invariably one of the parties. The object of civil proceedings is relief, redress or compensation, while that of criminal proceedings is punishment.

Apart from the regular civil and criminal courts, there is in every country another category of courts which may be called special courts. These include military courts, industrial courts, courts of inpeachment, customs courts and the like.

In France and most other continental countries, there are what are called administrative courts which deal with

cases arising between public officials on the one hand and private individuals on the other. The administrative courts constitute a system than runs parallel to the ordinary judicial courts and apply a body of law known as the administrative law. The subject of administrative law has been already discussed in Chapter VI. The French system of administrative courts will be referred to again in connection with the study of the French Government. In the United States, Britain, India, Australia and Canada and other countries which have adopted the English legal institutions, the system of administrative courts, as it exists in France, is unknown. In these countries cases between private citizens and public officials are dealt with by the same regular courts which adjudicate controversies between private individuals. In all countries, however, including the English-speaking ones, the Executive is now-a-days entrusted with certain judicial or quasi-judicial functions. The Ministry of Health in Britain, for instance, hears and decides appeals on matters affecting the rights of the owners of slum property, and the Ministry of Education decides appeals on certain matters involving questions of rights of local educational authorities. Thus administrative tribunals or courts of some kind or other are now found in most countries.

Independence of the Judiciary: Independence of the Judiciary is a principle of vital importance. Unless the judges are independent of the executive authorities, no rights can be safe. A government being, however, an organic unity there can never be complete separation of the executive and judicial spheres. In other words, the Judiciary can never be completely independent of the Executive, but it must be guaranteed a reasonable degree of independence of the latter if impartial administration of justice is to be ensured.

The principle of independence of the Judiciary demands not only that the judges should be independent of the executive but also that they should be immune against pressure from the Legislature and the electorate, as well as the political parties of the state. A judge cannot, obviously, be

independent if he is elected for a limited term by popular vote. The awareness on his part that his re-election will depend on the popularity of his decisions will tend to destroy his independence. No judge, again, can be independent if his continuance on the bench or his re-appointment depends on the favour of party leaders. Nor can a judge have the independence necessary for impartial administration of justice if his emoluments can be easily diminished by the executive authorities at their discretion. Thus the principle of judicial independence demands four things: (1) a method of appointment that is least susceptible to partisan influence, (2) security against arbitrary removal, (3) long tenure and (4) a guarantee that the salaries, allowances and privileges of the judge shall not be varied to his disadvantage after his appointment.

In almost all democratic countries the constitution and the laws ensure to the judges a large measure of independence. The Constitution of India provides that no judge of the Supreme Court or of a High Court shall be removed except by an order of the President passed after an address from each House of Parliament has been presented to him for such removal on the ground of proved misbehaviour or incapacity. The Constitution further requires that the Parliamentary address must be supported by a majority of the total membership of the House and also by a two-thirds majority of the members present and voting. The Constitution itself fixes the salaries of the Judges of the Supreme Court and the High Courts and provides that their salaries and allowances are to be charged on the Consolidated Fund of the Centre and of the States respectively. The Constitution further lays down that the salaries and allowances of these Judges shall not be varied to their disadvantage after their appointment. All these provisions together with the fact that all judges in India are appointive and hold their office during good behaviour, subject to an age-limit for retirement, ensure to the Indian Judiciary a high degree of independence.

In Britain all judges are appointive, that is, they are appointed by the executive. The Judges of the superior courts in Britain cannot be removed except on an address to the Sovereign by both Houses of Parliament. Their salaries, too, are not voted annually but are permanently charged upon the Consolidated Fund. In the individual states of the United States, where the system of elective judiciary prevails, the judges, speaking generally, possess far less independence than the judges in Britain, India or France. The federal judges in the United States who are appointed by the President with the consent of the Senate and who have a good behaviour tenure, which means, to all intents and purposes, a life tenure, enjoy, however, as much independence as the Judges of the higher courts in Britain. They cannot be removed except by impeachment. Nor can their salaries be diminished during their continuance in office. The Soviet and Chinese political systems are marked by the absence of judicial independence. The judges in these countries, whatever the formal method of their appointment, are all party nominees, chosen with strict regard to their political views; in fact, only supporters of the party in power can hope to be appointed to judicial positions. They also have a limited tenure. They give their decisions, as they are expected to do, in conformity with the views of the party.

The Power of Judicial Review: The power of judicial review means the power of courts to invalidate a law on the ground of its inconsistency with the constitution. The principle of judicial review is an American contribution to the science of government. The highest court in New Jersey laid down the principle as early as 1780. The Supreme Court of the United States first applied the doctrine in 1803 in the famous case of Marbury v. Madison. Since then it has declared unconstitutional and void a large number of federal laws and hundreds of state laws. The power of judicial review exists in India. The courts in India can declare a law unconstitutional if it conflicts with the Constitution. Such a declaration makes the law inoperative. It is, of

course, the Supreme Court of India which has the final power of decision as to whether a law is unconstitutional or not. The Courts in Australia, Pakistan and South Africa also possess the power to declare laws unconstitutional. The Courts in Britain have, however, no power to declare an Act of Parliament unconstitutional. A fundamental principle of the British Constitution is sovereignty of Parliament. Laws made by Parliament are binding on all concerned, including the courts. The British Courts, however, have the power to hold *ultra vires* orders-in-council or rules made by the administrative authorities if, in their opinion, they are not authorised by the Parliamentary statutes under which they have been made. The power of judicial review also does not exist in France. No court in France can declare an Act of Parliament unconstitutional. On the contrary, strangely enough, there exists in France a procedure for determining the legality of the Constitution itself. In case of a conflict between the Constitution of France and a law made by Parliament, it is the latter which is supposed to prevail. Under the Constitution, a Constitutional Committee elected by Parliament determines whether any law passed by Parliament implies amendment of the Constitution. In the Soviet Union no court, not even the Supreme Court, has the power to declare a law unconstitutional. The position is the same in China where in the power of interpreting laws and determining the constitutionality of local laws has been vested in a body known as the Standing Committee of the National People's Congress, which is the permanent body of the National People's Congress.

The Judicial Systems in the United States and Britain compared: In Britain all judges are appointive. In the United States, the judges in most states are chosen by popular election. In Britain, the judges serve during good behaviour; in the individual states of the United States, the judges are elected for limited terms, the average term of office of a judge being between 6 to 8 years. The federal judges in the United States are, however, all appointive.

They are appointed by the President, subject to confirmation by the Senate. They hold office during good behaviour and can be removed only by impeachment. In Britain, the courts form a pyramidal structure with the lowest courts at the bottom and a highest court at the top. In the United States, which is a federal state, the federal courts and the state courts run parallel, the latter being supreme in matters relating exclusively to state law. The courts in the United States possess the power of judicial review, that is, the power of declaring laws unconstitutional. The British courts do not enjoy this power. (Also see the preceding section).

The British and French Judicial Systems compared: In Britain the Judges are appointed by the Crown on the recommendation of the Lord Chancellor. The Lord Chancellor himself, Law Lords, the Lord Chief Justice and the Lord Justices of appeal are appointed by the Crown on the Prime Minister's nomination. The Judges cannot be removed except on an address to the sovereign by both Houses of Parliament. In France the judges are appointed by the President on the recommendation of the Superior Council of the Judiciary, and can be removed only for misconduct and only on the recommendation of this body. The Superior Council of the Judiciary consists of the President of the Republic, the Minister for Justice, six members elected by the National Assembly, four judges representing the various categories of judges and two members appointed by the President from among the members of the legal profession.

In Britain, the Judges are recruited mainly from among the members of the legal profession. Not so in France. The judicial service in France is really a branch of the civil service. Persons desiring to enter the service have to prepare themselves specially for it and to take examinations. They enter the service at a young age and gradually rise to higher positions through promotion. The higher judicial offices are filled always through promotion from lower ranks.

The courts in Britain, except those of appeal, consist as a rule of a single judge, whereas the French courts are

characterised by plurality of judges. Every French court is composed of three or more judges. The French believe that this plurality system is a safeguard against arbitrariness and affords greater protection against executive pressure. The system, however, necessitates the appointment of a very large number of judges and is consequently very expensive. It may be mentioned here that the plurality system or the collegial system prevails, generally speaking, all over the continent, whereas in all Anglo-Saxon countries the single-judge system is the rule.

In Britain, as well as in America, there is a system of circuit judges. Under this system, the judges go "on circuit" from one area to another, holding court in different places. This system does not exist in France ,the courts sitting there only at specified places.

The French criminal procedure is based on the "inquisitorial" system, while the English criminal procedure is based on the "accusatorial" system. The main difference between the two systems is this: Under the accusatorial system, the accused is not required to prove his innocence; it is for the prosecutor to prove by legal evidence the commission of the alleged offence. Under the inquisitorial system, there is from the beginning a presumption of guilt against the accused who is required to prove his innocence and is closely interrogated to bring out the truth.

In France both civil and criminal cases are handled by the same courts whereas in Britain and America they are dealt with by two separate sets of courts.

The French judicial system is characterised by the existence of administrative courts to deal with cases arising out of the relations of public officials with private individuals, such as complaints regarding infringement of private rights by public officials. Administrative courts of this type are unknown in Britain where both public officials and private citizens are subject to the jurisdiction of the same courts.

The Judicial Systems of Britain and India: The Indian judicial system is modelled on the British system. They are, therefore, alike in many respects. Both in Britain and India, the Judges are appointed by the Executive. In both countries they hold office during good behaviour. There is, however, in India an upper age limit. In neither country can the Judges of the higher courts be removed except on an address by both Houses of Parliament. The judicial system in both countries is marked by the absence of administrative courts. In both, there are two separate sets of courts for handling civil and criminal cases.

The Indian judicial system, however, differs in one fundamental respect from the British system. The Judiciary in India has the power to declare laws unconstitutional. The British Judiciary does not possess this power, all laws made by Parliament being binding on them. The difference is attributable to the fact that whereas the Indian Constitution belongs to the rigid type, the British Constitution is a flexible one.

The Relations between the Executive and the Judiciary: As has been already pointed out, it is vitally important that judges should be independent of the Executive. In all democratic countries the constitution and the laws ensure independence of the Judiciary. In most of these countries, of course, the judges are appointed by the Executive, but laws give the former adequate protection against arbitrary removal and reduction of salary and allowances. In totalitarian systems the principle of judicial independence is neither accepted nor followed.

The judges sometimes have to perform functions essentially executive in character. They are sometimes given power to appoint trustees and receivers. In Britain, India and many other countries the higher courts enjoy the power of issuing the writ of mandamus to compel executive authorities to perform their duties, and also of issuing the writ of 'quo

warranto' to prevent illegal assumption of office by any person.

While the courts have the power of trying and sentencing persons who have committed crimes, the power of pardoning is everywhere vested in the hands of the Executive.

Executive authorities are everywhere entrusted with certain judicial and quasi-judicial functions. There is a growing tendency in modern governments to place more and more power of adjudication in the hands of the Executive. (The subject of administrative adjudication will be discussed in some detail in connection with the study of the British constitution.)

Usually the Chief Executive is exempted from the jurisdiction of the courts in a very large measure, if not wholly, during his continuance in office. The British Queen is exempt from judicial processes. The President of the United States enjoys similar exemption from judicial control so long as he remains in office. He can be tried only by the Senate for crimes. Even the Senate cannot award greater punishment on him than removal from office and disqualification for holding any office under the United States. When he ceases to be the President, however, he can be tried and punished by the ordinary courts like any other private citizen. The Constitution of India makes similar provisions. The President, or the Governor or Rajpramukh of a State, says the Constitution, shall not be answerable to any court for the exercise of his powers or the performance of his duties or for any act done by him in his official capacity. No criminal proceedings can be instituted or continued against these functionaries in any court of law during their term of office. And no court can issue any process for their arrest or imprisonment during their term of office. And civil proceedings can be instituted against them only by following a certain procedure laid down in the Constitution itself. The President can, however, be tried by either House of Parliament for violation of the Constitution and in case of such

impeachment his conduct can be brought under review by any court or tribunal or body, appointed or designated by it.

It is a sound principle that no person holding an executive office should be appointed to a judicial position. For it is difficult for such a person to judge impartially matters involving the interests of the Executive. And, conversely, no judge should be eligible for appointment to any political office. "If candidates for the Presidency of the United States", says Laski, "can be selected from the Supreme Court, a prize so glittering will not fail to sway the minds of some judges at least who sit there; and their decisions will follow the path to their ambition."

Relations between the Judiciary and the Legislature: Although in strict theory legislation is the function of the Legislature, while the function of the Judiciary is to apply the law in individual cases, in practice the judges always legislate to a limited extent. For the judges have to interpret the law, and in interpreting the law, they make laws. It is impossible for the Legislature to foresee all possible circumstances and to include provisions in a law covering all contingencies. This is why cases often arise which a literal interpretation of the law fails to cover. In such cases the judges have to stretch the meaning of the words and phrases so as to cover those cases. And decisions given in a case tend to be followed later in similar cases. Through this process a body of laws which may be called judge-made laws or case laws comes into existence. In countries with rigid constitutions where the Judiciary is usually the final authority to interpret the constitution, the legislative power enjoyed by the judges is very great. What a particular provision of the fundamental law means in such a country at a given moment depends greatly on what the Judiciary makes it mean. By interpreting the law in one way rather than another the judges can greatly accelerate or retard social progress.

In most countries the Legislature performs certain functions essentially judicial in character. Thus the power of impeachment including that of trying an impeachment is usually vested in the Legislature.

Although, in most countries, the judges are appointed by the Executive, in some countries they are elected by the Legislature. In Switzerland, for instance, the Judges of the Federal Court are elected by the Federal Assembly, the Swiss Parliament. In the Soviet Union, all courts, excepting the lowest, are elected by the Soviets of the corresponding levels. Election of judges by the Legislature is also the general rule in China. In the United States, the appointment of federal judges is subject to confirmation by the Senate.

In some countries, judges cannot be removed except on an address by the Legislature. Among these countries are Britain, India, Australia, Canada and South Africa. The requirement of an address by the Legislature provides a highly valuable safeguard against arbitrary removal of judges by the Executive.

The principle of judicial independence demands that the Legislature must not unnecessarily interfere with the work of the Judiciary. The Constitution of India forbids discussion by the State Legislature of the conduct of the Supreme Court and High Court Judges in the discharge of their duties. It further lays down that no such discussion shall take place in Parliament except in connection with an address for the removal of a Judge. The Constitution also declares the salaries and allowances of the Supreme Court and High Court Judges to be expenditure charged upon the Consolidated Fund of the Centre or of the State as the case may be. These items thus are not subject to the vote of the Legislature. In Britain the salaries of the Judges are not submitted to the vote of Parliament every year. They are permanently charged upon the Consolidated Fund.

While the Legislature is expected not to interfere with the work of the Judiciary, the courts are as a rule not allowed to interfere with the work of the Legislature. The courts in India cannot enquire into the validity of any proceedings in a Legislature. And no officer vested with powers to regulate procedure or conduct proceedings in a Legislature is subject to the jurisdiction of any court in respect of the exercise by him of those powers. In Britain also, Parliament has always insisted that matters concerning either House of Parliament ought to be discussed and adjudged in that House to which it relates.

CHAPTER XVIII

POLITICAL PARTIES

What are Political Parties? A political party is a voluntary association of individuals holding certain common political views and having certain common political objectives, which they try to attain through control of the governmental machinery. A political party may be defined, says Gilchrist, "as an organised group of citizens who profess to share the same political views and who, by acting as a political unit, try to control the Government." Every political party aims at gaining or retaining control of the governmental machinery so that it may utilise political power to attain its objectives. In a democratic system of government, political parties propagate their respective views among the electorate, organise the voters and contest the elections on the basis of their programmes. The party which succeeds in getting the majority of the votes or in winning the majority of the seats in the Legislature forms the Government. In a cabinet system of government, it sometimes happens that none of the parties represented in the Legislature commands an absolute majority. In such cases, governments are formed through the coalition of two or more parties.

Inevitability of Political Parties: In a democratic system of government, the growth of political parties is inevitable. For in a true democracy, men are free to express their views and free to associate with one another. In such a situation, persons holding similar views or having common interests are bound, sooner or later, to form associations for the furtherance of their interests or attainment of their ideals. Particularly in modern states with their vast populations the formation of such associations is essential for the promotion by any section of the population of its interests. In populations of such vast size, isolated individuals can hardly make their influence felt at the seat of power.

No democratic government, secondly, can be run without the help of political parties. The power of the people is ineffective without leadership. Unless that power is mobilised and canalised towards some definite ends, it is sure to dissipate itself by moving in all directions. Parties provide leadership to the pepole. In a democratic state, we thus see, political parties are called into being by the very logic of facts.

Since men's interests and views naturally differ, there will always be at least more than one political party in a state which maintains freedom of speech and organisation. If it is found in any state that there is only one political party instead of two or more, one may safely conclude that no other party is allowed to exist there—that there is no true freedom of discussion or organisation in that state. Dictatorships are one-party states. In a dictatorship, the party of the dictator suppresses all other parties. Of course all dictators say that there is no need for the existence in their states of any party except their own. But the truth is that the dictator makes political power the monopoly of his own party and bans the formation of any other party. "Nothing", says Laski "appears to us so definite a proof of dictatorship as when the dictator destroys, as he is logically driven to destroy, all political parties save his own."

"If all people thought alike on political questions," says Munro, "there would be no rival political parties. There would be one all-inclusive political group; as is the case under the totalitarian system of government, in which everyone is compelled to think alike if he thinks out loud. On the other hand, if every man thought differently from his fellows, there would also be no party organisations; for every voter would then be a political party unto himself. So the political party is an inevitable development under every form of government, except dictatorship on the one hand and anarchy on the other. In witness whereof one need only repeat that no country has ever been able to maintain,

over considerable periods of time, any form of democratic government without the aid of political parties. And it is safe to prophesy no country ever will."

Functions of Political Parties: Political parties perform certain functions of vital importance.

Political parties, in the first place, select the issues on which the voters must make up their mind. Out of the confused mass of issues confronting the country, the political parties select those which are urgent and important and present them to the voters along with their views as to how these issues should be tackled. By placing their respective programmes before the voters, the parties give the voters a choice among alternatives. The parties thus act, as Lowell puts it, as brokers of ideas. They enable the voters to see clearly what are the important issues, what solutions have been suggested for them by the different parties and for which set of ideas they should vote. The parties thus evolve order out of chaos. They play a guiding and directive role. They enable vast masses of people to take unanimous decisions on public issues. "To attempt to govern a country", says Lord Bryce, "by the votes of masses left without control would be like attempting to manage a railroad by the votes of uninformed share-holders or to lay the course of a sailing ship by the votes of the passengers."

Parties, secondly, provide the motive power in the political life of a state. They stir up the voters' political interests. They stimulate thought and discussion on political issues. They organise and bring out voters in large numbers to vote for this or that programme. They direct the activities of the state machinery towards definite goals. But for parties, these vital functions, being everybody's business, would tend to be nobody's business.

Parties, thirdly, select candidates for public offices. It is difficult for an ordinary voter to choose a candidate of the right type, particularly in modern times when the constituencies have become very populous. The parties which do

the choosing on behalf of the voters thus perform a vital function. The importance of this function can be easily appreciated if we consider what would happen if there were no parties to perform it. In such a situation, it is obvious, scores of people would stand as candidates for election and each would, most probably, receive a small fraction of the vote, none receiving a majority. The elected representative would then represent only a small section of the voters and not the majority. The government, in such circumstances, would be a minority government, that is, an undemocratic government. Parties are thus indispensable if we are to secure majority rule. "If we insist on majority rule," says Munro, "there must be some way of getting the list of candidates narrowed down to a point where one of them has a chance of becoming the majority choice. If political parties were abolished, it would be necessary to find some other mechanism for accomplishing this."

Fourthly, political parties serve as a highly important agency of civic education. Through constant propaganda and discussion of political issues they rouse the interest of the voters and enlighten their mind. At the time of elections, particularly, they intensify their propaganda through the press, platform, the radio and the like to such an extent that even illiterate and indifferent voters are made to acquire some knowledge about the political problems and the solutions suggested for them.

Political parties, fifthly, help close co-ordination between the executive and legislative branches of government. Usually the same party controls both the Executive and the Legislature and party discipline enables the former to get laws passed by the latter without difficulty. In a presidential system like that of America where the functions of execution and legislation are vested in entirely separate and independent organs of government, smooth running of the government can hardly be possible without the help of parties. In America, the party system has helped to bring

the Executive and the Legislature closer to each other. It has thus filled a gap left by the Constitution.

The party system, sixthly, is essential for the successful working of the system of responsible government. Resignation by a government that has lost the confidence of the Legislature would be pointless if there is no rival party prepared to take over the administration. Unless, again, a government can count on the support of a disciplined majority in the Legislature, it would have to work under a constant fear of removal and, so, in an atmosphere of uncertainty. No government can function efficiently in such circumstances.

Parties, seventhly, make for a system of continuing responsibility. Each party has to take responsibility for the policies and activities of the governments formed by it. It is judged to a great extent by the record of the governments it set up in the past. Thus under the party system responsibility becomes continuous. "Without parties the responsibility would go no farther than the office-holder himself, and it would end with the expiry of his term."

Lastly, it should be obvious that it is difficult for poor candidates to get themselves elected without parties to help them with financial and organisational assistance.

Merits and Demerits of the Party System: Though parties perform some vital functions in a democratic system of government, the party system is not without its defects. The chief defects of the party system are the following:

(1) The party system, in the first place, tends to destroy individuality. A party imposes stringent discipline on the members. It requires them to subordinate their personal views to the declared principles and programmes of the party and loyally carry out the orders issued by the party committees or leaders. It threatens with expulsion, and often actually expels, members who have deviated from the party line even in matters of minor importance. Since,

because of the all-pervasive character of the modern party system, it has become extremely difficult for a person to get elected without the help of a political party, the party members who have political ambition usually refrain from criticising the party even when they find the party decisions to be at variance with the dictates of their conscience. The same is true of those members who hope to get a share of the loaves and fishes when the party comes to power. In totalitarian states, which are characterised by the one-party system, party discipline is far more stringent than in democratic countries. In such states, the party system results in almost complete suppression of individuality and party members are turned, so to say, into puppets controlled by a few party leaders.

(2) The party system, particularly, the two-party system, tends to make the political life of a country highly artificial. The Opposition party criticises every proposal or measure emanating from the party in power, no matter whether these are good or bad. A good proposal is criticised as strongly as a bad one. Fault-finding becomes a habit with the Opposition, while members of the ruling party support unquestioningly everything that emanates from the Government. A battle, largely unreal, is constantly carried on in this manner through the press, platform and the radio.

(3) A serious defect of the party system is that parties often distort issues and suppress the truth to serve their own ends. They sometimes indulge in deliberate falsehood to lower their rivals in public estimation.

(4) Party members are often encouraged to put the interests of the party above those of the state. Particularly, parties having extra-territorial allegiance, like the Communist Parties in democratic countries, promote loyalty to party at the expense of loyalty to the state.

(5) Under the party system, some of the ablest men in the state are sure to be excluded from positions of power. This happens because men of exceptional ability are often

deterred from joining parties because of the requirement of strict conformity to party discipline. In forming a Government, moreover, a party generally confines its choice of personnel to its own membership and does not include persons belonging to other parties, however able or efficient they may be.

(6) Sometimes, party rivalry fills the political atmosphere with extreme bitterness of feeling. In times of election, particularly, charges and counter-charges by the parties against one another, heated arguments and, not unoften, abusive speeches give rise to much bitterness and rancour throughout the country and create an atmosphere in which dispassionate consideration of the issues becomes almost impossible.

(7) In all political parties the control of affairs tends gradually to pass into the hands of a small number of leaders or a small clique of power-loving individuals. Thus, though parties are essential to democracy, they always tend to introduce an undemocratic element into the political life of a state.

When all is said and done, however, the fact remains that the merits of the party system, as it exists in democracies, far outweigh its demerits. The vital functions which parties perform in a democracy have already been referred to. These are, briefly, formulating issues, providing leadership to the voters, nominating candidates, stimulating the interests of the voters and serving as an agency of political education of the masses. It is true that by indiscriminately supporting and opposing measures, parties tend to introduce an element of artificiality into the political life of a state. But it must be admitted at the same time that constant criticism helps to keep the Government on the right track. The Government, under the party system, has to present its case as convincingly as possible and to maintain constant alertness about the possible short-comings of the administration. In a democratic system, moreover, parties by

helping people to organise themselves prevent the growth of dictatorial tendencies. Political parties are, says Laski, the most solid barrier we have against the danger of Caeserism. As for distortion of truth, with the spread of education it is becoming more and more difficult for parties to distort facts or to indulge in false propaganda. The awareness that rival parties will thoroughly expose falsehoods also discourages such propaganda.

Basis of Political Organisation: Community of interests, it should be obvious, provides the basis for the organisation of men into political parties. Men having the same kind of interests, whether political, economic, racial, social or religious, tend to form parties to promote those interests. There was a time when parties used to be founded mainly on religious or racial basis. Now-a-days the economic factor plays the dominant role in the formation of political parties. People having common economic interests tend to join together to form political organisations to further those interests. Thus employers and employees, broadly speaking, tend to organise themselves into rival political organisations. It has been the experience of mankind that only parties founded on the basis of common economic interests endure for any considerable length of time. Parties founded on interests other than the economic are as a rule short-lived. If a political party founded mainly on a religious or racial basis is found to endure for a long time, one may safely infer that the economic interest of the party members must also be identical in a very large measure. That religious or other non-economic issues cannot provide a durable texture for party organisation has been repeatedly exemplified in history and is being once more proved by the decline and disintegration that have overtaken the Muslim League in Pakistan and the Hindu Mahasabha in India.

The Two-Party System and the Multi-Party System: The political system of both Britain and the United States is characterised by the two-party system. In both these

countries, political forces have always tended to organise themselves into two big rival parties having a country-wide following. The result has been that the political scene in both has always been dominated by two great organisations one of them in power and the other in opposition. In sharp contrast to the Anglo-American political system is that of France where the multi-party system prevails. Instead of two big nation-wide organisations, France has usually had about a dozen or more parties none of which is strong enough to form a government single-handedly. Governments in France are, therefore, formed on a coalition basis, that is, through the combination of two or more parties. Formerly the multiple party system also used to prevail in Germany and Italy.

The main advantages of the bi-party system are the following: (1) It concentrates power and responsibility at any given moment in the hands of the leadership of a single party. Responsibility, under this system, can, therefore, be definitely fixed. Under a multi-party system, on the other hand, it is difficult to fix responsibility because, under this system, the government is run by short-lived coalitions of two, three, and sometimes more, parties.

(2) The two-party system makes for stability and continuity of policy. The multiple party system necessitates coalition governments, and such governments are proverbially unstable. In France, the Governments are extremely short-lived. It is difficult, under such a system, to secure continuity or coherence of policy.

(3) The two-party system ensures promptness of action. A coalition government of two or more parties having different views on most important questions can hardly act promptly.

(4) Under the two-party system, a Government does not find much difficulty in adopting great and radical measures for the solution of the national problems. But adoption of such measures is very difficult under a multiple

party system. For usually it is on the bigger issues that the views of different parties diverge more widely than on minor ones. As soon as such an issue is taken up for solution, the parties begin to express widely differing views and the coalition falls to pieces. Magyar has justly remarked that in a coalition government "unanimity is attainable in many cases only negatively in the determination not to solve some questions or to postpone attempting the solution."

(5) One of the greatest advantages of the two-party system lies in the fact that it is the only method by which the people can directly choose their government. In states having the multi-party system, where governments are formed through short-lived combinations of different parties and where nobody can be sure who will form the government after the elections or who will be in power a few weeks hence, the governments are chosen not so much by the people as by the leaders of the different groups. Under the two-party system, therefore, the people get a better chance to have their will, at least on the more important issues, translated into actual policy.

(6) Under the bi-party system, the fall of a Government brings immediately into view an alternative administration. This cannot be the case under a multiple party system.

It must not be understood, however, that the multiple party system, the disadvantages of which have been enumerated above, has nothing to be said in its favour. One of the advantages of the multiple party system is its flexibility. A Government, under this system, can be reorganised without holding elections which involve so much trouble and expense. This system appears to be more favourable to deliberation. Where the Government is controlled by a single rigidly disciplined party, there is much less freedom of deliberation than where it is run by a combination of a number of parties. A coalition Government is also more amenable to the pressure of public opinion than a single-party

Government which can depend on its majority to drive all its policies to the statute book.

Perhaps the chief defect of the two-party system is that it is likely to lead, particularly in a parliamentary government, to excessive concentration of power in the hands of a few leaders. Another great defect of the system is that some voters may find that neither of the two parties offers them a combination of principles which they favour.

There is no doubt, however, that representative government works best under the two-party system. A political system, Laski says, is "the more satisfactory the more it is able to express itself through the antithesis of two great parties." The multiple party system, says he, is fatal to government as a practical art. For this system means weak and unstable administrations and inability on the part of the Executive to evolve or carry out an ordered scheme of policy.

Different Types of Party: In a democratic state, where citizens enjoy freedom of speech and organisation, four general types of party are usually found to exist: (1) Reactionary parties, that is, parties of persons who wish to return to the institutions of the past; (2) Conservative parties, that is, organisations of persons who wish to 'conserve' or retain institutions of the present; (3) Liberal parties, that is, parties formed by persons who wish to reform the present institutions; and (4) Radicals who wish to abolish the present institutions and create new institutions in their place. Often the first two groups join hands with each other to form a unified organisation. Similarly, the last two groups also very often combine on the basis of a compromise for the sake of attaining and controlling power. And where this happens, a two-party system comes into being. Such a development cannot, however, take place in a country where the population is divided into a number of classes with sharply conflicting economic interests.

One of the reasons for the remarkable success of the two-party system in Britain is the fact that the number of such classes is fewer in Britain than in most other countries.

The One-Party System: Dictatorships are characterised by the one-party system. In fact, the one-party system is what fundamentally distinguishes a dictatorship from a democracy. The Soviet Union is a one-party state. So are the other Communist states of Europe. Fascist Italy and Nazi Germany were also one-party states.

The one-party system is characterised by ruthless suppression of all parties other than the official party, suppression of criticism and regimentation of the mind. In a one-party state, elections are reduced to a farce, only members and supporters of the ruling party being allowed to stand as candidates. The Legislature in such a state becomes a mere rubber-stamp for giving formal approval to decisions made by the party leaders. The Judiciary is made subservient to the party. In fact all branches of the Government, the executive, the legislative and the judicial, are brought under the absolute control of the party. Power in such a state becomes gradually concentrated in the hands of a few party leaders. In Stalinist Russia, all power was concentrated in the hands of Stalin. Hitler and Mussolini ruled Germany and Italy as dictators.

The one-party system is a contribution of Lenin to modern political practice. Lenin was the leader of the Russian Communist Party (Bolsheviks) which came to power in that country through the October Revolution (1917). Being Marxists, Lenin and his followers aimed at the overthrow of capitalism and establishment of dictatorship of the proletariat. Lenin taught that without a strong, highly disciplined party giving leadership to the proletariat, dictatorship of the proletariat was impossible of achievement. Under his leadership the Communist Party was built up into an organisation bound together by iron discipline. Dictatorship of the proletariat thus became dictatorship of

the Communist Party. The one-party system built up in Russia by Lenin has become a model for Communists all over the world. Wherever the Communists have captured power, they have built up a one-party administration on the Russian model.

The causes which led to the rise of the one-party system in Germany under Hitler and in Italy under Mussolini were complex and numerous. The main cause, however, was the fear of the propertied classes that the working of the democratic and parliamentary institutions in those countries will ultimately result in the destruction of all property rights. Their reasoning was as follows: Democracy means placing power in the hands of the masses. Wherever masses come to control power they invariably utilise it to curtail property rights. If the property rights are, therefore to be safeguarded, democracy and parliamentary institutions must be suppressed. Hitler and Mussolini, supported by these classes, rose to power and overthrew the democratic institutions. Victory of the Communists in Russia was also a factor that greatly contributed to the rise of the one-party system in Germany and Italy. Democracy, it was believed by the propertied classes, bred Communism. For democracy by maintaining freedom of speech and association enables the Communists to preach their doctrine freely and to build up a powerful organisation for seizure of political power. If the establishment of Communism is to be prevented, democracy must be suppressed. Thus the richer classes argued and welcomed Hitler and Mussolini who promised to save them from the menace of communism and safeguard their property rights. (Also see Ch. XXIII).

The Party Systems is Britain, United States, France and India: The party system as prevalent in each of these states will be studied in connection with the study of the respective governments.

CHAPTER XIX

FEDERAL GOVERNMENT

Federalism: When two or more states combine to form a new state without completely surrendering their rights, a federal state comes into being. With the formation of a federal state, however, the component states lose their statehood and become parts of the new state which becomes the sovereign. The formation of a federal state thus involves surrender of sovereignty on the part of the component units to the new state but not complete surrender of autonomy. A state cannot be called a federal state unless its units enjoyed a considerable measure of autonomy. The state in which there is no local autonomy for the parts is a unitary state and not a federal one. In every federal state, the constitution clearly demarcates the respective spheres of the federal and local governments. In a typical federation, both the federation and the states are supreme in their respective spheres.

Federalism, says Dicey, is "a political contrivance intended to reconcile national unity with the maintenance of state rights." It reconciles central control with local autonomy. It secures unity in diversity. It combines the principle of centralisation with that of decentralisation so as to secure the advantages of both. The federal principle of governmental organisation is most suitable for states which are very big in size or in which the population is composed of different linguistic or racial elements.

Sometimes, in the past, the desire to increase the defensive power against common enemies led to the formation of federal unions by groups of States. The Achaean League which was formed in Greece by a number of city states to resist Macedonian domination is an example of such federal union. One of the chief motives which led to the formation of the United States by the thirteen original colonies was to undertake common defense against their

common enemy, namely, England. A sentiment of unity arising from the community of language or culture has sometimes acted as a unifying force among a number of contiguous states and led to the formation of federations by them. Examples of such federation are Australia and Canada. Common economic interests too, have sometimes resulted in the formation of federal unions. In Europe in the middle ages, commercial towns would often form Leagues to protect themselves against attack and exaction by feudal landlords. Notable examples of such Leagues are the Hanseatic League, the Lombard League and the Rhenish League. These Leagues were, however, not federal states in the true sense of the term.

Federation, Confederation and Unitary Government: Confederation is a weaker type of union than federation. It is looser in organisation. Among the notable examples of confederation are the American Confederation which existed from 1781 to 1789 and the German Confederation of 1815-1866. In the American Confederation which was organised for common defence, the states retained, for all practical purposes, their complete independence. There was a congress consisting of delegates from the states, which was empowered to manage affairs relating to peace and war and handle foreign relations. It had, however, no power to compel a state to carry out its decisions. The confederation did not possess any executive or judicial organ. The German Confederation was created to strengthen internal and external security. It consisted of a number of states, kingdoms, grand duchies, principalities and free cities. The organ of the Confederation was a Diet consisting of representatives of the members of the Confederation. The Diet was given paramount power in matters relating to defence and foreign affairs. There was no common executive in the federation, though there was a machinery to settle inter-state disputes. Both in America and Germany, the Confederation passed into a federation. In Switzerland, also, there was a similar course of development. Three mountain cantons formed

for the purpose of common defence a confederation in 1621, which gradually developed into the present federation.

Let us note the main points of difference between a federation and a confederation. Federation creates a new state. No new state, however, comes into being as the result of confederation. In a federation, the new state is the sovereign while the original states are merely units in that new state. In other words, with the formation of a federation, the federating units lose their statehood. In a confederation, on the other hand, the states retain their sovereignty. Secondly, the units of a federation cannot secede; the members of a confederation, however, can secede from it at will. The central government of a federation, thirdly, can deal directly with both the provincial governments and the citizens. In a confederation, on the other hand, the central organ deals only with the governments of the member states and not with the citizens. Federation creates a new nation and the citizens of the various states become endowed with a new citizenship, the citizenship of the state formed through the federation. In a confederation, however, no new nation is created and no new citizenship comes into being.

In a unitary government, the local governments owe their existence to the will of the Central Government which can increase or curtail their powers. The state or provincial governments in a federation, however, derive their existence from the constitution; the federal government, which also derives its existence from the same source, cannot, acting by itself, alter the powers and jurisdiction of the state governments. "The name federal government," Freeman has aptly said, "may be applied to any union of component members where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of municipal freedom." The federal government thus represents a *via media* between confederation and complete union.

It should be carefully noted that though the units of a federation are often called states, as in India and the United States, they are not states in the true sense of the term because they do not possess sovereignty. They are called states, so to say, by courtesy. The use of the word "state" to designate the units of a federation sometimes causes serious confusion.

What are Bodies like the U. N. and the N. A. T. O. ?—Federation or Confederation ? Or mere Alliance ? International alliance should be clearly distinguished from both federation and confederation. It is the weakest type of union. Usually alliance does not involve the creation of a new organ. The individual governments carry out the terms of the treaty. There is no organisation to compel implementation of the treaty by any of them.

But what are bodies like the United Nations and the North Atlantic Treaty Organisation ?

Clearly, the North Atlantic Treaty Organisation is not a federation because it has not created any new state. It, however, resembles a confederation because it has a Council on which the member states are represented by Ministers and has established an integrated force for the defence of Western Europe under a Supreme Headquarters Allied Powers, Europe (SHAPE).

Still the N. A. T. O. is not a confederation. Nor do the members of the N. A. T. O. look upon it as such. As its very name North Atlantic Treaty Organisation implies, it is looked upon as an international alliance—an alliance based on a treaty. It is a security league. Its chief purpose is to ensure collective defence in the event of aggression in a particular region. Its activities cover only a part of the field of the foreign affairs of the N. A. T. O. members. Usually a confederation is given a wider jurisdiction than the limited field assigned to the N. A. T. O. It represents, however, a much closer form of alliance than alliances of the usual type. The fact is that with technological progress the world is

gradually shrinking and the nations are coming closer together. The extremely frightful character of warfare in this atomic age is also forcing groups of nations to unite more closely than before for unity has become the condition of survival. International alliances now-a-days are, therefore, tending to become increasingly closer and coming more and more to resemble confederations. In fact, it is quite possible that some of these alliances will gradually develop into confederations or, even, federations.

As for the United Nations, it is also not, obviously, a federation for it has not brought into existence any new state or any new nation. The United Nations has no power to intervene in matters "essentially within the domestic jurisdiction of any state." It cannot directly deal with the citizens of any state. The nations have not surrendered to it any of their legislative or administrative powers. In fact, the Charter of the U. N. itself declares that it is based on the principle of the sovereign equality of all its members.

Is the U. N. then a confederation ? There is no doubt that the U. N. resembles a confederation in that its main organ, the General Assembly, consists of the representatives of all its members and deals with various kinds of issues affecting their relations to one another. It is, however, not a confederation because the members enjoy perfect freedom to deal with those very matters outside the U. N. They can freely enter into treaties and pacts outside the U. N. and, in actual practice, members of the U. N. have concluded some treaties that go against the very basic principles of the U. N. Charter. The U. N. is thus only a voluntary international organisation for the promotion of international peace, security, goodwill and co-operation as well as economic prosperity of the world. It is, however, a unique organisation because it is truly a world organisation embracing in the scope of its activities the entire mankind. The U. N. is probably the embryo of a world federation which seems to be the goal of the political evolution of mankind.

Essential Conditions of Success of Federal Union: Certain conditions are essential for the formation of a successful federation. Geographical contiguity is one of these conditions. The administrative machinery cannot function properly unless the parts of a federation are geographically contiguous. Lack of contiguity also creates serious problems of defence against external aggression. It is also difficult to attain national unity among people living on territories separated by vast seas or mountain ranges.

Community of language, culture and economic or political interests is another essential condition for the success of federal union. For such union presupposes a sentiment of unity. And the sentiment of unity can hardly arise where there is no community of culture or language or interests.

A high degree of political competence is also essential for the success of a federation. For the federal system is more difficult to work than the unitary system. Federalism also calls for constant readiness for mutual adjustment and compromise—a virtue that is hardly to be found among politically undeveloped people.

In all those countries where successful federations have been formed, such as America, Canada, Switzerland and Australia, the conditions of territorial contiguity and community of culture are found to have been present. In the Swiss Federation, there is no community of language, the population being divided into three distinct linguistic groups —French, German and Italian. But this has not prevented the Swiss people from building up a successful federation. Contiguity, broad cultural unity and community of interests have provided a strong cement for the Swiss federal edifice. In the American federation there were many linguistic groups in the past but all these groups have gradually fused to form a linguistically homogenous population. The importance of community of economic interests in forming a federation is illustrated by the history of the American federation. The root cause of the civil war which very

nearly destroyed the union was the difference of economic interests between the northern and southern states. The southern states wanted to preserve the institution of slavery because slave labour was the basis on which the prosperity of their plantations rested.

Federalism and Pakistan: The political leaders of Pakistan are trying to build up a federal system of government in that country. But some of the essential conditions for the building up of a successful federation are lacking in Pakistan. In the first place, the eastern wing of Pakistan is separated from the western wing by roughly 1,500 miles. Secondly, the language and culture of the people of East Pakistan who constitute 54 per cent of the total population of the country greatly differ from those of the people of West Pakistan. Thus the conditions of geographical contiguity and community of culture which are considered essential for the success of a federal union are conspicuous by their absence in Pakistan. During the past eight years, the efforts of the people of Pakistan to frame a constitution have repeatedly foundered on the differences between the eastern and western wings on matters relating to the represenation of the two wings in the central legislature and the basic structure of the state. The leaders of West Pakistan are unwilling to concede the principle of representation on a population basis because they are afraid that this would result in domination of West Pakistan by East Pakistan. And East Pakistan is afraid that West Pakistan is trying to dominate the whole country in spite of the fact that its people constitute a minority in the total population. It is as if Pakistan is divided into two nations. If the leaders of Pakistan succeed in overcoming these difficulties and in building up a strong, stable federal state in that country on a democratic basis, it would be a miracle of constructive statesmanship.

Essential Elements in a Federal Government: The following elements are essential in a federal government:

(1) A rigid constitution that stands above the ordinary law; (2) demarcation of the spheres of the central and state governments; and (3) the existence of courts to decide disputes between the centre and the states as well as questions relating to the constitutionality of laws.

(1) A rigid constitution, as we have seen, is one which cannot be amended by the ordinary legal processes. The necessity of such a constitution in a federal government arises from the fact that if the constitution is easily amendable the relation between the centre and the state will be easily alterable. No state can feel secure under such an arrangement. A federal constitution represents essentially an agreement among a number of units to surrender certain powers to a central authority and to retain their autonomy over the rest of the field. To make the constitution easily alterable is to expose the powers of the states to the danger of rash curtailment. The essence of federalism lies in a division of powers between a central and local legislature which neither can alter acting by itself. In other words it is essential in a federation that any change in the division of powers shall require the consent of both the centre and the units or at least a majority of them. This implies a rigid constitution. The constitution must not only be rigid but it must also be the supreme law of the land. In case of conflict between the ordinary law and the constitution the former must give way.

(2) There can be no federal government without division of powers between the centre and the units. In some constitutions the provisions relating to the distribution of powers are more elaborate than in others; but each of them clearly demarcates the spheres of the federation and the state governments.

(3) Division of powers between the centre and the units means the possibility of disputes between them relating to their respective jurisdictions. There must be, therefore, a supreme court in every federation to decide such disputes

with final authority. In most federal governments, the Supreme Court has not only the final power to adjudicate conflicts of jurisdiction but also the power to determine the constitutionality of laws. It can declare a law to be unconstitutional and void if it conflicts with the constitution. The Supreme Court thus upholds the supremacy of the constitution and maintains the constitutional balance between the federation and the units. The Federal Tribunal of Switzerland, however, cannot declare a federal law unconstitutional though it can invalidate cantonal laws or constitutions if they are repugnant to the federal constitution.

The Methods of Distribution of Power between the Centre and the Units: Broadly speaking, there are two methods of distributing powers between the centre and the units of a federation. The centre may be given certain specified powers and the rest of the field may be left to the units; or the units may be given some specified powers and the remainder vested in the Centre. The former plan has been followed in America, while the latter has been adopted in Canada. The latter plan makes for a strong centre. This method has been followed in India where the framers of the constitution wanted to have a powerful centre. The enumeration of powers in the Indian Constitution is far more elaborate than in any other constitution of the world. The Constitution of India contains three legislative lists—the Union List, the State List and the Concurrent List. The Centre is given exclusive power to legislate on matters specified in the Union List, while the autonomous States are given exclusive jurisdiction in respect of the subjects mentioned in the State List. Both the Centre and the States are empowered to legislate on matters specified in Concurrent List, subject to the provision that in case of conflict between Federal law and State law, the former shall prevail. The residuary powers, that is, powers relating to subjects not mentioned in any of the three Lists, are vested in the Centre.

In Australia, the Centre has been given certain specified powers and the rest of the legislative field has been reserved

to the states. The residuary powers of legislation are, therefore, enjoyed by the states. The Central Legislature of Australia, known as Parliament, possesses exclusive powers of legislation in respect of only half a dozen subjects including naval and military forces, coinage and legal tender and duties of customs and excise. It, however, possesses a large number of concurrent but paramount powers. The Australian federalism is modelled on the American type.

In Switzerland the Centre has been given specified powers and the rest of the powers including the residuary ones have been vested in the Cantons.

In every federal government there are some subjects in regard to which both the Centre and the Units enjoy concurrent powers. The concurrent field in India is wider than in any other federal state. In Canada, the concurrent field is very narrow, narrower than in any other federation; only two subjects, agriculture and immigration, belong to this category. Everywhere, in case of inconsistency between federal law and state law relating to any concurrent subject, the former prevails.

Strength and Weakness of Federal Government: The main advantages of federal government are the following:

(1) Federal Government makes it possible to reconcile unity with diversity. It is the only system of government which makes it possible to combine uniformity of legislation in matters of common concern to the whole state with diversity in matters of purely local concern. It is, therefore, particularly suitable for countries which are very big in size or the populations in which are divided into different racial or linguistic groups.

(2) It enables small states to secure the advantages which flow from union, such as military and economic strength, without completely surrendering their rights and individual existence.

(3) When a number of states enter into a federal union, a common administrative machinery is created for certain matters like defence, foreign affairs and coinage, for which each state had to maintain a separate machinery before. This means a great saving in expenses of administration.

(4) Apart from the economic advantages conferred by federalism, there are distinct political advantages also. Federal union invests the component states with greater dignity and importance in international affairs.

(5) In a federal system local administration is carried on more efficiently and local needs are responded to more effectively than can be possible under a unitary system. For in a federation the local people govern themselves in matters which are of purely local concern and are not governed by "uninformed, overburdened, distantly removed bureaucrats", as is the case under a unitary system.

Federal government suffers from certain inherent defects; (1) In the first place, division of powers means weakness, at least in some measure. (2) A federal government sometimes finds it difficult to enforce treaty obligations because of opposition from the states. (3) Federal government is far more complex than unitary government. (4) Frequent conflicts of jurisdiction constitute another defect of the federal system. (5) Federalism means duplication of the governmental machinery and consequent expense. (6) The division of powers made at one time tends to go out of tune with the requirements of the state as conditions change, but the rigidity of the federal system prevents timely adjustment.

The U. S. Federalism: The Constitution of the United States confers a number of specified powers on the Central Government and leaves the rest of the legislative field to the states. The Constitution says: "The powers not

delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The subjects in regard to which the Central Legislature which is known as Congress has been given exclusive powers of legislation include: foreign affairs, army and navy, foreign and interstate commerce, postal service, patents and copyrights and admission of new states. The states enjoy exclusive powers of legislation in regard to civil and criminal law, establishment and control of local government, conduct of elections, commerce and industry within the state, protection of life, health and morals of the people. Both the Centre and the states possess concurrent powers in respect of the following: taxation, borrowing of money, promotion of agriculture and education, chartering of banks and other corporations. In case of conflict between state law and federal law in the concurrent field, the former gives way.

The Centre in America is, therefore, a weak one. The original states which formed the federation were very jealous of their rights. They delegated to the Centre a very small number of powers and retained for themselves maximum powers consistent with the formation of a federal government. The powers of the Centre in America have, however, steadily expanded at the expense of the states. The expansion of the central sphere has been effected mainly through judicial interpretation, particularly through the doctrine of implied impowers. The Constitution, for instance, nowhere expressly confers the power of establishing banks on the Centre. But the Supreme Court has held that this power is implied in the power to borrow money which has been expressly given to it.

The Courts in the United States possess the power to determine the constitutionality of laws. The Supreme Court, being the highest federal court, can determine with final authority whether a law is constitutional or not. It can, in other words, declare a law that conflicts with the

Constitution as void. Such a declaration makes the law inoperative.

The Swiss Federalism: Though the Constitution of Switzerland refers to it in some places as a confederation, it is in reality a federation. As in America, in Switzerland also the Centre has been given specified powers and the rest of the powers including the residuary ones have been reserved to the Cantons. Article 3 of the Swiss Constitution says: "The Cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution; and as such, they exercise all the rights which are not delegated to the Federal Power." The Centre in Switzerland is, however, stronger than in the United States. The subjects in regard to which the Swiss Federal Government enjoys exclusive power include: defence and foreign affairs; communications including posts, telegraph, rail-road and telephone; currency and coinage; civil and criminal law; industrial legislation; commerce; weights and measures; patents and copy rights; forests; embankments; control of waterpowers; welfare projects and naturalisation. The Federation has concurrent but paramount powers in regard to education, control of the Press, maintenance of highways, immigration, banking and industry. Within the field left to the Cantons, they are supreme. They can frame their own constitutions within the federal framework. The Federal Tribunal can set aside Cantonal laws or constitutions if they contravene the Federal Constitution. The Federal Tribunal cannot, however, declare a federal law unconstitutional.

U. S. and Swiss Federalisms Compared: (1) In both U. S. and Swiss Constitutions, specified powers are given to the centre and the rest of the legislative field reserved to the units. In both states, it is the units which enjoy the residuary powers.

(2) The powers of the Federal Government of Switzerland are greater than those of the American Central Government.

(3) In the United States, the national government directly administers its own laws through its own officials. In Switzerland, on the other hand, most of the federal subjects are administered by Cantonal officials. Thus, so far as the federal subjects are concerned, Switzerland combines legislative centralisation with administrative decentralisation.

(4) In the United States, the Supreme Court can determine the constitutionality of both state laws and federal laws. In Switzerland, the Federal Tribunal can determine the constitutionality only of Cantonal laws and not of federal laws.

(5) In Switzerland there are no subordinate federal courts, the Federal Tribunal being the only court of its kind with the exception of the Federal Insurance Tribunal. In the United States, below the Supreme Court there are ten federal Circuit Courts of Appeal and eighty-five inferior federal District Courts. Apart from these, there are some special federal courts such as the Customs Court and the Courts of Claims.

(6) In the United States, amendments to the Constitution may be proposed either by Congress or by a special convention to be called by the Congress on the application of the legislatures of two-thirds of the states. And proposed amendments become part of the U. S. Constitution when ratified by the legislatures of three-fourths of the states or by special conventions in three-fourths thereof. The American Constitution does not require proposed amendments to be submitted to the popular vote. In Switzerland, however, no constitutional amendment can be valid unless it is adopted in a referendum by a majority of the voters and also by a majority of the Cantons.

(7) Neither the American states nor the Swiss Cantons have the right to secede.

(8) The Swiss Federal Government possesses greater powers of military intervention in Cantonal affairs than does the American National Government.

A comparison of the two systems makes it clear that the Swiss federation is more centralised than the American.

The Canadian Federalism compared with the Australian: The Australian and Canadian federalisms differ in some fundamental respects. The differences are due to historical causes. In Canada the urge for forming a federation was created by deadlocks in the previous form of government as well by requirements of defence. Both these factors stressed the need for a strong central government. In Australia the chief urge behind the formation of the federation was economic. There was no threat of external aggression. The states, moreover, having developed their personalities, had become very jealous of their rights. In the Australian federation, therefore, the Centre has been given a very small number of powers. The Canadian constitution on the other hand, creates a strong Centre. The chief points of difference between the Australian and Canadian systems may be stated as follows:

(1) In Australia, the Constitution gives specified powers to the Centre and leaves the rest of the legislative field to the states. In Canada, on the other hand, the provinces are given specified powers and the rest of the powers are left with the centre.

(2) In Australia, the centre possesses exclusive powers of legislation only in respect of; (i) naval and military forces; (ii) coinage and legal tender; (iii) duties of customs and excise and export bounties; (iv) the seat of federal government; (v) the public services of the Central Government and (vi) some incidental matters relating to constitutional amendment. In Canada, on the other hand, the centre possesses a very large number of exclusive powers.

(3) The Governor-General of Canada has the power to disallow provincial legislation even within the provincial field. In Australia the Centre has no power of disallowing state legislation.

(4) In Canada the Lieutenant-Governors, that is, the heads of provincial executives are appointed, and are removable, by the Governor-General acting on the advice of the Ministers. In Australia, the state Governors are appointed by the Crown and are removable only by it.

The Indian Federalism: The Constitution of India sets up a federal system of government in the country. It distributes the governmental powers between a Centre and a number of units. It follows more or less the Canadian plan in distributing the powers and vests the residuary powers in the centre. The Indian federalism, however, differs in some fundamental respects from that of other federal countries. The peculiar features of the Indian federalism are the following:

(1) The Indian federation is far more centralised than any other federation. The Constitution vests in the Centre 97 exclusive powers, 47 concurrent but paramount powers as well as the residuary powers of legislation.

(2) In times of emergency, the centre can legislate on state subjects and issue such executive orders to the State Governments as it may think fit. In other words, the Constitution gives power to the Centre to turn the federal system of government into a unitary one in times of emergency.

(3) The Centre can legislate on State subjects at any time if it is declared by the Upper House of Parliament, the Council of States, to have assumed national importance. Such legislation cannot remain in force for more than one year, but the period may be extended by a further period of one year at a time by subsequent resolutions of the House.

(4) The Central authorities can supersede the Government of a State and take over the administration if they are satisfied that the government of the State cannot be carried on in accordance with the provisions of the Constitution.

(5) There is only one citizenship for the whole country —the Indian citizenship. Unlike the American states and

the Swiss Cantons, the Indian States have no separate citizenship of their own.

(6) There is a single unified judicial system in the country. In America each State has a separate judicial system of its own. The federal courts in America cannot interfere in matters falling exclusively in the States' own judicial field. The State courts in America run parallel to the federal courts; in India, the courts form a pyramidal system with the Supreme Court at its apex.

(7) Parliament can amend the Constitution, except in regard to some specified provisions, acting entirely by itself.

(8) In times of financial emergency, the President can order the reduction of salaries of State officials.

(9) The State Governors are appointed by the President.

Thus we see that the federalism of the Indian Constitution is qualified by a large number of unitary features which make it very different from the system prevailing in other federal states. We may say that the Indian federation is a flexible one. It represents a compromise between unitary and federal governmnet. The Indian federalism is on any showing sui generis; it forms a class by itself.

Soviet Federalism—This will be discussed in connection with the study of the Soviet Government.

The Tendency towards Increasing Centralisation in all Federations: A tendency towards increasing centralisation of power is noticeable in all modern federal governments. Everywhere, the sphere of the centre tends to increase at the expense of the states. This is mainly due to the fact that with the growing complexity of life the number of subjects requiring uniformity of regulation has been steadily increasing. Modern warfare has also greatly contributed towards increase in the power of the Central Government. Wars in the modern world call for extreme centralisation of control.

The powers of a Central Government are increased everywhere in wartime. Governments are, however, very tenacious of power. Once they are given new powers they invent all sorts of excuses to retain them. Thus every war leaves the Central Government of a federal state with greater powers than it possessed before its outbreak.

Where the constitution can be easily amended, the Centre's powers are increased by altering its provisions. Where the Constitution is not so easily amendable, the expansion of powers is brought about through judicial interpretation. This has happened in America. We have already seen how the American Judiciary has used the doctrine of implied powers to expand the jurisdiction of the Central Government. In India, as we have seen, the Constitution has created a very strong Centre. But the Centre's powers have been further increased by passing the Constitution (Third Amendment) Act, 1954 the effect of which has been the transference of a number of subjects from the State to the Concurrent List. In view of the complexities of modern life it appears that the tendency towards increasing centralisation of power in federations will continue for an indefinite period.

CHAPTER XX

LOCAL GOVERNMENT

What is Local Government ? : Local government should be clearly distinguished from local administration by officials of the Central Government. The administration of an Indian district, for instance, is carried on by the District Magistrate with the aid of a number of subordinate officials. The term local government cannot be applied to these officials or to their administrative activities. The district boards, municipalities and municipal corporations are examples of local government in India. The term local government is applied to organs which, although they derive their powers from the Central Government, enjoy independence of action within certain specified limits. The term 'local self-government' which is usually used in India to refer to local government clearly indicates the meaning of the latter term.

The term local government is often applied to provincial government in a federation. But the former should be clearly distinguished from the latter. The State Government of Bombay or West Bengal, for instance, is not a local governmnet. In fact, in a federation, it is the provincial or state governments which control local authorities. The difference between the provincial government in a federal system and local government properly so called is that whereas a local government derives its existence from the will of the Central Government, the former owes its existence to the constitution of the state to which the Centre also owes its existence. A local authority is a mere agent of the Central Government though it is allowed to enjoy a certain measure of autonomy. Its powers can be changed at the will of the Central Government. It can also be abolished by the Centre. The powers of a provincial government in a typical federation cannot, however, be altered by the Central Government acting independently. A local government is a creation of the Centre

but a provincial government in a federal system is a creation of the constitution. It is the constitution which divides the powers between the Centre and the units in a federation and neither the former nor the latter can alter this distribution acting alone.

The Reasons for Local Government: In strict theory, says Laski, there is no reason why all the necessary functions of government should not be carried on by a single body. It could maintain local officials throughout the state to carry on local administration. A system of government is thus quite conceivable in which there is no local government at all. But there are numerous practical reasons why there should be a system of local government in every state. In the first place, problems of a purely local character can be solved satifactory only if the persons who are most deeply affected by them are enabled to tackle them. Administration from without can never be expected to respond to local needs in a satisfactory manner. Local government thus makes for efficiency of administration. The fact that in a local government the people of the locality can censure or remove the persons charged with the conduct of the administration also greatly contributes towards efficiency.

Local government helps to secure economy in administration. If a service benefits only a particular area, it is only fair that the inhabitants of the locality should be made to pay for it. And if the money is raised from their pockets, they will naturally try to manage the service efficiently to keep costs as low as possible.

Local government is a great agency of civic education. By enabling common men and women directly to control the affairs of the locality which intimately affect their lives it makes the democratic processes very much real to them. It stimulates their political interest. It gives them a clearer understanding of the political issues. It, in short, provides schooling in democracy. If there were no local government,

the common people's participation in the democratic processes will be confined only to voting at the interval of four or five years. This would tend to make the citizen-body politically inert. And a state in which the citizens take no interest in the political affairs is almost sure to be full of corruption. A system of strong local government is thus essential to the success of the democratic government.

Local government helps, further, to lessen the pressure of work on the centre and thereby benefits the whole state.

Principles of Local Government: Local Government, broadly speaking, should be based on the following principles: (1) The members of the local authority should be directly and not indirectly elected. Direct election stimulates public interest and ensures continuous democratic control of policy. (2) In demarcating areas for local government the factors of tradition, geographical conditions, density of population and the requirements of functions to be performed should be given due importance. Certain services, like the supply of electricity, cannot be provided economically in a small area. (3) The Centre should have power of control and intervention in local affairs but this power should be used sparingly. (4) The local organs should be given maximum powers consistent with strong central government. To give the local bodies a broad field of activity means giving them a scope for creative experimentation that will bring out into full play the latent abilities and energies of the local people. (5) Appointment to services under local government should be based on the principle of merit. (6) There should be advisory committees consisting of representatives of the interests concerned to advise the local authorities on matters relating both policy and administration.

Functions of Local Government: While functions of common interest to the whole state are entrusted to the Central Government, functions of a purely local concern are entrusted to local self-governing bodies. Usually, local governments handle functions relating to public health and

sanitation. They construct and maintain roads, bridges and parks. They provide conservancy service. They control the sale of food and drugs. They register births and deaths. They maintain fire brigades. They also concern themselves with public utility services like water supply, street lighting and local transportation. They maintain schools, usually primary ones. They often establish and maintain libraries, theatres and picture galleries. They also build hospitals and maintain burial grounds.

In western countries, speaking generally, police work is also entrusted to local bodies. In India, however, the police is controlled by the central authorities. In the West, the local bodies are also made responsible for poor-relief in their areas. In India the local bodies do not possess the power to provide for poor relief, though District Boards are empowered to provide for famine relief.

Relation between the Central and Local Government: Local self-governing bodies, as has been already pointed out, are creations of the Central Government. They, however, possess independence of action within certain limits specified by statutes.

While matters of purely local concern should be left as far possible with the local government, the Central Government must have powers of supervision and control over, and intervention in, local affairs. There are mainly four reasons why the Centre should have an ultimate control over local affairs. In the first place, local affairs have a tendency to be dominated by powerful local factions or interests who often utilise the local organ as an instrument for the promotion of their own interests. The Centre must possess power to check this tendency. Secondly, unless the Centre is given power of intervention and control, "all the good done by an efficient local body might be undone by an inefficient neighbour." Disease, for instance, is no respecter of the boundaries of local self-governing areas. If a municipality fails to take proper precautions against the out-break of

plague, that may seriously endanger the lives of people in the neighbouring areas. Thirdly, Central control is essential for ensuring uniformity. There are certain minimum standards in matters of education and health which no local government can be allowed to fall below. The Centre must possess sufficient powers to enforce these minimum standards. Fourthly, the Centre can always view things in a wider perspective, and the fund of experience and ability at its disposal is always much greater than that of a local body. It is in the interests of the people of a locality, therefore, that the Centre should have power to warn and give directions to the local authorities.

The Centre's power of control should not, however, be exercised too frequently. Too frequent an exercise of this power is sure to destroy the initiative of the local government and to furstrate the very purpose of local self-government. The Centre must try to avoid as far as possible the substitution of its own will for the will of the local people in matters which exclusively concern the latter.

Sources of Income of Local Bodies: Formerly the functions of local bodies were very few in number and their financial requirements were correspondingly small. The industrial revolution and broadening conceptions of the functions of government have gradually led to a great multiplication in the activities of local bodies. As a result their financial needs too have greatly increased.

Almost everywhere local bodies derive part of their income from license fees, tolls, and rates imposed for certain types of public utility services such as water-supply, street lighting and the like. Nearly everywhere tax on property constitutes a very important source of their income. Where local bodies run business enterprises, as they often do in many Western countries, profits from these go to augment their income. In many countries central subventions and shares of central taxes account for a considerable part of the income of local bodies. Apart from these, loans are also

raised by local bodies in most countries to finance improvements of a permanent character or business projects.

So far as the local property tax is concerned, in England it is assessed only on real property, that is, land, houses, mines and the like. In America, the property tax is levied on both real estate and personal property and is the most important source of income of the local bodies. Over two-thirds of their tax revenue come from this source.

Central Finance and Local Finance: In every state certain minor sources of revenue are allocated exclusively to local bodies, while proceeds from certain taxes are shared between them and the Centre. Grants-in-aid from the Centre plays almost everywhere an important role in local finance. Local bodies are also allowed to raise loans subject to certain limitations imposed by the Centre.

The pattern of financial relation between Central and local government varies widely. In the United States, property tax is the main source of revenue of the local bodies. This tax is collected by the officials of the local bodies but the proceeds are shared between these bodies and the state government. In France the local bodies are given a share of the income tax which is levied and collected by the central authorities. The major part of the income of the French local bodies comes from this source.

In Britain, the sharing of taxes between Central and local authorities plays a less important part. The greater part of the local revenues is derived there from fees, tolls and rates on real property. Grants-in-aid from the Centre play a very important role in Britain. In America and France the importance of grants-in-aid is much less than in Britain.

In Britain, the raising of loans by local bodies requires previous sanction of the Central Government. This ensures expert technical examination of the projects. In the United States, the state fixes in most cases a limit for borrowing by

the local bodies. And the issue of bonds by municipalities sometimes requires approval by the voters or property owners, for which a "bond election" has to be held.

In Britain and the United States, local budgets do not require any superior approval. In France the prefect's approval is required. The prefect enjoys wide powers in respect of inclusion or exclusion of items in the budget. He has power to invalidate optional expenditure.

Local Government in Britain England and Wales: The local government areas in England and Wales are the following:—(1) the administrative county, (2) the urban districts, (3) the rural districts, (4) the parish and (5) the municipal borough and the county borough.

The country is divided into 62 administrative counties. These are different from the 'historic counties' that have come down through the ages and which number 52. The 62 administrative counties are divided into 475 rural districts and 572 urban districts. These districts are, in turn, divided into parishes.

In each administrative county there is an elected council consisting of a chairman, the councillors and aldermen. The councillors are popularly elected. The aldermen, one-third as numerous as the councillors, are elected by the councillors themselves. And the county chairman is elected by the councillors and aldermen together. The councillors are elected for a three-year term. The aldermen are elected for a six-year term, half of them retiring every three years. The council appoints a number of officials to carry on the day-to-day work of the administration. These officials include a clerk, a health officer, a treasurer, a land agent and a director of education. The council appoints a number of committees such as committees on public health, poor relief, finance, housing, education and the like. These committees, subject to the general control of the council, carry on the work of county administration with the help of the permanent officials. Among the functions of the council are

granting licenses, supervising elementary and secondary education, policing, providing asylums and reformatories, carrying on some kinds of public health activities and protecting streams from pollution. The council levies rates and frames by-laws.

The counties, as has been pointed out, are divided into urban districts and rural districts. An urban district has an elected council which appointed a number of permanent officials such as a treasurer and a clerk. A rural district also has the same administrative pattern. Both urban and rural district councils are subject to the general control of the county council. In certain matters, however, the urban districts enjoy greater power than the rural districts. Usually, when a rural district grows in population, it is converted into an unban district. And an urban district in which the population has greatly increased may be transformed into a borough.

The parish is the smallest local government unit. The parish council, which is an elected body, has some minor functions and powers. Some of the smaller rural parishes have no council at all. In these parishes the powers of the parish council are exercised by the parish meeting. "The parish meeting appears to be the only example of direct, as opposed to representative, government in the English constitution."

What is a borough? "A borough is simply an urban area that has received a charter." Boroughs are of two kinds—municipal boroughs and county boroughs. The difference between these two kinds of boroughs lies in the fact that whereas the municipal boroughs are, from the administrative point of view, part of counties in which they are situated, the county boroughs enjoy all the powers of a county administration and are not subject to the jurisdiction of the county.

Municipal boroughs are created by royal charter. Usually an urban district council, when the area has become

sufficiently populous, petitions the sovereign for a charter. On the receipt of the charter, it becomes a borough. A borough is governed by an elected council which consists of a major, aldermen and councillors. The council frames by-laws, levies rates and manages the borough fund. It carries on its work through a number of committees and permanent officials. Its functions include sanitation, running of public utility services, provision of local markets, maintenance of roads. It has also to perform various statutory duties in relation to housing and certain other matters.

When a borough's population reaches the 100,000 figure, it may petition Parliament to pass an act conferring on it the status and powers of a county borough. A county borough enjoys all the powers of a county council and certain other additional powers. Its administration is of the same pattern as that of a municipal borough.

London, it may be noted, is an administrative county, governed by an elected council—the London County Council. The city is divided into a number of metropolitan boroughs whose powers are analogous to those of municipal boroughs. The City of London, which is a small one-square-mile area in the heart of London has an administrative set-up peculiar to itself and dating from very early days. Although its position is like that of a metropolitan borough, the city of London enjoys certain special privileges. The police in London is controlled not by the London County Council but by the Home Office. Its water-supply is controlled by the Metropolitan Water Board.

Scotland: In Scotland, the chief local government areas are the towns, counties and districts. The towns have town councils with councillors, one-third of whom retire every year. The county councils are also elected bodies, the election taking place every three years. The districts are sub-divisions of counties and have their elected councils. As in England, for all practical purposes, the franchise for local government elections embraces the entire adult population.

LOCAL GOVERNMENT IN THE UNITED STATES

The City Government: More than half the population of the United States live in cities. Some of the metropolitan cities are more populous than many states. The population of New York, and also of Chicago, exceeds the population of most of the states. The City Government, therefore, occupies a position of great importance in the U.S. administrative system.

The city is a municipal corporation constitued under a charter granted by the state Legislature. The charter generally contains provisions relating to the basic structure of the city's government and sets forth the powers and duties of various officials. In some states, the city is allowed by the Legislature to frame its own charter, subject to certain limitations. The city enjoys a very large measure of autonomy in many fields of activity .

The city government serves most of the needs arising out of the everyday life of the resident. The city government provides for adequate supply of pure water to its inhabitants. It takes necessary measures for maintaining healthful and sanitary living conditions. It provides for proper inspection of foodstuff and water. It builds hospitals and takes precautionary measures for the prevention of disease. It builds and maintains roads and sewers. It sees to the removal of garbage and waste material. Each city has a police department to maintain order and to safeguard the life and property of the citizens. Each maintains ε fire-fighting organisation. The city government also pays close attention to matters relating to prevention of fire. Every city government operates a school system and takes care of the sick, the aged, the feeble-minded, the orphans and the poverty-stricken. Many cities own and operate public utilities. Each maintains parks and playgrounds. Most cities have free libraries, museums and art galleries.

Broadly speaking, there are three forms of city government in the United States. These are: (1) the mayor-

council form, (2) the commission form and (3) the city manager form.

The Mayor-Council Form: This is the oldest of the three forms of city government and has existed in some cities since the colonial days. Until about 60 years ago this form was used in almost all American cities. The mayor-council form is modelled on the pattern of the state and national government. The council which is elected by the voters enjoys the legislative authority, while the mayor, also elected by the people, is vested with the executive function. The mayor appoints the heads of the departments of the city government and a large number of subordinate officials. In some states, the more important of the appointments made by the Mayor are subject to confirmation by the Council. The Mayor and the staff under him are supposed to be independent of the council. In theory, the Mayor has no share in legislation. The council passes the city laws, which are called ordinances. The mayor enjoys the power to approve or to veto the ordinances. The council can override the mayor's veto by passing the ordinance again by a two-thirds (sometimes three-fourths) majority. In some cities, the mayor prepares the budget, the council being allowed to reduce an item but not to increase or insert new items. In others, the council prepares the budget, the mayor being allowed to make recommendations. The chief defect of the mayor-council plan is the division of authority between two co-ordinate branches of local government. "It has resulted in placing upon the cities a governmental mechanism which is clumsy and slow moving, productive of needless friction, and ill-adapted for the work which a modern city is expected to do for its people." This is why some cities have replaced this form by the commission form of government which provides for a better concentration of power and responsibility.

The Commission Form: In this form, the voters elect three or more commissioners for a term of two or four years. The commissioners are usually elected at large, that is, from the whole city and not from districts or wards. The Com-

missioners are paid for their services. The entire law-making and law-enforcing authority of the city government is concentrated in the hands of the commissioners. The work of the city is parcelled out among a number of departments, each commissioner being in charge of one or more departments. One of the commissioners is chosen as the chairman and is usually called chairman or mayor. He presides at meetings of the commission. In most cases, however, he does not have more power than the other commissioners.

The chief advantages of this system are simplicity and concentration of power and responsibility in a few hands, which ensures promptness in the taking of decisions and makes for efficiency. The system is, however, not without its defects. It suffers from the usual defects of government by plural executives. The commissioners often become a house divided within itself. The body of commissioners, it has been aptly remarked, is too small to be adequately representative as a municipal legislature and too large to be efficient as a municipal executive. Another defect of the system is that it makes difficult the placing of capable and experienced officials at the head of the city departments, for "specialised administrative competence does not always, or even usually, go with vote-getting ability."

The City Manager Form: This form of city government is so designed as to ensure the avoidance of the chief defects of the two forms described above. The main defect of the mayor-council form is lack of unified control. The main defect of the commission form is the placing at the head of the city department men having no technical qualification. The city manager form of government is designed to ensure both unified control and expert administration. In this form there is a council, usually consisting of from five to nine members, who are elected by the voters. This council is the policy-determining body. It makes the city ordinances and decides all general questions. It does not, however, assume any direct share in the administration. Instead it hires a

professional administrator to head the administrative organisation of the city. This city manager appoints the heads of departments and some of the other officers. He enforces the ordinances enacted by the council. He attends the meetings of the council, suggests plans of improvement and gives advice on all matters relating to municipal policy. He holds office at the pleasure of the council and can be dismissed by the latter at any time.

Rural Government: The units of rural government in the United States are: counties, towns, townships, villages and districts. "These areas are not always strictly rural in character; on the contrary, some counties are metropolitan and some towns are cities in everything but name."

Each State is divided into a number of counties. There are about 3000 counties in the whole country. In each county there is a town known as the "county seat" which is the head quarters of the county government. The chief organ of county government is the county board. The members of the county board who are known as commissioners or supervisors are chosen by election. The method of election varies from state to state. The chief functions of the county board are maintenance of highways and bridges; building and maintenance of schools, courts and prisons; welfare and relief work; keeping records of births deaths and marriages; issuing of licences and permits; assessment and collection of taxes; helping the conduct of State and national elections. Among the important officials of the county government are the sheriff, the prosecuting attorney and the coroner and the judge of the county court. The sheriff is the chief police officer of the county. The coroner investigates cases of violent and sudden deaths. The attorney helps to prosecute lawbreakers. The officials are sometimes elected, sometimes appointed.

For the purpose of local government, the county is divided into townships, villages and districts. When a portion of a county, however, grows in population and

becomes urban in character it is usually organised as an incorporated village, town, borough or city.

In some of the New England towns, the chief organ of town government is the town meeting. Every voter is entitled to attend the town meeting which assemlbes at least once a year. The town meeting passes laws, decides matters of general policy, votes appropriations and elects various officers of the town government. In most cases the town meeting chooses a small committee of townsmen known as the selectmen who form the executive committee of the town meeting. The selectmen are empowered to enforce the decisions of the town meeting but are given no legislative authority. The New England town meeting is an interesting example of direct democracy.

In the middle western states, the township is an important area of local government. The main organ of township government is an elected board of trustees or, sometimes, a single officer known as the supervisor.

The inhabitants of a locality where the population has reached the prescribed minimum of size can petition the State government for authority to set up a village, borough or town government. On the grant of such authority, the area is organised as an incorporated village, borough or town. The work of government of these areas is usually carried on by an elected board of trustees or council. The village, town or borough government usually deal with local needs. It paves and lights the streets, provides a water supply, provides for sewage disposal and sometimes for police and fire protection.

The system of incorporated districts prevails in the far western states. Each county is divided into a number of districts for certain designated purposes. There may be, for instance, school districts, fire prevention districts, road districts, flood-control districts and the like. Each district is a quasi-municipal corporation, has power to tax and utilise the money for the purpose for which it exists.

In the Southern States also it is common practice to divide the counties into districts for designated purposes. But these districts have no corporate personality, nor any power to tax. "In the Southern States, the county remains the dominant area of local government. There are no towns as in New England, and only in scattered regions any system of organised township government."

LOCAL GOVERNMENT IN FRANCE

The French system of local government is far more centralised than the English or the American. This means that the local bodies in France enjoy much less autonomy than their English or American counterparts. The French system, in sharp contrast to the American system of local government, is characterised by a rigid uniformity. The same pattern of local government prevails throughout the length and breadth of France. "Wherever one goes—to Normandy or Brittany, to Auvergne or Languedoc—one finds the same elective councils, the same prefects and mayors, the same school systems and police, the same laws and taxes."

The units of local government in France are, from top downwards, the following: (1) departments, (2) *arrondissements*, (3) cantons and communes. Of these only the first and the last, that is, departments and communes, are areas of local self-government in the true sense of the term. They have "corporate personality", can sue or be sued, own property and enter into contracts. *Arrondissements* and cantons have no "corporate personality." *Arrondissements* are areas of routine administration; cantons are areas demarcated mainly for judicial and electoral purposes.

Departments—Metropolitan France is divided into 90 departments. Besides these, there are 7 overseas departments which are regarded for most purposes as part of France proper—the three departments of Algeria and the former colonies of Martinique, Guiana, Reunion and

Guadelonpe. The total number of departments is thus 97. The departments vary greatly in size and population. Each department has a council consisting of members elected on the basis of adult suffrage for six-year term. One-half of the councillors retire every third year. Each canton is entitled to a councillor. The council passes various kinds of ordinances, adopts the budget and apportions taxes among the *arrondissements*. It has to function, however, within strict limitations imposed by Central laws, which leave it very little room for discretion. It can perform very little except on the initiative of the prefect, the executive head of the departmental government, who is appointed by the Central Government. The ordinances passed by the departmental council can be disallowed by the Central Government which can also dissolve the council itself at its discretion.

The prefect is the pivot of the demartmental administrative machinery. He is appointed by the Central Government. He plays a dual role. He is at once the local agent of the Central Government and the executive head of the departmental government. In the former capacity, he appoints a large number of local officials of the National Government such as tax-collectors, postmasters, sanitary officers and the like, supervises a large number of Central services and enforces the laws and decrees issued by the centre. In his capacity as the executive head of the departmental government he appoints officers of the local government, enforces the council's ordinances, recommends budgets to the council, supervises the local services and elections and hears and decides complaints. The prefect is a highly powerful official and it has been rightly said of him that "in the person of this busy and powerful official the shadow of Napoleon still walks in every corner of the land."

Arrondissements and Cantons—Each department is divided into *arrondissements* or districts, and the latter in turn are divided into cantons. As has been already Stated

the *arrondissements* and cantons have no corporate personality. They cannot own property. Nor have they any budget of their own. Each *arrondissement* has a council elected from the cantons. In each there is a sub-prefect appointed by the centre. The sub-prefect is the chief administrator but his powers are extremely limited. As for the council, it "has practically nothing to do except to apportion among the constituent communes the tax quota which it has itself been handed by the council of the department." Recently the number of *arrondissements* was 279.

The canton has no council. It exists chiefly for electoral and judicial purposes. It is the electoral area for the constitution of the councils of departments and *arrondissements*. Justices of the peace exercise their jurisdiction in cantons. For certain purposes such as tax collection and inspection of highways cantons serve to some extent as administrative units. The number of cantons exceeds 3000.

The Commune—The commune stands at the lowest level of the French local government system. Recently the communes numbered over 38,000. These local government units are deeply rooted in the country's past. Many of the existing communes have a history that goes back several centuries into the past. The communes vary greatly in size and population. Some of the communes are big cities. Paris itself is a commune; so are Lyons, Bordeaux and Marseilles. Some communes are but little villages; in 1946, 23,653 communes had a population of less than 500. The structure of communal government, with the exception of Paris and Lyons, is the same everywhere. In each commune there is a council consisting of members elected on the basis of adult suffrage. The council has a six-year term. The council elects one of its members as the mayor. It also elects from among its membership a number of persons to serve as the mayor's assistants. The work of the communal government is distributed among a number of departments. The mayor usually heads the police department and each

of his assistants is placed in charge of one or the other departments.

The French system of local government, critics point out, is out of keeping with democratic traditions of the French people and the popular character of their national institutions. There is no doubt that this system gives the Central Government excessive control over local affairs, stiffles local initiative, overtaxes the ministries at Paris and also gives the Central authorities too many agents through whom to influence voters in parliamentary elections.

Centralised and Decentralised System of Local Administration: In the decentralised system of local administration, officials appointed by the local authorities carry on the work of administration. In the centralised system, the administration is conducted by officials appointed by the Centre. The decentralised system prevails in Britain and the United States, while France is the most notable example of the centralised system. In a decentralised system, local bodies enjoy a considerable measure of autonomy, while the centralised system leaves little room for local initiative. Usually, in a centralised system, the administration is conducted by a professional class of administrators distinct from the rest of the population. In a decentralised system, on the other hand, the administration is run by locally elected functionaries.

The chief merit of the decentralised system is that it makes the administrative machinery highly responsive to the local needs and the will of the local people. It serves as a school of democracy, giving local people valuable training in the art of self-government. The system, however, has a tendency towards extravagance. Very often it fails to secure the desired degree of efficiency.

The chief advantage of the centralised system is that it ensures efficient administration. It also secures economy. Administration under this system, however, tends to be

bureaucratic. The will of the people, under this system is often sacrificed to routine. The officials, being responsible to their superiors, always look to them for guidance. Certain set formulae and uniform standards are applied everywhere, irrespective of local needs and desires. The system results in a dead level of uniformity. Since local democracy is the foundation of national democracy, a centralised system of local administration means a weak foundation for national democracy.

CHAPTER XXI

GOVERNMENT OF DEPENDENCIES

How Dependencies are acquired: A dependency is a country which is governed, or whose government is controlled, by another. Where as an independent state is sovereign, a dependency does not possess sovereignty. A dependency, in other words, is not a state in the true sense of the term although it may have a local government and enjoy some measure of autonomy.

There are various methods of acquiring dependencies, namely, conquest, cession, purchase or leasing, discovery and settlement. In early days, conquest was the sole method of acquiring dependencies. Sometimes dependencies are acquired through cession of territory by a defeated country to the victor. France ceded Canada to Britain in 1763; and Spain ceded the Philippines to the U.S.A. in 1899. Sometimes dependencies are purchased by one country from another or leased by one country to another. Alaska was purchased by the United States from Russia.

Discovery is another method of acquiring a dependency. In international law, priority of discovery is still regarded as valid ground for claim to new territory.

Settlement also sometimes leads to the creation of dependencies. In the past, migration of people to newly discovered countries brought them under the control of the mother country. Australia, New Zealand and various parts of South Africa came under the control of Britain mainly as a result of settlement of British migrants in those countries.

Colonies, Dependencies and Dominions: A colony, properly speaking, is a country which has been colonised by the people of another country; in other words, it is "an area in which the ruling section of the inhabitants, or their

forefathers, migrated from a parent country." Now-a-days, however, the word colony is usually applied to all kinds of dependencies whether acquired through conquest or settlement or cession or otherwise.

The word 'dominion' is used to mean a dependency. But when it is used with a capital D, it means one of those self-governing countries in the British Empire which have attained Dominion Status. Thus Canada is a Dominion. Australia is a Dominion. India, however, though she is a member of the British Commonwealth, is not a Dominion for she does not owe any allegiance to the British Queen.

The British Empire: The term British Empire was defined by the British Import Duties Act, 1932 as "His Majesty's dominions outside the United Kingdom." Used in this sense, the term British Empire not only includes the non-self-governing areas controlled by the British Government but also the self-governing countries known as Dominions such as Australia, Canada and New Zealand which are parts of the British Commonwealth. The Dominions, however, naturally resent the application of the term Empire to them because the word connotes dependency and subordination. The term British Empire, however, still continues to be used in the broad and loose sense referred to above. The component elements of the British Empire (used in the broad sense) are: (1) Colonies, (2) Protectorates, (3) Trusteeships and (4) Dominions. India, though a member of the British Commonwealth, is not a Dominion and does not owe allegiance to the Queen. India, therefore, does not form a part of the British Empire. This position is not strictly logical. How can a state, it might be asked, be a member of the British Commonwealth and at the same time stand outside the British Empire? The fact is that the British Empire and the Commonwealth have not always evolved on strictly logical lines. There is much about them that is illogical. India, for instance, is a Republic and can have nothing to do with a King or Queen. Yet she is a

member of the Commonwealth in which the Queen is to-day the sole bond of unity. Though India owes no allegiance to the Queen, she recognises her as the head of the Commonwealth.

Colonies: In common speech, all non-self-governing areas in the British Empire are referred to as colonies. But strictly speaking, all of them are not colonies. What are commonly called colonies include—colonies, protectorates and trusteeships.

Colonies—properly called crown colonies—are overseas dependencies which have been annexed to the British Crown. The British Government control both their internal and external affairs. The people of the colonies are British subjects. Examples of colonies are: Bermuda, Bahamas, British Guiana, British Honduras, Cyprus, Gibraltar, Gold Coast, Hong Kong. Though all of them are governed by the imperial authorities, no two colonies are governed in precisely the same way. In some colonies, such as British Guiana, Bermuda and Jamaica, there is a bicameral legislature with an elective lower chamber and appointive upper chamber. Some colonies such as Kenya—have a legislative council that is partly appointive and partly elective. In certain colonies like Hong Kong and British Honduras there is a legislative council that is wholly appointive. In a number of colonies there is no legislative body at all. A few colonies have risen considerably in the scale of self-government. Malta and Southern Rhodesia to-day enjoy powers which make their position very much akin to that of the Dominions.

Protectorates: Protectorates are dependencies which have not been annexed to the British Crown but are under British protection. In law, the territory of a protectorate is not British territory, nor are its people British subjects. In theory, only the external affairs of a protectorate are subject to the control of the British Government. But the practical difference between colonies and protectorates is

very small. Both are governed in the same way, the British Government exercising full control over both the internal and external affairs of the protectorates. Solomon Islands, Uganda, Northern Rhodesia, Nayasaland are examples of protectorates. On August 1, 1953, Northern Rhodesia, Nayasaland the self-governing colony of Southern Rhodesia were organised into a federation. Each of the units of this Federation retain the constitutional status as before the federation. On February 1, 1948 was brought into being the Federation of Malaya which consists of nine protectorates and two Settlements which were formerly crown colonies.

Trusteeships: After World War I, most of the former colonies of the defeated nations were placed by the League of Nations under the administration of some of the victorious powers. These came to be known as mandated territories. Among the territories which were made British mandates under the scheme were Tanganyika, Togoland, the British Cameroons, Iraq and Palestine. After World War II, the League of Nations was replaced by the United Nations and the mandate system was replaced by the trusteeship system which is, however, similar to the former system in all essentials. The old mandates of Tanganyika, Togoland and the Cameroons have thus now become trusteeships. Iraq and Palestine were given independence in 1932 and 1948 respectively. These have been formally entrusted to Britain by the United Nations Trusteeship Council. Trusteeships are governed in almost the same way as colonies, but every year a detailed report on these territories has to be submitted to the United Nations.

The Common Features of the Governmental System of these Dependencies: The ultimate control of affairs of all these various kinds of dependencies lies in the hands of the authorities at London and this control is exercised through the Colonial office. The chief executive and judicial positions are filled everywhere by persons sent out from

the imperial capital. The British Parliament enjoys paramount powers of legislation in relation to all of these dependencies and often legislates for them. Where there is a local legislature, local laws are subject to veto by the governor or the Crown. Appeals from the decisions of the local courts can be carried to the Judicial Committee of the Privy Council, which thus constitutes the highest court of appeal for all dependencies.

Dominions: The Dominions, though included in the British Empire as defined by the Statute referred to above, are fully self-governing countries. They are at present six in number—Canada, South Africa, Pakistan, Ceylon, Australia and New Zealand.

The Dominions were formerly colonies which have gradually attained complete self-government. Long before the beginning of the twentieth century a convention had developed whereby Britain ceased to exercise control over the internal affairs of these colonies and allowed them to enjoy complete internal sovereignty. But legally their governments were subject to control by the Imperial Government. Parliament had the right to legislate in matters relating to both their internal and external affairs. And the Crown had the right to disallow Dominion legislation. Moreover, the Imperial Government exercised complete control over their external affairs.

After World War I, during which the Dominions had given generous assistance to Britain, their claim to equality of status with the mother country was recognised. The Imperial conference of 1926 described the self-governing countries under the British flag, including the United Kingdom, as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." This declaration, however, did not take away the

legal supremacy of the Imperial Parliament in relation to the Dominions. Parliament still retained the power to make laws for them as well as to modify or repeal laws passed by the Dominion Legislatures. An Act passed by the Imperial Parliament in 1931, which is known as the Statute of West Minster, ended this legal supremacy at least for all practical purposes. At present, the Dominions may, therefore, be said to enjoy equality of status with Britain even from the legal point of view.

At the time of the passing of the Statute of West Minster there were six Dominions, namely, Canada, South Africa, Irish Free State, Australia, New Zealand and Newfoundland. On account of financial difficulties Newfoundland voluntarily gave up self-government in 1933 and passed under the direct control of the London authorities, on April 1, 1949 it was incorporated in Canada as her tenth province. The Irish Free State adopted a new constitution in 1937 which proclaimed it "a sovereign, independent and democratic state" and in 1949 it proclaimed itself a Republic—the Republic of Ireland. Ireland has thus ceased to be a Dominion. On August 1st, 1947, under the Indian Independence Act, two new Dominions, India and Pakistan, were brought into being. India became an independent Republic under her new Constitution which was inaugurated on January 26, 1950. From that date, India ceased to be a Dominion and became a completely independent state. India, however, continues to be a member of the Commonwealth. Ceylon became a Dominion in 1948.

The Statute of West Minster: The Statute of West Minster (1931) constitutes a land-mark in the history of the British Empire. It removes the legal limitations on Dominion autonomy which existed before the passing of the Statute. It declares that no law made by the British Parliament after the commencement of the Statute shall extend to a Dominion unless the Dominion has requested, and consents to, the enactment thereof. The Statute also gives the Dominion Legislatures power to amend or repeal Act of Parliament

which apply to them. The Statute repeals the Colonial Laws Validity Act under which Dominion laws which were repugnant to Acts of British Parliament used to be void and inoperative. It declares that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

Common Features in Dominion Governments: The Governments of all Dominions are modelled on the British system, that is, the Parliamentary system. In each case, there is a bi-cameral Legislature with an elective Lower House; and the Cabinet in every Dominion is responsible to the Lower House. (In Pakistan, however, the Constituent Assembly which acts as the Central Legislature is a uni-cameral body). All Dominions have written constitutions and in each case, the constitution is embodied in an Act of the British Parliament. For instance, the British North America Act, 1867, as subsequently amended, is the Constitution of Canada. The South Africa Act, 1909 and the Australian Constitution Act, 1900 embody the Constitutions of these two countries. The Constitution of New Zealand is the Constitution Act enacted by the British Parliament in 1852. Pakistan's constitution is the Government of India Act as adapted in 1947.

Dominion Status: The present status of the Dominions is one of virtual equality with that of the mother country. They are fully self-governing countries. Let us examine their present position with regard to the following: (1) legislation, (2) executive authority, (3) judicial appeals, (4) international relations and (5) the right of secession.

(1) The Dominions enjoy complete freedom in the sphere of legislation. They cannot only frame their own laws but can also amend and repeal Acts of the British Parliament applying to them (except the Statute of West Minster itself). No law made by the British Parliament can extend to a Dominion except at its own request. The Bills passed by a Dominion Parliament, requires, of course, the

assent of the Governor-General appointed by the King or the Queen. But whereas formerly the Governor-General was responsible to the British Government, now he is no longer so. He is a personal representative of the King or the Queen, who, in matters relating to the Dominion, acts on the advice of the Dominion Cabinet and not of the British Cabinet. Thus there can be no question of disallowance of Dominion law by the Imperial Government.

(2) In all Dominions the Crown is the executive authority. Actual power is, however, wielded by the Dominion Cabinet. Until 1926 the Governor-General, who is the Crown's representative in the Dominion, used to be appointed by the King on the advice of the British Cabinet. The Imperial Conference laid down in 1926 the principle that the Governor-General's position is in all respects like that of the King in Great Britain and he is not the representative of the British Government. The Governor-General of a Dominion is thus now a mere nominal head. And he is appointed by the King or the Queen on the advice of the Dominion Cabinet and not of the British Cabinet. Formerly, only distinguished citizens from the United Kingdom used to be chosen for appointment to the office of the Governor-General. Now-a-days, one finds occasional deviation from this practice.

(3) Formerly appeals from the courts of all Dominions could be carried to the Judicial Committee of the Privy Council. Passing legislation at various dates, (after the coming into effect of the Statute of West Minster), Canada, South Africa and Pakistan have abolished appeals to the Privy Council. At present, within certain limitations, appeals can be carried to the Privy Council only from the Dominions of Ceylon, Australia and New Zealand. These Dominions, too, have the power to abolish these appeals.

(4) In foreign affairs also, the Dominions enjoy almost complete freedom. Let us consider their position with respect to (a) representation in foreign countries, (b)

treaty-making, (c) war and peace and (d) membership of international bodies.

(a) The Dominions have the right of separate representation in foreign countries. The Irish Free State first asserted this right. At present, every Dominion is free to accredit its diplomatic representatives to foreign countries as well as to receive representatives from them. The representatives are accredited in each case by the Governor-General. In countries where a dominion has no representative of its own, its affairs are handled by the representatives of the United Kingdom.

(b) The claim to treaty-making authority was first put up by Canada in 1923. In the same year the Imperial Conference laid down that treaties could be separately negotiated and signed by a Dominion provided no other part of the Empire was affected and any Government in the Empire likely to be interested was consulted. In 1926, it was further laid down that no Dominion could be bound by a treaty not signed by its own representatives. The Dominions now-a-days freely negotiate and enter into treaties with other countries.

(c) When Great Britain is at war with any country, all Dominions become automatically belligerents in relation thereto. This certainly constitutes a limitation on their powers in the field of international relations. A distinction is now-a-days made, however, between "active" and "passive" belligerency. A Dominion may decide whether it will be actively or passively belligerent in relation to a country with which Britain is at war. This means that while technically at war with such a country a Dominion may choose to remain actually neutral in relation thereto. The distinction between active and passive neutrality is, obviously, a concession to the sentiments of the Dominions. It illustrates how legal theory has to adjust itself to the changing requirements of political life.

(d) As for membership of international bodies, all the Dominions (except Newfoundland) became members of the League of Nations when it was formed in 1919. And all the existing Dominions are members of the United Nations and enjoy all the rights to which the other members are entitled. Of course, the Dominions act in close co-operation with Britain in the United Nations but they are free to express their views, determine their policies and also to vote.

(5) Whether the Dominions have a legal right to secede from the British Empire and become completely independent states is a question on which opinion is sharply divergent. Some maintain that the Dominions possess this right, while others deny the existence of the right. In any case, the question of a legal right of secession has become, in the present context of world affairs, a mere academic issue. For if a Dominion chose to break away from the Empire, Britain would not think of preventing it from doing so. It will be recalled that Ireland, a former Dominion, has already broken away from the Empire and become an independent Republic under the name 'Republic of Ireland.'

The Commonwealth of Nations: The Commonwealth of Nations, popularly known as the British Commonwealth, consists of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon. India, as has been pointed out, ceased to be a Dominion on January 26, 1950 when her new Constitution was brought into force. Yet she has voluntarily continued her membership of the Commonwealth. India's relation to the Commonwealth will be discussed in connection with the study of the Indian Constitution. Suffice it to say here that India does not owe any allegiance to the Queen and regards her only as the symbolic head of the free association of members of the Commonwealth. The Commonwealth of Nations is a unique international organisation. It is neither a state nor a super-state. Its members are themselves states and are, for all practical purposes, entirely independent of each other.

Though its members freely co-operate with one another in matters of common concern, there is no attempt in the Commonwealth to impose majority decisions on minorities. The desire for friendly co-operation on the basis of equality and mutual respect for each other's independence is the only tie that binds the Commonwealth together. The Commonwealth, so to say, is an international club; and its constitution is of a character that is without parallel in history.

CO-OPERATION IN THE COMMONWEALTH

Normal Channels of Communication: Each member of the Commonwealth is represented in the other Commonwealth countries by High Commissioners. There is, for instance, a High Commissioner in London for India, and a High Commissioner for Britain in New Delhi. The offices of the High Commissioners constitute the normal channels of communication among the members of the Commonwealth. In Britain, affairs relating to the Commonwealth are normally handled by the Commonwealth Relations Office which replaced the Dominions Office in 1947. Apart from these normal channels of communication and co-operation, the Prime Ministers of Commonwealth countries periodically meet in what have come to be known as Prime Ministers' Conferences (see below) to discuss matters of common concern and to explore methods of co-operation to further their common interests.

The Imperial Conference: The Imperial Conference was brought into existence in 1907. The Conference used to meet from time to time to discuss matters of common concern to the members of the British Commonwealth of Nations. It has not, however, met since 1937. The Conference consisted of the British Prime Minister, the Dominion Prime Ministers, other Ministers concerned of these countries, the Secretary of State for India and other Indian representatives. It was at the successive Imperial Conferences that the unique relationship of the members of the British Commonwealth was

worked out. We have already seen how the Imperial Conference of 1926 declared the self-governing countries under the British flag, including the United Kingdom, as autonomous communities within the British Empire and completely equal in status one to another though united by a common allegiance to the Crown. And it was mainly as a result of deliberations of this body that the Statute of Westminster was brought into being.

The Prime Ministers' Conference: Since 1944, the Commonwealth Prime Ministers have met at intervals to exchange views on matters of common concern. These meetings have come to be known as Prime Ministers' Confernces. The Prime Ministers of India and Pakistan participated in the Conference for the first time in 1948. The Prime Minister of Southern Rhodesia has regularly attended these conferences though his country is not a member of the Commonwealth. The Prime Ministers' Conferences differ in some important respects from the Imperial Conferences referred to above. The Imperial Conferences held discussions on the basis of formal agenda and issued joint statements. The Prime Ministers' Conferences have been alsolutely informal, with no formal agenda, and they issue no joint statements excepting a final communique. Some distinguished statesmen of the Commonwealth seem to be of the opinion that the informal discussions held at the Prime Ministers' Conferences have proved more useful in promoting Commonwealth co-operation than the formal discussions that used to be held by the Imperial Conferences. The final communique which was issued at the conclusion of the Conference of 1948 stated: "The purpose of these informal meetings of the Commonwealth Prime Ministers is to provide opportunities for a free exchange of views on matters of common concern."

Commonwealth Finance Ministers' Conferences: To promote co-operation in economic affairs among the Commonwealth countries, the Finance Ministers of these

countries meet from time to time and exchange views on the economic problems of the Commonwealth.

Co-operation in Defence and in War Time: The Committee of Imperial Defence was brought into being in 1904. This Committee has a permanent panel of which the British Prime Minister is the President. The Dominions are not represented on the permanent panel but the Dominion High Commissioners regularly attend meetings at which matters of interest to their Governments are down for discussion. "The function of the Committee is to frame the fundamental principles that should govern imperial defence and to prepare detailed plans to ensure that all authorities, both at home and abroad, should in the event of war work to a detailed and co-ordinated plan."

During World War II, the British Prime Minister was in direct communication with the Dominion Prime Ministers. The Dominion High Commissioners in London used to hold daily meetings which would be presided over by the Secretary of State for Dominion Affairs.

CHAPTER XXII

THE ENDS AND FUNCTIONS OF THE STATE

Is the State an End or a Means ? To the ancient Greeks the state was an end in itself rather than a means to an end. They did not believe that the individual could have interests distinct from the collective interests of the state. The individual existed for the state, not the state for the individual. The result of this conception was that no sphere of life was considered as outside the province of the state. The state had a right to regulate everything. The individual was in duty bound always to bow to the will of the state.

In India, however, the conception has prevailed from times immemorial that the state is a means to an end and not an end in itself. The state has been made for the individual and not he for it. The state exists to protect and promote certain interests of the individual citizens. It has been brought into being by men to serve as a means to attain good life.

And this is the modern conception of the state. Most modern political scientists are agreed that the state is a means to achieve certain ends rather than an end in itself.

There is, however, a school of modern writers, known as the idealist school, who so idolise the state as to raise it to the level of an end in itself, rather than a means. The idealist theory of the state is discussed below. The great majority of modern writers, however, regard the idealist theory as a false and mischievous one.

The Italian Fascists and the German Nazis also held that the individual existed for the state and must completely subordinate himself to its will. Thus to the Fascists and Nazis also, the state was more an end than a means. Their political thinking shows the influence of the idealist school

of writers. The place of the state in Fascist and Nazi theory has been discussed below.

The Idealistic Theory of the State: The origin of the idealistic theory of the state is traced to the writings of Plato and Aristotle. While some elements of the theory are undoubtedly found in these ancient masters, it is modern Germany that may be regarded as the birth-place of the theory and Hegel, the German philosopher, as its 'father'. There is at least no doubt that the theory reached its highest development in the writings of Hegel. According to Hegel, the state has a personality distinct from the personality of the individual citizens. It has a will of its own distinct from individual wills. The will of the state is the general will which represents the best in individual wills. The state, representing as it does what is best in individuals, is always infallible. It is divine in essence. It is the march of God in the world. It is the divine idea as it exists on earth. The individual attains his highest morality in the state. In case of conflict between the will of the individual and the will of the state, the former must always give way because the latter is infallible and contains the real will of the individual himself. When the state puts a thief under arrest, it only enforces the general will which includes the best in the thief's own will. It follows, therefore, that the individual must always bow to the state and completely subordinate his own will to the will of the state. The state, being the highest power on earth, is not bound by any rules of morality either in its relations with individuals or with other states. It is above morality.

This, in brief, is the idealist theory of the state. This theory is also called the philosophical theory or the metaphysical theory of the state. It is also sometimes referred to as the absolute theory. Among the German adherents of the Hegelian conception of the state may be mentioned Treitschke, Nietzsche and Bernhardi. All of them defied the state and held that it is not bound by the ordinary rules

of morality or the rules of international law. The state has its own moral standards and there can be no limit to its sphere of action. All of them held that war is something noble and indispensable to human civilisation. Nietzsche taught that all that increases the will to power and power itself is good. All war, according to him, is good.

Among the English writers who accepted the Hegelian theory of the state are T. H. Green, F. H. Bradley and Bernard Bosanquet. None of them, however, accepted the Hegelian conception in toto, though all emphasised the majesty of the state and regarded it as the source of all rights. The English idealists, unlike the German school of idealists, never idealised the state in such a way as to make it infallible and omnipotent.

The main criticism of the idealist theory is that it is not only false but also dangerous. The theory is false because the state has no personality distinct from the personality of the citizens, nor any will apart from the individual wills. The theory is dangerous because it teaches that the state is omnipotent and infallible. For to hold that the state can do no wrong or that there is no limit to the sphere of state action is to sacrifice the individual at the altar of the state's power. Fascists and Nazis used the idealist conception of the state to justify their absolutism. The idealist theory is often invoked to glorify war and to justify destruction of civil liberties. The idealists hold that the state is an end in itself whereas the state in reality is a means to an end. It is a means whereby society maintains certain conditions essential to good life. The will of the state is far from infallible. For, at any given moment, the will of the state is nothing but the will of the individuals who are in effective control of the state machinery. If these individuals represent a small class, they will most probably try to use the state power to promote their group interests at the expense of the general good. Such a situation will call for protest, opposition and even revolt. The idealists who deify the state and teach

that obedience to the state is a sacred duty in all circumstances do a positive disservice to the cause of human freedom and progress.

Fascism, Nazism and the Idealistic Theory of the State: To the Fascists the state is an organic entity and has a personality of its own. It is the highest expression of the moral and intellectual life of man. It is essentially something spiritual. The individual must completely subordinate himself to the state and merge himself completely in the life of the state. The state is the supreme institution and every aspect of human life is subject to domination by it. Duty is the watchword of the citizen; authority that of the state. Only a few discerning individuals can understand the high collective destiny that is realised through the state. These individuals have a right to govern the common people—if necessary, against their will. And they must build up an effective system of government in which the doctrines of democracy, majority rule and the like have no place.

This Fascist theory of the state is essentially the same as the Hegelian or the idealist theory. Nazism, which is really a form of Fascism, is also based on the same theory or a theory very much akin to this. It, too, glorifies the state and its authority and holds that the individual lives for the state.

The Fascist rulers of Italy tried to justify suppression of civil liberties by reference to this mystic theory of the state. This clearly underlines the dangerous character of the theory.

INDIVIDUALISM *VERSUS* SOCIALISM

The Individualistic or the Laissez-Faire Theory: The individualistic theory of state functions may be stated thus: The state's sphere of activity should be restricted to the narrowest possible limits. The larger the province of the government, the smaller the sphere of individual freedom. All restraint on individual freedom is, as such, an evil. The

individual should, therefore, be restrained as little as possible. The state cannot, of course, be abolished because men are inherently selfish and would destroy all liberty by infringing each other's rights if there was no organisation to protect the rights of the individual. The state is thus a necessity but should be looked upon as a necessary evil, and its province should be limited to the protection of life and liberty. Beyond that limited province the individual should be left alone. Thus, according to the individualist, that government is best which governs the least. Best government means least government.

The individualists oppose regulation of economic activities by the state. They maintain that the state should have nothing to do with the promotion of education. Some of them even go so far as to condemn adoption of public health measures by the state, such as passing of pure food laws or laws relating to sanitation and prevention of disease. The function of the state, they hold, is to protect and restrain, not to foster and promote.

The doctrine of individualism, which is also known as the Laissez-faire theory, originated in the latter half of the eighteenth century as a reaction to excessive governmental interference in trade, commerce and other spheres of economic life. The restrictive laws of those days prevented free play of economic forces and kept down economic activities to a low level. One of the earliest advocates of individualism was Adam Smith who in his "Wealth of Nations" (1776) powerfully pleaded for non-interference by the state in economic matters. This book exerted a profound influence on the economic thought of the age. Later, the doctrine of individualism found a large number of adherents and advocates all over Europe. The most notable among them were Ricardo, Malthus, Herbert Spencer and John Stuart Mill in England, and Kant, Fichte and Wilhelm Humboldt in Germany. The doctrine has also found a large number of defenders among modern economists and political writers.

John Stuart Mill, in his essay on "Liberty", made the following classical statement of the doctrine: "The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant..... The only part of the conduct of anyone for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."

Numerous arguments, ethical, economic, biological and political, have been advanced in defence of the theory.

The Ethical Argument: It is argued that it is necessary for the harmonious development of the individual's personality that he should be interfered with as little as possible. Unless the individual is let alone by the state, he cannot grow according to the true laws of his being and cannot realise fully the ends of his existence. Over-government tends to destroy self-reliance. It crushes out individuality and tends to make everybody like everybody else. Free competition, on the other hand, increases the individual's sense of self-reliance and brings out into full play all his latent powers. Freedom thus conduces to social progress, while over-government hampers it by destroying originality.

The Biological Argument: The individualists point out that accoding to the science of biology, it is the fittest who survive in the struggle for existence. The state should, therefore, maintain conditions of free competition so that the weaker individuals may be eliminated and the fittest alone may survive. If the state lends a helping hand to the individual in his struggle for existence, it would mean, survival of the unfit, which cannot fail to hamper social progress.

The Economic Argument: The **laissez-faire** theory, it is argued, rests on sound economic principles. Free competition ensures better satisfaction of the economic needs of society. Under conditions of unrestricted competition, the self-interest of the producer leads to the production of those goods which are most useful to society, and also their production at the cheapest cost, while the consumer's self-interest leads him to buy those goods which give him the maximum satisfaction. Free play of the forces of demand and supply thus ensures production of socially useful goods in desired volumes and keeps prices at the normal level. In other words, in a laissez faire economy, while everybody pursues his self-interest, the interests of the entire society are efficiently served. State interference in economic matters hampers free play of the economic forces and prevents society from deriving the maximum possible benefit from its economic efforts.

Argument of Experience: Individualists cite numerous examples of cases of state interference in economic and social life which led to disastrous consequences in the past. These examples, in their opinion, constitute a decisive argument in favour of the individualistic doctrine.

Argument of State Incompetency: The individualists argue that in most cases a thing is better done if left to private individuals than if it is entrusted to the state. For the state does not feel any personal interest in what it does and this is a serious defect. People having a personal stake in a thing always do it better than those having no such stake. All the advantages possessed by the state such as the command of larger resources and access to best sources of information fail to make up for the lack of personal interest.

Criticism of the Individualistic Doctrine: The individualistic theory has been criticised on numerous grounds. (1) The chief defect of the theory lies in its assumption that government and freedom are necessarily antagonistic to

each other. The individualists believe that the larger the sphere of state activity the smaller the domain of freedom. As Ritchie aptly remarked, the individualists treat government and liberty as if they formed the debit and credit sides of an account book. But this is an entirely wrong conception of government and liberty. Restraint is not necessarily hostile to freedom. On the contrary, there can be no freedom without restraint. Law is the condition of liberty. If the state did not impose certain types of restraint on the conduct of individuals, social life would be a complete chaos in which there will be no freedom for anybody except the strongest and the most cunning individuals. The individualists are, therefore, entirely wrong in believing that all restraint is an evil and that the state is a necessary evil. The state is not a necessary evil. It is a positive good. (2) The argument of the individualists that governmental restraint hampers the development of individual character by weakening the sense of self-reliance and self-help is an extreme representation of an important truth. Excessive state interference in the life of the individual is certainly bad. But that does not mean all governmental restraint is inherently bad. Character is developed as much through discipline and restraint as through freedom. Every individual owes much of the good elements in his character to social restraint. But for such restraint, it would hardly be possible for the individual to learn self-discipline and to acquire control over his egoistic instincts.

(3) There are certain collective wants which can be satisfied only through state action. In the complex civilisation of to-day the necessity for such state action daily increases. With the growing complexity of life, more and more spheres of social existence are calling for state intervention. Almost everywhere, the state to-day regulates conditions of work in factories, carries on various kinds of public health activities and promotes education. It is social needs that have forced the state into these activities. And

there is no doubt that immense social good has resulted from these activities of the modern state.

(4) Instances of state action which resulted in harmful consequences are often referred to by the advocates of the individualistic doctrine as a powerful argument in favour of their position. But there are more instances of good state action than of bad. To condemn state action because in some cases such action results in harm to society is like holding that railways are an evil because their operation sometimes results in accidents. The government and the state must also be clearly distinguished. Certain actions of a particular government may be bad but that does not mean that state action as such is bad.

(5) The idea that the individual is a better judge of his own interests than the state is not always true. In fact, if individuals could clearly judge their true interests, there would be no necessity at all for the existence of the state. Most individuals are incapable of judging correctly their true interests in matters relating to education, sanitation and even food. "The truth is," says Garner, "society may be a better judge of a man's intellectual, moral or physical needs than he is himself, and it may rightfully protect him from disease and danger against his own wishes and compel him to educate his children and live a decent life."

(6) Mill maintains that the individual's freedom should be absolute in matters which concern only himself. "If a man's conduct", says he, "affects the interest of no person besides himself, the state has no right to interfere". But very few acts of the individual concern only himself. Almost all his acts directly or indirectly affect the interests of others. Thus on Mill's own principle, almost any action of the state is justified.

(7) While individualism might have some justification in the eighteenth and nineteenth centuries when the democratic movement was in its infancy, it has no justification in these days when governments in almost all countries are controlled

by the people. Government control now-a-days means such control as the people have decided to impose on themselves.

(8) The individualistic condemnation of government is due, in a large measure, to failure to distinguish between centralised government and local government. As some writers have pointed out, the individualistic objection to state intervention would be justified to some extent if directed against a highly centralised administration. In all modern governments, however, a large number of functions which intimately affect the life of the individual are entrusted to locally elected bodies and are performed directly under the eyes and control of the local people.

(9) "No better argument exists against the theory of individualism", says Gilchrist, "than the practical results which followed its adoption in the political and industrial life of England". Unregulated industrialism gave rise to serious evils in that country and the state had to intervene to check those evils. Housing, factory and labour laws were enacted to prevent overcrowding, unsafe conditions of work, child labour and the like.

Value of the Laissez-Faire Philosophy: The doctrine of individualism emphasises some valuable truths. It is undeniable that excessive state interference hampers the growth of individual character and tends to destroy individuality. The state should intervene only where such intervention is necessary for the promotion of common good. In those spheres of life in which the general interests of society do not call for state action, the individual should be left alone. In the past, individualism helped to abolish the laws that hampered the expansion of economic activities and thus made possible the development of modern industrialism. By emphasising the value of the individual in society, it has underlined the danger of regarding the state as an end in itself. The stress laid by it on the virtue of self-reliance has also been productive of much good. The theory is, however, based on a false conception of freedom and

individuality. It is also entirely out of tune with the modern conditions of life.

The Break-Down of Individualism: The impact of modern life has rendered individualism an obsolete doctrine. We have already referred to the evils which resulted from the adoption of individualism in the political and economic life of England. In other countries also individualism brought about similar evils. Unregulated industrialism led to the growth of unhealthy slums, exploitation of labour, child labour, inhuman conditions of work and the like. To check these evils the state has had to intervene in every country in the economic sphere. There are now laws in every country regulating conditions of work and wages, forbidding child labour and protecting workers against exploitation. In the general interest of the people almost every state nowadays exercises some measure of control over the processes of production and distribution. It controls prices of essential goods to prevent them rising too high or falling too low. It regulates the issue of capital so that the productive resources of the state may be made to flow in certain desired directions and in desired volumes. To ensure fair distribution in times of scarcity it introduces rationing. Most states today own and manage certain types of industrial undertakings which used to be left formerly to private enterprise.

Every state now-a-days carries on some vital public health activities. It takes measures for the prevention of disease and sale of adulterated food. It arranges the supply of pure water. It builds hospitals and sanatoria.

The modern state has also intervened in the sphere of education. Every state takes measures for the expansion of educational facilities through the building of schools and colleges, through grants to educational institutions and the maintenance of libraries.

In the more advanced countries, there are today state-sponsored insurance schemes for giving financial assistance

to the unemployed and the aged and for providing free treatment to the sick.

State intervention in all these spheres has followed public demand for such intervention and has greatly advanced public welfare.

The Socialistic Theory: The theory of socialism is diametrically opposed to the doctrine of individualism. While individualism looks upon state intervention as an evil, socialism regards it as essential to social and individual welfare. To the individualist the state is a necessary evil, to the socialist the state is a supreme and positive good. Individualism contends for a minimum of government; socialism stands for a maximum of government. The socialist holds that the state, instead of confining its activities to the function of protecting and restraining, must come forward to adopt positive measures for the promotion of the economic and cultural interests of the people. Socialism advocates collective ownership of the means of production. Land and capital should be socialised, that is, they should be brought under the ownership and control of the state. Industries should be run by the government for the benefit of the entire society, instead of the benefit of a few individuals. Socialism does not advocate complete abolition of private property; it aims at abolition of private ownership of only the means of production and its substitution by public ownership. It allows private ownership in respect of other kinds of property. There are various schools of socialism and their views differ in many respects. But the idea of the substitution of public ownership for private ownership in respect of the means of production is common to them all. Socialism, it is important to note, stands not only for the furtherance of the economic well-being of the people through the nationalisation of the means of production, but also aims at raising the cultural life of the entire people to a higher level through planned state action.

The socialist argues his case thus: Under the capitalist system of production capital is owned by a few. The working class, under this system, is at the mercy of the small owning class and is exploited by the latter. The worker gets only a small portion of the fruits of his toil, the rest being appropriated by his employer. The private capitalist dictates the conditions of work including the scale of wages and the worker has to accept work on those conditions, however unjust they may be, because otherwise he would starve. The capitalist system, in short, is organised in the interest of the rich few. It is based on inequality and injustice. And the operation of the system results in perpetuation of injustice and accentuation of inequality. Secondly, free competition which is the basic feature of the capitalist system results in gradual elimination of the smaller and the weaker capitalist. This means that under this system the rich becomes richer and the poor poorer, and wealth tends to become concentrated in fewer and fewer hands. Competition also leads to duplication of services, a large number of concerns providing the same kind of service. This leads to periodic overproduction, sharp fall in prices, closure of factories and unemployment. In short, periodic break-downs are inevitable in this system.

Competition, further, begets dishonesty. An enormous wastage of social wealth is caused under the capitalist system through competitive advertisement. And one of the chief defects of this system is that the profit motive is the sole determining factor in the production of goods and services. The private capitalist produces only those goods and services which give him the highest profit. The system thus responds more to the needs of the rich few than to those of the poor many. It often happens that luxury goods are produced in vast quantities, while society experiences acute shortage of necessities like food and cloth. Clearly, social utility and not private profit should determine production.

Socialism alone can place production and distribution on a just basis and end the inequalities inseparable from

the capitalist system. All the means of production should be taken over by the state from the private capitalist. The state should run the industries for the benefit of the entire society as distinct from the benefit of a few capitalists. Public ownership and management of industries will mean production of those goods and services which have the greatest utility from the social point of view. It will also mean end of exploitation of the workers. Socialism, further, by abolishing private profit, will prevent concentration of wealth in a few hands and will bring about more and more equality in the economic sphere. Socialism will thus lead to the establishment of a society based on complete equality of wealth and opportunities.

Socialism will also raise the cultural level of the entire society. By equalising wealth and opportunities, it will open the door of cultural life to one and all. Under the capitalist system only a few have the leisure and the financial resources for cultural activity. Under the socialist system, which will ensure a decent standard of living to all, everybody will be able to participate in cultural activities. This will lead to a great enrichment of the cultural life of society.

Socialism, some argue, will crush out individual freedom and individuality. But far from doing any such thing, socialism will create more real freedom for the individual and lead to the evolution of a higher type of individual character. Socialism will give the individual freedom from want and will thereby bring him greater opportunities for political and cultural activities. The capitalist system, based as it is on private ownership, tends to accentuate the inherent selfishness of man. The socialist system, by putting an end to private ownership and profit, will tend to make man more unselfish and honest.

The ideal of equality, the socialist says, has been already translated into practice in some spheres of life. Men are regarded as equal in the eye of law. It is also recognised

that men should have equal voting rights, and actually an equal system of suffrage has been established in many countries. The ideal of legal and political equality, in other words, has been already accepted by society. It is time, the socialist says, that the idea of equality was extended to the economic sphere. The principle of justice demands such extension. Economic equality alone, moreover, can make political and legal equality real to the vast majority whose poverty prevents them from taking advantage of their legal and political rights.

The socialists further point out that the state has already abolished competition in certain spheres of life. In all countries the state manages and controls the postal service and coinage. In some, the state owns and operates railways and some other industries. All this has demonstrated the wisdom of the socialist principle. The principle should now be extended to the rest of the economic field.

Arguments advanced against Socialism: The opponents of socialism argue that socialism by abolishing private ownership will destroy the most powerful mainsprings of human endeavour and the chief incentive to labour. It will retard social progress. Effort and invention are the parents of progress. Socialism will take away the most powerful incentive to effort and inventive activities, namely, the right to acquire private property and to accumulate wealth. Men of extraordinary ability will not exert themselves to the utmost in a socialist regime because they will know that they will have to share the fruits of their toil with the idle, the stupid and the worthless.

Socialism, it is further argued, will lead to a diminution of economic welfare because the state cannot manage industries as well as the private capitalist. The managers appointed by the Government will have no interest in the result of their efforts. And the production will be determined not by the laws of supply and demand but by orders

of officials who will be without any accurate method for determining the actual needs of the people.

Another argument advanced against the socialist theory is that socialism will destroy freedom and bring about a deterioration of the individual character. In a socialist regime, the state will control all the multifarious processes of production and distribution. It will, therefore, control almost every detail of life. Since, moreover, socialism will destroy all incentive to labour and industry, the socialist state will have to exercise coercion on men to make them do even their ordinary duties. Socialism will thus bring about a complete regimentation of life. A socialist society will closely resemble an army.

Individualism *versus* Socialism—the Debate has become obsolete: The controversy between individualism and socialism has nowadays become obsolete. Neither individualism nor socialism represents today the generally accepted view of the functions of the state. And there is no state today which practices hundred per cent individualism or hundred per cent socialism. The logic of facts has led all states to undertake activities of a socialist character. During World War I, most states of Europe and America were obliged to assume control over large sectors of their economy. After the war, this control was continued to a great extent as it was found beneficial from the social point of view. The economic depression which overtook the world in 1929 and continued for a number of years completely discredited individualism everywhere including America, the home of individualism, and brought about a vast expansion of the sphere of activity of the state. During World War II, the state control was extended further and today in the post-war world, one finds the state managing and controlling the economic processes in every country to an extent which would have horrified the individualists like Mill and Spencer. In fact, the concept of the 'police state' has now been completely replaced by that of the 'welfare state'. People

everywhere now look upon the state as an organisation whose function is not merely to protect and restrain but also actively to promote social welfare through positive measures. In other words, the state is not to confine its activities to the work of 'policing' only but also to advance social welfare by assuming control over the economic processes and through public health and other social welfare measures. And since all states have now come to accept this concept of state functions and are actually translating it into practice, we may say that the old 'police state' has been replaced by the 'welfare state' or that the 'negative state' has been replaced by the 'positive state'.

Socialistic Activities of Modern States: All modern states, as has been indicated, carry on various activities of a socialistic character. There are laws in almost every state for the control of prices, regulation of wages and conditions of work in factories and settlement of labour disputes. And every state maintains a huge machinery for the administration of these laws. There are courts in every state, for instance, for the arbitration or adjudication of labour disputes and an inspection staff for the enforcement of factory laws. Many states have now undertaken the responsibility of building houses for workers and improving slum areas. There are food laws in every state to prevent sale of adulterated or impure food as well as laws for preventing manufacture and sale of sub-standard and spurious drugs. Besides enacting and enforcing food laws, all states carry on various other kinds of public bealth activities such as building hospitals, running charitable dispensaries, organising drives for the destruction of pests and for providing collective inoculation of the population against diseases like cholera, small-pox and tuberculosis.

Every state today owns and operates various kinds of public utility services. In many countries the government owns and manages the transport services like railways, bus and air services. In Europe and America, most of the bigger

cities own their own electricity, water and gas systems. Local bodies in most states maintain parks, libraries and music halls. Nationalised industries are nowadays a ubiquitous phenomenon. These are industries which have been brought under public ownership and are managed by the state in the public interest. In Britain, the Government owns and manages the railway, civil aviation, coal, electricity and gas industries. In India, the Government not only owns and operates the railways, it has set up factories for the production of certain commodities considered essential to the life of the community such as penicillin, D.D.T., fertilisers and the like. Instances of such nationalised industries are found in every state.

Most of the advanced states today operate social insurance schemes. Britain appears to be far ahead of other countries in this field. The social insurance schemes in Britian provide for old age pensions, unemployment benefits, sickness benefits, maternity allowances and certain other kinds of benefits. The National Health Service in Britain provides adequate—and, in most cases, free—medical care for all citizens. In America, there are social insurance schemes for the benefit of the aged and the unemployed.

Activities of the modern state in the sphere of banking, insurance and agriculture are also considerable. In most countries, the government controls and regulates the activities of banking and insurance companies. In some states there are state banks for regulating the operations of the money market and for advancing loans to co-operative societies and farmers. The central banks in most states are either state banks or are strictly controlled by the state. The Bank of England which is the central bank of Britain, is a state bank. Similarly, the Reserve Bank of India is a state bank. Everywhere the Government today maintains agricultural farms for research and demonstration purposes. In times of falling agricultural prices, the state purchases large

volumes of agricultural commodities to prevent prices falling to uneconomic levels.

The state is playing today an increasingly important role in the sphere of education. In some countries, education in the primary stage has been made free and compulsory. In all countries, the state today gives liberal financial assistance to schools, colleges and universities. There are institutions in every state which are directly managed by the Government. Stipends and scholarships are granted by the Government to poor and deserving students. The state maintains libraries and social education centres to help dissemination of education.

The modern state has thus entered every sphere of human life. The old police state has been transformed into the modern welfare state. The process of expansion of the sphere of state activity has been steadily continuing everywhere. In the Soviet Union it has gone much farther than in any other state. The Soviet economy has been almost completely socialised. Land in the Soviet Union belongs to the state ; so does nearly cent per cent capital. The industries are run by the Government. Banking and wholesale trade are also state monopolies. The bulk of the retail trade is also handled by the state. Agricultural production has been organised on the basis of collective farming. Only a very small sector of agriculture and a small percentage of retail trade have been left to private initiative. Education in the Soviet Union has been brought completely under state control. All cultural activities, too, are controlled there by the state.

Limits of State Control : State intervention is justified only to the extent such intervention is necessary for the promotion of the common good. The state ought not to intervene in those spheres where such intervention cannot be clearly shown to be in the social interest. In other words, there are certain limits beyond which state intervention does

more harm than good. If, for instance, the state seeks to regulate by law the private relations between the husband and the wife, it will do more harm than good. If, again, the state tries to regulate the religious life of the people and to lay down, say, methods of worship for them, it will thereby only reduce the sum-total of spiritual welfare in the state. There are certain private spheres of life in which the state ought not to intervene at all; and in no sphere of life should the state try to regulate every detail of the individual's conduct.

It is, of course, difficult to lay down any hard and fast rule as to the legitimate functions of the state. There is no fixed line of demarcation to which one could point and say that this is the line where the power of the state should end and the freedom of the individual begin. For the line shifts in every age in response to changing social needs. Many of the things which used to be regarded a century ago as outside the legitimate sphere of the state are now looked upon as falling inside it. And the demand for the inclusion of more and more functions in the sphere of state activity is one of the characteristic features of our times.

Still, it is recognised in all modern democracies that there are certain limits which the state must not exceed if the freedom of the individual to grow according to the laws of his being and to develop his potentialities to the fullest is to be preserved. This is why in most democratic countries the constitution guarantees certain fundamental rights such as freedom of speech and expression, freedom of movement and association, freedom of conscience and the like and forbid governmental interference with these rights. In other words, most democratic constitutions demarcate the limits within which the state must confine its activities. Such demarcation, of course, is far from being absolutely rigid. Almost all constitutions contain emergency provisions which allow curtailment of the fundamental rights to a considerable extent in times of war or civil strife. Nevertheless, the

rights guaranteed by the constitution in a democracy are real rights and are protected by the courts against arbitrary interference by the executive authorities.

While all modern states have been taking over an increasingly large number of functions in the economic sphere, in all democratic countries it is considered to be a principle of the greatest importance that the state must not interfere in matters of faith and religion. The state, in a democracy, is expected to be neutral in matters of religion. The state is also expected not to interfere in private family affairs, nor to exercise too great a control over the cultural life of the people. The state, in short, ought not to extend its control to those areas of the individual's life where the results of his efforts mainly affect himself and where he cannot be fully himself unless completely left alone.

A totalitarian state, like a fascist or communist state, does not, however, recognise any limit to the sphere of state control. Everything in such a state is subject to state control, the sphere of the state being regarded as all-embracing. In such a state there is no real freedom. A totalitarian system thus lacks the conditions necessary for continued progress.

ANARCHISM

The Anarchist Theory: Anarchism aims at abolishing the state altogether. The state, according to the anarchists, is an engine of coercion. It has its origin in violence, aggression, war and conquest. The essence of the state is force. It functions through coercion and compulsion. True freedom is incompatible with the existence of the state. Free growth of the individual is impossible in a society in which the state always coerces him. Coercion turns even a good thing into bad. In a stateless society the individual would naturally do things that are good. It is because the state exercises compulsion on him for doing good things that these lose their good character, and fail to have the moral effect that they would otherwise produce. The state thus not only

destroys liberty, it also destroys morality. Even the most democratic state exercises a very large measure of compulsion on individuals. For in such a state it is the majority which rules, and this means that the minorities are coerced. Decisions to which the minorities have not consented are imposed on them by force. Majority rule thus cannot solve the problem of liberty. The only solution is to destroy the state and create a social order in which nobody will compel anybody to do anything. To the criticism that crimes cannot be suppressed in the absence of an organisation like the state, the anarchists reply that crimes have their origin in the existing social system and not in a supposed perversity of the human nature. The coercive machinery which the state maintains to punish crimes—its jails, police system, its hangmen and the gallows—only fosters the basest passions and habits and thus only multiplies crimes. The idea that crimes and violence can be eliminated by the organised violence of the state is a sheer delusion.

But how to replace the present social order with the one aimed at by the anarchists? Most anarchists hold that the state must be destroyed through the application of violent methods. They advocate organisation of the exploited sections of the people to effect armed uprisings against the state and to take advantage of every opportunity to weaken the power of the state with the ultimate purpose of bringing about its destruction. The anarchists of this school are known as revolutionary anarchists. There is another school of anarchists, known as philosophical anarchists, who believe that the anarchist society can be ushered into existence by the method of persuation. They believe that their goal can be attained by propaganda aimed at convincing the people of the advantages of an anarchical society over the existing one.

Though the anarchist doctrine in its essence is not a new theory, it is only in modern times that attempts have been made at systematic formulation of the theory. Godwin,

the English radical, and Proudhon, the French author, may be regarded as the intellectual progenitors of modern anarchism. Michel Bakunin, the Russian revolutionary, who was greatly influenced by the doctrines of Proudhon, waged a life-long struggle to popularise the anarchist doctrine and to organise people for the attainment of the anarchist ideal. One of his followers, Kropotkin, is regarded as the ablest exponent of the anarchist theory. In his books, "Fields, Factories and Workshops", "Conquest of Bread", "Anarchist Communism" and the like Kropotkin has tried to present the anarchist case in a systematic way. Tolstoi, the Russian author, was also an anarchist. The state, according to Tolstoi, fosters and wages war, commits acts of robbery and aggression and ought, therefore, to be abolished.

The anarchists do not deny that even in the society they aim at there will be need for organised social action in regard to matters like national defence, distribution of wealth, maintenance of internal order. They, however, point out that in an anarchistic society these functions will be performed by voluntary associations which will not exercise compulsion on any person, and will take decisions by free agreement.

As regards distribution of wealth, there are two schools of thought among the anarchists—the individualistic school and the communistic school. Bakunin and Kropotkin belong to the communistic school. They hold that in an anarchistic regime property will be held by voluntary associations but everybody will be allowed to have as much of the ordinary commodities as he can consume, while the rarer commodities will be rationed equally among the entire population. The individualistic anarchists, on the other hand, maintain that property should be vested in the individual and his reward should be determined by the value of his labour to others.

Criticism of the Anarchist Theory: (1) The anarchists are wrong in believing that the state is an evil. The state

is a positive good. It is the state that has made civilised existence possible by imposing restrictions on the conduct of individuals. There can be no liberty in the absence of restraint. If the state were abolished and everybody were free to do as he liked, liberty will be completely destroyed except, perhaps, for the strong and the cunning. Abolition of the state would mean return of mankind to barbarism. (2) Not everything that the state does involves coercion, as the anarchists believe. Many of the activities of the modern state are concerned with giving aid and assistance to the citizens, which do not involve any coercion. The modern state builds schools and hospitals, organises social insurance projects providing unemployment and old age benefits, gives loans and grants to industry and agriculture, organises relief measures in case of famines or other natural calamities. These activities cannot be called coercive. Their essential purpose is to help, promote and foster, rather than to hinder or restrict.

(3) Even if the anarchists succeeded in establishing a social order in which all coercion has been abolished, such a society can hardly be stable. For if compulsion were completely done away with, there would be nothing to prevent unscrupulous, power-loving men from conspiring and combining to subvert the anarchist regime itself and replacing it with a regime of tyranny. Thus if the anarchists succeed in attaining their objective, they would only revive ancient oppressions.

It must be admittted, however, that much of the criticism levelled against the state by the anarchists is justified. The state power is often abused. Power-loving leaders very often use the state machinery to gain their private ends. The more powerful economic classes have sometimes turned state into an instrument to oppress and hold down the weaker classes. Abuse of state power has too often resulted in war and aggression and has thereby brought about large-scale destruction of human lives and freedom. But when all is

said that can be said against the state, the fact remains that, human nature being what it is, the state in some form is an absolute necessity in human society.

SYNDICALISM

The Syndicalist Movement: The syndicalist movement originated in France. Syndicalism has been described as revolutionary trade unionism. It aims at the destruction of capitalism and establishment of producers' control in industries. The syndicalist philosophy is based on the Marxian theory of class war. The syndicalists believe that the interests of workers and capitalists are fundamentally opposed to each other. There can be no reconciliation between these interests. The working classes must carry on continuous warfare against capitalists till they have succeeded in destroying the capitalist system. How is this war to be waged ? Trade unions constitute the chief weapon in the hands of the working classes in their fight against the bourgeoisie. ('Syndicat' is a French word meaning trade union). The syndicalists believe that trade unions can overthrow capitalism by resorting to 'direct action' and thereby usher in the new society. Direct action may take various forms, namely, the sabotage, the boycott and the strike. Sabotage, again, may be of different types ranging from doing bad work and telling the consumers the truth about the commodities to spoiling the machinery and even causing railway accidents. The strike is, of course, the most important of the syndicalist methods. "Syndicalists aim at using the strike, not to secure such improvements of detail as employers may grant, but to destroy the whole system of employer and employed and win the complete emancipation of the worker." Ordinary strikes are but rehearsals for the General Strike, that is, strike by all workers. The General Strike, the syndicalists believe, will completely paralyse production, compel the capitalists to surrender and thus bring in the new social order based on producers' control. In the new society the means of production will be owned

by organised labour and production will be controlled entirely by the workers. Industrial organisation, in other words, will be based on the principle of self-government.

Like the anarchists, the syndicalists want to destroy the state which they regard as a capitalist institution. But whereas most anarchists believe that the capitalist society can be destroyed only by armed insurrection, the syndicalists rely mainly on the General Strike to achieve that end.

Syndicalism is opposed to participation in politics by workers. Politics, the syndicalists believe, always tend to create division in the ranks of the workers and to destroy their unity. The syndicalists have no faith in parliamentary democracy. Parliamentarism is based on the assumption that the interests of all sections of society can be harmonised through legal adjustments, whereas the fact is that the interests of workers and capitalists are absolutely irreconciliable.

In France, where the movement originated, a working-class organisation known as the General Confederation of Labour (C.G.T.), was the main force behind it. In America the organisation known as I. W. W. (Industrial Workers of the World) stood for syndicalism. Syndicalism was responsible for many of the strikes that took place in European countries before World War I and in the years immediately following it. The movement has, however, already declined. The French General Confederation of Labour (C. G. T.), which was the chief sponsor of the syndicalist movement, subsequently changed its views and policy. It co-operated with the French Government in improving the conditions of workers through legal and constitutional methods.

Criticism of the Syndicalist Doctrine: (1) Syndicalism aims at destroying the state but does not clearly indicate how, in the absence of the state, the interests of the different industries controlled by different groups of workers are to

be adjusted. Syndicalism, it has been rightly said, would not abolish social struggle. It would merely replace the conflict between the employer and the employed by conflict between groups of workers organised into autonomous bodies to control different branches of production. (2) Syndicalism stands for the point of view of the producer as opposed to that of the consumer. In the society aimed at by the syndicalists, there will be nothing to safeguard the interests of consumers. When it is remembered that everyone is a consumer, it becomes clear that in the syndicalist society, the general interests of the people will be subordinated to those of the producers. (3) The idea that the producers of a service should enjoy exclusive control over it is simply absurd. The service is produced for society, which must, therefore, be given general powers of control in respect of that service if the general interests of the people are to be safeguarded. If the police were to determine the policy and law relating to prevention of crimes, and the military were to control the nation's foreign policy, the nation would soon be overtaken by disasters.

GUILD SOCIALISM

The Theory: Like syndicalism, guild socialism, too, aims at the establishment of industrial self-government. Like the former, the latter also maintains that liberty cannot be secured through the replacement of private ownership and control of industries by state ownership and control. Both hold that the state as an employer has turned out not to differ essentially from the private capitalist. The chief difference between syndicalism and guild socialism lies in the fact that while the former is solely concerned with interests of producers and ignore those of consumers, guild socialism aims at reconciling the interests of both producers and consumers. Guild socialism represents a half-way house between syndicalism and socialism.

The most notable among the advocates of Guild socialism are G. D. H. Cole and S. G. Hobson. They advocate

organisation of each industry into a guild controlled entirely by the workers in that industry. The entire industrial system is to be taken over by a number of national guilds. As regards the question of the relationship between these guilds and the state, there are two distinct schools of thought. One school led by S. G. Hobson would give the state ultimate sovereignty over the guilds: The other school led by G. D. H. Cole holds that the state is but one of many social associations and cannot be allowed to have a dominant voice in social affairs.

Mr. Cole originally held that the state represented the consumers and should be preserved to protect their interests. In his book, *Self-Government in Industry*, Mr. Cole advocated the following plan for the new social order: There would be at the top two co-ordinate bodies, Parliament and the Central Guilds Congress. Parliament would represent the state, that is, the consumers. The Guilds Congress would represent the Guilds or the producers. "Neither Parliament nor Guilds Congress can claim to be ultimately sovereign: the one is the supreme territorial association, the other, the supreme professional association." In case of disputes between these two bodies, the final decision would lie with a Joint Committee on which Parliament and the Guilds Congress would be equally represented. Ultimate sovereignty would thus be vested in this joint body representing both producers and consumers.

Mr. Cole, in his later books, changed his position and advocated replacement of the state by local and national 'communes' formed through the federation of functional groups.

The guild socialists depend mainly on industrial action, as distinguished from political, to bring the guild society into being. They seek to wrest control of industries from the hands of capitalists by gradually strengthening trade union organisations. They would utilise the economic power of the trade unions to put pressure on the managements and

force them gradually to yield the power of control to the workers. They also advocate the formation of independent guilds within the capitalist system to enter into competition with capitalism.

Guild socialism as a movement is dead. After World War I, a large number of building guilds came to existence in Britain. These building guilds were later combined into a National Building League which went bankrupt because of mismanagement and inadequacy of funds. The collapse of the National Building League marked the end of Guild socialism as a movement.

Criticism: The guild socialists are rather naive in believing that the guild society can be brought into being through such methods as they advocate. It is obvious that without some kind of political action the capitalist system of production cannot be radically altered or abolished. The guild socialists attack the supremacy of the state and aim at abolishing state sovereignty. But even in their own schemes the state as a sovereign body reappears in one form or another.

Though guild socialism has disappeared as a movement, it has left a marked impression on socialist thought. The idea of workers' representation on bodies which manage and control industries is gaining ground everywhere. Even many of those who do not believe in socialism recognise this principle of workers' representation as a sound one.

SOME OTHER SCHOOLS OF SOCIALIST THOUGHT

Fabian Socialism: Fabian socialism originated in England towards the close of the nineteenth century. In 1883-84, a small group of middle-class intellectuals founded a society in England, known as the Fabian Society. Very soon the society attracted a large number of gifted individuals to its membership and began to propagate a distinct kind of socialist thought. The leading figures among the members of the Fabian Society were Sidney Webb and

George Bernard Shaw whose writings gained wide popularity and made Fabianism a powerful intellectual force in the political life of Britain. It became the 'brains' of socialism in Britain. Among other notable figures belonging to this school of thought may be mentioned Ramsay MacDonald, Tawney, Laski and GrahamWallas. Fabianism has considerably influenced progressive thinking in many countries besides Britain. One of the earliest and most notable publications of the Fabians is *Fabian Essays* (1889) which argues for state ownership of land and capital.

The Fabians reject the Marxian doctrine of class war. They believe that class conflict is unnecessary and socialism is bound to come as the inevitable result of the modern trends in social legislation. The programme of the Fabians aims at gradual progress towards socialism. They reject the idea of violent conflict and revolution. Thus what essentially distinguishes Fabian Socialism from Marxian Socialism or Guild Socialism or Communistic Anarchism all of which stand for abolition of the private ownership of capital is the doctrine of gradualism. The name Fabian is taken from the Roman General Fabius Cunctator, "the Delayer," who became famous for his delaying tactics against Hannibal. The Fabians believe in peaceful penetration through reasoned propaganda. They are of opinion that the logic of facts is sure to convince people sooner or later of the need for abolition of the private ownership of land and capital. They urge municipal socialisation—that is, municipal ownership of the public utility services and the like—progressive labour legislation and taxation of inherited wealth. Their ultimate goal is collectivism, or state ownership of industries and land.

Along with the Marxian theory of class war, the Marxian theory of value is also rejected by the Fabian school. Value, according to them, is a creation of the entire society and not of the workers only. And they advocate transfer of ownership not to the workers but to society as a whole.

Immediately after World War I, the programme of the Fabians was adopted by the British Labour Party. This was the greatest triumph of this school of thought. When, after World War II, the Labour Party came to power in Britain, it translated into action a considerable portion of its programme. It socialised the coal industry, the railways and the iron and steel industry. It nationalised the Bank of England. It also brought gas and electricity industries, already to some extent under municipal ownership, under complete state ownership. It took a number of important measures to promote the welfare of workers. One of the most notable public welfare measures adopted by it was the establishment of the National Health Service designed to provide free medical care to the sick. Thus a movement originally started by a few middle-class intellectuals succeeded in course of six or seven decades in bringing about radical changes in the social and economic life of a people.

The Fabian ideas and their practical application in Britain have greatly influenced progressive minds in a large number of countries. Their influence is also noticeable in official policies and social legislation in these countries. The method of gradual progress, advocated by the Fabians, is coming to be looked upon by an increasingly large number of people as a much better method of bringing about social transformation than violent revolution. There can be no doubt that men at the helm of affairs in India today have been greatly influenced by the Fabian doctrine of continuity and gradualism. The Congress, the party in power in India, aims at the building up of a socialistic pattern of society in this country through peaceful methods and gradual evolution.

Christian Socialism: Another school of socialism is known as Christian socialism. Christian socialists maintain that the competitive system is incompatible with the teachings of Christ. The capitalist system of production

breeds greed, acquisitiveness and selfishness, while Christ taught unselfishness and simplicity. Competition gives rise to feelings of enmity and hatred while Christ taught brotherly love and helpfulness. The competitive system should be, therefore, replaced by a co-operative system; in other words, the capitalist system should be replaced by a socialist economy. This is the essence of the doctrine of Christian socialism. The leading figures among the advocates of Christian socialism, which had considerable vogue in the middle of the nineteenth century were Charles Kingsley, the English novelist and Frederick Denison Maurice, the French priest.

Utopian and 'Scientific' Socialism: The word 'Utopian' has been derived from 'Utopia' which is the name of a book published by Sir Thomas More in 1515. In this book More depicts the picture of an imaginary communistic society in which property is held communally and not privately, food supply is abundant and men live a life of simplicity and happiness because there is no want and everyone gets his due share. (The word Utopia means 'nowhere'.) The word Utopian is now-a-days used mainly in a derogatory sense. Thus schemes of reform which are theoretically perfect but are unpractical are called Utopian.

Marxian socialists who claim to be scientific socialists call the earlier socialists Utopian. Thus, according to them, Saint-Simon, Fourier and Owen were Utopian socialists. These earlier socialists believed that the idea of socialism was based on certain high principles of truth and justice. Socialism could be established if only men could be made to understand these principles and if a perfect social system could be imposed on society by propaganda. This idea was regarded by Marx and his followers as Utopian and unscientific. They claimed that their socialism, that is, Marxian socialism was alone scientific socialism because it was based on a correct analysis of the laws of social development. Socialism, according to them, is the product of a

certain stage of social development. When that stage is reached socialism is bound to come, whether men liked it or not. The establishment of socialism was thus not something dependent on human reason and goodwill. The laws of social development which have been operative since the birth of society would inevitably lead to the dustruction of the capitalist social order and its replacement by a socialist order.

Evolutionary and Revolutionary Socialism: The various schools of socialist thought may be broadly divided into two categories—evolutionary and revolutionary. Revolutionary socialists are those who advocate destruction of the existing social order by revolutionary methods such as violent upsurge, insurrection and the like. Evolutionary socialists, on the other hand, stand for attainment of socialism through the method of slow transformation and gradual evolution. Marxian socialists belong to the revolutionary school, while Fabians are evolutionary socialists.

INDIA AND SOCIALISM

There can be no doubt that free India has been moving, however slowly, in the direction of socialism. The Constitution of India embodies the socialist ideal, though it does not refer to any particular brand of socialism. The leaders at the helm of affairs in the country at present, particularly Prime Minister Nehru, are all believers in democratic socialism, and aim at attainment of socialism in India through peaceful methods. The Congress, the party in power, adopted a resolution at its Avadi session in January, 1955, declaring that it aims at the establishment of a socialistic pattern of society in India. The resolution, which constitutes a landmark in the evolution of the economic ideal of the Congress, runs thus: "In order to realise the object of the Congress as laid down in Article 1 of the Congress Constitution and to further the objectives stated in the Preamble and Directive Principles of State Policy of the

Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth."

Article 1 of the Congress Constitution, which is referred to in this resolution, declares that the object of the Congress is the "establishment in India, by peaceful and legitimate means, of a Co-operative Commonwealth based on equality of opportunity and of political, economic and social rights." The objectives embodied in the preamble to the Constitution of India include "justice, social, economic and Political" and "equality of status and of opportunity." The Directive Principles of State Policy embodied in the Constitution of India lay down: "The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life." The Directive Principles further lay down that the state must direct its policy towards securing— "that the citizens, men and women equally, have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment." The Directive Principles also direct that the state shall endeavour to secure to all workers, agricultural, industrial or otherwise, "work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities." It is further directed that the state shall promote cottage industries and organise village panchayats as units of self-government. Thus, by the term "socialistic pattern of society," the resolution quoted above means a social order in which—

(1) there will be equality of opportunity and of social, economic and political rights;

(2) there will be full employment, and everybody will be ensured an adequate means of livelihood;

(3) the principal means of production will be either owned or controlled by the state;

(4) production will be speeded up;

(5) distribution will be made equitable;

(6) the economic system will be so organised as to prevent harmful concentrations of wealth;

(7) political and economic power will be decentralised in a large measure through the organisation of village panchayats, and small-scale and cottage industries.

And it is integral to the Congress ideal of socialism that the social transformation should be brought about through peaceful and democratic methods.

The Government of India have been seeking to attain their economic objectives through a series of Five-Year Plans. The first Five-Year Plan was launched in 1951; the second Plan is to be inaugurated in 1956. It is also highly significant that the Government's control over industrial and other economic activities has been steadily expanding. In this connection the following facts deserve mention: The Reserve Bank, which is the Central Bank of India, was nationalised on January 1, 1949. India's air transport services were nationalised by an Act of Parliament called the Air Corporation Act, 1953. The entire railway system in India, with some insignificant exceptions, is owned and operated by the state. In their famous Resolution on Industrial Policy of April, 1948, the Government of India declared that the state shall be exclusively responsible for the establishment of new undertakings in the following industries—coal, iron and steel, aircraft maunfacture, shipbuilding, manufacture of telephone, telegraph and wireless apparatus, mineral oils. The state may, however, seek the co-opera-

tion of private industries in establishing any such undertaking if it considers that it is in the national interest to secure such co-operation. The Government of India have already taken steps to set up two new steel plants under their control and ownership. The Estate Duty Act, which was passed in 1953, aims at the reduction of economic inequalities through taxation of property passing on death. The Industries Development and Regulation Act, 1953 gives the Government power to regulate a large number of industries in the national interest. The Employees State Insurance Act, 1948 makes provision for the following kinds of benefits for factory workers—(a) sickness benefit, (b) maternity benefit, (c) disablement benefit, (d) dependents' benefit and (e) medical benefit. This Act is being implemented according to a phased plan.

COLLECTIVISM

Collectivism advocates taking over by the state of the ownership of industries from private hands. Sometimes the words collectivism and socialism are used as synonymous terms. Very often the word collectivism is used as a general concept of which socialism, communism and communistic anarchism are special variants. The word socialism has, however, far greater vogue than collectivism. Since the essence of the doctrine of socialism is advocacy of communal ownership of land and capital, all socialists are collectivists.

COMMUNISM

The Theory: The fundamental doctrines of communism were developed by Karl Marx (1818-1883) and his friend and collaborator Frederick Engels (1820-1895). The political philosophy expounded by these two men has come to be known as Marxism. The two words Marxism and communism are often used as synonymous terms. The Marxian system of thought was, however, further developed by Lenin, the founder of the Soviet regime in Russia. And

communism as we know it today owes many of its characteristic features to Lenin. We may thus say that the theory and practice of communism are the handiwork of three men, Marx, Engels and Lenin. Nevertheless, the basic ideas originally propounded by Marx and Engels still remain the philosophical basis of communism, for Lenin accepted all the fundamental principles of Marxism and built on the foundation laid by the great masters.

The Marxian system was first set forth in the Communist Manifesto which appeared in 1848. It was jointly written by Marx and Engels. Some of the ideas adumbrated in the Communist Manifesto were later developed by Marx in his great book, Capital, the first volume of which was published in 1867 and the other two volumes were published after his death (in 1885 and 1894). The other important works of these two authors, a study of which is necessary for correct understanding of their position, are *Critique of the Gotha Programme* by Marx, *The Origin of the Family, Private Property and the State* by Engels, *Socialism : Utopian and Scientific* by Engels and *Anti-Duhring* by Engels. Among the most important works of Lenin, from the point of view of theory, are *The State and Revolution* and *Materialism and Emperio-Criticism.*

The basic principles of Marxism, which constitute the philosophical foundation of communism, may be grouped under the following heads: (1) materialism, (2) economic interpretation of history, (3) the theory of class struggle, (4) labour theory of value and the laws of capitalist development.

Materialism: Marxism starts from the assumption that matter is the ultimate reality. All phenomena, physical, vital, mental and social are strictly determined by material factors. The birth and growth of life on this planet as well as the birth of mind and consciousness have all been caused by material factors. Even our thought is nothing but a

phenomenon caused by the vibration of material particles. There is no spiritual factor behind the universe. The idea of God itself is an illusion caused by certain material factors. These factors also determine both the individual life and the life of society. All changes in social, political and economic life of mankind are caused by changes in the material basis of human life. And since the material basis of life is the economic factor, it is this factor which determines the laws of social development and explains the changes in social life. And thus we come to the economic interpretation of history.

Economic Interpretation of History: History, according to Marxism, is determined by the economic factor. Art, religion, literature, science, law and all social institutions are, in the last analysis, but by-products of the system of production of wealth. Social changes are also brought about by changes in the productive system prevalent in society. It is the economic factor that lies at the root of all revolutions. Revolutions take place when old social institutions become incompatible with changes in the productive system. With such changes gradually becoming more and more marked, a time comes when the strain on the old social institutions becomes too great and a violent adjustment takes place. This is revolution. The transition of society in the past from the age of slavery to the age of serfdom, and from serfdom to the age of capitalism is explained by changes in the system of production. And as an inevitable result of the changes that are occurring in the womb of the capitalist society, capitalism is going to be destroyed and replaced by socialism. The overthrow of capitalism and the establishment of socialism are thus both inevitable, whether one liked it or not. The economic laws of society are working inexorably to bring about the destruction of the capitalist social structure and to usher in socialism.

The Theory of Class Struggle: According to Marxism, every system of production that has been evolved so far has

given rise to a number of economic classes. These classes are always broadly divisible into two main classes—the dominant and the privileged class and the exploited class. The interests of these two classes clash, and this conflict of classes is the chief force that causes the evolution of society. For this conflict ultimately leads to the overthrow of the exploiting class by the exploited, and the establishment of a new social system based on a new set of productive relations. In the past, it is this conflict between the dominant and the exploited classes which caused society to evolve from one historical stage to another. It is, in short, this conflict which has caused the transition of society from the age of slavery to the age of serfdom and from that age to the age of capitalism. The capitalist age was ushered in when the bourgeoisie overthrew the feudal lords and themselves became the dominant class in society. Capitalism has, however, given rise to a new exploited class, the proletariat. The interests of the bourgeoisie and those of the proletariat are sharply in conflict with each other, and the conflict between these two classes are sure to result ultimately in the overthrow of the exploiters, that is, the capitalist class. When the bourgeoisie would be overthrown, the capitalist system of production would be replaced by the socialist system of production and bourgeois democracy would be replaced by the dictatorship of the proletariat. Under socialism, such fundamental changes will occur in human life and social motivation that ultimately the age of socialism will merge into the age of communism in which there will be no classes and no state either. Thus socialism and dictatorship of the proletariat will mark the intervening stage between capitalism and communism.

(4) The Labour Theory of Value and the Laws of Capitalist Development: Socially useful labour, according to Marx, is the source of all value. The value of a commodity is determined by the socially necessary labour time embodied in it. Though the workers produce value, they do not get

the entire value created by them. They are given only a fraction of the value created by them and the rest is pocketed by the capitalists. The labourer is given only so much of the value created by him as is necessary for his bare maintenance and the rearing of children by him. The surplus value, that is, the difference between what the labourers create and what they get, which goes to the pocket of the capitalists, is the source of their profit. Though this profit results at first in great enrichment of the exploiters, it ultimately causes their downfall. For appropriation of this surplus value by the capitalists means continuous withdrawal from the main body of society a vast volume of purchasing power. This continuously results in goods being produced in excess of the purchasing power of the market. From time to time large accumulation of such unsaleable goods results in crises. These crises are marked by a sharp slump of prices, stopping of production and unemployment. In a capitalist society such crises are bound to occur periodically and these become continually more and more disastrous. They cause large-scale unemployment and impoverishment of the masses and intensify popular discontent against the capitalist system. A time comes when the crash comes with such a catastrophic intensity that the entire system breaks down beyond recovery. The role played by crises in the destruction of the capitalist system of production is thus very great.

Apart from these recurrent crises, there are two other tendencies inherent in the system of capitalist production. In the first place, capitalism, according to Marx, is bound to result in increasing concentration of industry into larger and larger units of production, which means increasing concentration of wealth in the hands of fewer and fewer monopolists. And along with this progressive concentration of wealth in the capitalist society, there goes on another process, namely, that of increasing impoverishment of the people. The concentration of industries in bigger and bigger units means

the pauperisation of the smaller producers who begin to swell the ranks of the proletariat. Thus ultimately a stage comes when the capitalist society gets polarised into a few extremely rich people on the one hand and a vast majority of extremely poor people on the other. And the rich become richer and the poor poorer every day. Finally, the system breaks down because it is not possible for a microscopic class of rich people to keep the vast majority of the people in economic bondage. The breakdown of the system, as has been pointed out above, is hastened by the crises which periodically throw the capitalist productive system out of gear.

To these ideas, which constitute the theoretical foundation of communism, must be added the Marxian theory of the state. The state, according to this theory, did not exist in earliest societies. The state came into existence only at a certain stage of social development when the prevailing mode of production gave rise to economic classes. The state is an instrument in the hands of the exploiting class to hold down the exploited class. And in every state, laws have as their primary aim the protection of the interests of the exploiting class against onslaughts by the exploited class. The capitalist state is an instrument in the hands of the capitalist class to hold down the proletariat and maintain the system of production based on exploitation of the latter. When the proletariat will overthrow the capitalist class and become the new dominant class, it will reorganise the state on the basis of its own dictatorship. Thus the capitalist state will be replaced by dictatorship of the proletariat. The power of the state will, in this new regime, be used by the proletariat to expropriate the capitalists. But gradually dictatorship of the proletariat will end exploitation of man by man and abolish all class distinctions. When the class distinctions will be completely eliminated, the state will also cease to exist. Thus after the proletarian revolution the state will gradually wither away. This theory of the state

it should be noted, is fully consistent with the Marxian belief in economic determinism.

Lenin's main contribution to the communist theory is the idea of a well-knit, highly centralised party to act as the spearhead of the revolution and the idea of a one-party state. After the Russian revolution, Lenin and his followers set up a one-party regime in which power was monopolised by their own party, the Communist Party (Bolsheviks) and all other parties were ruthlessly supressed. The Soviet state was organised by them on a totalitarian basis—all aspects of life were brought under state control and all opposition was eliminated by force. Stalin carried this process to its logical conclusion. He liquidated not only actual opponents but also potential opponents and built up a regime characterised by complete subordination of the individual to the state and complete concentration of state power in the hands of a few leaders. In fact, numerous writers and observers are of the opinion that the Stalinist regime was a one-man dictatorship in which all threads of power ended in Stalin's hands. The Leninist ideas of a highly centralised party organisation and the establishment of a totalitarian state based on the communist monopoly of power have become an integral feature of the communist theory. These ideas, however, were inherent in Marxism, particularly in the Marxian theory of dictatorship of the proletariat. Lenin only developed what existed in an embryonic form in Marxism itself.

The Communists attach no value to the ideas of morality. In fact, true to their economic interpretation of history, they look upon traditional morality as bourgeois morality. They believe that their end justifies all means. Whatever means, violent or non-violent, may be necessary to destroy the capitalist system and to establish a socialist order ought to be adopted without any hesitation. To the communists, falsehood, theft, dacoity and even murder are legitimate means, provided these help the attainment of their objective.

Communism, they hold, will usher in a higher morality to replace the present morality which fosters inequality and injustice.

To sum up, the basic tenets of communism are the following: (1) materialism, (2) economic interpretation of history (also called materialistic interpretation of history), (3) the theory of class struggle, (4) the labour theory of value, (5) the theory that the contradictions inherent in capitalism will cause recurrent crises and finally bring about the downfall of the capitalist system of production, (6) the idea that the communists must build up a completely centralised party organisation to organise the forces of revolution, to seize power and thereafter to reorganise the state on a socialist basis, (7) the idea of a totalitarian, one-party state, that is, a state in which all aspects of life would be brought under state control and all parties other than the communists would be suppressed, (8) reconstruction of the economy on a socialist basis, that is, on the basis of state ownership of land and capital and equitable distribution, (9) the idea that the communist end justifies the adoption of every kind of means, whether these are approved or not by traditional morality, (10) the theory that the state will ultimately wither away when the classes have been completely abolished and the productive forces fully developed.

Socialism and Communism: According to the communist theory, the overthrow of capitalism will not be immediately followed by the establishment of full-fledged communism. Society will have to pass through a transitional stage before the stage of communism is reached. This transitional stage is usually termed the stage of socialism. In other words, between the capitalist society and the communist society there will intervene the socialist society. The stage of socialism is called by Marx the first phase of communism, while the stage of communism is termed by him the higher phase of communism.

In the stage of socialism the state will continue to exist in the form of dictatorship of the proletariat and distribution of products will be based on the principle: "From each according to his ability, to each according to his work". When the stage of communism will be reached, the state will cease to exist and distribution of social income will be based on the principle: "From each according to his abilities, to each according to his needs." The communists believe that in the stage of socialism the productive forces of society will be developed to such an extent that ultimately it would be possible to allow everybody to take commodities freely according to his needs. Socialism will also develop the sense of social responsibility in the individual so greatly that it will become a habit with him to work according to his ability. Socialism, in short, will develop the conditions necessary for transition to communism.

The Soviet state is supposed to be at present in the stage of socialism. Article 1 of the Constitution of the Soviet Union states: "The Union of Soviet Socialist Republics is a socialist state of workers and peasants." And Article 12 of the Constitution declares: "The principle applied in the U.S.S.R. is that of Socialism: From each according to his ability, to each according to his work."

The Communist Movement and the Modern World: Communism appears to be the most powerful single movement in the modern world. The communist movement attained its first great victory in 1917, when the Bolshevik Party led by Lenin organised the great October Revolution which overthrew capitalism in Russia and brought into existence the first socialist state in history. Since then the Russian state, which later came to be known as the U.S.S.R., became the symbol of the hope and aspirations of the communists all over the world and a powerful source of their inspiration. The Soviet Communist Party, now in possession of state power and exercising control over the resources of a vast country, began to give both moral and material help

to the communist parties in other countries. The victory of the communists in Russia and the help they rendered to the communist movement outside the Soviet Union greatly strengthened the movement, speaking generally, all over the world. The Soviet Union also rapidly grew in strength and launched great development programmes which vastly increased the country's wealth and brought additional prestige to the communist movement.

The outbreak of World War II in 1939 brought to the door of the Soviet Union great opportunities to expand its sphere of influence in Europe. Immediately after the outbreak of the war, the Soviet Union occupied the territories of Latvia, Estonia and Lithuania and then incorporated them in its own territory. The end of the war found the Soviet troops in occupation of a large number of countries in eastern Europe. In most of these countries the Soviet Union helped the communist parties or elements to suppress all other political parties and groups and to set up communist regimes. The governments of all these countries are strictly controlled from Moscow. These countries, which may be called satillites of the Soviet Union, at present number seven. They are Poland, Rumania, Hungary, Eastern Germany, Czechoslovakia, Albania and Bulgaria.

In China the communists under the leadership of Mao Tse-tung had set up an independent regime in the province of Shensi in 1934. They intensified their struggle against the Chiang Kai-shek regime after World War II which had plunged China in political and economic chaos. They received considerable help from the Soviet Union in this struggle and succeeded in establishing their power over the entire mainland of China within a comparatively short period. On October 1, 1949, they proclaimed the establishment of the People's Republic of China. In New China all real power is concentrated in the hands of the communist leaders.

Thus communism which only fifty years ago was only an idea in the minds of a few thousand people is now in absolute control of state power over a vast region in the Eastern Hemisphere, extending from the Arctic ocean to the frontiers of India, Burma and Viet Nam, and from Bering Straits to central Germany. It is an area of between 13 to 14 million square miles—one-fourth of the total land surface of the globe excluding the Antarctic. And over 750,000,000 people, or one-third of the total population of the world, live in this area. In other words, communism today rules over a fourth of the land surface of the world and a third of mankind. "The extraordinary success of communism can only be compared to the Greco-Macedonian conquest of Western Asia in the fourth century B.C., to Rome's conquest of the Mediterranean in the second century B.C., to the Islamic expansion of the seventh century, to the empires conquered in a few years by Attila, Genghis Khan and Timur." The almost irresistible appeal which communism has for the persecuted and the poor is the chief source of its power and explains the rapidity of its expansion.

Criticism: Both the theory and practice of communism have been subjected to strong criticism by scholars, thinkers, social scientists, politicians and others all over the world.

The most fundamental objection to communism, they have pointed out, is that it is incompatible with freedom. Dictatorship and totalitarianism are the very antithesis of freedom and democracy. Communism sacrifice liberty to economic well-being. The Soviet experiment has shown how in trying to promote economic welfare of the masses, communism destroys the political and spiritual freedom of the individual. In the Soviet Union, all power is concentrated in the hands of the leaders of the ruling party, the Communist Party. All opposition elements have been suppressed. People have neither the freedom of speech nor freedom of political organisation. Criticism of the leadership is forbidden. Elections have been reduced to a farce, only

members and supporters of the Communist Party being allowed to stand as candidates. All aspects of life, political, economic, social and cultural, have been brought under state control and supervision. Through control over education, the authorities have tried to regiment even the minds of the people. And a similar process is already in operation in China. It has thus been conclusively proved that in a communist regime there is no place for freedom, the greatest of human goods. (Political conditions in the Soviet Union will be discussed later at some length in connection with the study of the Soviet Constitution.)

Modern research and experience have shown that most of the Marxian doctrines on which the communist theory is based are open to fatal criticisms. These doctrines are at best only partially true.

The economic interpretation of history, which is one of the basic principles of Marxism has been rejected by modern sociologists. Eminent sociologists like Giddings, Hobhouse, Lowie, Goldenweiser, Ginsberg, Sorokin and others hold that history has not been determined by any one single factor whether economic, political or racial. Historical phenomena are determined by a large number of factors such as the geographical, political, economic, religious, psychological, sexual and other factors. The economic factor, according to these social scientists, is but one of the factors behind social evolution and just as the economic aspect of life has its influence over other aspects of life, so also the economic factor itself is influenced by other factors. These sociologists, therefore, hold that the economic interpretation of history, one of the fundamental principles of communism, represents a hopelessly one-sided view of life and society. The only interpretation of history that can be called truly scientific is the pluralistic interpretation of history, for historical phenomena can never be fully explained except with reference to a plurality of factors. This becomes obvious when one finds that the same economic conditions

give rise to different kinds of social phenomena and persons living in the same economic circumstances develop different kinds of likes, dislikes, temperaments, views and propensities. Similarly, the same political and geographical conditions are seen to give rise to different kinds of economic and organisational phenomena; persons living in the same political conditions often develop wide divergences of views and belief.

The Marxian analysis of the laws of capitalist development has also been found to be largely incorrect. The prediction of the rich getting richer and the poor increasingly poorer has not come true. In most capitalist countries, the economic conditions of the working class have recorded progressive improvement and the economic inequalities are today certainly not greater than in the days of Marx. Another blunder of Marx was his idea that management and ownership of industry will always be concentrated in the same hands. Today we see that ordinary people hold shares in the biggest of industrial concerns and are the owners of these concerns. This wide diffusion of ownership Marx could not foresee.

The Marxian analysis of the capitalist society would suggest that the socialist revolution would come earlier in the highly industrialised countries than in the industrially backward ones. None of the industrially advanced countries like America, Britain and France have, however, experienced the revolution predicted by Marx. In Russia, the revolution occurred at a time when the economy of the country was backward and agrarian, and the industries were far from developed.

FASCISM

Rise of Fascism in Italy: Under the leadership of Benito Mussolini, the fascists seized power in Italy in October, 1922. The following factors were responsible for the rise of fascism in Italy. (1) The Italians, who had fought on the side of

the Allies during World War I, emerged from the war a frustrated nation. Their hope of getting a large share of the spoils of victory was not fulfilled. Their ambition to become a great power through acquisition of colonies was dashed to pieces. This made them bitter and highly susceptible to nationalistic and militaristic propaganda. Mussolini who raised the banner of militarist nationalism could, therefore, easily gather round him a large following. (2) War had seriously dislocated Italian economy. The Socialists who were the strongest political party in the country organised a large number of strikes and seized factories in the north. They could not, however, run the factories and had to surrender them to the capitalists soon afterwards. But the capitalist classes and other vested interests were alarmed at these developments. They were gripped by the fear of communism which had seized power in the Soviet Union. They began to subsidise Mussolini's hordes and utilise them to break the strikes. The financial assistance of the capitalists and other propertied classes helped Mussolini to strengthen and expand his organisation and ultimately to wrest power from the hands of the constituted authorities. The fear of communism on the part of the propertied classes thus played a major contributory role in the rise of fascism in Italy. (3) The war had left the country with a vast army of discontented elements—the disbanded soldiers who could find no jobs, ruined professionals and starving peasants. Mussolini rallied these people to his side by promising economic rehabilitation. Criminal elements, the thugs, also joined his organisation in large numbers. Fascism always needs these elements to do its dirtiest work. Thus by cunningly playing upon the feelings and sentiments of the people by nationalistic slogans and promise of better economic conditions, Mussolini succeeded within a remarkably short period in building up a powerful organisation. (4) The Socialists, though they had a large following, had been rendered weak by quarrels and divisions. They did not feel strong enough to seize the state power which was

in the hands of the old political groups of the middle and upper classes. The weakness of the Socialists gave the fascists an opportunity which they utilised fully. (5) Finally, Mussolini's intense love of power combined with his gifts for leadership must be regarded as one of the most important factors responsible for the growth and victory of fascism in Italy. Had there been no Mussolini, there would have been no fascist revolution in that country. Mussolini acted as a catalytic agent. His personality, leadership and will to power brought together elements of diverse character and belonging to different walks of life and welded them into an organisation strong enough to seize power and dominate the country for two decades. Mussolini was born in a poor household in 1883. He began his career as a socialist and became the editor of the Socialist organ, *Avanti,* in 1912. Owing to his differences with the party on the question of Italy's entrance into World War I, he gave up the editorship of *Avanti* and founded the journal *Popolo d'Italia* in December 1914 with official assistance. This led to his expulsion from the party. He was in the army from the end of 1915 to the beginning of 1917. After the war he began severely criticising the socialists for their timidity and lack of patriotism and tried to rally the working classes round his banner. In March, 1919, at Milan, he formed an organisation under the name *fascio di combattiments* (fighting band) with the help of a small number of followers. The organisation made little headway at first and in the November elections not a single fascist candidate was returned to Parliament. Being convinced that he could expect little response from the working classes, he now turned to the capitalists and other richer classes for help. Thus love of power transformed Mussolini the socialist into Mussolini the fascist. He now began to receive liberal financial assistance from the propertied classes, and the number of his followers increased at a rapid pace. In the middle of 1922 Mussolini demanded of the Facta Ministry that Parliament be dissolved, new elections held and the fascists be given five seats in

the Cabinet. The demand was, of course, turned down. In October 1922, Mussolini ordered his followers to march on Rome. Thousands of his followers converged on the capital from all directions till, towards the end of the month, the city and its suburbs teemed with them. The authorities were unnerved. Mussolini, who was at Milan, was summoned to the capital by the king and asked to form a ministry. He formed a ministry on the coalition basis. But the fascists gradually tightened their grip on all key positions of power. The other parties were gradually ousted from power and suppressed. In 1926, all parties other than the Fascists were officially abolished and a completely dictatorial regime headed by Mussolini was set up. The fascists held power in Italy till 1944. Mussolini was publicly executed by his opponents in 1945.

The Doctrines of Fascism: At the outset, fascism had no clearly defined ideology. Attempts were made later to give the movement a philosophical foundation. Whereas the communists have been armed with a clearly worked-out theory (Marxism) from the beginning and have always based their action on that theory, in the case of the fascists the theory followed action. The fascist philosophy has, however, never been worked out with thoroughness and clarity because it was always the policy of the fascists to be grandly vague. Their chief aim was power. And their doctrines were formulated in such a way as to justify assumption of dictatorial power by them. While much in the fascist theory was made deliberately vague, there are certain concepts about which there is no vagueness at all. The clearly discernible elements in the fascist philosophy may be summarised as follows: (1) Fascism, in the first place, rejects democracy. The common people, it maintains, can hardly understand the laws of the nation's being or visualise its destiny. Their mental horizon is extremely limited. Their hopes and fears relate to commonplace things. It is only a gifted minority who can look beyond the

immediate and the personal and can have a true idea of the collective destiny of the people. This minority, even a minority of one, has the right to govern the rest—if necessary against their will. They have the right to impose their will by force on the rest of the nation if the method of persuasion fails. Popular sovereignty, majority rule, individual equality, bills of rights and the like are outworn and enfeebling dogmas and have no place in a virile system of government. (2) A basic element in the fascist theory is glorification of the state. The state, according to fascism, has the right to control every aspect of human life. The state is a spiritual entity. It represents the larger interests of the nation and its function is to protect and further those interests. It has the right to sacrifice individuals and organisations in the national interest. The highest duty of the individual is to obey the state. The state, to the fascists, is an organic entity and individuals bear the same relation to the state that the parts of an organism bear to the organism as a whole. The individual must, in other words, completely subordinate his own interests to the interests of the state. And the state must assume total control over human affairs—"all in the state, nothing outside the state, nothing against the state". This concept of the state is known as the totalitarian concept. (3) Fascism glorifies force and looks upon it as a legitimate means of achieving political ends. (4) Fascism repudiates pacifism and believes that war plays an ennobling role in human affairs. "War alone", said Mussolini, "brings up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it". (5) Fascism rejects internationalism and frankly bases itself on nationalism. "We commence", said Mussolini, "with the concept of the nation. We are therefore antithetic to all internationalism." According to the fascists, a nation is an organic entity and has a personality apart from the personality of the individual citizens. (6) The doctrine of imperialism is another important element in the fascist philosophy.

"Imperialism", asserts Mussolini, "is the eternal and immutable law of life. It is, at bottom, nothing more than the need, the desire, and the will to expansion which every individual, every live and vital people, possesses." The Italian fascists tried to justify their aggression against Ethiopia by this doctrine. (7) Unlike communism or socialism, fascism aims at retention of private property in the economic sphere. It maintains, however, that, like everything else, private property too is subject to state control. The state has the right to regulate economic activities in the national interest. It must, whenever necessary, intervene in the economic sphere to direct economic efforts to channels which it may consider desirable. (8) Fascism, lastly, believes that the state must undertake welfare activities on a large scale. The fascist regime in Italy adopted and carried out an impressive social welfare programme.

Fascism is the very negation of democracy. It denies the spiritual dignity of the human individual. In a fascist regime, there is no freedom for anybody except the fascist leaders. A fascist society thus lacks the essential condition necessary for the proper growth of the individual. Since freedom is essential to progress, such a society is sure to be overtaken by stagnation and decay in a few generations.

The Corporative State: The Italian fascists developed the idea of the corporative state and tried to translate it into practice. The corporative state, as envisaged by the fascists, differs from the political state in being grounded mainly on economic relationships. The scheme of the corporative state in Italy was based on certain economic concepts developed by the fascists. These concepts are: (1) The employers and employees constitute two complementary elements in the life of the state, both performing certain essential functions. The classes are not to be abolished, as the communists aim at doing, but should be perpetuated and stabilised. (2) No class should be favoured at the

expense of the other. Under the ultimate guardianship of the state, the employers and the workers must co-operate in running the industries. They must understand that there is no real disharmony between their true interests. (3) Private property, though subject to ultimate control of the state, is the fundamental basis of the economic life. (4) The Italian economic classes constituted, according to the fascists, "a complete and self-contained group, with no community of interest with classes, however similar, beyond the national frontiers."

The programme of the fascists, when they came to power, contemplated replacement of Socialist—dominated trade unions by Fascist-controlled syndicates. The syndicates were to be grouped into federations and confederations. The employers were to be grouped in similar syndicates, federations and confederations. And at the top there were to be "corporations" including the representatives of both workers and employers. The realisation of the plan took time. A law entitled "The Legal Discipline of Collective Labour Relations", which was passed in 1926, outlined the system. A Labour charter of 1927 set forth the principles which were to govern the relations of workers and employers. A Ministry of Corporations with Mussolini at its head was established in 1926 to carry out the scheme. By the end of 1938, the scheme of the corporative state was almost fully implemented.

At the bottom of this corporative structure were syndicates of workers and employers. Each syndicate was an association of workers or of employers in a given branch of industry and in a particular area. Each syndicate, it must be clear, was composed either wholly of workers or wholly of employers. The syndicates were grouped into national federations and the federations were organised into nine confederations—'four representing workers in industry, agriculture, commerce, and credit and insurance, four representing employers in these same fields and a ninth

representing professional men and artists'. It must be clearly understood that up to the point of confederations the organisations of employers and employees ran parallel and were entirely separate. The two were finally brought together in "corporations." Each corporation was composed of equal numbers of representatives of employer and employee federations. Under the Law of Corporations passed in 1934, 22 such corporations were created. The corporations were finally linked up in a National Council of Corporations, composed of representatives of the corporations. In 1938 was created a new body known as the Fascist and Corporative Chamber which replaced the old Chamber of Deputies. The Fascist and Corporative Chamber thus became the new Lower House of Parliament. This Chamber had no fixed number of members. And all members of this body served *ex officiis*; all of them owed their position to appointment by Mussolini to some post or other. It was composed of the following categories of members: *Il Duce* (Mussolini) himself, members of the Fascist Grand Council, (the highest executive organ), the members of the party National Council and the members of the National Corporative Council referred to above. Thus the new Lower House of Parliament was a wholly appointive body, each member owing his position to appointment by Mussolini to some office, or other. Creation of this new body meant complete abolition of parliamentary elections.

Whatever the theory, the corporative state was nothing but a machinery designed to perpetuate and strengthen fascist dictatorship. As for the claim regarding equal treatment towards all classes, it was sheer bunkum. The employers, although subject to strict state control, were always favoured by the fascist leaders. Subject to ultimate control of the state, it is the employers who ran the industries, the workers' part being only to obey and carry out orders. The workers were completely regimented in

Facist-controlled syndicates and had no power to act independently. All well-paid and influential jobs were held by the Fascists who monopolised the entire state power. The theory of the corporative state was little more than a cover for fascist ambitions.

Nazism: Hitler's 'National Socialism', commonly known as Nazism, is also a form of fascism. The German Nazis borrowed much from the theory and practice of Italian fascists. Like Italian fascism, Nazism rejects democracy and believes in dictatorship by an intelligent minority. It is also a totalitarian doctrine. The Nazis forcibly suppressed all opposition elements and built up a dictatorial regime in Germany just as the fascists did in Italy. In fact, the Nazis showed far greater efficiency in liquidating their opponents and regimenting the life and mind of the people than their Italian counterparts. The chief difference between Nazism and Italian fascism lay in the fanatical belief of the Nazis in the superiority of the Germans over other peoples. This racial superiority, the Nazis held, entitled them to subject other peoples to German domination and use them as means to their own ends. The Nordic race, according to them, had a mission in the world and the Germans must not shrink from using force and violence to carry out that mission. Another important element in Nazism is the belief that it is the Fuhrer, the Supreme Leader, who alone is capable of guiding the destiny of the nation. The Fuhrer alone understands the eternal laws of the people's life. It is only by obeying the Fuhrer, therefore, that the people can hope to advance their real interests. Such a view, it should be clear, completely rules out democracy.

How the irrational beliefs of the German Fuhrer, and his followers brought ruin and untold suffering on the German people is now a matter of history.

TOTALITARIANISM

The essence of totalitarianism is the belief that nothing in the lives of the citizens should be outside the control of

the state. All aspects of human affairs, totalitarianism insists, are within the jurisdiction of the state. The state is omnicompetent. It is an absolute beside which all else is relative. The state, in short, is an end in itself. The individuals, like cells in an organism, are only to discharge functions assigned to them by the state. They must completely subordinate themselves to the state because it is only in and through the state that they can attain their best selves. Totalitarianism may be summed up in the following words: "all in the state, nothing outside the state, nothing against the state."

Under a totalitarian system, the individual can have no *private* rights, that is, rights lying outside the state's jurisdiction. Of course, the totalitarian state may let alone certain spheres of life but that does not mean that it has no right to regulate those spheres. It has the right, it is claimed, to intervene in each and all of them whenever it may consider such intervention desirable.

Hegel, the German philosopher, who deified the state may be regarded as the father of the totalitarian concept of the state. The state, according to Hegel, is man in his fullness and perfection of development. It is 'perfected rationality'; it is the march of God in the world. It is infallible and omnipotent. Man can attain his liberty and morality only in the state. The logical corollary to this view is that the individual must completely subordinate himself to the state and that no aspect of life can be outside the state's jurisdiction.

Both communism and fascism are totalitarian. In fascist Italy and Nazi Germany, the state brought under its control all aspects of the life of the people, political, social, cultural and economic. In the Soviet Union the process has gone much further. The state in the Soviet Union not only controls production and distribution, it also exercises stringent control over education, the Press and the cultural life of the people. In the schools, colleges and universities,

nothing is allowed to be taught that is considered harmful by the Soviet leaders. Even books have been purged to eliminate things that are not to the liking of the party leaders. History has been rewritten according to the orders of the Communist leadership so as to present a point of view favourable to it. The Press is owned and controlled by the state and nothing is allowed to appear in it that may be considered as going against the Party line. Literature that does not conform strictly to the views of the Party and its ideology are frowned upon. Such literature is promptly suppressed and the authors, unless they make amends, are punished and even sometimes physically liquidated. In short, education and the Press as well as the radio have been turned by the Soviet State into instruments of indoctrination and thought control. No literature is allowed to be imported from outside which is likely to contain criticism of the Party line or the leaders. Broadcasts from non-communist countries are not allowed to be received or heard. Even the theatre and the cinema are strictly controlled so that they may not present anything considered harmful to the regime. There is an elaborate espionage system to ensure that all potential opposition is nipped in the bud and actual opposition suppressed. Opposition elements are dealt with by the regime with a ruthlessness unparalleled in the annals of mankind. Individuals are taught that their highest duty is to obey the state. Obedience to the regime is to be put before friendship and family affection. There are instances of friends reporting to the authorities against friends and brothers against brothers. Real friendship is thus something rare in the Soviet Union, for usually a person dares not open his heart even to those with whom he is on most intimate terms. The Soviet Union is thus a monolithic state controlled from top to bottom by a party that has suppressed all opposition and completely monopolised power. It is a perfect embodiment of the doctrine of totalitarianism.

All modern totalitarian states have the following features in common: (1) a one-party regime, (2) planned economy,

(3) ruthless suppression of opposition, (4) strict state control over the Press, radio, educational institutions, literature, art, scientific research, the cinema, the theatre and other media of public entertainment.

FASCISM AND COMMUNISM COMPARED

Fascism and communism are believed by many to be diametrically opposed to each other. In reality, however, fascism and communism bear a close likeness to each other. The points of similarity between the two are the following: (1) Both fascism and communism reject democracy; (2) both subscribe to the principle of one-party state and dictatorship; (3) both have the same technique of revolution, namely, direct action by a highly centralised party with a dictatorial leadership; (4) both are totalitarian in character; (5) both accept the principle of a planned and state-controlled economy.

Fascism and communism, however, differ from each other in some fundamental respects. The chief points of difference between the two are: (1) While fascism is militantly nationalistic, communism is, at least in theory, international. Communism aims at an international revolution. One of the most important slogans of Communism is: "Workers of all countries, unite." (2) Communism believes in class struggle as one of the cardinal facts of social life and fosters this struggle as an instrument of revolution. Fascism denies the necessity of class struggle and maintains that there is no ultimate opposition between the interests of the bourgeoisie and those of the proletariat. The two classes are complementary to each other—they are partners, not rivals. They must fully co-operate with each other, under the guardianship of the state. While elimination of all classes is the ultimate aim of the communists, fascists aim at perpetuation of the classes. (3) Fascism believes that the state is to be permanently dominated by a small elite minority. The communists, whose party organisation is, at

least at the earlier stages, of the same pattern as that of the fascists, avow that the base of the party can be gradually broadened till it includes everyone. (4) While both fascist and communist states are equally authoritarian, the fascist theory of the state differs sharply from the communist conception. The fascists hold that the state is a spiritual entity, having a personality of its own and embodies certain principles of eternal validity. The communists, on the other hand, maintain that the state is the product of certain economic factors and will cease to exist when these factors are eliminated from social life. After the communist revolution, the state, according to them, will begin to wither and when the communist society reaches the higher stage of development it would completely go out of existence. (5) Communism is based on materialism. Members of the communist party are required to be atheists. The fascists do not attach much importance to the religious views of the party members. The Communists encourage anti-religious propaganda by party members. Fascism usually discourages such propaganda but does not tolerate hostility to the regime by any religious organisation. (6) While Communism stresses the essential equality of all human beings, regardless of race or sex, and stands for granting them all the same political and economic rights, fascism is found sometimes to exclude women from the political life and subordinate them to men. Sometimes, as in Nazi Germany, it is found to profess belief in the superiority of a particular race over others.

THE CONSTITUTION OF INDIA

CHAPTER I

BETWEEN THE TWO WARS AND AFTER

War always quickens social and historical processes. In India, the awakening of mass consciousness and the national struggle for freedom from British rule were immensely accelerated by the two World Wars. The end of World War I saw the first mass upheaval against the British rule; the end of World War II wrote its epitaph. The period spanning these two sanguinary landmarks in human history is one of tremendous significance in the story of our race. In India, this period between the two Wars has been a most exciting chapter in our history. It saw the rise of those movements and the release of those forces which ultimately broke the fetters of the country's slavery and made possible the framing of a Constitution by the people of the land. A brief account of the important events during this period and the years immediately following it will be found helpful to an understanding of these forces and movements and will thus provide a fitting background to the study of the Constitution of free India.

During World War I, which began in 1914, India loyally helped Britain in her war efforts. The Indian troops fought on the side of the British in various fronts in France, Flanders, Palestine, Egypt and Mesopotamia.

India also took on her shoulders a big portion of the war-debt. Indian people, however, hoped that Britain would not forget these services and would grant a substantial measure of Home Rule to the people of the country after the end of the War. There began a Home Rule movement in the country mainly under the auspices of the Indian National Congress, and the British Government felt the necessity of making a declaration giving assurance to the people of India

of their desire to introduce gradually responsible Government in the country.

In 1917, on August 20, in his famous declaration, Montagu declared that the policy of His Majesty's Government was that of increasing association of Indians in every branch of administration with a view to the progressive realisation of Responsible Government in India as an integral part of British Empire.

The Calcutta Congress in 1917 recorded its satisfaction over the pronouncement of the Secretary of State. The Congress, however, asked for a statutory provision, fixing a time-limit for the full realisation of Responsible Government and recommended that the Congress-League scheme of reforms should be introduced as a first step.

Gandhiji & Non-co-operation—Mahatma Gandhi arrived in India from South Africa early in 1915. He attended the Lucknow Session of the Congress in 1916. He did not figure much in Indian politics until the end of the war.

When the war ended and the armistice was signed, the Congress, referring to the pronouncements of President Wilson and Lloyd George and others, demanded that the principle of self-determination be applied to India. But the British Government replied with the Rowlatt Bill. The Bill made drastic provisions for imprisonment without trial and summary procedures for trial even though the war emergency was at an end. The Bill became Act in March 1919. And on March 6, 1919, at Gandhiji's call, a hartal was held throughout India. The hartal was a unique success, the masses having responded to Gandhiji's call with unbelievable enthusiasm. Thereafter came the terrible brutality at Jallianwala Bagh in Amritsar. On April 13, a large crowd gathered at the Bagh, surrounded on all sides by high walls, for a public meeting. General Dyer who entered the Bagh with a large number of troops ordered them to open fire on the unarmed crowd without giving any warning. The

people were trapped. On General Dyer's own admission, 1600 rounds were fired and according to Government report, 379 were killed and 1200 injured. The ghastly tragedy marked the beginning of a new chapter in the Congress struggle for freedom.

The Amritsar session of the Congress in December, 1919, denounced the Montagu-Chelmsford Reforms Scheme, announced in June 1918, as "inadequate, unsatisfactory and disappointing." At the special session at Calcutta in September, 1920, Gandhiji's formula for Non-co-operation was accepted. It was earlier accepted by the Khilafat Committee which had written to the Viceroy in June, 1920, that they would start Non-co-operation, if the wrongs done to the Khalifa of Turkey were not redressed. Gandhiji had espoused the Khilafat cause whole-heartedly. So the Non-co-operation resolution said that for the redress of the Punjab and Khilafat wrongs and the establishment of Swaraj the Congress must accept the Non-co-operation formula. At the annual session at Nagpur in the month of December, the Non-co-operation programme received the final and formal approval of the Congress. Gandhiji also succeeded in changing the creed of the Congress at this session. The creed was no longer "self-government within the Empire" but "the attainment of Swaraj by the people of India by all legitimate and peaceful means." It was at this session also that 'four-anna' membership of the Congress was first introduced. Mahatmaji promised Swaraj within a year. He declared, "If they (the British people) do not want to do justice, it will be the bounden duty of every Indian to destroy the Empire."

The movement plunged the country in delirious enthusiasm. The masses were roused as never before. The struggle for the liberation of India was for the first time broad-based on popular support and participation. Students left schools and colleges, lawyers gave up practice and thousands of peasants joined the movement. Hindus and

Muslims made common cause. British goods were boycotted and huge bonfires made of them in Bombay.

A hartal was observed when the Prince of Wales landed in Bombay in November. At the annual session held in Ahmedabad, resolutions were passed in which the Congress declared "the fixed determination of the Congress to continue the campaign of non-violent Non-co-operation." Gandhiji was appointed at the session "as the sole executive authority" of the Congress.

By the end of December, 1921, the number of political prisoners in jails rose to 20,000 and later it increased to 30,000.

In February, 1922, Gandhiji was contemplating to start mass Civil Disobedience and sent an ultimatum to the Viceroy. On February 4, occurred the Chouri Choura incident in U.P. in which 22 policemen were murdered by an infuriated mob. Gandhiji was upset by the news. Civil Disobedience was suspended by the Congress Working Committee which met at Bardoli on February 12. Gandhiji was arrested on March 10, 1922 and sentenced to six year's imprisonment, but he was released on February 5, 1924, after an operation for appendicitis.

The Swaraj Party—Reforms had been inaugurated in 1921. In 1922, at the Gaya Congress, an unsuccessful attempt was made to allow Congress members to enter the legislature. On January 1, 1923, however, the formation of the Swaraj Party was announced by Deshabandhu C. R. Das, Pandit Motilal Nehru, Hakim Ajmal Khan and others. Throughout 1923, the influence of the Swaraj Party increased. No-changers began to lose ground. The Swaraj Party won a large number of seats in the elections. In September, 1923, at a special session of the Congress at Delhi, Maulana Mohammad Ali announced that he had received a telepathic message from Gandhiji approving the modification of the triple boycott which included the boycott of Councils. The

annual session at Coconada, however, formally reaffirmed the triple boycott, including the boycott of the Councils. The Swaraj Party took its seats in the Assembly a few days later. Towards the end of 1924, a pact was made between Gandhiji and the Swarajists, which recommended the formal suspension of the non-co-operation programme and authorised the Swaraj Party to work in the legislatures on behalf of the Congress and as an integral part of the Congress. The annual Congress session at Belgaum formally adopted the pact. On May 1, 1925, Gandhiji in an important speech at Calcutta stressed the necessity of concentrating on a constructive programme, the three main items of the programme being, (1) Hindu-Muslim unity, (2) removal of untouchability and (3) the use of the spinning wheel. Towards the end of July, 1925, a month after Deshabandhu's death, at a meeting of the Swarajists and the Working Committee at Calcutta, Gandhiji placed the entire Congress machinery at the disposal of the Swarajist leader, Pandit Motilal Nehru. Thereafter he withdrew from active politics.

Simon Commission & After—The Simon Commission was announced on November 8, 1927. The Commission was to report, **inter alia**, on the extent to which it was desirable to introduce responsible government in India. The Congress boycotted the "all-white" Commission. Mr. Jinnah and some of his followers also declared for boycott of the Commission. The Commission arrived in India on February 2, 1928.

An All-Parties Conference met in February, 1928, and appointed the Nehru Committee to draft a report embodying the principles of a constitution for India. The report of the Committee, called the "Nehru Report", was India's answer to Lord Birkenhead's challenge to Indian politicians to produce a constitution which could gain the assent of all the interests in the country. The report was based on the principle of Dominion Status. At the Calcutta Congress in 1928, a resolution which rejected Dominion Status and claimed complete independence was defeated. The session

is also important because Gandhiji who returned to politics in that year participated in it. It was, however, resolved that the Congress would not be bound by the constitution if it was not accepted on or before December 31, 1929, that is, if the British Government did not concede Dominion Status by that date.

On October 31, 1929, an Extraordinary Gazette announced the recognition of Dominion Status as the goal of Indian political development. It was also announced that after the report of the Simon Commission had been published, a Round Table Conference would be held.

The Lahore Congress in 1929 under the presidentship of Jawaharlal Nehru rejected the Round Table Conference, adopted the independence resolution, and urged the Congressmen to devote their exclusive attention to the attainment of complete independence. The All-India Congress Committee was also authorised to launch upon a programme of civil disobedience, whenever it deemed fit.

Civil Disobedience—On March 12, 1930, Gandhiji started his famous Dandi March to break the salt laws. India was thrown once more into turmoil. A programme was laid down by Gandhiji and instructions were issued for the preparation of contraband salt, for picketing liquor shops and foreign cloth shops, spinning and burning of foreign cloths, boycott of schools and colleges and resignation of Government service.

The masses again responded with wild enthusiasm. Terrible police repression let loose on them could not cow them down. A number of areas in the country went beyond the reach of the Government and had to be recaptured. Martial law and ordinances became the order of the day. At several places, police opened fire on unarmed crowds. The movement grew at a terrible pace. Gandhiji was arrested on May 5. In June, the Congress was declared illegal.

The first R.T.C. conference was inaugurated in London on November 12, 1930. The Congress was unrepresented in it. The conference ended on January 19, 1931.

The bureaucracy was feeling the necessity of a compromise and Gandhiji and the members of the Working Committee were released. Gandhiji was authorised by the Committee to seek interviews with the Viceroy and, after a long series of private interviews, the famous Gandhi-Irwin Pact was signed. The main terms of the Pact were effective discontinuance of the Civil Disobedience Movement, the general release of political prisoners and the participation of the Congress in the Round Table Conference.

At the end of August, 1931, Gandhiji left for England to attend the Round Table Conference and returned in December. On his return, he was compelled to revive Civil Disobedience on account of the action taken by the Government in the meantime in the U.P., the Frontier Province and Bengal. He was again arrested in January, 1932.

The Communal Award was announced in August, 1932. This was followed by Gandhiji's fast and the "Poona Pact".

The Civil Disobedience Movement was finally suspended on April 7, 1934. On June 6, the Government of India withdrew the ban on Congress organisations.

The Government of India Act was passed in 1935. The Congress at its Faizpur session in December, 1936, affirmed its determination to combat and end the new constitution. In August, 1936, the Congress had already issued an election manifesto in which it stated that the purpose of sending Congressmen to the Legislatures was ending the constitution.

The elections to the Provincial Legislatures were completed by the end of February, 1937. The Congress at first formed ministry in six provinces and later in seven provinces. Netaji Subhas Chandra Bose was elected President of the Congress in 1938 and also in 1939, but after his second

election he resigned owing to his differences with the Working Committee.

It may be mentioned that the Act of 1935 had two parts, one dealing with an All-India Federation and the other with Provincial Autonomy. It was only the latter part which was brought into force in 1937. For various reasons the enforcing of the Federal part had to be postponed till it was suspended on the out-break of World War II.

The World War II broke out in September, 1939. India was immediately declared a belligerent country by the British Government without consulting the opinion of her people. The Congress Working Committee expressed their strong resentment at this. They called upon the British Government to declare their war aims unequivocally. They asked whether the war aims of that Government included "the treatment of India as a free nation whose policy will be guided in accordance with the wishes of her people". They firmly declared "the Committee cannot associate themselves or offer any co-operation in a war which is conducted on imperialistic lines and which is meant to consolidate Imperialism in India and elsewhere."

The British Government, however, gave no such assurances as were asked for by the Congress. They made only some vague promises to the effect that at the end of the war they would be willing to consult the various interests in India to make such modifications in the Act of 1935 as might seem desirable. The Congress, thereafter, called upon the ministries in the provinces to resign. There were Congress Governments in eight provinces and all of them resigned. Only the three non-Congress Provincial Governments *viz.*, those in Sind, Punjab and Bengal remained in office.

The country began to seethe with discontent. But though some political leaders like Netaji Subhas Bose urged the Congress and Mahatma Gandhi to start a mass struggle

taking advantage of the situation brought about by Britain's entanglement in the War, no such movement was started. Gandhiji started an Individual Civil Disobedience movement. The participants in the movement would openly address people preaching non-co-operation with the Government's war effort and thereby court arrest.

In December 1941, Japan joined the war against America and Britain. The Japanese forces advanced swiftly all over the South-East Asian countries and the tide of their conquest rolled at a tremendous speed towards Burma and India. Singapore fell in February, 1942, and the British Empire in India was gravely threatened. At this time, the British Government felt the necessity of making a fresh endeavour to win the co-operation of the Indian people in the War against the Axis Powers.

The Cripps Mission—The Cripps Mission was announced on March 11, 1942. Sir Stafford Cripps arrived in New Delhi on March 23 with some proposals from the British Government to remove the Indo-British stalemate. His proposals had two parts, one dealing with the long term question of Indian freedom and the other with the short term one of an interim Government at the Centre. As regards the long term plan, it was proposed to set up a Constituent Assembly at the end of the War. The members of the Assembly were to be elected by the entire membership of the Lower Houses of the Provincial Legislatures acting as a single electoral college. The new body, it was laid down in the proposals, would be in number about 1/10 of the number of the electoral college. The States were to send representatives to this body in the same proportion. His Majesty's Government undertook to accept and implement the Constitution framed by the Constituent Assembly subject to the following conditions :—

Any province which was not prepared to accept the constitution was to be free to retain its constitutional position existing at that time. With such non-acceding Provinces the

H. M. G. could enter into separate constitutional arrangements. A treaty would be signed between the H. M. G. and the constitution-making body, which would cover all necessary matters arising out of the complete transfer of power, such as matters relating to the minorities. It was laid down that there would be no restriction on the power of the Indian Union to decide its future relationship to other members of the British Commonwealth. Appropriate revision of the treaties with the Indian States would be made in the new situation.

As for the short term arrangement, there was to be an interim Government which would organise the military, moral and material resources of India to help the war effort. The responsibility for the defence of India and its control would of course lie with the British Government.

Prolonged negotiations took place between Sir Stafford and the leaders of the Indian National Congress and also of the Muslim League on these proposals. But the talks ended in complete failure. The main objections of the Congress to these proposals were three-fold. As the resolution adopted by the Congress Working Committee on April 11, 1942, stated, the Committee felt that in the situation the country was in at that time, the immediate counted more than the ultimate. While the British Government recognised the right of self-determination for the people of India, the question of freedom was relegated to an uncertain future. And as regards the interim arrangement which was more important than the promise of ultimate freedom, the interim Government that was to be set up would be given no real power. The Committee felt that defence covered in wartime every aspect of life and to take away defence from the sphere of responsibility would mean total denial of power. Secondly, the Committee said, by recognising beforehand the principle of non-accession for a province, the proposals had gone against the ideal of a United India and were likely to encourage separatist tendencies. Thirdly, the future

constitution-making body would not be a homogenous body but would contain a large non-representative element *viz.*, the representatives of the States. These representatives would not be elected by the people. They would be nominated by the rulers. This meant, the Committee argued, "the complete ignoring of the ninety millions of the people of the Indian States and their treatment as commodities at the disposal of their rulers." It also became evident in course of the negotiations that the interim Government would not function as a cabinet but would be only a slightly modified version of the Governor-General's Executive Council. All these reasons impelled the Congress to reject the proposals.

The Muslim League rejected the Cripps Proposals mainly on the ground that though they envisaged the possibility of more than one Union in India they did not clearly concede the principle of the division of India on communal lines and that in the Constituent Assembly, as provided for in the proposals, the Muslims would be a minority of 25 per cent. As the Constituent Assembly would take decisions by a simple majority vote, the League felt, that would result in the Muslims being at the mercy of the Hindus.

The Cripps proposals were not open to modification. The talks, therefore, failed and the deadlock continued.

It may be mentioned that, during the thirties, there had developed in the country an aggressive Muslim politics based on the two-nation theory. The Muslim League, under the leadership of Mr. M. A. Jinnah, had become the champion of this aggressive communalism. In 1940, the League passed the famous Pakistan resolution in its Lahore session. The resolution said that no constitutional scheme would be workable in the country or acceptable to Muslims unless the Muslim majority areas were constituted into independent States. It is this demand for division of India and the creation of Pakistan which became in subsequent years the sole basis of League politics.

The August Revolution—The months following the failure of the Cripps proposals were marked by great anxiety and discontent in the country. On August 8, 1942, the All India Congress Committee at its Bombay session passed the momentous resolution which stressed the need for immediate ending of British rule in the country and sanctioned "the starting of a mass struggle on non-violent lines, on the widest possible scale." The Government reacted by immediately arresting all the members of the Congress Working Committee and also Mahatma Gandhi. A spontaneous revolutionary up-surge of the people swept the country from one end to the other and the Government set in motion its entire repressive machinery to put down the rebellion. Thousands were mercilessly shot down and wholesale arrests and detention without trial led to the jails being packed to over-flowing. Practically all political groups and parties in India participated in the mass up-surge. There was, however, one notable exception. The Communist Party of India which always puts the interests of the Soviet Union before the national interests and takes its directives from the party dictators in that country did not join the struggle but helped the Government in whatever way it could in the prosecution of the war.

The period following the August Revolution was, from the point of view of national movement, one of despair and inactivity inside the country. But as the leaders were rotting in jail and the people remained plunged in despondency, outside the country a glorious chapter of our struggle was being written in the same period by the Indian National Army under the leadership of Netaji Subhas Chandra Bose. Netaji who had disappeared from the country in 1941 proclaimed the formation of the Azad Hind Government on October 21, 1943 and led an army, the I.N.A., against the British forces in Burma. The I.N.A. was raised from the Indians in South-East Asia and the Indian war prisoners captured by the Japanese. Netaji's aim was to enter India

with the Liberation Army and to create a revolution against the British rule. The I.N.A. advanced a long way towards India through Burma and at one place even reached the soil of India but eventually, on account of lack of equipment, it was forced to withdraw and surrender.

Mahatma Gandhi was released in the middle of 1944. In September, 1944, negotiations took place between Mahatma Gandhi and Mr. Jinnah for a solution of the communal question and to explore the possibilities of co-operation between the League and the Congress in solving the political deadlock in India. But these negotiations which were based on a formula evolved by C. R. in March, 1944, bore no fruit. Mr. Jinnah insisted on the acceptance of the two-nation theory by Mahatma Gandhi and also the acceptance of the Pakistan demand. Gandhiji was unable to accept the former and, as regards the division of India, he took the stand that the division should be made after the wishes of all the inhabitants of the areas concerned had been ascertained through a plebiscite. Mr. Jinnah would not agree to this.

The Wavell Plan—On June 14, 1945, Mr. Leopold Amery, the Secretary of State for India, made a statement in the House of Commons embodying some proposals for breaking the deadlock in India. The Statement, after expressing the British Government's anxiety to help the Indians "in the working out of a new Constitutional settlement", went on to say that the offer of 1942 (the Cripps proposals) still stood. The hope was expressed that the political leaders would come to an agreement among themselves as to the procedure for determining the permanent future form of Government. The H. M. G. were desirous to make possible a step forward if the Indian parties were "prepared to agree to their suggestions and to co-operate in the successful conclusion of the war against Japan as well as the reconstruction in India which must follow the final victory." "It is proposed", the Statement said, "that the Executive Council should be re-constituted and that the Viceroy should in future make his

selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the Centre and in the provinces, in proportions which would give a balanced representation of the main communities including equal proportions of Moslems and Caste Hindus."

To hold negotiations for the proposed expansion of the Executive Council, invitations were sent by Lord Wavell to leaders at the Centre and in the Provinces including Mahatma Gandhi and Mr. Jinnah. Negotiations took place for nearly a month but they ultimately broke down owing to disagreement between the main parties regarding the composition of the Council. Explaining the reasons for the League rejection of the Viceroy's proposal regarding the composition of the Council, Mr. Jinnah said that acceptance of the proposal would have reduced the League to a minority of one-third in that body. He also complained that the Viceroy wanted to include non-League Muslims in the Council who were to be chosen by Congress and the Punjab Muslims (under the leadership of the then Chief Minister of the Punjab, Malik Khizir Hyat Khan). When the talks finally proved abortive, the Congress President asked the Viceroy to take a step forward in spite of the League intransigence. Lord Wavell, however, declined to do so.

The war with Japan officially ended at midnight on August 14, 1945. The General Elections in the United Kingdom which were held a few months later returned a Labour Government to power with Mr. Clement Attlee as the Prime Minister. The Labour Government seemed from the very beginning to be determined to transfer power to Indian hands.

The new elections to the Centre and the Provincial legislatures in India were held at the end of 1945 and early in 1946.

The Cabinet Mission—On February 19, 1946, Lord Pethick Lawrence, the new Secretary of State for India

announced in the House of Lords the decision of the British Government to send out a special Mission of Cabinet Ministers to help Lord Wavell in his attempts to resolve the constitutional dead-lock in India. The Mission consisting of Lord Pethick Lawrence himself, Sir Stafford Cripps, the President of the Board of Trade and Mr. A. V. Alexander, the First Lord of the Admiralty, reached New Delhi on March 24.

The three Ministers along with Lord Wavell immediately began exploratory talks with Indian leaders. The two major parties, however, failed to come to any agreement on the fundamental constitutional issues and the Cabinet Delegation lost all hopes of bringing about such agreement by their efforts. The Delegation then put forward their own formula for solving the vexed problem. This formula was embodied in a joint statement issued by the Viceroy and the Cabinet Mission on May 16, 1946.

The Statement of May 16, after pointing out the impracticability of the Pakistan scheme, made the following suggestions for the solution of the Indian problem.

" (1) There should be a Union of India, embracing both British India and the States, which should deal with the following subjects: Foreign affairs, Defence and Communications; and should have the powers necessary to raise the finances required for the above subjects.

" (2) The Union should have an Executive and a Legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

" (3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.

" (4) The States shall retain all subjects and powers other than those ceded to the Union.

" (5) Provinces should be free to form Groups with executives and legislatures, and each Group could determine the Provincial subjects to be taken in common.

" (6) The constitution of the Union and of the Groups should contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the constitution after an initial period of 10 years and at 10-yearly intervals thereafter.

As regards the constitution-making machinery, the statement suggested that the Legislative Assemblies in provinces would elect the members of that body on the basis of one representative for one million of the population, the Muslim and Sikh legislators electing the quota of their communities determined on this population basis. Others will elect the representatives for the rest of the population. The election of the representatives of the States was left to be settled by consultation. It was then laid down by the statement that the representatives thus chosen would divide themselves into three sections A. B and C. The section A would comprise the representatives of Madras, Bombay, United Provinces, Bihar, Central Provinces and Orissa ; Section B would consist of the Punjab, N. W. Frontier Province and Sind ; Section C would comprise Bengal and Assam. "These Sections shall proceed to settle the Provincial Constitutions for the Provinces included in each Section, and shall also decide whether any Group Constitution shall be set up for these Provinces and, if so, with what provincial subjects the Group should deal." The representatives of the Sections and the Indian States were then to reassemble and settle the Union Constitution.

Table of Representation

Section A

Province	*General*	*Muslim*	*Total*
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Province	16	1	17
Orissa	9	0	9
Total ..	167	20	187

Section B

Province	*General*	*Muslim*	*Sikh*	*Total*
Punjab	8	16	4	28
N. W. Frontier Province ..	0	3	0	3
Sind	1	3	0	4
Total ..	9	22	4	35

Section C

Province	*General*	*Muslim*	*Total*
Bengal	27	33	60
Assam	7	3	10
Total ..	34	36	70

Provinces were given power to opt out of the Groups by a decision of their new legislatures after the general election under the new constitution.

Apart from this scheme, a plan for an interim Government was also envisaged in the statement.

In a memorandum on States' Treaties and Paramountcy issued on May 12, the Cabinet Mission had declared that the British Government could not and would not in any circumstances transfer Paramountcy to an Indian Government.

The memorandum made it clear, however, that when a new self-governing Government or Governments came into being in British India it would no longer be possible for the British Government to carry out the obligations of Paramountcy. In such a situation all the rights surrendered by the States to the Paramount Power would return to the States. The memorandum concluded thus: "Political arrangements between the States on the one side and the British Crown and the British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the succession Government or Governments in British India, or failing this, entering into particular political arrangements with it or them."

The Muslim League Council adopted a resolution on June 6, which, after strongly criticising the scheme of May 16 for non-acceptance of the principle of Pakistan, accepted the scheme in its entirety. The Congress Working Committee, in a resolution adopted on June 26, accepted the scheme partially. The Committee accepted only the part dealing with the Constitution-making body. They, however, placed their own interpretations on some parts of the statement of May 16, particularly on the clauses relating to Grouping of the provinces. The Committee held that grouping could not be compulsory as it went against the fundamental principle of provincial autonomy. The Committee rejected the interim Government scheme, because the clarifications given to them regarding the matter were entirely unacceptable to them.

The Sikhs, it may be mentioned, rejected the scheme in its entirety as they felt that the grouping of the provinces as envisaged in the scheme would be seriously detrimental to their interests.

The All India Congress Committee, meeting in Bombay early in July, ratified the Working Committee's resolution of June 26.

Meanwhile, the Viceroy issued instructions to the Governors to take the necessary steps for the election of the members of the Constitution-making body. The elections took place in July.

On the eve of the Cabinet Mission's departure from India, in a joint statement, the Mission and the Viceroy expressed their gladness that the constitution-making could now proceed with the consent of the major parties. They, however, regretted that it had not been so far possible to form an Interim Coalition Government. They further stated that, after the elections to the Constituent Assembly had taken place, the negotiations would be renewed for the formation of such a Government.

Mr. Jinnah felt insulted at the abandonment—although temporary—of the Interim Government plan and charged Lord Wavell with having gone back on his word. On July 29, the Council of the Muslim League passed a resolution withdrawing the League acceptance of the Cabinet Mission Plan. They also passed the famous Direct Action resolution. This resolution charged the Congress with intransigence and the British Government with breach of faith with Muslims and stated that the time had come for the League to resort to direct action to achieve Pakistan. The resolution authorised the Working Committee to prepare forthwith a programme of direct action. August 16 was fixed as the Direct Action Day.

On August 16, Hindu-Muslim riots on an unprecedented scale broke out in Calcutta. Thousands of people of both communities lost their lives in the disturbances.

On August 12, the Viceroy invited Pandit Nehru, now President of the Congress, to form an Interim Government. The Government formed by President Nehru took office on September 2. The League did not join this Government. The members of the Interim Government were Pandit Nehru, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. Asaf

Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Matthai, Sardar Baldev Singh, Shaffat Ahmed Khan, Mr. Jagjivan Ram, Syed Ali Zaheer and Mr. Cooverji Hormusji Bhabha.

On October 13, however, the Working Committee of the League decided to accept the Viceroy's offer to join the Interim Government. On October 15, five members of the League were included in the Interim Government. These five members were Mr. Liaquat Ali Khan, Mr. I. I. Chundrigar, Mr. Abdur Rab Nistar, Mr. Ghaznafar Ali Khan and Mr. Jogendra Nath Mandal. To enable the necessary adjustments to be made in the cabinet, three members of the body viz. Mr. Sarat Chandra Bose, Sir Shaffat Ahmed Khan and Syed Ali Zaheer resigned.

The Constituent Assembly met for the first time in New Delhi on December 9, 1946. The League did not join it. The League boycott of the Assembly was mainly due to its differences with the Congress regarding the interpretation of the Cabinet Mission Plan of May 16, particularly the grouping clauses in it.

On February 20, Mr. Attlee, the British Premier, made his momentous 'Quit India' statement. The statement said that the state of uncertainty existing in India at that time was fraught with danger and declared: "His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June, 1948." The statement after referring to the H. M. G's earlier decision to recommend to Parliament a constitution worked out according to the Cabinet Mission Plan by a fully representative Constituent Assembly, said: ".....if it should appear that such a constitution will not have been worked out by a fully representative Assembly before the time mentioned in Paragraph 7 (June, 1948), His Majesty's Government will have to consider to whom the powers of the Central Government in British India should

be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people." As regards the States, the statement reiterated His Majesty's Government's intention not "to hand over their powers and obligations under Paramountcy to any Government of British India".

The statement also contained the announcement of the British Government's decision to terminate the war-time appointment of Lord Wavell as Viceroy of India and to appoint as his successor Admiral the Viscount Mountbatten. This step, it was said, was necessitated by "the opening of a new and final phase in India."

Lord Mountbatten arrived in New Delhi on March 24, 1947. Immediately after his arrival he made the declaration that the solution of the Indian problem must be reached within the next few months. A series of conferences with the Indian leaders followed. In the middle of May, he flew to London and came back towards the end of the month. Meanwhile, a vigorous agitation for the partition of Bengal and the Punjab had grown up and it became evident that the new plan of H.M.G. would try to cut the Gordian Knot of the Indian problem by partitioning India.

The Mountbatten Plan—On June 3, a statement of His Majesty's Government which embodied their latest plan for the solution of the Indian problem was broadcast to the people of India. After expressing the desire of the British Government that power should be transferred in India according to the wishes of the people, the statement said that it was not their intention to interrupt the work of the existing Constituent Assembly. The Constitution framed by the Assembly, however, could not be imposed on parts of the country unwilling to accept it. To ascertain whether such areas wanted a new Constituent Assembly or not the following procedure was laid down. The Provincial Legisla-

tive Assemblies of Bengal and the Punjab (excluding the European Members) would meet in two parts, one representing the Muslim-majority districts and the other the rest of the province. "The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements would be made accordingly." In the event of partition being decided upon, each part of the Legislative Assembly would, on behalf of the areas they represent, decide whether they would join the existing Constituent Assembly or a new and separate one. The Legislative Assembly of Sind would at a special meeting take its own decision in the matter. A decision by referendum was provided for in the case of N. W. Frontier Province. The Muslim-Majority district of Sylhet would decide by a referendum whether it would join East Bengal or remain in Assam.

The statement made it clear that regarding Indian States the British Government's policy, as contained in the Cabinet Mission Memorandum of May 12, remained unchanged. The statement also provided for the creation of a Boundary Commission to settle the details of the demarcation of boundary in case partition was decided upon.

The Statement finally said: "His Majesty's Government propose to introduce legislation during the current session for the transfer of power this year on a Dominion Status basis to one or two successor authorities according to decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constitution Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth."

The All-India Congress Committee and the Muslim League Council accepted this plan on June 15 and June 9 respectively.

Partition of Bengal and the Punjab was decided upon according to procedure laid down in the June 3 plan. West Punjab and East Bengal decided to join the new Constituent Assembly on June 20 and June 23 respectively. Two Boundary Commissions for the division of Bengal and the Punjab were announced on June 30. The award of the Boundary Commissions was published on August 17. Sind and the N. W. Frontier Province decided to join the new Constituent Assembly, Sylhet joined East Bengal.

The Indian Independence Bill was presented to Parliament on July 4 and it became law on July 18. The Act established the Dominions of India and Pakistan as from August 15, 1947.

There took place throughout India in the year 1947, and particularly in the Punjab, communal riots of unparalleled dimensions. The Punjab riots began in February. Soon the entire province was engulfed in the most frenzied outbursts of violence, mass murder, kidnapping and looting. Thousands and thousands lost their lives and millions were uprooted. When the two newly-formed Governments came to power in the two Dominions they were faced with the task of transferring millions of refugees to their respective dominions from the other side of the border.

The States—It has been aptly said that when the British left India they followed a "Political Scorched Earth Policy." Mr. Attlee's declaration of February 20, 1947, contained the following :

"In regard to the Indian States, as was explicitly stated by the Cabinet Mission, H.M.G. do not intend to hand over their powers and obligations under Paramountcy to any Government of British India." Thus India was going to face complete disintegration, for under the policy outlined above the States were to be completely free to decide their future relations with the Government of India. Section 7 (1) (b) of the Indian Independence Act, 1947, laid down the following :

"The suzerainty of His Majesty over the Indian States lapses, (from August 15, 1947) and with it, all treaties and agreements in force at the date of passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdictions exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufference or otherwise."

When the Constituent Assembly of India was set up, it appointed a Negotiating Committee to settle the political relations with the States and also the question of their accession to India. Soon, a number of important States declared in favour of accession to India. The representatives of a number of States joined the Constituent Assembly even before August 15, 1947. After the passing of the Indian Independence Act, almost all the States with the exception of those under the N.W.F. Agency and the Baluchistan Agency, and Bhahawalpur and Khairpur of the Punjab Agency joined the Indian Dominion. The States acceded only on three subjects, namely, defence, external affairs and communications. The Dominion Legislature thus acquired the right to legislate on these three subjects with regard to the States. Later, the States acceded on a number of other subjects so that their position became almost similar to that of the provinces. It may be mentioned in this connection that owing to the growth of an aggressively communal movement in Hyderabad, the State had for a long time refused to accede to India. In September, 1948, the Government of India were forced to take military action against the State to clean up the communal gangsters.

The policy followed by the Government of India regarding the States has transformed the map of India to an amazing extent within a very short time. This policy may be briefly described as one of integration and democratisation.

By following a judicious policy of pressure and persuation, the Government have succeeded in merging a large number of small States in the various provinces. A large number of others have been grouped together to form Unions. Most of the Unions of States and Mysore, Kashmir and Hyderabad have been placed on a par with the Provinces. In the new Constitution, their position is almost exactly similar to that of the former Provinces.

The Indian Constituent Assembly—The inaugural meeting of the Constituent Assembly took place on December 9, 1946. On December 11, Dr. Rajendra Prasad was elected its permanent chairman. On December 13, Pandit Nehru moved the "Objectives Resolution" in the Assembly, which was passed on January 22, 1947. The resolution is as follows :—

"The Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent, sovereign republic and to draw up for her future Government a Constitution : wherein the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside British India and the States, as well as such other territories, as are willing to be constituted into the independent, sovereign India, shall be a Union of them all ; and

"Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom ; and

"Wherein all power and authority of the sovereign, independent India, its constituent parts and organs of Government, are derived from the people ; and

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

"Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

"Wherein shall be maintained the integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of mankind."

The Constituent Assembly set up a number of Committees such as, the Union Subjects Committee, Provincial Constitution Committee, Union Constitution Committee and others and at a number of sessions held from time to time passed the main principles of the Constitution.

On August 29, 1947, the Assembly set up a Drafting Committee to prepare a draft Constitution embodying the principles adopted by the Assembly. The Committee consisted of the following:—Dr. B. R. Ambedkar (Chairman), Sri N. Gopalaswamy Ayyangar, Sri Alladi Krishna Swami Ayyar, Sri K. M. Munshi, Saiyid Mohammed Saadulla, Sri N. Madhava Rau, Sri D. P. Khaitan and Sir B. L. Mitter. Sir B. L. Mitter, however, could not attend the meeting of the Committee after its first sitting as he soon ceased to be a member of the Assembly.

The Drafting Committee submitted its draft on February 21, 1948.

On November 5, the Draft Constitution was introduced into the Assembly and after a general debate the Assembly took up the consideration of the Draft clause by clause. The consideration of the Draft was completed after a few sessions

and the new Constitution of India was adopted on November 26, 1949. Some of the provisions of the Constitution came into force with immediate effect. But the rest, that is, the bulk of it was brought into force on January 26, 1950.

The Constituent Assembly held 11 sessions and sat altogether for 165 days. Of these, 114 days were spent for the consideration of the Draft. The total number of amendments to the Draft Constitution was 7,635 of which 2,473 were moved. The total number of seats in the Constituent Assembly was 307.

The Constituent Assembly took 2 years, 11 months and 18 days to complete its labours. It is interesting to compare this period with the time consumed by some other well-known Constitutional Conventions. The American Convention took four months to complete its labours, the Canadian Convention took 2 years and 5 months, the Australian Convention nine years and the South African Convention one year.

THE GOVERNMENT OF INDIA ACT, 1919

Before 1833, there were no legislative bodies in India. Legislative Councils then began to be gradually introduced in response to popular demand. These Councils used to have official majorities. It was only under the Morley-Minto Act of 1909 that the provincial legislatures came to be constituted with non-official majorities. At the Centre, however, an official majority was retained. The proportion of nominated official members was reduced under the Act of 1919 and the representative element increased.

Dyarchy—The Government of India Act, 1919 introduced what has come to be known as dyarchy. The dyarchy related to the provincial administrations and not to the Central Government of India. Under this system, the subjects to be dealt with by the Provincial Governments were divided into two parts, called the Transferred subjects and the Reserved Subjects. The Reserved Subjects were administered by the

Governor with the aid of an Executive Council and the Transferred Subjects were dealt with by the Governor with the aid of Ministers. The members of the Executive Council were nominated to the Council and the Ministers were chosen by the Governor from among the members of the Legislature. The following were the Reserved Subjects: Administration of Justice, Police, Irrigation and Canals, Drainage and Embankments, Water Storage and Water Power, Land Revenue Administration, Land Improvement and Agricultural Loans, Famine Relief, Control of Newspaper, Books and Printing Presses, Prisons and Reformatories, Borrowing money on the credit of the Province, Forests except in Bombay and Burma, Factory Inspection, Settlement of Labour Disputes, Industrial Insurance and Housing. The following were the Transferred Subjects: Local Self-Government including matters relating to Municipal Corporations and District Boards; Public Health, Sanitation and Medical Administration, including Hospitals and Asylums and provision for Medical education; Education of Indians with some exceptions; Public Works, including Roads, Bridges and Municipal Tramways, but excluding irrigation; Agriculture and Fisheries; Co-operative Societies; Excise; Forests in Bombay and Burma only; Development of Industries, including Industrial Research and Technical Education.

The Act also specified the Central Subjects thus clearly demarcating the Provincial and the Central spheres. The Central Subjects were: Military matters, Foreign Affairs, relations with the Indian States, Tariffs and Customs, Railways, Posts and Telegraphs, Income-tax, Currency, Coinage and Public Debt, Commerce and Shipping, Civil and Criminal Law, Census and Statistics, Public Service Commissions and others.

The power of legislation in residual matters was vested in the Centre.

In the financial sphere, the Central sources of revenue were income-tax, railway receipts, receipts from post and

telegraphs, customs, the salt and the opium taxes. The chief sources of provincial revenue were land revenue, excise, receipts from the provincial taxes, stamp duties and income from forests and irrigation.

The Governor-General in Council—The Governor-General in Council was given very wide powers under the Act. If the Legislature, which consisted of two chambers, the Legislative Assembly and the Council of State, refused to introduce or pass any Bill recommended by the Governor-General, he could certify that the passage of the Bill was necessary for the peace, safety or interests of India and could make the Bill an Act by simply signing it. In relation to Reserved Subjects, the Provincial Governors were responsible to the Governor-General and the Secretary of State.

The Secretary of State—The Act vested in the Secretary of State-in-Council the powers of superintendence, direction and control over all acts and operations and concerns which related to the Government or revenues of India or payments made out of these revenues.

The Central Legislature—The Central Legislature was bicameral. The Council of State consisted of not more than 60 members of which not more than 20 could be officials. The number of elected members was 33. The rest were nominated. The number of members in the Legislative Assembly was 140 of which 103 were elected. The rest were nominated. The number of officials in the nominated bloc was twenty-six.

Electorate—The communal electorate having been introduced by the Act of 1909, under the Act of 1919, too, the electorates were mainly based on the same communal principle. There were Muslim, non-Muslim, European and Anglo-Indian constituencies. There was also provision for electorates representing special interests—universities, trade and commerce and landholders.

The Provincial Legislatures—Under the Act, at least 70 per cent of the members of the Provincial Legislative Councils

were elected, the rest, including not more than 20 per cent officials, were nominated. In the matter of legislation, the Governor possessed the power of 'Certification' whereby he could restore cuts in the budget made by the Legislature or certify as passed Bills thrown out by it. The Governor had no such power in respect of Transferred Subjects. The Legislative Council could remove the Ministry by an adverse vote but not the Executive Council appointed for a fixed period by the Crown. The Council had no power to vote or discuss certain items of the budget.

The Defect of the Dyarchy—The dyarchy did not work well. Every Government, like an organism, is a unity and cannot be artificially divided without detriment to its efficient working. Moreover, it is easy to see, it is impossible to divide the subjects into water-tight compartments. For instance, Finance concerns every subject and as Finance was included in the Reserve side, the Ministers were at the mercy of the Executive Councillors for the necessary funds for their subjects. Complaints, not unjustified, used to be made that almost all the moneys were spent for the Reserve Subjects and the nation-building activities under the charge of Ministers were very much starved for want of funds. The Congress was consistently opposed to dyarchy. The position of ministers under the system was not enviable. Most of them, having to depend greatly on the nominated bloc, used to be regarded as 'Yes-men' of the Government.

THE GOVERNMENT OF INDIA ACT, 1935 (Original)

On the basis of the results of the Round Table Conferences and the Communal Award given by the British Prime Minister, Ramsay MacDonald, the British Government issued their proposals for the new Constitution of India in the form of a White Paper. The Communal Award was given by the British Prime Minister owing to the failure of the two communities represented on the Round Table Conference to come to an agreement regarding the allocation of seats in the

legislatures. The Award envisaged separate electorates for the depressed classes among the Hindus. This was regarded by Mahatma Gandhi as an attempt to split the Hindu Community. He declared that he would fast unto death if this provision about the separate electorates for the depressed classes were not modified. This threat resulted in an agreement between the communities concerned. This agreement has come to be known as the Poona Pact. The British Government accepted the Pact which was based on the principle of joint electorate between caste Hindus and the depressed classes. In the Constitution of 1935, this principle was incorporated.

A Joint Select Committee of Parliament examined the proposal of the White Paper and submitted its report in 1934. On the basis of this report a Draft Bill was prepared. This Bill was enacted into law as the Government of India Act, 1935.

It was this Act which was the Constitution of India from 1937 to August 14, 1947. From the 15th August, 1947, a modified version of that Act was the basis of India's constitution. The main provisions of the original Act are being summarised below.

The Federation—The Government of India Act, 1935, (Original) envisages a Federation of the provinces and territories in British India, and the States. The Act lays down that it shall be lawful for His Majesty to proclaim the formation of the Federation on an address being presented on that behalf by each House of Parliament if the rulers of a number of States which represent one half of the total population of the States and are entitled to half the seats allotted to them in the Upper Chamber in the Federal Legislature have acceded to the Federation. Because of the objections raised by various interests and parties in India to the scheme of Federation and also of the above condition remaining unfulfilled, the Federal scheme could not be brought into operation in 1937 when the scheme of Provincial

Autonomy under the Act was brought into force. The Federal scheme was postponed and a few weeks after the outbreak of World War II, on October 18, 1939, it was suspended. In a statement made on that date, Lord Linlithgow, Governor-General of India, declared: "His Majesty's Government recognises that when the time comes to resume consideration of the plan for the future Federal Government of India.....it will be necessary to reconsider in the light of the then circumstances to what extent the details of the plan embodied in the Act of 1935 remain appropriate." A modification of the Federal plan in future was thus contemplated.

The Governor-General—The Governor-General is made the key-stone of the Federal edifice. He is given very wide powers and responsibilities under the Act. He exercises on behalf of His Majesty the executive authority of the Federation. The executive authority of the Federation extends to all matters with respect to which the Federal Legislature has power to make laws and some other matters relating to His Majesty's naval, military and air forces and the tribal areas.

The Governor-General is aided in the exercise of his functions by a council of ministers except in so far as he is required to exercise his function or any of them in his discretion. He exercises his discretion in the following matters —defence, ecclesiastical affairs and external affairs except the relation between the Federation and any part of His Majesty's Dominions. In these matters the ministers cannot advise him. The Governor-General has a number of special responsibilities regarding which he exercises his individual judgment i.e. he is to consult the ministers but need not accept their advice. His special responsibilities are the following:—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(*b*) the safe-guarding of the financial stability and credit of the Federal Government;

(*c*) the safe-guarding of the legitimate interests of minorities;

(*d*) the safe-guarding of the rights and legitimate interests of the members of the public services or their dependants;

(*e*) the prevention of commercial discrimination;

(*f*) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(*g*) the protection of the rights of any Indian State and the rights and dignity of the rulers thereof;

(*h*) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion or to exercise his individual judgment, is not prejudiced or impeded by any course of action with respect to any other matter.

The Act provides that in so far as the Governor-General is by or under this Act required to act in his discretion he shall be under the general control of the Secretary of State and also comply with the latter's particular directions issued from time to time. To assist him in the exercise of his discretionary functions he may appoint counsellors, not exceeding three in number.

The Governor-General is given very great powers of issuing ordinances and also to enact Acts in certain circumstances. These ordinances fall into two categories:

(1) those that can be promulgated by the Governor-General during recess of the Federal Legislature;
(2) those that can be promulgated at any time by him.

(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. It is provided that he shall

exercise his individual judgment as regards the promulgation of any such ordinance, if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature. It is further provided that he shall not promulgate any such ordinance without His Majesty's instructions if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon. The ordinances have force and effect as Acts of the Federal Legislature. It is laid down that the ordinances may be disallowed by His Majesty or may be withdrawn at any time by the Governor-General.

All such ordinances must, however, be laid before the Federal Legislature and will cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period resolutions disapproving it are passed by both Chambers.

(2) Again, if at any time the Governor-General is satisfied that circumstances exist which necessitate immediate action for the satisfactory discharge of his discretionary functions or those functions with respect to which he is required to exercise his individual judgment, he may promulgate such ordinances as the circumstances of the case may require. Any such ordinance will continue in operation for a period not exceeding six months but may, by a subsequent ordinance, be extended for a further period of six months. Such ordinances have force and effect as the Acts of the Federal Legislature and are subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if they were Acts of the Federal Legislature. They may be withdrawn at any time by the Governor-General. The functions of the Governor-General relating to the promulgation of such ordinances will be exercised by him in his discretion.

The Governor-General can assume extraordinary powers in certain special circumstances. If at any time the Governor-General is satisfied that a situation has arisen in which the

Government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation declare that his functions shall, to such extent as may be specified by him, be exercised by him in his discretion. By proclamation he may assume to himself all or any of the powers vested in or exerciseable by any Federal body or authority. Such proclamations must be communicated forthwith to the Secretary of State and must be laid by him before each House of Parliament. Any such Proclamation shall cease to operate at the expiration of six months but may be extended by Parliament.

The Federal Legislature—According to the provisions of the original Act of 1935, the Federal Legislature consists of His Majesty, as represented by the Governor-General and two Chambers, the Council of State and the House of Assembly.

The Council of State consists of 156 representatives of British India and not more than 104 representatives of the Indian States. Of the 156 seats for British India 6 seats are to be filled up by nomination by the Governor-General in his discretion. The rest 150 seats are to be allocated as follows: General 75, Muslim 49, Sikhs 4, Scheduled Castes 6, Women 6. These seats are to be filled by direct election by voters of high property and other qualifications. 1 Anglo-Indian, 7 Europeans and 2 Indian Christians are to be chosen by the representatives of the respective categories in the Provincial Legislatures.

The House of Assembly or the Federal Assembly consists of 250 representatives of British India and not more than 125 representatives of the Indian States. The distribution of the British Indian seats, which is on a communal basis, is as follows:—The total general seats 105, of this 19 are reserved for the Scheduled Castes; Muslim 82, Sikhs 6, Anglo-Indians 4, Europeans 8, Indian Christians 8. The General, Muslim and Sikh seats are to be filled by the representatives of these communities in the Provincial Assemblies. The Europeans,

Anglo-Indians, Indian Christians and women representatives are to be chosen by electoral colleges of members of these groups in the Provincial Assemblies. Some seats are allocated to representatives of commerce and industry, landholders and representatives of labour. These are to be respectively filled by Chambers of Commerce, landholders and labour organisations.

As regards the seats allotted to the States, these are to be filled by persons appointed by the Rulers.

The Council of State is a permanent body and not subject to dissolution, the members being chosen for nine years, one-third of them retiring every third year. The Federal Assembly is to continue for five years unless sooner dissolved. Annual sessions of this body are required; subject to this provision, the Governor-General can summon, or prorogue the Chambers or dissolve the Federal Assembly at his discretion.

Financial Bills cannot be introduced except on the recommendation of the Governor-General and cannot be introduced in the Council of State. All other Bills can originate in either Chamber. The powers of both Chambers in relation to consideration and passing of Bills are identical. To meet cases of disagreement between the Chambers joint sittings are provided for.

The control of the Federal Legislature on the Federal Government's expenditure is extremely limited. The following expenditures which are called expenditure charged on the revenues of the Federation cannot be voted upon by the Legislature :—(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order-in-Council; (*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of

Table of Seats—Provincial Legislative Assemblies (Act of 1935)

Province	Total Seats	General Seats												Seats for women			
		Total of General Seats	General Seats Reserved for Scheduled Castes	Seats for representatives of backwardareas and tribes	Sikh Seats	Muhammadan Seats	Anglo Indian Seats	European Seats	Indian Christian Seats	Seats for representative of Commerce, Industry, Mining and Planting	Landholders Seats	University Seats	Seats for representatives of labour	General	Sikh	Mahammadan	Anglo-Indian	Indian Christian
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Madras	215	146	30	1	..	28	2	3	8	6	6	1	6	6	..	1	..	1
Bombay	175	114	15	1	..	29	2	3	3	7	2	1	7	5	..	1	..	..
Bengal	250	78	30	..	..	117	3	11	2	19	5	2	8	2	..	2	1	..
United Provinces	228	140	20	..	..	64	1	2	2	3	6	1	3	4	..	2	..	..
Punjab	175	42	8	..	31	84	1	1	2	1	5	1	3	1	1	2	..	..
Bihar	152	86	15	7	..	39	1	2	1	4	4	1	3	3	..	1	..	..
Central Provinces & Berar ..	112	84	20	1	..	14	1	1	..	2	3	1	2	3	..	..	..	..
Assam	108	47	7	9	..	34	..	1	1	11	..	..	..	4	1	..	..	..
North West Frontier Province	50	9	..	..	3	36	..	..	..	..	2	..	..	..	..	..	..	..
Orissa	60	44	6	5	..	4	..	..	1	1	2	..	1	2	..	..	..	..
Sind	60	18	..	..	..	33	..	2	..	2	2	..	1	1	..	1	..	..

Table of Seats—Provincial Legislative Councils

Province	Total of Seats	General Seats	Muhammadan Seats	European Seats	Indian Christian Seats	Seats to be filled by Legislative Assembly	Seats to be filled by Governor
1	2	3	4	5	6	7	8
Madras ..	Not less than 54 Not more than 56	35	7	1	3	..	Not less than 8 Not more than 10
Bombay ..	Not less than 29 Not more than 30	20	5	1	..	..	Not less than 3 Not more than 4
Bengal ..	Not less than 63 Not more than 65	10	17	3	..	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6 Not more than 8
Bihar ..	Not less than 29 Not more than 30	9	4	1	..	12	Not less than 3 Not more than 4
Assam ..	Not more than 22 Not less than 21	10	6	2	..	..	Not less than 3 Not more than 4

the advocate-general, of chief commissioners, and of the staff of the financial adviser; (*d*) the salaries, allowances and pensions payable to or in respect of judges of any High Court; (*e*) expenditure for the purpose of the discharge by the Governor-General of those functions with respect to which he is required to act in his discretion, namely, defence, external affairs, ecclesiastical affairs and matters relating to tribal areas; (*f*) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with the Indian States; (g) any grants for purposes connected with the administration of any areas in a province which are for the time being excluded areas; (*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (*i*) any other expenditure declared by this Act or the Federal Legislature to be so charged.

It is laid down by the Act that items (*a*) and (*f*) of the list mentioned above cannot even be discussed by the Legislature. All other items can be discussed but, as has been said above, cannot be voted upon. It may be noted that these items of expenditure account for over 80 per cent of the total expenditure of the Central Government of India. As the control over finance by the Legislature is an essential feature of democracy, it should be clear that the Act which placed over 80 per cent of the Federal expenditure beyond the Legislature's control cannot by any stretch of imagination be called democratic. It made a mockery of responsible Government and democracy. Even regarding those expenditures which are subject to the vote of the Assembly, the Governor-General is given power in the Act to restore demands refused by the Legislature or cuts made by it in matters affecting his special responsibilities. The Governor-General's discretionary powers, his special responsibilities and other statutory limitations on the power of the Federal Legislatures reduce it to a practically powerless body. The

Act also makes it clear that nothing in it affects the power of Parliament to legislate for British India.

The Amendment of the Constitution—The Federation is given no constituent power under the Act. Such power vests in the Imperial Parliament. The Crown in Council is empowered to make some minor amendments in certain circumstances.

Distribution of Legislative Powers—The Act of 1935 (original) clearly demarcates the spheres of Federal and Provincial legislation. There are lists specifying the subjects: the Federal Legislative List, the Concurrent Legislative List and the Provincial Legislative List. Ordinarily in case of inconsistency between Federal and Provincial laws, the Federal law prevails. The power of residual legislation is, strangely, vested in the Governor-General. It is laid down that the Governor-General by a public notification may empower either the Federal Legislature or a Provincial Legislature to enact laws with respect to any matter not enumerated in any of the Lists mentioned above. As for the States, the Federal Legislature cannot make laws for them except in accordance with their Instruments of Accession and any limitations contained therein.

Unsatisfactory Character of the Federal Scheme—The Federal Scheme was opposed by almost every party or group in India. The Congress objected to the Federal Scheme on various grounds. The scheme, in the first place, did not envisage any real transfer of power to Indian hands. Secondly, the Federal legislature was saddled with an element of conservatism, namely, the States' representatives who, it was obvious, would always try to veto progress. In fact, under the provisions of the Act [sec. 6(5)] constitutional advancement of India could be always vetoed by the States.

The Rulers of the States also objected to the Federal Scheme though on different grounds. They pointed out that once they entered the Federation there was no provision that would enable them to come out of it. The Federation had

great power of coercing them. In the Federal Legislature, as well as in the Federal Executive, the British Indian representatives, that is, the democratic elements would, it was obvious, predominate. These elements might, it was apprehended by the States, influence the Viceroy to take steps which might impair their sovereignty.

Provincial Autonomy—The provisions of the Government of India Act, 1935 (original) dealing with Provincial Autonomy came into operation on April 1, 1937.

Provincial Autonomy is generally supposed to mean either of the two following things or both : (1) freedom from external control, (2) responsible Government inside the province. Provincial Autonomy under the Act of 1935, however, was neither free from external control nor did it grant fully responsible Government to the provinces so far as their internal administration was concerned. Wide powers were vested in the Governor, the Governor-General and also in the Crown and Parliament which were, so to say, a negation of autonomy in the provinces.

The Governor—The following are the provisions of the original Act of 1935 relating to the position, powers and functions of the Governor :—

The Governor is appointed by His Majesty. The executive authority of a province is exercised on behalf of His Majesty by the Governor either directly or through officers subordinate to him. There is a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required to exercise his functions or any of them in his discretion. In many respects the powers of the Governor are similar to those of the Governor-General. The Governor, too, like the Governor-General has some discretionary powers and special responsibilities. The Governor acts in his discretion in the following matters :

(1) To choose, summon and dismiss ministers ; also to summon and prorogue the Chambers and to dissolve the Assembly ;

(2) To prevent crimes of violence intended to overthrow the Government;
(3) To assent to Bills passed in the Legislature or to withhold assent therefrom or to reserve the Bill for the Governor-General's consideration;
(4) To promulgate ordinances;
(5) To enact Acts in certain circumstances;
(6) To issue proclamations in order to take over the Government of the Province in case of failure of Constitutional machinery;
(7) To give previous sanction to certain kinds of Bills;
(8) To exercise functions as agent to the Governor-General in relation to defence, external affairs, tribal areas and ecclesiastical affairs.

The Governor is given power to issue two kinds of ordinances. In matters affecting his discretionary functions and special responsibilites, the Governor can issue an ordinance at any time. Such an ordinance may continue in operation for a maximum period of six months but may, by a subsequent ordinance, be extended for a further period not exceeding six months. In other matters, the Governor can issue ordinances only when the legislature is not in session. These ordinances are issued at the instance of the ministers. All such ordinances must be laid before the Legislature and cease to operate at the expiration of six weeks from the reassembly of the Legislature or if a resolution disapproving it is passed by the Legislature.

The Governor has the following special responsibilities: (*a*) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof; (*b*) the safeguarding of legitimate interests of minorities; (*c*) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights, provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests; (*d*) prevention of commercial discrimination; (*e*) the securing of the peace and good government of areas which by or under the provisions of the Act

are declared to be partially excluded areas; (*f*) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof; and (*g*) the securing of the execution of orders or directions lawfully issued to him by the Governor-General.

In exercising functions involving his special responsibilities, the Governor is to consult his ministers but must exercise his individual judgment as to the acton to be taken, *i.e.*, he need not accept their advice. In his discretionary sphere, the ministers cannot advise the Governor. In the exercise of functions with respect to which the Governor has to act in his discretion or exercise his individual judgment, the Governor is under the general control of the Governor-General and must comply with particular directions issued by the latter from time to time.

Apart from his ordinance-making powers, the Governor has been given considerable legislative power. He can in his discretion either assent to a Bill or withhold assent therefrom. And no Bill becomes an Act unless it receives the Governor's assent. He can also reserve the Bill for the Governor-General's consideration. He may also return the Bill to the Chamber or Chambers for reconsideration. The Governor may stop the discussion relating to any Bill or clause or amendment in the Legislature on the ground that it affects his special responsibility for the prevention of any grave meance to the peace or tranquillity of the Province or any part thereof. The Governor can also enact Acts in matters involving his individual judgment or discretion if he considers it to be necessary for the satisfactory discharge of his duties.

In case of failure of constitutional machinery, the Governor can take over the Government, *i.e.*, can assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority.

The powers of the Governor, it is quite obvious, reduce provincial autonomy to a farce. His discretionary powers and special responsibilities 'cabine, crib and confine' the

powers of the Legislature and the Ministry. Some of these powers and responsibilities are vaguely defined and can be interpreted to mean anything. Moreover, the Governor is the sole judge as to whether any particular matter falls within his discretionary sphere or affects any of his special responsibilities. Thus, the Governor can be a virtual dictator in provincial sphere if he chooses to be one.

The Provincial Legislature under the (Original) Act, 1935—The Act provides that the Provincial Legislatures in six provinces, viz., Madras, Bombay, Bengal, the United Provinces, Bihar and Assam are to be bi-cameral and in other Provinces viz., Orissa, Sind, the Punjab, the N.W.F.P., and C.P. unicameral.

The number and composition, as specified in the Act, of members in the Upper Houses, called Legislative Councils are given in the appended table. The Governor under the Act nominates a small percentage of members in the Legislative Council. In Bengal and Bihar a large percentage of seats are to be filled through election by the Legislative Assembly. There is no such provision in the case of the Councils in other Provinces, where all seats excepting those to be filled by nomination are to be filled by direct election. High property and other qualifications are prescribed for the voters. The Councils are permanent bodies. The members are to hold their seats for nine years, one third of the total membership retiring every third year.

The Legislative Assembly is the Lower Chamber. It has a term of five years. The members of the Assembly are to be elected by communal electorates. The constituencies are mainly territorial. The distribution of seats in the Lower Chambers is as shown in the appended table.

The Upper Chambers have no initiative in Financial Bills. They have also no voice in the matters of grants. Subject to these provisions, a Bill can originate in either Chamber. A Financial Bill cannot be introduced or moved except on the recommendation of the Governor.

The control of the Legislature over finance is limited. The following items of expenditure, called expenditure charged on the revenues of the Province, are made non-votable: (*a*) the salary and allowances of the Governor and other expenditure relating to his office, (*b*) debt charges, (*c*) the salaries and allowances of ministers and of the Advocate-General, (*d*) salaries and allowances of the judges of any High Court, (*e*) expenditure for the administration of excluded areas, (*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal, (*g*) any other expenditure declared by this Act or any Act of the Provincial legislature to be so charged.

The item (*a*) cannot even be discussed. As regards other expenditures, though they can be voted upon by the Assembly the Governor has the power to restore any cuts or any sums refused by the Assembly if he thinks it to be necessary for the due discharge of any of his special responsibilities.

No Bill is to be deemed as passed unless it is agreed to by both the Chambers. If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not presented for the Governor's assent within a period of twelve months, the Governor can summon the Chambers to meet in a joint sitting for the purpose of considering and voting on the Bill. Joint sessions may be summoned earlier if the Bill relates to Finance or any of the special responsibilities of the Governor.

The above makes it clear that the limitations on the powers of the Provincial Legislatures are very great. Moreover, the allocation of seats on a communal basis is such as cannot but prevent these Legislative bodies from correctly reflecting the true interests of the people. The Upper Chambers, again, are deliberately made reactionary bodies.

The Crown and the Secretary of State—The post of the Secretary of State was created in 1858. Under the Act of 1919, as has been pointed out, the Secretary of State was

given all powers of superintendence and control over the Indian administration. In fact, the Central and Provincial Governments in India were only the agents of the Secretary of State under that Act. Under the Act of 1935, however, the position was changed. All rights, powers and jurisdiction over the Indian territories are resumed by the Crown under the Act. These are distributed between the Federation and the Units. The Crown's rights have been of two kinds—statutory and prerogative. Some of the statutory powers of the Crown have been already mentioned—for example, the power of appointment of the Governor-General and the Governors. The prerogatives of the Crown included the right of granting pardon and the granting of titles and also rights of war and peace.

As has been already mentioned, the Governor-General is placed by the Act under the control of the Secretary of State in matters relating to the use of his discretionary powers and to his special responsibilities. The Secretary of State is given the power to make appointments to the I.C.S., the I.P.S. and the Indian Medical Service.

It will be seen that the Secretary of State, through his control over the Governor-General and the Governor, could practically control every aspect of the Indian administration.

The Secretary of State was responsible to Parliament of which ne was a member. The Office of the Secretary of State was known as the India Office.

The Working of the Constitution—It was apprehended before the inauguration of the Constitution that the discretionary powers and the special responsibilities of the Governor under the Constitution of 1935 would reduce the Councils of Ministers in the Privinces to utter impotence. When, therefore, after the elections in 1937, which gave the Congress majority in six provinces, the Congressmen were called upon to form Ministries in these provinces, they refused to do so unless they were assured by the Governor

that they would not interfere with the former. The Governors concerned refused to do so. And the Congress too refused to form Governments in those provinces. A deadlock ensued which was resolved on an assurance on behalf of the British Government, which, though it fell short of the assurance demanded by the Congress, made it clear that the Governors would not normally interfere with the Ministers by taking recourse to their special powers. The Congress agreed to work the Constitution after this assurance.

The councils of Ministers in the Provinces, it must be said, enjoyed greater power and initiative in actual practice than was supposed possible under the Act before it was brought into force.

The first major crisis in the working of Provincial Autonomy came in October, 1939, when in circumstances already mentioned, the Congress Governments in eight Provinces resigned. When the new elections took place in 1946 the Congress formed Governments again in seven Provinces.

The Constitution of 1935 was, however, fundamentally such as could not satisfy the demands of the masses who wanted complete freedom. Real Provincial Autonomy has been installed only after the attainment of complete freedom and has been functioning since August 15, 1947.

The Central Government before August 15, 1947—As the Federal scheme could not be introduced in the country, the Central Executive and Legislature of India continued to be of the same features as under the reforms of 1919 up to the 15th of August 1947. Since the inauguration of Provincial Autonomy in 1937, however, the relations between the Centre and the Provinces were governed by the provisions of the Act of 1935 relating to the distribution of powers. The Executive Council of the Governor-General was expanded during the war. An interim popular Government came to office in September, 1946. A fully responsible Government was installed at the Centre on the day of freedom.

CHAPTER II

THE CONSTITUTION OF FREE INDIA—BASIC STRUCTURE OF THE STATE

The General Features of the Constitution of Free India— The Constitution of Free India is federal in type. It envisages the establishment of a Federation consisting of a Central Government and a number of State Governments. An important thing to be noted about the Federation in India is that whereas a typical Federation is formed through the combination of a number of separate States, in India the process of development has been from a unitary Government to a federal one.

The term Federation has not, however, been used in the Constitution. The Drafting Committee in submitting the Draft Constitution to the President referred to the point and said, "Nothing much turns on the name, but the Committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure." Apparently the Committee felt that there should be, even in the language of the Constitution, greater emphasis on the unity existing between the different parts of India than on their points of difference.

The Constitution creates a strong Centre and vests the residual power of legislation in the Central Legislature, called Parliament in the Constitution. Parliament and the State Legislatures are both sovereign in their respective spheres. The Constitution embodies three detailed legislative lists, namely, (*i*) the Union List, (*ii*) the State List and (*iii*) the Concurrent List. The distribution of legislative powers in the Constitution is, therefore, more or less of the Canadian type, the chief difference being that whereas in Canada there are

only two Concurrent subjects, namely, agriculture and immigration, the Concurrent List in the Indian Constitution contains as many as 47 subjects.

In one important respect, the Constitution differs from all other federal constitutions of the world. Though the Constitution is of the federal type, it has been so framed that in times of emergencies it can be made a work as a unitary one. This is made possible by the emergency powers given in the Constitution to the central executive. In times of emergencies the President can assume extra-ordinary powers which have the effect of practically suspending the autonomy of the units. Such provisions do not exist in any other constitution of the world. The Indian Constitution thus aims at the establishment of a flexible Federation.

Under the Constitution, there is only one citizenship for the whole of India. This is an important point of difference with the Constitution of the United States. In the United States, there is a dual citizenship, namely, the U.S. citizenship and the citizenship of the States. The States in America can discriminate in favour of their own citizens in some political matters, such as, the right to vote and the holding of public office. No such thing can be possible in India, the Constitution recognising only one citizenship—the Indian citizenship.

Another important difference between the Constitution of free India and that of the United States is that whereas under the U.S. Constitution the central executive is of the Presidential type, in India the central executive is of the Parliamentary type. That is, whereas in the U.S.A. the central executive is not responsible to the Legislature and cannot be removed by its vote, in India the central executive —or to be more precise, the Council of Ministers—has been made responsible to Parliament and is removable from office by an adverse vote of that body. A third point of difference between the two Constitutions in that in India the Centre

has been made a very strong one, whereas in the U.S.A. the Centre is weak.

The Constitution vests the constituent powers in the Central Legislature. It is Parliament alone that can amend the Constitution. But true to the federal principles, the Constitution does not vest in the Centre the power of changing the division of powers. It is easy to see that if the Centre possessed this power, namely, that of changing the division of powers, the system of Government would not be a federal one in the true sense of the term, for in that case the Centre would be able to deprive the States of their powers at any moment and turn them into impotent bodies. The Constitution has, therefore, been so framed that Parliament cannot make alteration in the division of powers except with the consent of at least half the Legislatures of the autonomous States. The States are given no constituent powers. The Provinces of Canada and the States in the Commonwealth of Australia, it may be mentioned, enjoy the power of moulding their constitutions within the federal frame-work. Obviously such powers for the States have been regarded by the framers of the Indian Constitution as detrimental to the efficiency of the State as a whole and incompatible with a strong Centre.

The chief points of difference between the Constitution of India and the British Constitution are three in number. The Constitution of India is a written one, whereas the British Constitution is mainly unwritten. The British Constitution is unitary, the Indian Constitution is federal. Thirdly, the supremacy of Parliament is a basic principle of the British Constitution. The courts in England have no power to declare an Act of Parliament unconstitutional. But here in India the courts have been empowered by the Constitution to declare the Acts of Parliament and of other Legislatures to be void on the ground of their being unconstitutional. The third point is of course a corollary to the first two points.

Besides the division of powers, a federal government has two other distinctive features, *viz.*, (1) supremacy of the Constitution and (2) a Supreme Court to decide disputes between the Centre and the Units. In India, too, the Constitution is the supreme law of the land and it has created a Supreme Court to decide the disputes that may arise between the Centre and the States regarding their respective jurisdictions.

The Constitution of India is the biggest and the most voluminous constitution in the world. It contains 397 Articles and 9 Schedules. Article 393 says that the Constitution may be called "the Constitution of India".

THE INDIAN FEDERALISM—SEE VOL. I, CH. XIX

Comparison with the Government of India Act, 1935—The Constitution of India has been largely modelled on the Government of India Act, 1935. Its size, contents, general scheme, arrangement of the provisions under different heads and even the language of the provisions bear the clear stamp of its indebtedness to the Act of 1935. But the similarity between the last Constitution of enslaved India and the first Constitution of free India should not blind one to the essential differences between the two. Whereas the Act of 1935 was the creation of a foreign Parliament and was imposed on India against the wishes of the people by a foreign Power which ruled by force, the Constitution of India represents the voice of the people's representatives and derives its authority from the will of the Indian people. The Act of 1935 represented the grudging concession of limited self-government to a dependent people by the foreign masters, the Constitution of India is a fundamental law framed by a completely free nation to regulate its affairs.

Bearing in mind this fundamental fact, it would be interesting to compare and contrast the main features of the Constitution of India with those of the Act of 1935.

(1) The Act of 1935 envisaged a federal scheme of Government. The Constitution of India, too, sets up a federal Government in India. And like the Constitution of India, the Act of 1935, too, gave power to the Central Executive to turn the Federation practically into a unitary Government in times of emergency. (The Federal part of the Act of 1935 was never brought into force).

(2) The Act of 1935 did not confer on the people of the former Indian States the least right of self-government and treated them merely as commodities at the disposal of the Rulers. And apart from the people of these States, who constituted one-fourth of the population of India, the people of the Chief Commissioners' Provinces and the tribal population were given no right of self-government. The Constitution of India has, however, simplified the map of India by integrating and democrating the former Indian States. The five hundred odd former Indian States, ruled by feudal autocrats, have been reduced to fifteen units and their people granted the right of self-government. Some of the areas in the country have, however, been placed by the Constitution under central administration, these being the Part C States Andaman and Nicobar Islands and some frontier tracts in Assam inhabited by tribal people. Most of the Part C States, however, have been granted a large measure of autonomy by the Government of Part C States Act, 1951, though the Centre still retains overall control over them.

(3) Though the Act of 1935 envisaged the creation of a central Ministry to aid and advise the Governor-General, it gave very little power to the Ministry. The Governor-General who was to be appointed

by the British Crown was given discretionary powers in certain vital matters. The Ministry had no right to advise the Governor-General in these matters. The Governor-General had special responsibility in a large number of other matters. In these matters, the Ministry could advise him but the Governor-General was free to reject its advice. The Constitution of India, however, matters. The Governor-General had special responsible body—responsible to the lower house of the Central Legislature, called Parliament. The President has been made the Central Executive head but his position is more or less like that of a constitutional monarch. He has to act on the advice of the Ministry. Only in exceptional circumstances, it seems, the President will have power to act independently of the advice of the Ministry.

(4) Under the Act of 1935, the Governors of the Provinces, like the Governor-General, enjoyed discretionary powers and special responsibilities. Under the Constitution of India, however, the Governors and Rajpramukhs of the States are more or less nominal heads and cannot act except on the advice of their Ministers. Whether, in exceptional circumstances, they will have power to act independently of the advice of the Ministers is not yet clear.

(5) The Legislatures in India under the Act of 1935 were not sovereign bodies. The Governor-General and the Governors had discretionary power to assent to or withhold assent from Bills passed by the Chambers of Legislatures and presented to them. They could enact Acts independently of the Chambers of Legislatures in matters in which they were given discretionary powers and special

responsibilities. The Crown had the power to disallow any central or provincial Act. And the Act of 1935 specifically mentioned that the British Parliament had complete legislative sovereignty over British India and that the British Crown enjoyed all its prerogative powers in relation to this country. Under the Constitution of India, the Indian legislatures enjoy complete sovereignty in the sense that they are not subject to any external control.

(6) The scheme of division of powers between the Centre and the units in the Constitution of India closely follows that of the Act of 1935. As in that Act, there are three Legislative Lists in the Constitution. The Act of 1935, however, vested the residuary powers in the Governor-General who could empower either the Federal Legislature or any provincial Legislature to enact laws with regard to any matter not included in the Legislative Lists. The Constitution of India, however, vests the residuary powers in the Centre.

(7) The Act of 1935 did not give any of the Legislatures, federal or local, the power of amending that Act. This power continued to vest in the British Parliament. The Constitution of India vests the power of amendment in the Central Legislature which, however, will require the consent of at least half the Legislatures of the autonomous states to amend some specified provisions of the Constitution.

(8) The Act of 1935 gave the right of franchise to a very small percentage of the people—roughly 14 per cent. The Constitution of India introduces a system of universal adult franchise. The Act of 1935 provided for a pernicious system of separate

electorates whereas the Constitution of India entirely abolishes that system and introduces a uniform system of joint electorates all over the country. The Constitution of India, however, provides for the reservation of seats for the Scheduled Tribes and the Scheduled Castes, and makes some special provisions for the Anglo-Indians. But this reservation and the special provisions will remain effective only for a period of ten years from the commencement of the Constitution.

(9) The Act of 1935 did not contain any declaration of fundamental rights. Only secs. 298 and 299 of the Act guaranteed rights that might be called fundamental. The Constitution of India, however, devotes the whole of Part III to the enumeration of fundamental rights of citizens and also of non-citizens.

(10) The Judiciary under the Constitution of India enjoys far greater powers than it did under the Act of 1935.

The points briefly noted above have been elaborated at the appropriate places.

Power Derived from the People—The Preamble to the Constitution of India which embodies the highest ideals of justice, liberty, equality and fraternity is as follows :—

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens :

Justice, social, economic and political ;
Liberty of thought, expression, belief, faith and worship ;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity of the Nation;

In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give To Ourselves This Constitution."

The very first line of this preamble makes it clear that political power in the Indian Republic is derived from the people. It will be seen that the preamble is more or less similar to that of the American Constitution which is as follows: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The words 'Sovereign Democratic Republic' should be carefully noted. The word 'Sovereign' signifies that India is to be free from all external control. She is also to be a 'Republic', that is, there is to be no monarchical system of government in the country. She is to be, further, a 'Democratic' country that is, a country in which the Government must be run by representatives of the people. Some of the South American States which pass as republics are actually ruled by elected dictators and, therefore, cannot be regarded as trully democratic countries. The constitution of India, however, sets up a truly democratic system of government in the country.

The Union and its Territory—India, says the Constitution, shall be a Union of States. The States and the territories thereof are the States and territories specified in Parts A, B and C of the First Schedule to the Constitution which is given below:—

The First Schedule to the Constitution

PART A (*Names of States*)	PART B (*Names of States*)	PART C (*Names of States*)	PART D
1. Andhra	1. Hyderabad	1. Ajmer	The Andaman & Nicobar Islands.
2. Assam	2. Jammu & Kashmir	2. Bhopal	
3. Bihar	3. Madhya Bharat	3. Coorg	
4. Bombay	4. Mysore	4. Delhi	
5. Madhya Pradesh	5. Patiala and East Punjab States Union	5. Himachal Pradesh	
6. Madras	6. Rajasthan	6. Kutch	
7. Orissa	7. Saurashtra	7. Manipur	
8. Punjab	8. Travancore-Cochin	8. Tripura	
9. Uttar Pradesh		9. Vindhya Pradesh	
10. West Bengal			

The territory of India comprises the territories of the States and the territories of the Andaman and Nicobar Islands; it will also comprise such other territories as may be acquired.

It should be noted that the States specified in Part A of the First Schedule correspond to the former Provinces of India and the States specified in Part B of the Schedule comprise five Unions of the former Indian States and three individual States, namely, Mysore, Hyderabad and Jammu and Kashmir. Formerly, Andhra did not exist as a separate State. The territory comprised in it formed part of the State of Madras (as it was originally). It was carved into a

separate State with effect from October 1, 1953. Vidhya Pradesh, originally a Part B State, has since been made a Part C State. The States specified in Parts A and B of the Schedule have been made autonomous States and both their internal constitution and relations with the Union are practically the same. The States specified in Part B of the Schedule have, however, been placed by the Constitution under the general supervision and control of the Union for a period of ten years from the commencement of the Constitution. Parliament has been authorised to vary this period of Central supervision in respect of any of these States. The President, too, has been empowered to exempt any of the Part B states from central control by issuing an order to that effect. It may be noted that, in exercise of this power, the President exempted Mysore from central control by an order issued in December, 1951.

As distinguished from these autonomous States, the States in Part C of the Schedule have been placed under central administration. (Cooch-Behar, originally a Part C state, has since been merged in West Bengal and Bilaspur which also existed as a separate Part C State for a few years was merged in Himachal Pradesh in 1954). In 1951, six Part C states were granted a large measure of internal autonomy; but the centre still retains complete control over them in every respect. The territories mentioned in Part D of the First Schedule, that is, the Andaman and Nicobar Islands have also been placed under Central administration.

Parliament has been empowered to make laws to admit into the Union, or establish, new States on such terms and conditions as it thinks fit. Parliament has also been empowered to make laws to—(*a*) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to part of any State; (*b*) increase the area of any State; (*c*) diminish the area of any State; (*d*) alter the boundaries of any State: (*e*) alter the name of any State. It has been provided that

no Bill for making any of these changes shall be introduced except on the recommendation of the President and unless, where the proposed change affects any State or States specified in Parts A and B of the First Schedule, the views of the Legislature of the State or each of the States concerned with respect to the proposal for introduction of the Bill and also its provisions have been ascertained by the President.

Citizenship—The Constitution does not lay down any provisions for the acquisition and termination of Indian citizenship, for which Parliament has been empowered to make laws. The Constitution only defines the groups of persons invested with citizenship rights at the commencement of the Constitution.

At the commencement of the Constitution, it is laid down, every person having domicile in the territory of India would be a citizen of India if (*a*) he was born in the territory of India; or if (*b*) either of his parents was born in the territory of India; or if (*c*) he has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

Apart from these classes of persons, provision has been made for two other groups of persons:—(1) persons who have migrated to the territory of India from the territory now included in Pakistan and (2) persons of Indian origin residing outside India. The immigrants from Pakistan have been broadly divided into two groups:—(*a*) those who migrated to India before July 19, 1948, and (*b*) those who migrated on or after July 19, 1948. Every person, says the Constitution, who migrated to India before July 19, 1948, would be deemed to be a citizen of India at the commencement of the Constitution if he satisfies the two following conditions:—(*i*) he or either of his parents or any of his grand-parents must have been born in undivided India (India as defined in the Government of India Act, 1935, as originally enacted) and (*ii*) he must have been ordinarily resident in the territory of India since the date of his

migration. Every person who has migrated to India on or after July 19, 1948, would be deemed to be a citizen of India at the commencement of the Constitution if he satisfies the two following conditions:—(*i*) he or either of his parents or any of his grand-parents must have been born in undivided India (*i.e.* India, as defined in the Government of India Act, 1935, as originally enacted) and (*ii*) he must have been registered by an officer appointed by the Government of India in this behalf on an application made by him to such an officer before the commencement of the Constitution. It has been provided "that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application." This means that persons who migrated to India on or after July 25, 1949, cannot claim to be citizens under the Constitution unless they are granted the rights of citizenship by a special law made by Parliament.

Persons, however, who migrated from the territory of India to the territory now included in Pakistan after March 1, 1947, would not be deemed to be citizens of India. This rule will not apply to persons who, after having so migrated have returned to India under a legal permit for resettlement or permanent return and these persons would be deemed to have migrated to the territory of India after July 19, 1948.

Persons residing outside India will be deemed to be citizens of India if they satisfy the two following conditions: (*i*) They or either of their parents or any of their grand-parents must have been born in undivided India and (*ii*) they must have been registered as citizens of India by the diplomatic or consular representatives of India in the countries where they are for the time being residing on acquired the citizenship of any foreign State.
after the commencement of the Constitution, in prescribed form and manner.

No person will be a citizen of India if he has voluntarily application made to such representatives, whether before or

All persons who are, or are deemed to be, citizens of India under the provision mentioned above will, subject to any law that may be made by Parliament, continue to be such citizens.

(In May, 1955, a Bill to provide for the acquisition and termination of Indian citizenship was introduced in Parliament.)

Elections—The constitution introduces universal adult franchise in India. The elections to the popular chambers both at the Centre and the States are required to be held on the basis of adult suffrage. This is one of the greatest merits of the Constitution. By this provision the Constitution abolishes, at one stroke, the entire pernicious system of communal electorates which the British introduced in the country as part of their divide and rule policy. It abolishes all kinds of property qualifications for voters. Thus, at least so far as the popular chambers are concerned—the chambers to which the Governments, both at the Centre and in the States have been made responsible—the principle of 'one man, one vote' has been established in India.

The Election Commission—To ensure that elections are free and fair, the Constitution provides for the setting up of an independent body known as the election commission. The superintendence, direction and control of the preparation of the electoral rolls and the conduct of elections to Parliament and the State Legislatures as well as the election to the offices of the President and the Vice-President have been vested in the Commission. The Commission is to consist of a Chief Election Commissioner and other members all of whom are to be appointed by the President, subject to the provisions of any law made by Parliament. It is provided that the Chief Election Commissioner shall not be removed from office except in like manner and on like grounds as a Judge of the Supreme Court. And, it is further laid down, other Election Commissioners shall not be removed

except on the recommendation of the Chief Election Commissioner.

The Delimitation Commission—The first general elections under the Constitution were held in 1951-52 on the basis of certain provisional population figures. Under the Delimitation Commission Act, 1952, a body known as the Delimitation Commission has been set up to redelimit the constituencies on the basis of the latest census figures and to adjust representation in the various Legislatures on that basis.

CHAPTER III

FUNDAMENTAL RIGHTS

Almost every written constitution guarantees some fundamental rights. The Bill of Rights in the American Constitution deals with some of these rights. The Irish Constitution also guarantees a number of these rights. The Constitution of the Weimar Republic of Germany devoted the whole of Part II to provisions relating to "Fundamental Rights and Duties of Germans." The Constitution of India also rightly includes a number of highly important provisions dealing with "Fundamental Rights." These provisions are set out in Part III of the Constitution. It must not be supposed, however, that Indian citizens will have no other rights except those guaranteed by Part III of the Constitution. There are many other rights of which the Constitution does not say anything at all but which are dealt with by various existing laws and regulations in force in the country.

An important thing to be noted about the fundamental rights guaranteed by the Constitution is that some of them are guaranteed only to citizens, whereas there are others which are guaranteed to every person, irrespective of whether he or she is a citizen or not. For instance, freedom of expression, freedom of association, freedom of movement and the like are guaranteed only to citizens, while rights relating to the protection of life and personal liberty are guaranteed to every person irrespective of his or her being a citizen. Evidently, rights of the latter category are regarded as of greater human importance than those of the former.

Comparing the Constitution of India with the Government of India Act, 1935, it will be found that the latter contained no declaration of fundamental rights except what were contained in Sections 298 and 299. The purpose of Section 298 of the Government of India Act, 1935 was to prevent discrimination against citizens in matters relating

to holding of office under the crown, holding, acquiring and disposing of property and carrying on any trade in British India on grounds of race, religion or place of birth or any of them. And Section 299 of the Act declared, *interalia,* that "no person shall be deprived of his property in British India save by authority of law."

It is interesting to note that the British Constitution which is mainly unwritten does not declare any right to be fundamental. In Britain the rights of the citizens can only be discovered on the principle that what is not illegal under the existing laws is legal. But any law can be changed by Parliament and any right thereby taken away. And if Parliament passes any law thereby abrogating any right of citizens, courts have no power to challenge such law. Here in India, however, the courts have full authority under the Constitution to declare any law to be unconstitutional and void which infringes any of the fundamental rights. But this does not mean that the British people do not enjoy such rights as are conferred on the people of India by the Constitution of India. The traditions of the British people and their laws are such that they enjoy more democratic liberty than perhaps any other people under the sun. And it will be found on scrutiny that, in many respects, the people of India have been given less liberty under the Constitution than is at present being enjoyed by the British.

It is necessary to remember in connection with the study of fundamental rights that no right can be absolute. To give absolute rights to anybody in any matter means seriously curtailing the freedom of others. There cannot be any absolute right in any civilised system of government.

A Brief Summary—The Constitution of India embodies an impressive list of fundamental rights. It guarantees equality before the law and equality of opportunity for all citizens in matters relating to public employment. It prohibits discrimination between citizens on grounds of race, religion, caste, sex, place of birth or any of them. It

abolishes untouchability and also abolishes the system of conferring of titles by the State, excepting of course military and academic distinctions. The Constitution guarantees to all citizens freedom of speech and expression, freedom to assemble peaceably and without arms, freedom of association, freedom of movement and residence, freedom to acquire, hold and dispose of property and the freedom to practise any profession or carry on any occupation, trade or business. All these freedoms are of course subject to reasonable restrictions that may be imposed by the State in the interests of Public order, morality, decency etc. The Constitution declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. It prohibits trafficking in human beings and forced labour. It also prohibits employment of children below the age of fourteen in factories, mines and any other hazardous employment. It guarantees freedom of conscience and religion. It guarantees to the minorities the right of conserving their language, script and culture. It lays down that no person shall be deprived of property except by authority of law. It finally guarantees the right to move the Supreme Court for the enforcement of the fundamental rights.

Can Fundamental Rights be Restricted or Suspended ? —The Constitution permits the restriction and suspension of fundamental rights in certain cases and circumstances.

(a) Parliament has been authorised by the Constitution to restrict or abrogate the fundamental rights in their application to the Armed Forces or Forces charged with the maintenance of public order. Parliament has been given this power with a view to ensuring proper discharge of their duties by the Forces and the maintenance of discipline among them. (Art. 33).

(*b*) Parliament has been given the power to indemnify any person in the service of the State for acts done in any area where martial law was in force in connection with

maintenance or restoration of order. Parliament can also validate any sentence passed or punishment inflicted in such an area under martial law. This means that in areas under martial law fundamental right will remain practically suspended and soldiers or other forces will be able in anticipation of Parliament's indemnifying legislation to violate fundamental rights in course of the discharge of their duties. (Art. 34).

(*c*) When a Proclamation of Emergency has been issued by the President (Art. 352), the fundamental rights conferred on citizens by Art. 19 will remain suspended while the Proclamation is in operation. These rights include freedom of expression, movement, assembly and association as well as the freedom to hold, acquire and dispose of property. (See below).

(*d*) While a Proclamation of Emergency is in operation, the President may by an order suspend the right to move courts for enforcing such fundamental rights as may be mentioned by him. Such orders must be laid before Parliament as soon as possible and Parliament will have the right to modify or sescind such orders. It would be possible, however, to enforce the right through courts as soon as the Proclamation ceases to operate. (See also Chapter on the President).

(*e*) The Constitution is not something unchangeable. It can be amended by following a certain procedure. All fundamental rights can, therefore, be modified by amending the Constitution.

In the United Kingdom, where sovereignty of Parliament is one of the basic principles of the Constitution, Parliament has the power to alter or repeal any law and thereby restrict or abrogate any right whatsoever enjoyed by the people. But the British Executive has no power to suspend any such right. In the United States of America, none of the fundamental rights guaranteed by the Constitution can be

suspended, except the right to the writ of *habeas corpus*. And the writ of *habeas corpus* can be suspended only by the Congress and that only in the case of rebellion or external invasion. Thus, whereas under the American Constitution neither the Executive nor the Legislature has power to suspend any of the fundamental rights, except one (in any circumstances whatsoever), the Constitution of India permits the Central Executive to suspend a large number of fundamental rights in times of emergency. In India, the President by Proclaiming an Emergency under Article 352 can bring about an automatic suspension of the fundamental rights garanteed by Article 19 and can also, by issuing an order, suspend the right of enforcing any or all fundamental rights embodied in the Constitution. And this the President can do even in defiance of Parliament at least for a certain period of time. (See Chapter on the President).

The Constitution of the Weimar Republic of Germany, by Art. 48, gave power to the President to abrogate either wholly or partially some of the most important fundamental rights in the event of public security or order being seriously disturbed or endangered. The President was required to inform the Reichstag 'without delay' the measures taken by him under this section and the Reichstag (the Lower House of the German Parliament) had the right to annul such measures. If there was danger in delay the President could take provisional measures which could be thereafter abrogated by the Reichstag. The position in India is more or less analogous to this. India has of course to learn much from the fact that the powers conferred by Article 48 of the Weimar Republic which authorised the abrogation of vital rights of the people in times of emergencies were abused by Hitler to destroy the German Republic.

The Rights Analysed—Part III of the Constitution is divided under the following sub-headings: (1) General, (2) Right to Equality, (3) Right to Freedom, (4) Right

against Exploitation, (5) Right to freedom of Religion, (6) Cultural and Educational Rights, (7) Right to Property, and (8) Right to Constitutional Remedies.

General—Article 13 says that all laws which contravene any of the provisions relating to the fundamental rights shall be void. Clearly, therefore, this Article empowers the courts to declare void and unconstitutional any law, whether made before or after the commencement of the Constitution, which infringes any of the fundamental rights.

Right to Equality—Articles 14, 15, 16, 17 and 18 deal with the right to equality.

Article 14 says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Thus, according to this Article, no law can discriminate unfairly between one group of citizens and another in relation to the same matter, or between citizens and foreigners. This Article, however, does not prohibit fair discrimination being made between citizens. It does not, for instance, forbid discrimination between the rich and the poor in matters relating to taxation.

Article 15 says that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." It further provides that all citizens, irrespective of race, religion, caste, sex or place of birth, shall have equal rights in respect of access to shops, restaurants, hotels and places of public entertainment, and in regard to the use of wells, tanks, bathing ghats and the like, which are maintained wholly or partly out of State funds or are dedicated to the use of the general public. It is, however, made clear that nothing in this Article shall prevent the State from making special provisions for women, children and the socially and educationally backward classes.

Article 16 guarantees equality of opportunity to all citizens in matters relating to employment under the State

and prohibits discrimination in respect of such employment on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.

Article 17 declares the abolition of untouchability and says that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

Article 18 abolishes the conferring of titles, excepting military and academic ones, by the State. It further provides that no citizen of India shall accept any title from any foreign state, and that no non-citizen in the service of the State shall accept such title without the President's consent. The Article also lays down that no person, whether a citizen or not, in the service of the State shall accept any present or emolument or office from or under any foreign State without the President's consent.

Right to Freedom—Articles 19, 20, 21 and 22 deal with the "Right to Freedom."

Article 19 guarantees the following rights to the citizens —(a) freedom of speech and expression, (b) the right to assemble peaceably and without arms, (c) to form associations or unions, (d) to move freely throughout the territory of India, (e) to reside and settle in any part of the territory of India, (f) to acquire, hold and dispose of property, and (g) to practise any profession or to carry on any occupation, trade or business. None of these rights, however, are absolute. The State has been empowered to impose reasonable restrictions on these rights in the public interests. And the Courts are the final authority to decide whether any particular restriction imposed by the State is reasonable or not.

Article 20 lays down that no person shall be convicted of any offence except for the violation of a law in force at the time of the commission of the act. No person, it says

further, shall be prosecuted and punished for the same offence more than once. It also prohibits the forcing of accused person to be witnesses against themselves; that is, it gives the accused 'the privilege of remaining silent'.

Article 21 says: "No person shall be deprived of life or personal liberty except according to procedure established by law."

Article 22 provides for preventive detention. It also lays down that every person who has been arrested shall have the right to consult and to be defended by legal practitioners and he must be produced before the court of the nearest magistrate within twenty-four hours of his arrest; these privileges are denied to persons arrested under any law providing for preventive detention.

Right against Exploitation—Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour. Clause (2) of this Article saves from its operation the imposition of compulsory service by the State in the public interest.

Article 24 prohibits the employment of children below the age of fourteen years in any factory or mine or in any other job involving hazardous work.

Right to Freedom of Religion—Article 25 guarantees to all persons freedom of conscience and religion. Nothing in this Article, it is made clear, shall prevent the State from making any law providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina and Buddhist religious institutions of a public character to all classes and sections in these communities.

Article 26 guarantees to religious denominations the right to acquire property and to administer it, the right to establish institutions and the right to manage their affairs.

Article 27 lays down that no person shall be compelled to pay any tax the proceeds of which are to be utilised for

the promotion or maintenance of any particular religion or religious denomination.

Article 28 prohibits the provision of religious instruction in educational institutions maintained wholly out of State funds.

Cultural and Educational Rights—Article 29 guarantees to all sections of the citizens the right to conserve their respective language, script and culture.

Article 30 guarantees to all religious and linguistic minorities the right to establish and administer educational institutions of their choice. It prohibits the State from discriminating against such institutions in giving aid to educational institutions.

Right to Property—Articles 31, 31A, and 31B deal with the right to property. They provide that no person shall be deprived of property save by authority of law. They empower the State to acquire property for public purpose on payment of compensation. The Legislatures are given the final authority to determine the quantum and the principles of compensation and the jurisdiction of the courts is barred in respect of this matter.

Right to Constitutional Remedies—Article 32 guarantees the right to move the Supreme Court for the enforcement of fundamental rights.

Article 33 authorises Parliament to restrict or abrogate fundamental rights in their application to the Armed Forces.

Article 34 empowers Parliament to validate acts done or sentences passed in any area where martial law was in force. This Article thus declares indirectly that fundamental rights will, for all practical purposes, remain suspended in areas under martial law.

The Writ of Habeas Corpus in India— *Habeas corpus* literally means to "have the body". The writ of *habeas corpus*, as it is known in England, is an order issued by the

High Court in England calling upon a person who has detained another to produce the body of the latter before the Court. By this order, the Court can have any detained person produced before it in order to examine whether that person is being lawfully detained or not and thereafter deal with him as required by law. The writ of *habeas corpus* is thus a great safe-guard of the liberty of the citizens under the British Constitution. Any person who is being illegally detained can have his liberty restored by the Court through its power to issue the writ, and the wrong-doer can be properly punished by the Court for his illegal act. The writ of *habeas corpus* is thus a bulwark of Rule of Law under the British Constitution. Maintenance of Rule of Law in England has been possible largely because of the Court's power to issue this writ. The writ of *habeas corpus* is of great antiquity. It is called a prerogative writ because it is based on the King's prerogative to inquire into the cause of detention of any of his subjects.

In India formerly only the High Courts of Calcutta, Madras and Bombay had power to issue the writ of *habeas corpus*. Later (1927) the High Court of Calcutta held that for purposes mentioned in S. 491 of the Criminal Procedure Code, the Legislature had taken away the power of the High Court to issue the old prerogative writ of *habeas corpus*. Though the High Courts of Bombay and Madras held a different view about the matter, in 1939 the Privy Council approved of the view taken by the Calcutta High Court. The Privy Council agreed with the Calcutta High Court that the Legislature had taken away the power of the High Court "to issue the prerogative writ of the *habeas corpus* in matters contemplated by S. 491 of the Code of Criminal Procedure of 1898." The relief for the purposes mentioned in S. 491, therefore, could only be obtained by application under that section which authorised High Courts to issue orders of the nature of *habeas corpus* within the limits of their appellate jurisdiction.

Under the new Constitution, however, the Supreme Court, and the High Courts (and such other Courts as may be authorised by Parliament) have power to issue the writ of *habeas corpus*. The power of issuing this writ is, therefore, derived under the new Constitution from clear Constitutional provisions and not from historical precedents or usage as under the British Constitution. And, unlike in England, the Courts here have the authority to go into the question whether the law itself is constitutional or otherwise. In England no Court can declare an Act of Parliament to be unconstitutional though it may hold the rules made by the administrative authorities under any law as ultra vires of that law.

The writs of mandamus, prohibition, quo warranto and certiorari :—

Before the inauguration of the Constitution only the High Courts of Calcutta, Madras and Bombay could issue the writs of prohibition, *quo warranto* and *certiorari* and orders in the nature of *mandamus* within the Presidency towns. The Constitution of India, however, authorises the Supreme Court to issue these important writs all over India. And it also authorises the High Courts to issue these writs throughout the territories included within their respective jurisdictions (Art. 226). The Supreme Court can issue these writs only for the enforcement of fundamental rights but the High Courts can issue these writs for all appropriate purposes including the enforcement of fundamental rights.

These writs are instruments for the control of abuse of powers.

The writ of *mandamus* :—*Mandamus* is an order which commands a person or body to do that which it is his or its duty to do. Suppose, under a labour law, the duty of a firm is to pay compensation to an injured worker. If in any particular case the firm fails to perform this duty, the appropriate High Court may issue a writ of *mandamus* to

that firm commanding it to pay such compensation to the worker concerned. *Mandamus,* it must be understood, is granted only where the applicant has the right to the performance of a legal duty and has no other specific or equally appropriate and convenient means of compelling its performance.

The writ of *prohibition* :—The writ of prohibition is usually issued by a higher court to stop proceedings in a lower court on ground of excess of jurisdiction or violation of the rules of natural justice. A High Court may issue such a writ to a lower court to restrain it from hearing a case which lies beyond its jurisdiction. The High Court may also issue a writ of prohibition to any judge to prevent him from doing anything in violation of the rules of natural justice, such as, hearing a case in which he is personally interested.

The writ of prohibition can also be issued to non-judicial public bodies in cases where such bodies take quasi-judicial decisions. Suppose a District Board has to take a quasi-judicial decision regarding the valuation of a plot of land after hearing all the parties concerned. If it takes the decision without hearing the parties or only one of the two contending parties, a writ of prohibition can be issued against it (on the ground of violation of a rule of natural justice).

The writ of *certiorari* :—The writ of *certiorari* is generally issued to remove a suit from an inferior court to a higher court to prevent excess of jurisdiction. Usually the writs of *prohibition* and *certiorari* are issued together. The writ of *certiorari* also lies against public bodies, such as, District Boards and Corporations, in matters in which these bodies have to take quasi-judicial decisions.

The writ of *quo warranto*—The writ of *quo warranto* is issued to prevent illegal assumption of any public office or usurpation of any public office by anybody. Suppose a

person whose age is 70 years is appointed to fill a public office. Now, if the prescribed age of retirement in relation to that office is less than 70 years, then an appropriate High Court may issue a writ of *quo warranto* against that person and declare that office vacant.

Rule of Law in India—The Rule of Law as it is understood in Britain and the United States means two things: (1) no person can be deprived of life, liberty or property except for a breach of law proved in the ordinary courts, and (2) no person (except the King or Queen) is above law, that is, all persons, regardless of their status and position are equally liable to penalty for contravention of law.

Part III of the Indian Constitution which deals with the fundamental rights may be said to establish the Rule of Law in India. Under the provisions contained in this Part, no person can be deprived of life, liberty or property except according to law. They also guarantee equality before the law and equal protection of the laws to all persons.

In matters relating to personal liberty, however, the Indian Judiciary enjoys much less power than the American Judiciary. Article 21 of the Indian Constitution says: "No person shall be deprived of his life or personal liberty except according to procedure established by law." This means that in a given case of arrest or detention, the courts can only examine whether the procedure established by law has been adhered to in making the arrest or detaining the person concerned. They cannot go into the question whether the law itself is unjust, capricious or iniquitous. For instance if a law lays down that persons found guilty of quarrelling on the public streets shall be hanged, it will not be open to the courts to challenge the law on the ground that it is unjust or oppressive. The American courts, however, cannot only examine whether a particular person has been arrested or detained in accordance with law, they can also go into the question whether the law itself is unjust or iniquitous. And they can declare a law invalid on the ground that it

makes an undue invasion of liberty. The fifth and fourteenth amendments to the American Constitution lay down that no person shall "be deprived of life, liberty or property, without due process of law." The American Supreme Court has interpreted the words "without due process of law" to mean that the courts cannot only examine in a given case of arrest or detention, whether the law has been adhered to but also go into the question whether the law itself is good or bad. We may, therefore, say that the Rule of Law as established by the Indian Constitution differs from the Rule of Law as prevalent in America in an important respect. The defect of Article 21, however has been made up to some extent by Article 22 which provides that every person who is arrested shall have the right to consult and to be defended by a legal practitioner of his choice and must be produced before the nearest magistrate within twenty-four hours of such arrest.

Moreover, the courts in India enjoy, like the American Judiciary, the power of judicial review, that is, the power to declare unconstitutional and void any law that contravenes the provisions of the Constitution. This power of judicial review constitutes a great safe-guard against arbitrary infringement of liberty.

Directive Principles of State Policy

A novel feature of the Constitution is the Articles dealing with "Directive Principles of State Policy." These are included in Part IV of the Constitution. Article 37 makes it clear that the provisions of this Part shall not be enforceable in any Court but that nevertheless they are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Article 38 declares that the State shall strive to establish a social order on the basis of justice, social, economic and political. Almost all the other Articles of this Part are like an amplification of this Article. Articles 39, 41, 42, 43, 46,

47 and 48 relate chiefly to economic matters. They lay down that the State shall strive to ensure adequate means of livelihood to all citizens; to ensure equitable distribution of the ownership and control of the material resources of the community; to prevent harmful concentrations of wealth; to secure that there is equal pay for equal work for both men and women; to prevent injury to the health and strength of men, women and children through their being forced to enter vocations unsuitable to their age; to protect childhood and youth against exploitation and against moral and material abandonment; to make, as far as possible, provisions for education, work and public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want; to ensure just and humane conditions of work and maternity relief; to ensure a decent standard of living to all workers and to promote cottage industries; to protect the interests, educational and economic, of weaker sections of people, particularly the Scheduled Castes and the Scheduled Tribes; to raise the level of nutrition and standard of living, to promote public health and to prohibit the consumption of intoxicating drinks or drugs except for medicinal purposes; to promote agriculture and animal husbandry on modern and scientific lines; to preserve and improve breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock.

Article 40 says that the State shall organise village panchayats and endow them with such powers as may enable them to function as units of self-government. Article 44 declares that the State shall strive to secure for its citizens a uniform civil code throughout the country. Aricle 45 directs that within a period of ten years from the commencement of the Constitution, the State shall endeavour to provide free and compulsory education for all children up to the age of fourteen years. Article 49 makes it an obligation of the State to protect monuments, places or objects of

artistic or historic interests declared by Parliament to be of national importance. Article 50 directs that the State shall take steps to separate the Judiciary from the Executive in the public services.

Article 51 relates to international peace and security. It lays down that the State shall endeavour to promote international peace and security, "to maintain just and honourable relations between nations"; "to foster respect for international law and treaty obligations in the dealings of organised peoples with one another"; and "encourage settlement of international disputes by arbitration.

Are these provisions meaningless ?

This Part of the Constitution has been criticised on the ground that it embodies only a number of pious wishes. It is pointed out that as the provisions of this Part are not enforceable in Courts, their inclusion in the Constitution has been meaningless. As against this criticism it may be said that these principles embody some high ideals and their inclusion in the Constitution will act as a standing reminder to the State that it must continually strive to formulate and implement its policies in such a manner as to approximate to these ideals. They are, it has been well said, like an instrument of instructions to the State issued by the people. In a democratic system of Government, the swing of public opinion puts different parties in power at different times. In India, therefore, different parties may come to the helm of affairs according to the change of popular opinion. At one time the party in power may be one with conservative leanings, at another time the Government may be controlled by a party with a radical outlook. But the 'Directive Principles' in the Constitution will ensure that a conservative party will not be able to ignore these principles altogether in the formulation of its policy, and also that a radical party will not feel it necessary to abrogate or scrap

this Constitution in order to be able to carry out the party's economic or other programmes.

It is also not a fact that provisions similar to the "Directive Principles" exist in no other Constitution of the world. Some such principles are found in the Constitution of the Irish Free State.

CHAPTER XXVI

THE UNION EXECUTIVE

The President: The Constitution lays down that there shall be a President of India. The President, it is further laid down, shall be elected by the members of an electoral college consisting of—(a) the elected members of both Houses of Parliament and (b) the elected members of the Legislative Assemblies of the States. The election of the President is to be in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election is to be by secret ballot. To be eligible for election as President, a person (1) must be a citizen of India, (2) must have completed the age of thirty-five years, (3) must be qualified for election as a member of the House of the People, and (4) must not hold any office of profit under the Government of India or any State Government or any local authority subject to the control of any of these Governments. For the purpose of this provision, however, a person will not be deemed to hold any office of profit by reason only that he is the President or the Vice-President of the Union or the Governor or the Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State. It is provided that a person who holds office as President will receive a salary of Rs. 10,000 per month and other allowances. He will be entitled to a rent-free official residence.

The term of office of the President is five years. The President must not hold any other office of profit. He must not be a member of either House of Parliament or a House of any State Legislature. If any member of any of these bodies is elected President, his seat will be deemed to have been vacated from the date on which he enters upon his office as President. The President may resign his office by

writing under his hand addressed to the Vice-President. He may be impeached for violation of the Constitution and removed from office. When a President is to be impeached for violation of the Constitution, the charge is to be preferred by either House of Parliament and the other House will investigate the charge or cause it to be investigated. If the House which investigates the charge or causes it to be investigated passes by a two-thirds majority of its total membership a resolution that the charge preferred against the President has been sustained, it will have the effect of removing the President from his office as from the date on which the resolution is so passed.

The President's powers—The executive power of the Union has been vested in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Constitution, however, says that "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Thus, the President is required by the Constitution to exercise his functions with the advice of his Council of Ministers. But the important question is whether the President is always bound to accept the advice of the Council of Ministers, that is, whether he is a mere nominal executive head, a figure-head, or enjoys some real power.

It is clear, in the first place, that the Constitution does not say that the President must always accept the advice of his Ministers. And it cannot be argued that the conventions of the British Constitution, according to which the King acts as a mere constitutional head and exercises his functions according to the advice of the Cabinet, apply in India. So the President is not required either by the letter of the Constitution or by any established convention in the country to act as a mere constitutional head. In fact, there are provisions in the Constitution which seem to point to the conclusion that the President has been given some real

power. The President, for instance, has been empowered by the Constitution to return to Parliament, for reconsideration, Bills other than Money Bills, which have been passed by Parliament and submitted to him for his assent. Now, no Bill can be passed in Parliament unless it is supported by the majority and, hence, by the Ministry. A President who can return to Parliament a Bill which has been already passed with Ministerial support cannot be supposed to be a mere rubber-stamp in the hands of his Ministry.

It is obvious, however, that it is not possible for the President to interfere in the normal day-to-day administration of the country and he must act according to the advice of his Ministry so far as ordinary affairs are concerned. For the Ministry, under the Constitution, must be collectively responsible to the Lower House of Parliament, the House of the People. And no Ministry can accept responsibility for a policy of which it is not the author, or which has not been formulated according to its will or advice. If the President refuses to accept the advice of the Ministry in the day-to-day affairs, the Ministry may feel compelled to resign and thereby confront the President with the necessity of finding an alternative Ministry which the President may not be able to do. For the new Ministry must also be such as will enjoy the confidence of the Lower House. But a President who flouts the counsel of the Ministry in the ordinary administrative affairs, is bound to incur the wrath of the Lower House of Parliament, too, which will make it impossible for him to find an alternative Ministry enjoying the confidence of that body.

It is also extremely doubtful whether the President can exercise any real power in extraordinary situations. For it is difficult to hold that a Constitution which sets up a responsible Ministry contemplates that in times of crises, when policy decisions of momentous significance to the security and welfare of the State have to be taken, the power of making those decisions would vest in one man rather than

a body of persons representing the collective wisdom of the majority in the popular Chamber. To sum up, the President of India is a nominal executive head, a figure-head, except, probably, in the matter of dissolution of the House of the People.

The President, it seems, may refuse to accept the advice of the Ministry for the dissolution of the House of the People. He may hold that such dissolution, though it might be advantageous to the Ministry, will not be to the best interests of the nation. The power of dissolution, it may be noted, is regarded in many countries as a prerogative of the head of the State who, in a democratic form of Government, is expected to hold the balance between the Ministry and the Legislature. In South Africa, for example, though the King has to act on the advice of the Ministers, he or his representative, the Governor-General, has discretionary powers in respect of certain matters including the dissolution of the Legislature. Also, in the Irish Constitution, though the President is generally required to exercise his powers on the advice of the Ministers, he has discretionary power to refuse to dissolve the Dail Eireann on the advice of the Ministers.

The conclusion that the President is a nominal head is reinforced by the following considerations: (1) Not on a single occasion since the Constitution was brought into force has the President withheld his assent to any Bill passed by the two Houses of Parliament, or returned to the Houses, for reconsideration, any Bill submitted to him for assent. (2) President Prasad, the first President of Republican India, has never claimed any real power for himself and has been scrupulously trying to play the self-effacing role of a nominal executive. He never even, it appears, opposes his will to that of Prime Minister Nehru, one of the greatest statesmen of modern times and a man of extraordinary moral and intellectual stature. President Prasad has thus created an important convention which, one feels sure, has come to

stay because it is in perfect accord with the general scheme and spirit of the Republican Constitution.

It is clear, however, that if a man of strong personality is elected to the Presidential office, he will wield enormous *influence* over the affairs of the state. Being himself an elected representative of the people, he will enjoy great prestige and by the power of his personality he will be able greatly to influence the decisions of the Ministry. One has only to remember the enormous powers vested in the Centre by the Constitution to see what the ability of the President to influence Ministerial decisions means. Moreover, the President will appoint his Prime Minister. And if, instead of two, a number of parties are represented in Parliament, none of which possesses an absolute majority, the President will have great freedom of choice in appointing the Prime Minister. By choosing the leader of one group instead of another, he will be greatly able to determine the composition of the Government and, therefore, its colour.

Bearing in mind this general estimate of the Presidential powers, let us examine the specific powers that have been vested in the President. The President's powers may, for the sake of convenience, be divided under the following heads:—(a) Executive Powers; (b) Emergency Powers; (c) Legislative Powers; (d) Financial Powers; (e) Judicial Powers.

The Executive Powers—As has been mentioned, the President is the executive head of the Union Government. The supreme command of the Defence Force of the Union is vested in the President. He thus has the power of declaring war and concluding peace. The Executive power of the Union extends (a) to the matters with respect to which Parliament has power to make laws and (b) to the exercise of such right, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

As a rule, however, the executive power of the Union does not extend in any Part A or Part B state to matters with respect to which both Parliament and the Legislature of the State have power to make laws. But this rule has its exceptions. Parliament may by law extend the Union executive power to any of those matters in any of the autonomous States. And in situations of emergency, the executive power of the union would extend far beyond its normal limits (see below; see also Ch. XXXII). The President has been empowered to make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business. All executive action of the Government of India must be expressed to be taken in the name of the President.

Emergency Powers—The President has been given very wide powers to meet emergencies. The Constitution envisages three kinds of emergencies and arms the President with sufficient powers to deal with them. The three kinds of emergencies are the following:—(a) Emergencies arising out of war or aggression or internal disturbance or threat of the same; (b) emergencies arising out of the failure of the Constitutional machinery in the States; (c) financial emergencies.

(A) Let us first deal with provisions relating to the first kind of emergency. If the President is satisfied that the security of India or any part thereof is threatened by war or external aggression or internal disturbance, he may by proclamation make a declaration to that effect. It has been provided that a Proclamation of Emergency (as it is to be called) can be made even before the actual occurrence of war or aggression or disturbance if the President is satisfied that there is imminent danger thereof. A Proclamation of Emergency may be revoked by a subsequent Proclamation. It must be laid before each House of Parliament and will cease to operate at the expiration of two

months unless before the expiration of that period it has been approved by both Houses of Parliament.

It is quite possible, however, that a Proclamation of Emergency may be issued at a time when the House of the People has been dissolved or its dissolution may take place during the period of two months following the issuing of the Proclamation. In such cases, if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period (of two months), the Proclamation will cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has also been passed by the House of the People.

The Proclamation of Emergency will have the effect of practically turning the federal constitution into a unitary one. For while a Proclamation of Emergency is in operation, (1) Parliament will have unrestricted power to make laws for the whole or any part of India with respect to any of the matters enumerated in the State List; and any State law which is inconsistent with such laws made by Parliament will be void to the extent of the inconsistency; (2) the executive power of the Union will extend to the giving of directions to any State in any matter as to the manner in which the executive power thereof is to be exercised; (3) the following fundamental rights guaranteed by the Constitution will remain suspended—(a) freedom of speech and expression; (b) freedom to assemble peaceably; (c) freedom to form associations; (d) freedom to move freely throughout the territory of India; (e) freedom to reside and settle in any part of the territory of India; (f) freedom to acquire, hold and dispose of property and (g) to practise any profession, or to carry on any occupation, trade or business; (4) the President will have power to suspend the right to

move the courts for the enforcement of any of the fundamental rights and (5) the President will have the power to suspend the application of provisions relating to the distribution of revenues between the Centre and the States.

It is undeniable that the powers vested in the President, or rather the Central executive, to meet emergencies arising out of war or aggression or disturbances are really very drastic. And when it is remembered that a Proclamation of Emergency can be issued even before the actual occurrence of war or aggression, the extent of powers conferred on the President seems to be almost incompatible with democracy. Indeed, it is difficult to refute the criticism that the powers given to the executive to meet emergencies arising out of war or aggression or disturbances are totalitarian in character.

On the other hand, it is indisputable that the security of the State as a whole is of far greater importance than the individual liberty of a few citizens. It is the State that protects the liberty of citizens and if the State itself is destroyed, the liberty of all citizens would be annihilated. Nor should it be forgotten that the threats to the security of states is at present greater than in any other period of history. The Constitution of India has been drawn up at a time when, after the devastation of two successive global wars, the world has been darkened by the shadow of a third armageddon. It is natural, therefore, that the framers of the Constitution have put greater emphasis on the need for the maintenance of the integrity and security of the state in grave national emergencies than on guaranteeing individual liberty in such situations. It is quite conceivable that in times of crisis a few anti-social elements, if they are allowed to have the same liberty they enjoy in normal times, may, by taking advantage of that liberty, destroy the State and annihilate the liberty of all other citizens.

The power of suspending fundamental rights is not unknown in other constitutions. The British Parliament

can suspend or abrogate any of the rights enjoyed by the citizens. The U. S. Congress, however, can suspend only one of the fundamental rights guaranteed by the Constitution, namely, the right to the writ of *habeas corpus*. But neither the British, nor the American executive has power to suspend any of the fundamental rights, and this is in sharp contrast to the position of the Indian executive under the Constitution. The executive in India has been empowered to suspend some of the most important fundamental rights, for the issuing of a Proclamation of Emergency will have the automatic effect of suspending these fundamental rights. But it is provided that the orders that may be made by the President to suspend the right of moving the courts for the enforcement of the fundamental rights must be laid before each House of Parliament. This means that Parliament will have the right to revoke these orders.

It is clear, however, that the powers conferred on the central executive to meet national emergencies are, so to say, a loaded gun which can be used both to protect and to destroy the liberty of citizens. The gun must be used, therefore, with extreme caution. Article 48 of the Constitution of the Weimer Republic of Germany empowered the President of the German Reich to abrogate some fundamental rights in times of serious disturbance or other crises. And it is by abusing the powers granted by this Article that Hitler destroyed the liberty of the German people. The need for caution in the exercise of emergency powers cannot, therefore, be over-emphasised. When Article 359, which deals with the suspension, during the operation of a Proclamation of Emergency, of the right of moving courts for the enforcement of the fundamental rights, was being passed in the Constituent Assembly, a certain member stood up and declared: "This is a day of shame and sorrow. May God help the Indian people." How far this declaration was prophetic will be shown by Futurity alone.

(B) Let us now come to the second kind of emergency. Article 356 states that if the President, on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh or anybody or authority in the State other than the State Legislature and the High Court; and (b) declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. Any such Proclamation may be revoked or varied by a subsequent Proclamation. Such a Proclamation will cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. A Proclamation so approved will, unless revoked, cease to operate on the expiration of a period of six months from the date of passing of the second of the resolutions approving the Proclamation. By similar subsequent approvals the life of the Proclamation may be extended by periods of six months each but in no case will be the Proclamation remained in force for more than three years.

It may so happen, however, that a Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House takes place during the period of two months following the issuing of the Proclamation. In such cases, if a resolution approving the Proclamation has been passed by the Council of States but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period (of two months), the Proclamation will cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a

resolution approving the Proclamation has been also passed by the House of the People. A similar provision has been made for the case where the dissolution of the House takes place within a period of six months after an approval of the Proclamation by the two Houses of Parliament.

It is important to note that to issue a Proclamation regarding the failure of the constitutional machinery in any State, the President need not wait for the report of the Governor or the Rajpramukh, but may take action on his own initiative. Further, Article 365 states that any failure on the part of a state to comply with any direcions given in the lawful exercise of the executive power of the Union may be regarded by the President as failure of the constitutional machinery in the State. This means that any such failure to comply with the Union's directions on the part of any State may be followed by the issuing of a Proclamation and the assumption by the President of the powers of the State Government. The President's power of supersession of the State Government is, therefore, very drastic.

It will be seen that unlike the Act of 1935, which vested in the Governor the power of law-making for the Provinces under similar circumstances, the new Constitution vests such power in the Central Legislature. The difference is not insignificant. For under the new Constitution, in cases of constitutional failure, the executive will not have the power to assume automatically the functions of the Legislature of the State; such power will be vested in the Central Legislature where, it should not be forgotten, the State in question will be represented by its own representatives. The idea is that, in the case of constitutional failure in a State, the power of making laws for it should be exercised in accordance with the desire of the representatives of the whole country and not those of that particular State alone. It has been provided by Article 357 that when the powers of any State Legislature are made exercisable by Parliament by Proclamation under Article 356—that is, Proclamation of constitutional failure—Parliament shall have the competence

to delegate to the President or any other authority the power of law-making for the State. Thus the executive will be able to make laws for the State only if Parliament authorises it to do so.

The wide powers given to the central executive by Articles 356 and 357 should be used sparingly. A too frequent exercise of these powers will destroy the autonomy of the units. The framers of the Constitution contemplated that before the President took over the administration of any State he would issue a warning. If this warning fails to have any effect, the next step would be the ordering of a general election. If even the election of the new legislators fails to mend matters, then alone the President would take over the administration of the State. This intention of the framers of the Constitution has not, however, been respected in the actual working of the Constitution.

(C) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India is threatened, he may by a Proclamation make a declaration to that effect. This is the third kind of emergency envisaged by the Constitution. Such a Proclamation may be revoked by a subsequent Proclamation. It will cease to operate at the expiration of two months unless before the expiration of that period, it has been approved by resolutions of both Houses of Parliament. If such a Proclamation is issued at a time when House of the People has been dissolved or if the dissolution of the House takes place within the period of two months mentioned above, the procedure will be the same as in the case of a Proclamation of Emergency [See (A) above].

While a Proclamation of this kind is in operation the executive authority of the Union will extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and of giving such other directions as the President may deem necessary. These directions may include (a) a provision requiring the

reduction of salaries and allowances of any class of persons serving in connection with the affairs of a State, (b) a provision requiring that Money Bills or all other financial Bills must be reserved for the consideration of the President after they are passed by the State Legislature.

Also, while such a Proclamation of financial emergency is in operation, the President will have power to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

Legislative Powers—All Bills, when passed by both Houses of Parliament must be presented for the assent of the President. The President can withhold his assent from all Bills other than Money Bills. But if the Bill is passed again by the Houses with or without amendment, the President must not with hold his assent therefrom. All Money Bills and other financial Bills require the previous recommendation of the President before their introduction into Parliament.

At any time, except when both Houses of Parliament are in session, the President can issue Ordinances, which are to have the same effect as Acts of Parliament. Every such Ordinance must be laid before both Houses of Parliament and will cease to operate at the expiration of six weeks from the re-assembly of Parliament or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions. Where the Houses of Parliament are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates.

(The President has been given some legislative powers in relation to the State laws for which see the chapter on Legislatures of States specified in Part A of the First Schedule).

Financial Powers—The President has been authorised to lay before Parliament at the beginning of every financial year a financial statement showing the estimated receipts and expenditure of the Union for that year. No demand for grant can be made except on the recommendation of the President.

The President has been given power to distribute between the Union and the States shares from the Income tax, and to assign to Assam, Bihar, Orissa and West Bengal grants-in-aid in lieu of their shares from jute export duty. The President is also empowered to set up a Finance Commission. (For all these matters see chapter on Financial provisions).

Judicial Powers—The President enjoys the power to grant pardons, reprieves or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—(a) in all cases where the punishment or sentence is by a Court Martial; (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death.

The American President and the President of India—See Chapter XV, Vol. I.

The French President and the President of India—See Chapter XV.

The Vice-President—There shall be a Vice-President of the Indian Union. The Vice-President is to be elected by a joint sitting of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote. The voting is to be by secret ballot. To be eligible for the office of the Vice-President, a person must (a) be a citizen of India, (b) must have completed the age of thirty-five years, (c) must be qualified for election as a member of the Council of States and (d) must

not hold any office of profit under the Government of India or any State Government or any local authority subject to the control of these Governments. (Provisions exactly similar to those relating to the President are made to provide that the offices of the President or the Vice-President or of the Governors or Ministers of States are not to be regarded as offices of profit in this connection).

The Vice-President must not be a member of either House of Parliament or of a House of a State Legislature. The Vice-President is to be the ex-officio Chairman of the Council of States and hold office for a term of five years. In case of any vacancy in the office of the President by reason of his death, resignation or removal, the Vice-President is required to act as the President till a newly elected President enters upon his office. It is provided that an election to fill a vacancy in the office of the President occurring by reason of his death, resignation or removal shall be held as soon as possible after, and in no case later than six months, from the date of such vacancy. In the event of the President's temporary inability to discharge his functions owing to absence or illness or any other cause, the Vice-President is to discharge those functions till they are resumed by the President. The Vice-President may resign his office by writing to the President under his own hand. He may be removed for incapacity or want of confidence by a resolution passed by a majority of all the then members of the Council and agreed to by the House of the People.

The Present President and the Vice-President—Under the transitional provisions of the Constitution, Dr. Rajendra Prasad was elected President of India by the Constituent Assembly of India as a provisional arrangement which was to continue till the election of a President under the permanent provisions of the Constitution. This election took place after the completion of the first General Elections under the Constitution in 1952. The members of the electoral college, that is, the elected members of the new Parliament and the

elected members of the new Legislative Assemblies, recorded their votes on May 2, 1952. On May 6, when the counting took place, Dr. Rajendra Prasad, the Congress nominee for the Presidential office, was (once again) declared elected President of India. Dr. Prasad defeated his rivals by an overwhelming majority of votes. While he obtained 50,74,00 votes, the other contestants for the office received votes as follows:—Prof. K. T. Shah 92,827; Sri L. G. Thatte 2,672; Sri Hari Ram 1,954; Sri Krishna Kumar Chatterjee 523.

On April 25, 1952, Dr. S. Radhakrishnan, a Philosopher of international fame, who was the only validly nominated candidate for the Vice-Presidential election was elected uncontested as the Vice-President of India. Dr. Radhakrishnan is the first Vice-President of India.

Both the President and the Vice-President assumed office on May 13, 1952.

The Council of Ministers—Article 74 lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The question whether any or what advice was tendered by Ministers to the President shall not be inquired into in any court. Article 75 says that the Prime Minister shall be appointed by the President and other Ministers are to be appointed by him on the advice of the Prime Minister. The Council of Ministers shall be collectively responsible to the House of the People. Unless a Minister becomes a member of either House of Parliament within a period of six months from the date of his appointment he shall cease to be a Minister at the expiration of the period. The salaries and allowances of Ministers are to be determined by Parliament from time to time.

Article 77 provides that it shall be the duty of the Prime Minister to keep the President informed of all decisions of the Council of Ministers relating to the administration of affairs and also to furnish him with such information about the Union affairs and proposals for legislation as the

President may call for. The Prime Minister must also submit, if the President so requires, for the consideration of the Council of Ministers any matters on which a decision has been taken by a Minister but which has not been considered by the Council.

The Ministry is the central directive force in the Union Government. It is the real executive, the President being a nominal head. The Ministry shoulders tremendous responsibility and wields enormous power. Its normal function is the administration of the affairs of the Central Government through the various departments. It formulates policy and co-ordinates the activities of all the departments. It determines the legislative programme and enjoys the initiative in introducing and passing all important laws. This initiative is in its hands because it has majority support in the House of the People. Any Bill not coming from the Government party or failing to get its support has little chance of getting passed in the Legislature. The financial power of the Ministry is very great. It prepares the Budget and as no financial Bill can be introduced without the President's consent all such Bills practically emanate from it. It also determines the foreign policy of the state. It is thus greatly able to influence, and set the pattern of, activities even in matters falling outside the jurisdiction of the Centre. It is, in an important sense, the central directing force in the constitutional machinery. The position of the Ministry, it is obvious, is more or less like that of the British Cabinet.

Responsible Government—As has been already mentioned, the Constitution lays down that the Council of Ministers shall be collectively responsible to the House of the People. This means that the Council of ministers can continue in office only so long as it enjoys the confidence of the House of the People. On any clear indication that the House has no confidence in the Ministers, they must resign in a body.

It is interesting to note that in India the system of responsible Government is based on clear constitutional pro-

visions. In Great Britain the system of responsible Government is based entirely on convention, the Cabinet being unknown to the law of the British Constitution. The Canadian Constitution also does not mention Ministers or their responsibility to the Legislature of the Centre or the Provinces. So in Canada, too, the system of responsible Government is wholly based on conventions. Again, though the Australian constitution and the constitution of the Union of South Africa mention Ministers, they say nothing about their responsibility to the Legislature. Hence in Australia and South Africa, also, the principle of responsibility of the executive to the Legislature rests almost wholly on conventions. In the constitution of the Irish Free State, however, both Ministers and their responsibility to the Dail Eireann are clearly mentioned. The constitution of the Fourth Republic of France also expressly provides for the responsibility of the Cabinet to the Lower Chamber of Parliament. Thus the new Constitution of India is in this respect similar to the Irish constitution and that of the Fourth Republic.

Collective Responsibility—The Council of Ministers, according to the Constitution, shall be collectively responsible to the House of the People. Collective responsibility of the Ministers means that the defeat of a Minister in the Parliament on any issue will mean the defeat of the whole Cabinet. An attack against a Minister will also mean attack against the entire Cabinet. Collective responsibility also involves that when a proposal has been made by a Minister it will be regarded as the proposal of the Government, even if that proposal has not been approved by the Cabinet.

Collective responsibility further involves that where a decision has been made by the Cabinet, the dissentient members must either resign or, if they do not resign, must be prepared to defend that decision. Unless they resign, they must not speak or vote against that decision. Under a system of collective responsibility, no Minister is allowed to vote against a proposal emanating from the Government. It may

be mentioned, however, that in Britain where the system of collective responsibility is in existence, questions used to be left sometimes in the past as "open questions" on which the Ministers could speak or vote as they liked. In 1932, some of the Ministers of the coalition Government under the premiership of Mr. MacDonald were allowed to speak and vote against the Government on the tariff question. The existence of these precedents, however, does not mean that they will necessarily govern parliamentary practice in this country.

It must be understood that under a system of collective responsibility, no Minister should make any public statement that goes against the policy of the Government. Nor should he, without consulting his colleagues, make any statement that may commit the Government in any way.

Collective responsibility, however, does not mean that the Cabinet will accept the responsibility for an error of judgment or mal-administration by any individual Minister. Nor, if any one or more Ministers are found guilty of corrupt practice, can the Cabinet as a whole be made responsible for it. For these faults and lapses, it is the Ministers concerned and not the Cabinet as a whole that will be called upon to resign.

It may be recalled that though the Government of India Act, 1935 did not expressly provide for the responsibility of the Ministers, in practice a system of collective responsibility was developed in the various provinces. The system is, therefore, far from unknown to the people and politicians of this country.

The Prime Minister—The Constitution expressly provides for the office of the Prime Minister. The Prime Minister was, it may be noted, unknown to the British Constitution till 1905. A Royal Proclamation issued in that year gave precedence to the Prime Minister next to the Archbishop of York. Later, an Act of Parliament fixed the salary of the Prime Minister and thus recognised his position.

The position of the Indian Prime Minister is a pre-eminent one. He is truly the *primus inter pares,* that is, the first among equals, and more than that, for it is he who chooses the other Ministers. Though the Constitution does not define the relation of the Prime Minister with other Ministers, it is obvious that he acts as their leader, presides over Cabinet meetings and plays a guiding role in the determination of policy. In Parliament he is expected to speak usually on all general questions of policy as well as on all other important questions. If he happens to be a man of personality, the Indian Prime Minister will be one of the most highly powerful functionaries in the world.

The position of the Indian Prime Minister is more or less analogous to that of the British Prime Minister. The Indian Prime Minister would always be, most probably, the leader of a powerful party like the British Prime Minister and would wield all the authority of that position. The Prime Minister not only chooses his colleagues, but can also "shuffle his pack as he pleases", that is, he can force a Minister to resign and choose a new Minister in his place. More than any other man in the country, he is in a position to shape and determine the country's internal and foreign policy. All the wide powers vested in the Centre including the emergency powers of the President, it is obvious, will always be exercised mainly on his advice. In war-time, he will wield almost dictatorial powers. In fact, as in Britain, a general election for the House of the People may become in reality the election of a Prime Minister.

The Indian Prime Minister and the British Prime Minister—See Chapter XV, Vol. I.

A Loop-hole—It will be seen that a Minister can be a member of either House of Parliament. As some of the members in the Upper House, that is, the Council of States, will be nominated, it is clear that a nominated member can also be a Minister. (For a period of ten years from the commencement of the Constitution the House of the People

may have two nominated Anglo Indian members—see next chapter). Here is a loop-hole for bringing into the Cabinet unpopular elements. It is quite conceivable that persons who are too unpopular to be elected to Parliament either directly or indirectly may sometimes be nominated to the Upper House and thereafter appointed as members of the Council of Ministers. The system of collective responsibility, however, under which the defeat of a Minister means the defeat of the Ministry, will exercise a salutary check on such a back-door method of bringing unrepresentative elements into the Ministry.

Different Categories of Ministers and the Cabinet— Though the Constitution provides only for 'Ministers' and does not speak of any difference in rank or status among them, in actual practice such distinctions have been made and there are at present three categories of Ministers—Ministers of the Cabinet rank, Ministers of State and Deputy Ministers. Deputy Ministers are, as the term implies, Ministers of subordinate rank, while the Ministers of State, too, are not supposed to attend Cabinet meetings except when the particular subjects with which they are concerned are discussed. The law already recognises these differences in rank and status among Ministers. The salaries of Ministers (Amendment) Act, 1950 states: "There shall be paid to each Cabinet Minister a salary of three thousand rupees *per mensem* and a sumptuary allowance of five hundred rupees *per mensem,* to each Minister of State a salary of three thousand rupees per mensem, and to each Deputy Minister a salary of two thousand rupees per mensem." Thus, as in Britain, in India, too, the words 'Cabinet' and 'Ministry' do not mean the same thing. While the Ministers of the highest rank constitute the Cabinet, the Ministry means the Council of Ministers as a whole including Cabinet Ministers, Ministers of State and Deputy Ministers.

CHAPTER V

PARLIAMENT

Parliament is the Central Legislature in India. Parliament is bicameral and consists of the President and two Houses. The Lower House is called the House of the People and the Upper House the Council of States. The President must from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The President may from time to time prorogue the Houses or either House and dissolve the House of the People.

The Lower House—The House of the People, it is laid down, shall consist of not more than five hundred members directly elected by the people. The constituencies are to be territorial and the election is to be on the basis of adult suffrage. That is, every citizen who is not less than twenty-one years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice is entitled to be a voter. The proportion of electoral representation must be not more than one representative for every 500,000 of the population. The ratio of representation must be, as far as possible, uniform throughout India. Upon the completion of each census, the representation of the several territorial constituencies must be readjusted according to law made by Parliament. The Representation of the People Act, 1950, has provided for the allocation of seats in the House of the People among the different States. (See appended Table). Under the Act, the seats for Jammu and Kashmir, the Andaman and Nicobar Islands and Part B Tribal Areas in Assam are to be filled by nomination by the President, and the seats for all other States are to be filled by direct election.

Allocation of Seats in the House of the People

	Name of State	*Total number of seats*	*Seats reserved for Scheduled Castes*	*Seats reserved for Scheduled Tribes*
PART A STATES				
	1	2	3	1
1.	Andhra	28	4	4
2.	Assam	12	1	2
3.	Bihar	55	7	6
4.	Bombay	45	4	4
5.	Madhya Pradesh ..	29	4	3
6.	Madras	46	8	..
7.	Orissa	20	3	4
8.	Punjab	18	3	..
9.	Uttar Pradesh ..	86	17	..
10.	West Bengal ..	34	6	2
PART B STATES				
1.	Hyderabad	25	4	..
2.	Jammu and Kashmir ..	6	..	..
3.	Madhya Bharat ..	11	2	1
4.	Mysore	12	2	..
5.	Patiala and East Punjab States Union ..	5	1	..
6.	Rajasthan	20	2	1
7.	Saurashtra ..	6	..	..
8.	Travancore-Cochin ..	12	1	..
PART C STATES				
1.	Ajmer	2	..	..
2.	Bhopal	2	..	..
3.	Coorg	1	..	..
4.	Delhi	4	1	..
5.	Himachal Pradesh ..	4	1	..
6.	Kutch	2	..	..
7.	Manipur	2	..	1
8.	Tripura	2	..	..
9.	Vindhya Pradesh ..	6	1	1
10.	Andaman and Nicobar Islands	1	..	..

AREAS :—				
11. Part B Tribal Areas (Assam)	..	1	..	..
Total	..	497	72	26

In spite of the provision for universal adult suffrage, some special provisions have been made for the representation of minorities in the House of the People. Article 330 provides that seats shall be reserved in the House of the People for (a) the Scheduled Castes; (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas in Assam and (c) the Scheduled Tribes in the autonomous district of Assam. (See Chapter XXXIV). The reservation will be made in the population ratio of the Scheduled Castes and the Scheduled Tribes. A special provision has also been made in respect of the Anglo-Indian Community. If the President is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, he may nominate not more than two members of the community to the House. All these special provisions relating to the Scheduled Castes, the Scheduled Tribes and the Anglo-Indian community will cease to have effect at the end of ten years from the commencement of the Constitution.

To be qualified, a candidate for election to the House of the People must be a citizen of India, must be not less than twenty-five years of age and must possess such other qualifications as may be prescribed by Parliament by any law. A person shall be disqualified to be chosen as, or to be, a member of either House of Parliament (*a*) if he holds any office of profit under the Government of India or any State Government other than an office declared by Parliament by law not to disqualify its holder; (*b*) if he is of unsound mind and stands so declared by a competent Court; (*c*) if he is an undischarged insolvent; (*d*) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence

to a foreign State; and (*e*) if he is so disqualified by or under any law made by Parliament. If a person becomes subject to any of these disqualifications, his seat shall become vacant. If any question arises whether a member of Parliament is subject to any of these disqualifications, the decision of the President given in accordance with the opinion of the Election Commission (see chapter on Elections) shall be final.

The House of the People must choose two members of the House to be its Speaker and Deputy Speaker respectively. Unless sooner dissolved, the life of the House will be five years from the date appointed for its first meeting and the expiration of this period will operate as the dissolution of the House. This period may, however, be extended by Parliament while a Proclamation of Emergency is in operation for a period of one year at a time but not exceeding in any case beyond a period of six months after the Proclamation has ceased to operate.

The Council of States—The Council of States is a permanent House and not subject to dissolution, with one-third of its members retiring every second year. The Council of States, says the Constitution, shall consist of not more than two hundred and thirty-eight representatives of the States plus twelve members to be nominated by the President. These twelve members shall be persons having special knowledge or practical experience in the following matters: Letters, Art, Science and Social Services. The representatives of States are indirectly elected to the Council. The representatives of States specified in Parts A and B of the First Schedule are elected by the elected members of the Legislative Assemblies of these States. As for the Part C States, representatives of Delhi, Bohpal, Himachal Pradesh, Vindhya Pradesh, Ajmer and Coorg are elected by the respective Legislative Assemblies. In Kutch, Manipur and Tripura, where there are no Legislative Assemblies, there are special electoral colleges to elect the representatives to the Council of States. Each electoral college consists of 30

members elected on the basis of adult franchise. The one seat allotted to Ajmer and Coorg in the Council of States is filled by the Legislative Assemblies of these States in rotation. The seat jointly allotted to Manipur and Tripura is also filled in this manner, that is, by the electoral colleges for these States in rotation. The allocation of seats is as follows :—(A) Andhra—12, Assam—6, Bihar—21, Bombay—17, Madhya Pradesh—12, Madras—18, Orissa—9, Punjab—8, The United Provinces—31, West Bengal—14 (Total 145).

(B) Hyderabad—11, Jammu and Kashmir—4, Madhya Bharat—6, Mysore—6, Patiala and East Punjab States Union —3, Rajasthan—9, Saurashtra—4, Travancore-Cochin—6 (Total 49).

(C) Ajmer and Coorg—1, Bhopal—1, Himachal Pradesh —1, Delhi—1, Kutch—1, Manipur and Tripura—1, Vindhya Pradesh—4. (Total 10).

To be qualified, a candidate for election to the Council of States must be (*a*) a citizen of India ; (*b*) must be not less than thirty years of age and (c) must possess such other qualifications as may be prescribed by Parliament. The disqualifications for memberhip of the Council of States shall be the same as have been mentioned in connection with the Lower House.

The Vice-President of India is the ex-officio Chairman of the Council of States. The Council must choose one of its members to be its Deputy Chairman.

It will be seen that though the Council of States in theory represents the States as such, the latter have not been granted equality of representation in the House but are represented in it on the population basis. This is a deviation from the principles of federalism. In America and Australia the States enjoy equality of representation in the Upper House of the Central Legislature.

Privileges and Immunities of Members—Subject to the rules of procedure, there is freedom of speech in Parliament.

No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or in any of its Committees. Nor is he so liable in respect of any publication by or under the authority of the House. In other respects, the members' privileges and immunities, till they are defined by Parliament, shall be such as were being enjoyed by the members of the House of Commons of the British Parliament at the commencement of the Constitution.

The members of either House of Parliament shall receive such salaries and allowances as may from time to time be determined bw Parliament.

Sovereignty of Parliament—The Indian Parliament is sovereign in the sense that it is independent of all external authority. Internally, however, its sovereignty is limited by the sphere of the States, as is the case with every federal system of Government. Every federal constitution demarcates the respective spheres of jurisdiction of the Centre and the units and invests the Judiciary with the authority to prevent the encroachment by either of them into the sphere of the other. The same principle has been followed in our Constitution. (The distribution of legislative powers between the Centre and the States in the Constitution has been dealt with in another chapter). The Indian Parliament, however, is not sovereign in the sense in which the British Parliament is sovereign. Whereas no Act of British Parliament can be challenged by the courts, the Acts of Indian Parliament are subject to judicial review. (See below).

Judicial Review—As in the United States, the laws made by Parliament are subject to Judicial Review. That is, the Judiciary in India has the power to declare an Act of Parliament unconstitutional and void on the ground that it violates the provisions of the Constitution. This is a powerful safeguard of the liberty of the citizens because it helps to prevent the executive, which controls a majority in Parliament, from infringing the liberty of the people in an unconstitutional manner. It may be noted that the system of Judicial Review

does not exist under the British Constitution. No English court can declare an Act of Parliament as unconstitutional. The courts in England can, however, declare the Orders-in Council or rules made by administrative authorities as *ultra vires* of the laws under which they have been made and can refuse to enforce them .

The System of Election for the House of the People— The Constitution while providing for a system of direct election to the House of the People does not mention the system of proportional representation. In fact, the framers of the Constitution wanted to avoid the proportional representation system on the ground that it is unsuitable for a Parliamentary system of government. Any minority or group which can pool a requisite number of votes can under a system of proportional representation be sure of having one or more of their own candidates elected to the legislature. This unfortunately results in the legislature being divided into a large number of groups or parties, none of which may possess an absolute majority in the House. In such a situation coalition governments become inevitable and these governments, as is common knowledge, are very unstable. Any group or party in such governments may at any time withdraw from the coalition from motives of self-interest and may thereby cause their downfall. This is why the system of proportional representation is unsuitable to a Parliamentary system of government. A Parliamentary system of government works best under a two-party system, as in England. The system of proportional representation is inimical to the growth of a two-party system. It is well, therefore, that the framers of the Constitution have deliberately avoided the incorporation of the system in our Constitution, so far as the election to the popular Chamber is concerned. (Elections to the Upper Chambers, both at the Centre and in the States, are, however, required to be held according to the system of proportional representation). It may be recalled that the British Parliament in 1918 rejected the recommendation made in favour of the system

of proportional representation by the Speaker's Conference. It was feared by Parliament that the acceptance of the recommendation would lead to the break-up of the two-party system in Great Britain which has worked so well for a long time.

The system of proportional representation is also a complicated one and not suitable for illiterate voters. The English system of single-member constituencies will, therefore, be more suitable to India than the system of proportional representation so far as election to the House of the people is concerned, for it is to this House that the Government has been made responsible.

In the General Elections of 1951-52, the constituencies for election to the House of the People were mostly single-member constituencies. Those constituencies, however, in which seats were reserved for the Scheduled Castes or Scheduled Tribes were for the most part double-member constituencies. The Representation of the People Act, 1951 prescribed a system of distributive voting for the plural member constituencies. In such constituencies, it was laid down, "no elector shall give more than one vote to any one candidate."

In the Elections, of the 489 seats in the House of the People (for which elections were held), the Congress captured 363 seats or roughly 74 per cent of the seats, though it received only 44 per cent of the total votes cast. And the Socialist Party, though it received over 10 per cent of the votes, succeeded in capturing only less than 3 per cent of the seats. It is interesting to speculate what would have happened, had the election to the House of the People been held according to the system of proportional representation. None of the Parties in such case would have been able to get an absolute majority of seats in Parliament and a Coalition Government at the Centre would have been unavoidable. That would have exposed the country to all the uncertainties inseparable from unstable administrations.

The Legislative Procedure—All Bills except Money Bills, and other financial Bills can originate in either House. Money Bills and other financial Bills can only originate in the House of the People. Generally a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses with or without amendment or with such amendments only as are agreed to by both Houses. The Constitution provides for joint sittings of both Houses in certain cases relating to Bills which have been passed by one House and transmitted to the other House. The President by notification can summon the Houses to meet in a joint sitting if such a Bill is rejected by the other House or if there is final disagreement between the two Houses as to the amendments to be made to the Bill or if more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it. If at a joint sitting the Bill is passed by a majority of the members present and voting, the Bill shall be deemed to have been passed by both Houses. There is a restriction on the amendments that can be considered by a joint sitting. If the Bill has been passed by the other House with amendments and returned to the House to which it orginated, only these amendments can be considered at the joint sitting and also such other amendments as are relevant to the matters with respect to which the Houses have not agreed. But if the Bill has not been so passed and returned by the other House to the House of its origin, then no amendment can be proposed except those that are made necessary by the delay in the Bill's passage.

A special procedure, however, has been laid down for Money Bills. A Money Bill, as has been said above, cannot be introduced in the Council of States. After a Money Bill has been passed by the House of the People, it shall be transmitted to the Council of States for its recommendations. The Council of States must, thereafter, return the Bill with its recommendations within fourteen days from the date of

its receipt. If it does not return the Bill within this period, the Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Lower House. If the Upper House, however, returns the Bill to the Lower House within this period with its recommendations, the Lower House shall have authority either to accept or reject any of these recommendations. The Bill shall thereafter be deemed to have been passed by both Houses of Parliament. It is laid down by Article 110 that a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters: (a) the imposition, abolition, remission, alteration or regulation of any tax, (b) the regulation of the borrowing of money; (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of money into or withdrawal of money from any such fund; (d) the appropriation of moneys out of the Consolidated Fund of India; (e) the declaring of any expenditure as expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or custody or issue of such money or the audit of the accounts of the Union or of a State; (g) any matter incidental to any of the matters specified in items (a) to (f).

Clause (2) of Article 110 makes it clear that a Bill shall not be considered to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes. The decision of the Speaker of the House of the People shall be final on the question whether a Bill is a Money Bill or not.

After a Bill has been passed by both Houses it shall be sent to the President and the President shall declare either

that he assents to the Bill or that he withholds assent therefrom. The President may as soon as possible return the Bill, if it is not a Money Bill, to Parliament with his recommendations and Parliament will then reconsider it accordingly and pass it again with or without amendment. The Bill will, thereafter, be presented again to the President for assent and the President shall not withhold his assent therefrom.

The Constitution lays down that, save as otherwise provided, all questions at any sitting of either House of Parliament or at joint sittings of the Houses are to be determined by a majority of votes of the members present and voting. The Speaker or Chairman or a person acting as such is not to vote in the first instance but has a casting vote in case of equality of votes. The quorum for either House is one-tenth of the total membership of the House. Parliament, however, has power to alter the quorum.

It has been provided that each House of Parliament will have authority to make rules for the procedure and conduct of its business. As regards the rules of procedure for joint sittings, these are to be framed by the President in consulation with the Speaker and the Chairman of the Upper House. At a joint sitting of the Houses, the Speaker will preside. In his absence any other person as determined by the rules of procedure will be the president.

The language for the transaction of business in Parliament, it is laid down, shall be Hindi or English subject to the provisions of the Constitution in respect of official language. Unless Parliament otherwise provides, at the expiration of fifteen years from the commencement of the Constitution, this language shall be only Hindi. It is provided that the Speaker, or the Chairman as the case may be, may permit any member having inadequate knowledge of Hindi or English to address the House in his mother tongue.

Courts shall have no authority to enquire into the validity of proceedings in Parliament. No discussion, it is laid down, shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or any High Court except in connection with a motion for presenting an address to the President for the removal of any Judge, as provided by the Constitution. (See Chapter XXVIII).

Financial Procedure—The main features of the financial procedure are firstly, an annual financial statement, secondly, the demands for grants and thirdly the Appropriation Bills, and other Financial Bills.

In respect of every financial year, the President must cause to be laid before both Houses of Parliament an annual financial statement showing the estimated receipt and expenditure for the Government of India for that year. The estimates of expenditure shall show separately (a) the sums required to meet expenditure charged upon the Consolidated Fund of India; and (b) the sums required to meet other expenditure.

The following expenditure shall be expenditure charged on the Consolidated Fund of India:—(a) the emoluments and allowances of the President and other expenditure relating to his office; (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of State and the Speaker and the Deputy Speaker of the House of the People; (c) debt charges; (d) the salaries and allowances and pensions payable to or in respect of Judges of the Supreme Court; (e) pensions payable to or in respect of Judges of the Federal Court, and (f) of Judges of any High Court which exercises jurisdication in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction within any area included in the States for the time being specified in Part A of the First

Schedule; (g) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India; (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal and (i) any other expenditure declared by this Constitution of Parliament by law to be so charged. It may be mentioned that the sums necessary to meet the administrative expenses of the Supreme Court and any privy purses promised to Rulers are declared by Arts. 146 and 291 respectively to be sums that shall be charged on the Consolidated Fund of India. Also, Article 322 declares that the expenses of the Union Public Service Commission shall be charged on the Consolidated Fund of India.

The expenditures charged on the Consolidated Fund of India shall be non-votable but these can be discussed in either House of Parliament. The estimates relating to other expenditure shall be submitted to the House of the People in the form of demands for grants and the House shall have power to assent or refuse to assent to any demand or reduce its amount. No demand for a grant shall be made except on the recommendation of the President.

After the grants have been made, a Bill shall be introduced in the House for the appropriation out of the Consolidated Fund of India of all the grants made by the House as well as the expenditure charged on the Consolidated Fund of India. No money can be withdrawn from the Consoliadated Fund of India except under the Appropriation Act.

Apart from the normal demands for grants, the President is authorised by the Constitution to place before Parliament, if he considers it necessary, demands for additional or supplementary or excess grants and the same procedure must be gone through in respect of them as in the case of the normal annual demands for grants. The House of the People has been empowered to make advance grants or even

exceptional grants to which also the normal procedure for grants or appropriation will apply.

No financial Bill can be introduced in the Council of States and such a Bill cannot be moved except on the recommendation of the President. It must be understood that such recommendation is not necessary for the moving of an amendment making provision for the reduction or abolition of any tax.

Control over Finance—It will be seen that the Upper House, the Council of States, has been given very limited power in financial matters. It has no voice so far as demands for grants are concerned. As regards the Money Bills, the Lower House, has authority to reject its suggestions and recommendations. Even its power of delaying the passing of a Money Bill has been limited to a maximum of fourteen days only.

In theory, the members of the House of the People will be representatives of the people of the nation, while the members of the Council of States will represent the States, as such. It has been thought that it is the national representatives and not the States' representatives who should have the real control over finance.

It is interesting to compare the limited power of the Upper House in financial matters with that of the House of Lords in England. The Parliament Act of 1911 has practically taken away the powers of the House of Lords in matters of finance. The relevant section of the Act states: "If a money bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that house, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the royal assent being signified, notwithstanding that the House of Lords have not assented to the bill." Thus, the House of Lords has no

power of amending a Money Bill and can delay it for a month only. The Upper House in India can amend a Money Bill only if that amendment is accepted by the Lower House and its power of delaying a Money Bill is limited to fourteen days only.

The position of the Upper House of the U. S. Congress, namely, the Senate, in financial matters, is almost co-ordinate to that of the Lower House, the House of Representatives. That is, both the Houses enjoy almost equal authority in financial matters. The financial powers of the Lower House are only slightly greater that those of the Senate because the constitution lays down that "all Bills for raising revenue shall originate in the House of Representatives." But the Senate has authority to amend the Bills for raising revenue and thereby practically to originate new revenue-raising measures. As for Bills relating to expenditure, they may, under the U. S. Constitution, originate in either House. But, by usage it is the House of Representatives which originates such Bills and the annual budget is first submitted to that House. The Senate, however, can amend such Bills. It actually sometimes originates Bills which incidentally involve expenditure and appropriation of funds, though their main purpose may be different. Thus, whereas the U.S. Senate is, in respect of financial powers, a body co-ordinate to the House of Representatives, in India the Council of States has been made subordinate to the House of the People in such matters. An important point to remember is that in modern states, though the ultimate control over finance is vested in the Legislature, in practice it is the executive that exercises complete control over it. Modern States are becoming more and more welfare states. They are no longer police states. Their social activities have immensely multiplied and their income and expenditure have increased enormously. Now-a-days, it is not even possible for an ordinary member of the Legislature to have access to the figures, unless supplied by the Government, which are necessary for effective criticism

of the items of Government expenditure. The legislators, in these matters, have become completely dependent upon the executive. An executive which controls a majority in the legislature has, therefore, almost absolute control over finance. In India, as in England, all the financial Bills must have the previous recommendation of the executive for introduction in the Legislature. No demand for grant also can be made except on the recommendation of the President, that is, of the executive. So ordinarily, it is the executive that will have almost absolute control over finance.

Other Legislation—Apart from finance, in all other matters of legislation, the two Houses will enjoy co-equal authority. The Lower House has no power to over-rule the Upper House. In England, however, under the Parliament Act of 1949 the House of Commons can over-rule the House of Lords in almost all matters by following a certain procedure. Under that Act, the House of Commons, in spite of the Lords' disapproval of a Bill, can make it an Act of Parliament by passing it in two successive sessions in not less than one year's time. Thus the House, it it so desires, can pass certain laws alone. But, except in financial matters, the Lower House of the Indian Parliament cannot pass any law alone.

Joint Sittings—Joint sittings have been provided for to meet certain situations including the final disagreement between the two Chambers. In case of disagreement in America between the House of Representatives and the Senate, a compromise is effected by means of a conference committee on which both the Houses are represented by small groups of legislators of each House. Each of these groups votes as a unit. So the compromise is effected by bargaining and it generally depends on the bargaining power of the persons which side gets the better of the other. Since, at the Parliamentary joint sittings in India, a majority of those present and voting is to decide the issues, it is the

Lower House (which is the more numerous body) whose views are like to predominate at such sittings.

The Executive Veto—Generally the executive in a state is given the power to approve or disapprove of the measures passed by the Legislature, the approval being essential to the validity of a legislation. This is called the 'veto power' of the executive. In the English Constitution, the veto power of the Crown is absolute, that is, it cannot be over-ridden by the Legislature. But this veto power has fallen into desuetude and has not been exercised for a long time. It is unlikely that it will be ever exercised in future. In the U.S.A., the President has the right to veto a measure passed by the Congress, but his veto is a qualified one. It can be over-ridden by the Legislature by passing the measure again by a two-thirds majority. The President in India has been given the veto power but it is merely suspensive in character. The two Houses of the Legislature have been given the power to over-ride the veto by passing the measure in question once again and by a simple majority. As has been already indicated, the veto power of the President has not been used even once since the Constitution was brought into force.

The New Parliament—The first General Elections were held under the Constitution in the winter of 1951-52, and the first Parliament in the country elected on the basis of adult franchise came into existence after the completion of the Elections. Officially, the new Parliament came into existence on April 17, 1952 when the President summoned the two Houses of Parliament to meet in New Delhi on May 13, 1952. With the summoning of the newly elected Parliament, the provisional Parliament which had functioned in the country since the commencement of the Constitution went out of existence. It may be recalled that the provisional Parliament was the same body as the constituent Assembly of India, with certain changes made in its membership under the transitional provisions of the Constitution.

The Lower House of the new Parliament, that is, the House of the People, is a big House, its total membership being 499 (including 2 members nominated by the President to represent the Anglo-Indian community). Of these 499 members, 489 are elected, the rest being nominated. The 10 nominated members are: 6 representing the State of Jammu and Kashmir, 1 representing Andaman and Nicobar Islands, 1 representing Part B Tribal Areas in Assam and 2 representing the Anglo-Indian community. The number of seats reserved in the House of the People for the Scheduled Castes is 72, and the number reserved for the Scheduled Tribes is 26.

The Upper House of the new Parliament, that is, the Council of States, has a membership of 219 including 12 members nominated by the President, who are supposed to be specialists in Art, Letters, Science and Social Services.

CHAPTER VI

THE JUDICIARY

A Supreme Court is an essential element in a federal government. The chief function of the Supreme Court is to interpret the constitution authoritatively, as well as to decide disputes between the central and provincial or state governments regarding the demarcation of powers. The Constitution of India, therefore, sets up a Supreme Court.

The Supreme Court, says the Constitution, shall consist of the Chief Justice of India and not more than seven other Judges. Parliament, however, has been empowered to vary this number by law. All the Judges of the Supreme Court, it is laid down, shall be appointed by the President after consultation with such Judges of the Supreme Court and of the High Courts in the States as the President may think necessary. It is provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India must be consulted. The age of retirement of the Judges is 65 years. A person will not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and (a) has been for at least five years a High Court Judge; or (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or (c) is in the opinion of the President a distinguished jurist. No person, it is laid down, who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. The salary of the Chief Justice is Rs. 5,000/- per month and that of other Judges Rs. 4,000/- per month. The Constitution provides for the appointment of *ad hoc* judges for specific purposes, and also for requiring the attendance of retired Judges of the Supreme Court and the Federal Court with their consent.

The Supreme Court is to sit in Delhi or in such place or places as the Chief Justice of India may, with the President's approval, appoint from time to time. The Supreme Court is a court of record and has all the powers of such a court including the power to punish for the contempt of itself.

The Supreme Court has an original as well as an appellate jurisdiction.

It has original jurisdiction, to the exclusion of any other Court, in any dispute (a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other or (c) between two or more States, if and in so far as the dispute involves any question, whether of law or of fact, on which the existence or extent of a legal right depends. The following matters are excluded from the original jurisdiction of the Supreme Court:—

(1) any dispute to which a State specified in Part B of the First Schedule is a party if the dispute arises out of any treaty, or covenant or a similar instrument executed before the commencement of the Constitution and in force after it;

(2) any dispute to which any State is a party if the dispute arises out of any provision of a treaty or agreement or a similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

An appeal shall lie to the Supreme Court from any judgment or decree or final order of a High Court in any case, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High court refuses to give such a certificate, the Supreme Court may grant special leave for such appeal if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution.

Apart from this special provision, the appellate jurisdiction of the Court can be divided under two heads, (1) civil and (2) criminal. In civil cases, an appeal shall lie to the Supreme Court from the judgment of a High Court if the High Court certifies that (a) the amount or value of the subject matter in dispute is not less than Rs. 20,000/- or such sum as may be specified by Parliament or (b) that the judgment involves a claim or question respecting property of the like amount or (c) that the case is a fit one for appeal to the Supreme Court. If, however, the judgment appealed from affirms the decision of the court immediately below, in any case other than a case referred to in item (c), the High Court must further certify that the appeal involves some substantial question of law.

It has been provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.

In criminal cases, an appeal shall lie to the Supreme Court from the judgment of a High Court if the High Court (a) has on appeal revised the order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) certifies that the case is a fit one for appeal to the Supreme Court. Parliament has been empowered to enlarge the appellate jurisdiction of the Supreme Court in criminal matters.

The Supreme Court has been given wide powers to grant special leave to appeal to it. The Constitution provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment or decree in any matter passed by any court or tribunal in India, excepting the tribunals constituted by or under any law relating to the Armed Forces.

Parliament has been empowered to enlarge the jurisdiction and powers of the Supreme Court.

It has been already mentioned that the Constitution has conferred on the Supreme Court the power of issuing orders or writs, including writs in the nature of *habeas corpus*. *mandamus* and the like for the enforcement of the fundamental rights. The Constitution has, further, authorised Parliament to confer on the Supreme Court the power of issuing such writs in regard to other matters.

The law declared by the Supreme Court shall be binding on all Courts in India. The Supreme Court has, however, the power of reviewing any judgment pronounced by it.

The President has been empowered to seek the opinion of the Supreme Court on important questions of law and fact. And the Constitution has expressly provided that all judgments and opinions of the Supreme Court shall be declared in open Court. It is not clear whether an opinion of the Supreme Court will have binding effect.

It has been provided by the Constitution that the Judges of the Federal Court holding office immediately before the commencement of the Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court.

The Indian Supreme Court and the American Supreme Court —A comparative study of the two Courts will be made in connection with the study of the American Constitution. (See also Ch. XVII).

Advisory Jurisdiction of the Supreme Court—As has been already stated, the Constitution confers on the Supreme Court what may be called an advisory jurisdiction. The President, under the Constitution, can refer important questions of law or fact to the Supreme Court for its opinion on them, and it is obligatory for the Court to give its opinion thereon (Art. 143). Such opinion, it is further provided, shall be delivered in open court. The Government of India

Act, 1935, it may be recalled, conferred a similar advisory jurisdiction on the Federal Court (Sec. 213). The Governor-General was empowered by that Act to consult the Federal Court for its opinion on important questions of law. But whereas the Governor-General could consult the Federal Court only on questions of law, the President, under the Constitution of India, can refer to the Supreme Court questions of both law and fact. It should be further noted that the Government of India Act, 1935 did not impose any obligation on the Justices of the Federal Court to give their opinion on questions submitted to them. But in actual practice they never declined to give such opinion.

The Position of the Judiciary under the Constitution— The Judiciary in India has been invested with wide powers under the Constitution. Its position is more or less like that of the Judiciary in the United States. Like the American Judiciary, the courts in India have power under the Constitution to declare laws to be unconstitutional and void on the ground that they contravene the provisions of the Constitution. This Supreme Court has been made the final interpreter of the Constitution. The law declared by the Supreme Court is to be binding on all other courts. It will not be binding, however, on the Supreme Court itself, which will have power to review its own judgments. The High Courts and the Supreme Court have also been given the power to issue various kinds of writs on individuals, associations, and even on governments to enforce fundamental rights. The position of the Indian Judiciary, it will be seen, is thus made supreme in many matters, unlike in the United Kingdom where Parliament is Supreme and the Judiciary has no power to declare laws made by Parliament to be unconstitutional.

In some respects, however, the position of the Indian Judiciary will be inferior to that of the Judiciary in America. Some important matters have been placed beyond the

jurisdiction of the courts by the Constitution of India. In these matters, no law passed by the Legislatures will be open to judicial review, that is, courts will have no power to challenge these laws. Among these matters, three important ones are noted below :—

(1) No law laying down procedures for arrest and detention of individuals and even for taking their lives can be challenged by the courts (Art. 21). Of course if any particular provision in these laws is inconsistent with any provision of the Constitution itself, it can be declared void by the courts.

(2) No law laying down any principle of compensation for the acquisition of property by the State can be questioned by the courts on the ground that the compensation is unjust, or unreasonable or insufficient. Once the Legislature lays down the principle of compensation for such acquisition of property, it becomes final. (Art. 31).

(3) Some important electoral matters have been placed beyond the jurisdiction of the Judiciary. No court can call in question any law relating to the delimitation of constituencies or allotment of seats to such constituencies.

'A Joint in the Court's Armour'—The provisions made by the Constitution to ensure the independence of the Supreme Court have been already taken note of. The executive cannot remove the Judges from office. Parliament cannot reduce their salaries and allowances. But Parliament has the power to increase the number of the Judges. This is 'a joint in the court's armour", to use a phrase coined by Lord Bryce,—it is a joint through which a weapon may some day penetrate. For, a situation is conceivable in which a

Government, finding that the decisions of the Court are going against it, might have a law passed increasing the number of Judges in the Court and, thereafter, 'pack' the Court with its on men to have a favourable majority on it. That would be, however, a gross abuse of power. But only an alert and enlightened public opinion can prevent such abuse of constitutional authority.

In the United States, too, Congress can increase the number of justices in the Supreme Court. In 1937, after the Court had invalidated certain legislations connected with President Roosevelt's 'New Deal', the President had a Bill introduced in Congress, known as the Court Reorganisation Bill. Had it been passed, it would have enabled President Roosevelt to appoint six more justices and thereby to increase the number of justices from nine to fifteen. The Bill was, however, regarded by many as an attempt on the part of the President to 'pack' the Court with his own men to get a majority on it favourable to the administration. Congress ultimately rejected the Bill.

The High Courts: The High courts are the highest courts of appeal in the States, in both civil and criminal matters. Some of them have also original jurisdiction in certain matters. The High courts have powers of superintendence over all courts and tribunals within their respective jurisdictions. Both for the enforcement of the fundamental rights and for any other purpose, the High courts can issue orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* or any of them to any person or authority including any government within their jurisdiction.

Every High court consists of a chief Justice and other Judges, who are all appointed by the President. A High Court Judge can be removed from office only in the manner provided for in regard to the removal of a Supreme Court Judge. That is, he can be removed only by an order of the

President passed after an address by each House of Parliament has been presented to him for such removal on the ground of proved misbehaviour or incapacity.

Every High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself.

The Subordinate Court: Below the high courts, there are subordinate courts on both the civil and the criminal side in the States. On the civil side, there is in every district a court with a district judge and other subordinate or additional judges, having both original and appellate jurisdictions. They hear appeals from Munsiff's courts. There is a Munsiff's court in each sub-division and in some chowkies. On the criminal side, there is generally in each district a sessions court. A sessions court can pass any sentence but a sentence of death passed by it is subject to confirmation by the High court. The sessions courts are presided over by sessions judges and additional sessions judges. In important criminal cases, the judges are helped by assessors. Below the sessions courts are the courts of the various classes of magistrates.

CHAPTER VII

PART A STATES

The Governor: In each of the States specified in Part A of the First Schedule there is a Governor as the executive head. (In States specified in Part B of the First Schedule there is a Rajpramukh in the place of the Governor, the powers and functions of the Rajpramukh being similar to those of the Governor).

The Governor, says the Constitution, shall be appointed by the President and shall hold office during the pleasure of the President. Subject to this provision, his tenure of office has been made five years. To be eligible for appointment as the Governor, a person must be a citizen of India and must have completed the age of thirty-five years. The Governor, it is provided, shall have an official residence and shall receive such emoluments and allowances as may be determined by Parliament by law. Until provision is made by Parliament in this behalf, the Governor will receive Rs. 5,500/-per month plus such allowances and privileges as the Governor of the corresponding Province was entitled to immediately before the commencement of the Constitution. The Governor must not be a member of either House of Parliament or of a House of the Legislature of any State. If any such member is appointed Governor, his seat must be deemed to have been vacated from the date on which he enters upon his office. The Governor must not hold any other office of profit.

The powers of the Governor—The Constitution says that there shall be a Council of Ministers "to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." But, except

in the case of Assam, the Governor has not been given any discretionary power by the Constitution. And in Assam the Governor is to act in his discretion only in respect of the administration of certain frontier tracts, which he is required to administer as the agent of the President, and in respect of a minor financial matter relating to some tribal areas.

So it may be said that the Governor is required by the Constitution in practically all matters to exercise his functions with the aid and advice of the Ministers. But the question is whether the Governor is always bound to take the advice of the Ministry. In other words, the question is whether the governor is a mere nominal head having no power to act except on the advice of the Ministry, or whether he has some real power which he can exercise independently of ministerial advice. The framers of the Constitution intended that the Governor would act as a mere nominal head and this is why the idea of having an elected Governor was given up. But the language of the Constitution does not make it clear whether or not the Governor will be always bound to accept the advice of the Ministry. If the constitutional conventions followed in other countries like Australia and Canada are any guide to this matter, certainly the Governor must act as a nominal head.

The provisions of the Constitution, taken as a whole, also make it clear that the Governor is expected, at least normally, to act as a constitutional head and to carry out the advice of his Ministers. For the Constitution clearly states that the Council of Ministers shall be collectively responsible to the Assembly. No Ministry can accept responsibility for a policy of which it is not the author or which has not been framed according to its will or advice. Power and responsibility go together. To hold that the governor can act independently of ministerial advice is to maintain that the

Ministry can be held responsible for a policy which it has no power to determine. And that is simply absurd.

It is easy to see, moreover, that if a Governor disregards ministerial advice, the Ministry can bring about a deadlock by resigning its office. It can hardly be possible for a Governor to resolve such a deadlock. For this can only be done by setting up an alternative Ministry enjoying the confidence of the Assembly.

All these considerations lead to the inescapable conclusion that the governor is a nominal executive head. He cannot act except on the advice of the Ministry. (The only exception to the rule, probably, is a ministerial advice for dissolution of the Assembly, which the governor, it appears, is not bound to accept.) The working of the Constitution, moreover, has clarified what was left vague by the language of the Constitution. Since the commencement of the Constitution, the Governors in all States have acted as nominal heads and have never claimed any real power for themselves.

The following observations regarding the power of the Governor under the new constitution were made by a special bench of the Calcutta High Court in the case of *Sunil Kumar Bose and others* v. *The Chief Secretary to the Government of West Bengal* (1950) :—

> "The Governor under the present Constitution cannot act except in accordance with the advice of his ministers. Under the Government of India Act, 1935, the position was different. The Governor could do certain acts in his discretion, that is, without asking for the advice of any minister; he could do certain acts in his individual capacity, that is, only after consulting his ministers but he was not bound when acting in his individual capacity to follow the advice of his ministers. Under the present Constitution, the

> power to act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his ministers. This is the constitutional position as explained to us by the Advocate-General and we accept his view."

Keeping in view the constitutional position of the Governor, let us see what specific powers have been vested in him. The Governor's powers may be divided under four heads:—(1) executive, (2) legislative, (3) financial and (4) judicial.

Executive Powers—The executive power of the State has been vested in the Governor and is to be exercised by him either directly or through officers subordinate to him. The executive power of the State, it should be noted, extends to the matters with respect to which the Legislature of the State has power to make laws. In matters specified in the Concurrent List, the executive power of the State is subordinate to the executive power of the Union. The Governor is empowered to make rules for the convenient transaction of the business of the State Government and for the allocation among his Ministers of the said business.

Legislative Powers—After a Bill is passed by the House or Houses of the Legislature of a State, it must be presented to the Governor for his assent. The Governor may assent to the Bill or withhold assent therefrom or he may reserve it for the President's consideration. He may return the Bill (if it is not a Money Bill) to the House or Houses for reconsideration but if it is passed again by the House or Houses with or without amendment, he must not withhold assent therefrom. The Governor has also been given the power of reserving Bills for the consideration of the President. No Money Bills or other Financial Bills can be introduced in the Legislative Assembly except on the recommendation of the Governor. Amendments making provision for financial

matters, too, cannot be moved except on the Governor's recommendation. This rule will not apply to amendments making provision for the reduction or abolition of a tax.

The Governor has been given the power of issuing Ordinances when the House or Houses of the Legislature are not in session. But all such Ordinances will cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, on the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council. It has been provided that the Governor shall not without instructions from the President promulgate any such Ordinance (1) if a Bill containing the same provisions would have required the previous sanction of the President for introduction into the Legislature; or (2) if the Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or (3) if an Act of the Legislature containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President. As for item (1), it may be noted that, by Art. 304, Bills which seek to impose restrictions on the freedom of trade, commerce or intercourse with or within a State in public interest will require the previous sanction of the President for their introduction into the State Legislature. Regarding item (3), it should be noted that (a) laws relating to compulsory acquisition of property and (b) repugnant to any Central law will be invalid unless, having been reserved for the consideration of the President, they have received the President's assent.

Financial Power—The Governor is required, in respect of every financial year, to cause to be laid before the House or Houses of the State Legislature "an annual financial statement", showing the estimated receipt and expenditure

of the State for that year. No demand for grant can be made except on the recommendation of the Governor. The Governor has also been empowered to cause to be laid before the House or Houses of the State Legislature statements for supplementary or additional expenditure or cause to be presented to the Legislative Assembly of the State demands for excess grants.

Judicial Powers—The Governor of a State has the power of granting pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The Council of Ministers—Article 163 says that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to act in his discretion. The Chief Minister is to be appointed by the Governor and the other Ministers are to be appointed by the Governor on the advice of the Chief Minister. The Ministry must be collectively responsible to the Legislative Assembly of the State. Curiously, it is also laid down that the Ministers shall hold office during the pleasure of the Governor. In practice, it is evident, no Governor will dare to dismiss individual Ministers because of the principle of collective responsibility. Also, he will not be able to dismiss the Ministry as a whole so long as it will enjoy the confidence of the Legislative Assembly. A Minister will cease to be so if he is, for any period of six consecutive months, not a member of the Legislature. It is laid down that in Bihar, Madhya Pradesh and Orissa there shall be a Minister for tribal welfare. The Ministers are to receive such salaries and allowances as the Legislature of the State may from time to time by law determine. As in the case of the Centre, a member of either House of the Legislature can be a Minister

and nominated members can be Ministers. Where the Legislature is bicameral, the Ministers have access to both Houses.

Legislatures in Part A States—The Legislature of every State (of Part A of the First Schedule) consists of the Governor and a House or two Houses as the case may be. The Legislature in each of the following States consists of two Houses—Madras, Bombay, Bihar, Uttar Pradesh, Punjab and West Bengal. In each of the other States, namely Andhra, Assam, Orissa and Madhya Pradesh the Legistature is unicameral.

Where the Legislature is bicameral, the Lower House is known as the Legislative Assembly and the Upper House as the Legislative Council. Where there is only one House, it is known as the Legislative Assembly.

The Governor must from time to time summon the House or each House of the Legislature of the State to meet, and six months must not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The Governor may from time to time prorogue the House or either House and dissolve the Legislative Assembly.

The Legislative Assembly—The Legislative Assembly of a State, the Constitution provides, shall be composed of members chosen by direct election. The only exception to the rule is the provision for nomination of persons belonging to the Anglo-Indian community in certain circumstances to be presently noted. The election shall be on the basis of adult suffrage. That is, every citizen who is not less than twenty-one years of age and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice is entitled to be registered as a voter at such elections. The constituencies are to be territorial and the proportion of electoral representation (except

in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong) is to be not more than one representative for every seventy-five thousand of the population. It is provided that the total number of members in the Legislative Assembly of a State shall in no case be more than five hundred or less than sixty. The Constitution does not specify the actual number of seats in the different State Assemblies, which is fixed by the Representation of the People Act, 1950. (see appended table). The ratio of representation must be, as far as possible, uniform throughout the State. Upon the completion of each census, the representation of the several territorial constituencies must be readjusted according to law made by the State Legislature.

Apart from these general provisions, some special provisions have been made for the representation of minorities in the Legislative Assemblies of the States. Article 332 provides that in the Legislative Assemblies of States for the time being specified in Part A (and Part B) of the First Schedule, seats shall be reserved for (a) the Scheduled Castes and (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam. It is also laid down that in the Legislative Assembly of Assam, the seats shall be reserved for the autonomous districts of that State. The reservation is to be made in the population ratio of the Scheduled Castes and the Scheduled Tribes. In Assam, the reservation for the autonomous districts shall be in the population ratio of the districts, that is, in the ratio which the population of the districts bears to the total population of the State. It is further provided that no person who is not a member of a Scheduled Tribe of any autonomous district of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong. A special provision has also been made for the Anglo-Indian Community. If the

Governor of a State is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of that State, he may nominate such number of members of the community to the Legislative Assembly as he considers appropriate. All these special provisions for the Scheduled Castes and the Scheduled Tribes and the Anglo-Indian community shall cease to have effect at the end of ten years from the commencement of the Constitution.

To be qualified, a candidate for election to the Legislative Assembly of a State must be (a) a citizen of India, (b) must be not less than twenty-five years of age, and (c) must possess such other qualifications as may be prescribed by the State Legislature. A person shall be disqualified to be chosen as, and for being, a member of the Legislative Assembly (or of the Legislative Council) of a State (a) if he holds any office of profit under the Government of India or the Government of any State for the time benig specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder; (b) if he is of unsound mind and stands so declared by a competent court; (c) if he is an undischarged insolvent; (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreigen State, or is under any acknowledgment of allegiance or adherence to a foreign state; (e) if he is so disqualified by or under any law made by the Central Legislature. It is provided that for the item (a) a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule by reason only that he is a Minister for India or for any such State.

If any question arises as to whether a member of a House of a State Legislature is subject to any of these disqualifications, the decision of the Governor given in accordance with the opinion of the Election Commission shall be final.

The Constitution lays down some provisions dealing with the vacation of seats of persons elected to the State Legisla-

tures. It is stated by Article 190 that no person shall be a member of both Houses of the Legislature of a State and that provision must be made by the State Legislature by law for the vacation by a person, chosen a member of both Houses, of his seat in one House or the other. Under the same article, no person can also be a member of the Legislatures of two or more States and unless a person, who has been chosen a member of the Legislatures of two or more States, resigns his seat in all but one of the States before the expiration of a period to be specified by the President in rules, his seat in all the Legislatures shall be vacant. Again, if a member resigns his seat by writing under his hand addressed to the Speaker or the Chairman as the case may be, his seat shall become vacant. If any member becomes subject to any of disqualifications (a) to (e) mentioned above, then, too, his seat shall be vacant. Finally, if a member of a House of a State Legislature is without the permission of the House absent from all the meetings thereof for a period of sixty days, the House may declare his seat vacant. (In counting these sixty days no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days). All these provisions relating to the disqualification of members and the vacation of their seats shall, it should be noted, be applicable to members of both the Legislative Assembly and the Legislative Council.

Every Legislative Assembly is required to choose two of the members of the House as the Speaker and the Deputy Speaker.

Unless sooner dissolved, the life of a Legislative Assembly shall be five years from the date appointed for its first meeting and the expiration of the said period shall operate as the dissolution of the Legislative Assembly. It has been provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a

time and not extending in any case beyond a period of six months after a proclamation has ceased to operate.

The Legislative Council—The Legislative Council, it is laid down by the Constitution, shall be a permanent House and not subject to dissolution, one-third of its members retiring every second year. Its membership shall not exceed one-fourth of the total number of members in the Legislative Assembly (of the State). It is provided that the total number of members shall in no case be less than 40. Until Parliament therwise provides by law, the composition of the Legislative Council of a State shall be as follows :—

(a) as nearly as may be, one-third of the members are to be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify ;

(b) as nearly as may be, one-twelfth of the members are to be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(c) as nearly as may be, one-twelfth are to be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament ;

(d) as nearly as may be, one-third to be elected by members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly ;

(e) the remainder (that is, one-sixth) shall be nominated by the Governnor. These nominated members shall consist of persons having special knowledge or practical experience in literature, science, art, co-operative movement and social services.

The election in case of all the categories of electorates mentioned above is to be in accordance with the system of proportional representation with the single transferable vote. The constituencies in the case of the first three categories, namely, the local bodies, the teachers and the graduates are to be such territorial constituencies as may by or under any law be made by Parliament. The Constitution has not specified the actual number of seats in the Legislative Councils of the different States, which has been fixed by the Representation of the People Act, 1950 (see appended table).

To be qualified, a candidate for election to a Legislative Council (a) must be a citizen of India, (b) must be not less than thirty years of age and (c) must possess such other qualifications as may be prescribed by the State Legislature. The same provisions regarding disqualification of members and vacation of their seats as have been mentioned above in connection with "the Legislative Assembly," will be applicable in case of the members of the Legislative Council.

The Legislative Council of a State shall choose two of its members to be the Chairman and the Deputy Chairman thereof.

The Constitution lays down the procedure for the creation or abolition of the Legislative Council. Parliament may by law provide for the abolition or creation (as the case may be) of the Legislative Council of a State if the Legislative Assembly of that State passes a resolution to that effect by a majority of its total membership and by not less than two-thirds majority of the members present and voting.

Such a law for the abolition or creation of the Legislative Council, it is provided, shall not be deemed to be an amendment of the Constitution, that is, it will not require the procedure laid down for Constitutional amendments (see Chapter on 'Amendments').

Privileges and Immunities of Members—Subject to rules of procedure, there is freedom of speech in every State Legislature. No member is liable to any proceedings in a court for anything said or any vote given by him in the Legislature or any Committee thereof. Nor is he so liable in respect of any publication by or under the authority of the Legislature. In other respects, the member's privileges and immunities till they are defined by the State Legislature shall be such as were being enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

The members of every State Legislature are to receive such salaries and allowances as may from time to time be determined by the Legislature by law.

The Legislative Procedure—With the exception of Money Bills and other financial Bills, a Bill can originate in either House of the Legislature. Subject to the provisions relating to Money Bills and to general restrictions on the powers of the Legislative Council (Art. 197, see below), a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

The Legislative Council has been given a subordinate position in law-making. Its powers have been greatly circumscribed both in respect of Money Bills and other Bills. Article 197 deals with the restrictions on the power of a Legislative Council as regards Bills other than Money Bills. The power of a Legislative Council to amend a Bill which has been passed by the Legislative Assembly and sent to the

Council is severely limited by it. The Article lays down that when such a Bill is (a) either rejected by the Legislative Council or (b) passed by it with amendments to which the Assembly does not agree or (c) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, the Legislative Assembly may again pass the Bill in the same or in any subsequent sessions with or without amendments suggested by the Council and then transmit the Bill as so passed to the Legislative Council. If now the Bill is rejected by the Council or passed by it with amendments to which the Assembly does not agree or if more than one month elapse from the date on which the Bill is laid before the Council, without being passed by it, the Bill shall be deemed to have been passed by both Houses of Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments, if any, as have been agreed to by the Legislative Assembly.

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

Article 199 states that a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters:

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) custody of, payment into or withdrawal of money from, the Consolidated Fund and Contingency Fund;

(d) appropriation of money out of the Consolidated Fund;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State or increasing the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the custody or issue of such money or the audit of the accounts of the State; or

(g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

It has been provided that a Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties; or for the demand or payment of fees for licences or fees for services rendered; or for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or

body for local purposes. If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Assembly on the matter shall be final.

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

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

In respect of every financial year, the Governor must place before the House or Houses of the State Legislature an annual financial statement showing the estimated receipts and expenditure of the State for that year. The estimates of expenditure must show separately (a) the expenditure charged upon the Consolidated Fund of the State and (b) other expenditure to be made from that Fund. Clause (3) of Article 302 lays down that the following expenditure shall be expenditure charged upon the Consolidated Fund of the State: (a) the emoluments and allowances of the Governor

and other expenditure relating to his office; (b) the salaries and allowances of the Speaker and the Deputy Speaker and in the case of a bicameral Legislature, also of the Chairman and the Deputy Chairman of the Council; (c) debt charges; (d) expenditure in respect of the salaries and allowances of the Judges of any High Court; (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (f) any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged. It may be noted that Articles 229, 291 & 322 declare the following sums also to be expenditure charged on the Consolidated Fund of the State:—(i) sums required to meet the administrative expenses of High Courts; (ii) sums required to meet such contributions to the privy purse of Rulers as may be determind by the President; (iii) sums necessary to meet the expenses of the State Public Service Commission. The expenditure charged on the Consolidated Fund, that is, the items (a) to (f), are nonvotable but they can be discussed in the Legislature. Other expenditure must be submitted to the Legislative Assembly in the form of demands for grants. The Assembly can then either assent or refuse to assent to any demand or reduce the amount of any demand. No demand for grant can be made except on the recommendation of the Governor.

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

The Governor has been authorised, whenever he will think it necessary, to place before the House or the Houses of

the State Legislature supplementary financial statements and cause to be laid before the Assembly demands for supplementary or additional or excess grants. But the same procedure will apply to these matters as has been laid down for the annual financial statement or the ordinary demands for grants.

The Legislative Assemblies of the States have been authorised to sanction advance grants as well as exceptional grants.

Conduct of Business—All questions, except those otherwise provided for by the Constitution, shall be determined in any sitting of a House by a majority of votes of the members present and voting. The quorum shall be ten members or one-tenth of the total number of members of a House, whichever is greater. The Speaker or Chairman shall not vote in the first instance but shall have a casting vote.

Subject to these and some other provisions, a House of the Legislature of a State may make rules for its procedure and conduct of business.

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of a High Court or the Supreme Court in the discharge of his duties. The validity of any proceedings in the Legislature of a State shall not be called in question in any court.

As regards the language to be used in the Legislature of States, Article 210 lays down that the business in such Legislatures shall be transacted in the official language or languages of the State or in Hindi or in English. The Speaker may, however, authorise a member who cannot adequately express himself in any of these languages, to address the House in his mother-tongue. At the expiration of fifteen years from the commencement of the Constitution,

Total number of Seats in the Legislative Assemblies

(Part A and Part B States)

[*To be filled by direct election*]

Name of State	*Total number of Seats*	*Seats reserved for Scheduled Castes*	*Seats reserved for Scheduled Tribes*
1	2	3	4
PART A STATES.			
1. Andhra	196	26	5
2. Assam	108	5	26*
3. Bihar	330	44	35
4. Bombay	315	27	29
5. Madhya Pradesh ..	232	32	27
6. Madras ..	230	44	1
7. Orissa	140	21	28
8. Punjab	126	21	—
9. Uttar Pradesh ..	430	83	—
10. West Bengal ..	239	40	12
PART B STATES.			
1. Hyderabad ..	175	31	2
2. Madhya Bharat ..	99	17	12
3. Mysore ..	104	19	—
4. Patiala and East Punjab States Union ..	60	12	—
5. Rajasthan ..	160	16	5
6. Saurashtra ..	60	4	1
7. Travancore-Cochin ..	108	11	—

* Including 17 seats reserved for the Scheduled Tribes of the autonomous districts.

Allocation of Seats in the Legislative Councils

Name of State	*Total number of Seats*	*Seats for Local authorities*	*Seats for Graduates*	*Seats for Teachers*	*Seats for Members of Legislative Assemblies*	*Nominated*
1	2	3	4	5	6	7
PART A STATES.						
1. Bihar ..	72	24	6	6	24	12
2. Bombay ..	72	24	6	6	24	12
3. Madras ..	51	14	6	4	18	9
4. Punjab ..	40	13	3	3	13	8
5. Uttar Pradesh	72	24	6	6	24	12
6. West Bengal	51	17	4	4	17	9
PART B STATES.						
1. Mysore ..	40	13	3	3	13	8

Local Authorities for purposes of election to Legislative Councils

BIHAR

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Notified Area Committees.
5. The Patna Administration Committee.

BOMBAY

1. Municipalities.
2. District Boards.
3. Cantonment Boards.

MADRAS

1. Municipalities.
2. District Local Boards.
3. Cantonment Boards.

4. Major Panchayets, that is to say, Panchayets notified by the State Government in the Official Gazette as Panchayets which exercise jurisdiction over an area containing a population of not less than five thousand and whose income for the financial year immediately preceding the date of the notification was not less than ten thousand rupees.

PUNJAB

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Small Town Committees.
5. Notified Area Committees.

UTTAR PRADESH

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Town Area Committees.
5. Notified Area Committees.

WEST BENGAL

1. Municipalities.
2. District Boards.
3. Cantonment Boards.
4. Local Boards.

MYSORE

1. Municipalities.
2. District Boards.

unless the State Legislature otherwise provides, English shall cease to be one of the authorised languages so far as business of the Legislature is concerned. [As regards the language to be used in Bills etc., Article 348 deals with the matter, for which see Chap. on Official Language.]

Limitations on the Powers of State Legislature—Though the Part A State Legislatures are, as a general rule,

sovereign in their own spheres, it is important to remember the following limitations on their powers even within their own spheres.

(a) Some State laws will be invalid unless having been reserved for the President's consideration they have received his assent. In this category fall—(i) laws relating to acquisition of property by the State (Article 31) and (ii) laws in respect of concurrent matters which are repugnant to earlier legislations of Parliament (Art. 254).

(b) Some Bills require the previous sanction of the President for their introduction in the State Legislature. In this category fall Bills seeking to impose restrictions, in the public interest, on the freedom of trade, commerce or inter-course with or within that State (Art. 304).

(c) Parliament has been given power to legislate on those matters in the State List which may be declared by a resolution passed by a two-thirds majority in the Council of States to be matters which should be regulated by Parliamentary law. Such Central laws will, however, have effect for a limited period. (Art. 249; See Chapter XVIII).

(d) When a Proclamation of Emergency is in operation, Parliament will have paramount power to legislate on State subjects.

(e) By a Proclamation of failure of constitutional machinery in the State, the President may take away all the powers of the State Legislature and vest them in Parliament.

Control over Finance etc.—As is natural, it is the Legislative Assemblies of States that have been given the controlling power over the State finances. The control

of the Council in such matters is practically nil. In other legislation also, the Second Chamber has been given a very subordinate place and the Lower House can, if it so desires, entirely ignore the Upper House and can even pass a legislation alone. Moreover, the Lower House has been given the power to cause the abolition of the Upper House by passing a resolution to that effect by the required majority (see above). In view of these provisions, some people feel that it has been entirely meaningless to have made the provision for the Upper House which, they argue, have very little power and usefulness but place a heavy permanent burden on the State finances.

CHAPTER XXX

THE STATES IN PART B OF THE FIRST SCHEDULE

A historic achievement of the Government of free India is the integration and the democratisation of the former Indian States. Most of the hundreds of Indian States that were formerly under a feudal system of princely rule were, within a period of two years after the attainment of freedom, either merged in the provinces or integrated into bigger Unions. A few of them were, however, allowed to maintain their separate identity. The internal administration was placed everywhere on a democratic basis. Power was transferred from the princes to the people. All these Unions of the former Indian States, with the exception of Himachal Pradesh and Vindhya Pradesh, and three big individual States have been placed in Part B of the First Schedule to the Constitution. (Vindhya Pradesh was originally a part B state but has since been made a Chief Commissioner's State, that is, a Part C State.) There are altogether 8 states in this Part of the Schedule. They are :—(1) Hyderabad, (2) Jammu and Kashmir, (3) Madhya Bharat, (4) Mysore, (5) Patiala and East Punjab States Union, (6) Rajasthan, (7) Saurastra and (8) Travancore-Cochin. Of these, with the exception of Mysore, Hyderabad and Jammu and Kashmir, all the others are Unions of former Indian States.

The Government of the States—The Constitution places all the States in part B of the First Schedule on a par with the States in Part A of the First Schedule. All the provisions relating to the Executive, the Legislative and the Judicial Organs in the States in Part A of the First Schedule are to apply to the States in Part B with some exceptions which have been dealt with below.

The Executive—The Executive in the Part B States is almost exactly similar to that of the States of part A of the

Schedule. Only, in the place of the Governor there is a Rajpramukh in each of these States. The Rajpramukh of Hyderabad, says the constitution, shall be the person who is for the time being recognised by the President as the Nizam of Hyderabad. The Rajpramukh of Mysore shall be the person who for the time being is recognised by the President as the Maharaja of that State. The head af the State of Jammu and Kashmir, who used to be formerly known as the Rajpramukh is now designated Sadar-i-Riyasat. In relation to any other State, the Rajpramukh shall be the person who for the time being is recognised by the President as the Rajpramukh of that State. The Rajpramukh is to receive some allowances which will be charged upon the Consolidated Fund of the State. It should be noted that whereas a Governor's tenure of office is five years, no such limitation has been prescribed in regard to the office of the Rajpramukh. A Rajpramukh can continue in office till his death unless the President withdraws his recognition of him as the Rajpramukh of the State.

The Legislature—There is a legislature in each of these States consisting of the Rajpramukh and (a) in the State of Mysore two Houses, (b) in other States one House. The Representation of the People Act, 1950 has specified the number of seats in the Legislative Assemblies of Part B States and also the number of seats in the Legislative Council of Mysore (see tables in Chapter XV). On account of the peculiar position of Kashmir under the Constitution, (see below) the Representation of the People Act, 1950 has not specified the number of seats for the Kashmir State Assembly.

In other respects, the provisions which apply to the Legislature of the States in Part A of the First Schedule also apply to these States.

The Judiciary—The Judiciary in these States is also similar to that in States specified in Part A of the First Schedule and the same provisions apply. (See the Chapter on High Courts etc.). The only difference relates to a minor

matter, namely the salary and allowances etc. of the High Court Judges. The salaries of the High Court Judges in these States are fixed by the President after consultation with Rajpramukh. The salaries of the High Court Judges in States specified in Part A of the First Schedule have been fixed by the Constitution. The allowances, rights in respect of leave, pension etc. of the Judges in these States are to be determined by Parliament by law and until so determined are to be such as may be fixed by the President after consultation with the Rajpramukh.

Relations to the Centre—The relations to the Centre of the States in Part B of the First Schedule are almost the same as those of States in Part A of the First Schedule. As regards the legislative relations, they, too, have been given the exclusive power to legislate on matters enumerated in the State List and also the power, concurrently with the Union, to legislate on matters enumerated in the Concurrent List (See the same Chapter), Central legislation being paramount. These matters have been dealt with at length in Chapter XVIII. An exception to this general rule has, however, been made in the case of the state of Jammu and Kashmir.

So far as the administrative relations with the Centre are concerned these States, unlike the States in Part A of the First Schedule have been placed for a period of ten years from the commencement of the Constitution, under the general control of the Union and their Governments must comply with such particular directions as may from time to time be given by the President. Parliament, however, has been empowered to lengthen or shorten this period in respect of any State and the President has been authorised to exempt any State from the application of this provision regarding Centre's general control. In exercise of this power, the President has already exempted the state of Mysore from Central control.

In financial matters, provision has been made for special agreements between the Centre and the Government of any of these States but these agreements cannot continue in force for a period exceeding ten years from the commencement of this Constitution.

The Position of the State of Jammu and Kashmir :—

A special position has been accorded to Kashmir by the Constitution for well-known historical reasons.

When India attained her freedom on August 15, 1947, the State of Kashmir had not yet acceeded to her. In October, 1947, Kashmir was invaded by tribal hordes who were actively aided by Pakistan. The Government of Kashmir failed to organise effective resistance against the invasion which swiftly rolled towards the Capital of the State, Srinagar. Faced with this critical situation, the Maharaja of Kashmir appealed to India for help and offered to accede to her immediately. The biggest and the most representative political organisation in Kashmir, the National Conference, also requested India to accept Kashmir's accession and to help the State to fight back the invading hordes. After anxious deliberation for a few days, India agreed to the proposal. An Instrument of Accession was signed and India sent part of her Armed Forces to Kashmir which reached the State just in time to save it from being overrun by the tribals. By the Instrument of Accession, Kashmir acceded to India on three subjects—defence, foreign affairs, communications. While India accepted the accession, she agreed that in future the question of accession should be finally decided by the freely expressed will of the Kashmir people. Early in 1948, India submitted a representation to the Security Council complaining that Pakistan was actively aiding the invasion of Kashmir. Thus began the Indo-Pakistan dispute over Kashmir which has continued for years, Pakistan being still in occupation of a part of the State. Meanwhile the Constitution of India came into force on January 26, 1950. In

view of the peculiar circumstances relating to Kashmir, the Constitution of India could not treat it on a par with the other units of the Republic and made some special provisions for it.

The Constitution lays down that Parliament's power to legislate in regard to the State shall be confined to (a) those matters in the Union List and the Concurrent List which were ceded to the centre by the Instrument of Accession, that is, defence, foreign affairs and communications—and (b) such other subjects as the President may, with the concurrence of the State Governments, by order specify. These latter matters, it is further provided, must be placed before the Constituent Assembly of the State, when convened, for its decision. The President may, on the recommendation of the Constituent Assembly, at any time declare that these exceptional provisions will cease to have effect or will remain operative only with such exceptions as he may specify.

As regards the application of the provisions of the Constitution to the State, Articles 1 and 370 are made unconditionally applicable to it; Article 1 declares, *inter alia,* that Kashmir is a State in the Indian Union, and Article 370 lays down the special provisions relating to Kashmir which are being described here. The President may specify by order what other provisions of the Constitution will apply to the State. It is laid down, however, that if such Presidential order relates to matters ceded to the Union (defence etc.), the President must not issue it except in consultation with the Government of Kashmir. And if such order relates to any other matters, the President must not issue it except with the concurrence of the Kashmir Government.

The Constituent Assembly of Kashmir, which is envisaged in the Constitution, was elected in 1951 on the basis of adult franchise and met for the first time on October 31, 1951.

Though the framing of a constitution for Kashmir is the main business before the Constituent Assembly, it is also

acting as the Legislature of the State for the time being. It has already held a few sessions and taken a number of important decisions. Among them is the decision that no compensation shall be paid for lands taken over by the State Government under their land reform schemes. The Constituent Assembly could easily take this decision because the provisions of the Indian Constitution relating to the fundamental rights do not apply to the State.

On June 7, 1952, the Kashmir Consembly unanimously adopted a flag for the State. It is a rectangular red flag with a white plough in the middle and three equidistant white vertical stripes of equal width next to the staff. Sheikh Abdullah, Premier of Kashmir, explained that the white plough stood for the Kishans who formed the bulk of the State's population; red colour represented the labourers and the three equidistant white vertical stripes of equal width symbolised three geographical divisions of the State, namely, Jammu, Kashmir and Ladakh.

On June 12, 1952, the Constituent Assembly took the momentous decision to abolish the institution of monarchy in the State and to provide for an elected head of the State.

These decisions of the Kashmir Consembly aroused strong resentment among a section of the Indian people who apprehended that Kashmir was trying to be practically free from Central control and to set up a republic within a Republic.

To clarify the position of Kashmir *vis-a-vis* India, talks were held in July, 1952 between a delegation of the Kashmir leaders, headed by Sheikh Abdullah, and representatives of the Government of India. The talks resulted in an agreement covering various constitutional issues between the Indian Government and the Kashmir leaders. On July 24, 1952, the Prime Minister of India, Pandit Nehru, announced this agreement in the House of the People. The Kashmir Consembly formally approved this agreement on August 19,

1952. On the basis of this agreement, the President issued in May, 1954 an Order, called the Constitution (Application to Jammu and Kashmir) Order, 1954, which specified the provisions of the Constitution which are to apply to Kashmir as well as the modifications and exceptions subject to which they are so to apply. The Order came into force on May 14, 1954. The constitutional position of the State of Kashmir in the Indian Union, as it has been since the order was brought into force, is being summed up below under different heads.

Division of Legislative Powers—The Centre enjoys a number of specified powers, the rest being vested in the State. There is no concurrent subject. The residual powers of legislation, it must be clearly understood, are also vested in the State. Thus whereas the division of powers between the Indian Union and the other autonomous States is of the Canadian type, in the case of Kashmir it is of the American type. Kashmir thus enjoys a far larger measure of autonomy than any of the other autonomous States. The subjects in regard to which the Centre can legislate for Kashmir include: Defence; foreign affairs; armed forces; arms, ammunition and explosives; atomic energy; war and peace; citizenship; railways, airways, posts and telegraphs; currency, coinage, legal tender, foreign exchange; foreign trade; banking; insurance; stock exchanges; taxes on income other than agricultural income; customs duties; corporation tax; estate duty in respect of property other than agricultural land.

Citizenship—Kashmiris are Indian citizens. The Legislature of the State has, however, power to make special provisions for the return of migrants from Pakistan to the State. It has also the power to confer certain special rights and privileges on the permanent residents of the State. (See next section.)

Fundamental Rights—The provisions of the Indian Constitution dealing with fundamental rights apply to Kashmir. The Legislature of the State, however, has power to define

the classes of persons who are, or shall be, permanent residents of Kashmir. And it has the power to confer on such permanent residents special rights and privileges, and to impose on others restrictions, in regard to—(1) employment under the State Government; (2) acquisition of immovable property in the State; (3) settlement in the State. It has been further provided that, for five years since the commencement of the above-mentioned Order, no law relating to preventive detention shall be void on the ground that it is inconsistent with any of the provisions of the Constitution dealing with fundamental rights.

Emergency Powers—The President's power to issue a Proclamation of Emergency extends to Kashmir, but when such a Proclamation is necessitated by internal disturbance or imminent danger thereof it will not apply to Kashmir unless it is made at the request or with the concurrence of the Kashmir Government. The President's power to take over the administration of a State on the ground of failure of the constitutional machinery does not extend to Kashmir. Nor do his powers relating to the proclamation of a financial emergency apply to that State.

President's Prerogative—The President's power to grant pardons and reprieves or to suspend or commute sentences in all cases of death sentences and in all cases falling within the executive jurisdiction of the Union extends to the State of Kashmir.

The Supreme Court—The Supreme Court of India is the highest court of appeal for the State. The Supreme Court's power to grant special leave to appeal, however, does not extend to the State. And Parliament cannot add to the existing powers of the Supreme Court in regard to criminal matters, so far as Kashmir is concerned, except on the request of the State Legislature.

Head of the State—The head of the State of Kashmir is to be known as the Sadar-i-Riyasat.

"The New Paramountcy"—Some constitutional experts are of opinion that the Constitution has created a "new paramountcy" in relation to Part B states. They point out that the fact that these States have been placed under the general control of the Centre means that the Central Government can exercise unlimited control over them. The period of Central control over them can be indefinitely lengthened in respect of any of them by Parliament, which means that Parliament can lengthen this period for all of them to any extent it likes. These provisions, it is held, practically turn the federation into a unitary government so far as these States are concerned. The party in power may, it is believed, take advantage of this constitutional position of Part B States to entrench itself in these States and oppose the growth of progressive forces.

It is undeniable that there is much force in this line of reasoning. But the fear that the constitutional position of these States may be taken advantage of to consolidate reaction in these States seems to be exaggerated. Public opinion in free India seems to be sufficiently strong and alert to prevent the possibilities of such an undesirable development. The necessity of general control of the Centre over part B States arose mainly from the fact that these States are at present passing through a period of transition from a backward feudal regime to a modern democratic one. The framers of the Constitution, it is clear, estimated that this transition would take more or less ten years to be completed. This is why they provided for general control of the Centre over these States for a period of this length. It is unlikely that the Central control over any of these States would extend beyond a period of ten years. Already, it should be noted, Mysore has been exempted from Central control.

CHAPTER XXXI

CENTRALLY-ADMINISTERED AREAS

The States in Part C of the First Schedule—The States in Part C of the First Schedule are the following:—Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh.

The Constitution lays down that the President shall administer these States. In administering them, the President may, however, act through a Chief Commissioner or Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. But if the President wants to administer any such State through the Government of a neighbouring State, he must first consult the Government concerned and also ascertain the views of the people of the State concerned in such manner as he thinks most appropriate.

Parliament has been authorised to create or continue by law local legislatures for the States that are administered through a Chief Commissioner or a Lieutenant Governor, and specify their functions, powers and constitution. Such bodies may either be nominated or elected or partly nominated and partly elected.

Parliament has also been authorised to create or continue for each of such States a Council of Advisers or Ministers.

In response to popular demand for the creation of representative bodies in Part C States, Parliament has already enacted an Act providing for the setting up of Legislatures and Ministries in these States.

Legislatures and Ministries in Part C States—The Government of Part C States Act, 1951 provides for the creation of Legislative Assemblies and Ministries in all Part C States. In Kutch, Manipur and Tripura, however, these

provisions will not come into force until such dates as the Central Government may by notification specify.

Thus, at present therefore there are Legislative Assemblies and Ministries in six of these States, namely, Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh and Vindhya Pradesh. Allocation of seats in the Legislatures of these States is as shown in the appended table. Elections to the Legislatures must be held on the basis of adult franchise. The Legislative Assemblies have been given power to make laws for the States with respect to any of the matters enumerated in the State List or in the Concurrent List (See next Chapter). The Legislative Assembly of Delhi, however, has no power to make laws with respect to any of the following matters: public order; police including railway police; the constitution and powers of municipal corporations and other local authorities, of improvement trusts and of water supply, drainage, electricity, transport and other public utility authorities in Delhi or in New Delhi; lands and buildings vested in or in the possession of the Union which are situated in Delhi or in New Delhi including all rights in or over such lands and buildings, the collection of rents therefrom and the transfer and alienation thereof; offences against laws relating to any of the above-mentioned matters; jurisdiction of courts in respect of these matters; fees in respect of any of these matters other than fees taken in any court. Every Bill passed by the Legislative Assembly of a Part C State is required to be reserved for the consideration of the President and no such Bill can become law unless it has been assented to by him. In case of inconsistency between laws made by these Legislative Assemblies and Parliamentary laws, the latter is to prevail. The Assemblies, unless sooner dissolved, are to continue for five years. While a Proclamation of Emergency is in operation, this period may be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

In almost all other respects, the powers, functions and procedure of the Legislative Assembly of these States are similar to those of the Assemblies of Part A States.

The Act provides for a Council of Ministers in each State to aid and advise the Chief Commissioner in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the State has power to make laws except in so far as he is required by any law to exercise any judicial or quasi-judicial functions. The Chief Minister is to be appointed by the President and the other Ministers are to be appointed by the President on the advice of the Chief Minister. The Council of Ministers, the Act says, shall be collectively responsible to the Legislative Assembly of the State.

As compared with the Ministries in Part A or Part B States, the Ministries in Part C States enjoy very little real power. In case of difference of opinion between the Chief Commissioner and the Ministers, the Chief Commissioner is required to refer the matter to the President and act according to the President's decision; in case of urgency, the Chief Commissioner has power to take such action as he deems necessary pending such decision by the President. The Act lays down that the Chief Commissioner, when present, shall preside at meetings of the Council of Ministers. In his absence, the Chief Minister, or such other Ministers as may be determined by rules of procedure to be framed by the President, shall preside.

The Chief Commissioner—The Chief Commissioner, who is appointed by the President, is the executive head of the State and all his executive action, whether taken on the advice of the Ministers or otherwise, must be expressed to be taken in his name. The Chief Commissioner is required to summon from time to time the Legislative Assembly to

meet, but six months, it is laid down, shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The Chief Commissioner may, from time to time, prorogue or dissolve the Assembly. The Chief Commissioner may address the Assembly and may require the attendance of members for this purpose. He may also send messages to the Assembly which must consider with all convenient dispatch any matter required to be taken into consideration by the message. The Commissioner shall, in respect of every financial year, cause to be laid before the Assembly, with the previous approval of the President, a statement of the estimated receipts and expenditure of the State for that year. No financial Bill can be introduced into the Assembly except on his recommendation.

There is to be a Council of Ministers to aid and advise the Chief Commissioner in the exercise of his functions in relation to matters with respect to which the Assembly has power to make laws. The Ministers, however, have no power to advise him in regard to his judicial or quasi-judicial functions, if any. The decision of the Chief Commissioner, it is provided, shall be final on any question as to whether he is required by law to act in a judicial or quasi-judicial capacity in any matter.

The Chief Commissioner, when present, presides at meetings of the Council of Ministers. In case of difference of opinion between him and his Ministers, he is to report the matter to the President and act according to the President's decision. But if such difference of opinion arises on any matter which, in the Chief Commissioner's opinion, requires urgent action, he may take such action as he thinks necessary pending the President's decision on the matter. In the State of Delhi, every decision taken by a Minister or by the Council in relation to any matter con-

cerning New Delhi is subject to the concurrence of the Chief Commissioner. And the decision of the Chief Commissioner is final as to whether any matter is or is not a matter concerning New Delhi. (Where there is a Lieutenant-Governor as the executive head, his powers and functions are the same as those described in relation to the Chief Commissioner.)

The Centre Retains Complete Control—In spite of the fact that the Government of Part C States Act provides for the creation of representative bodies in these States, the Centre, it is important to note, retains complete control over them. Parliament continues to enjoy complete legislative sovereignty in relation to these States, which means that it has power to repeal or modify, whether directly or indirectly, any law made by the Assembly of any of these States and also to lay down such laws for them as it may deem necessary. The Act also specifically lays down that the Chief Commissioner and the Council of Ministers shall be under the general control of the President and shall comply with such particular directions as may from time to time be given by the President. And, as has been already pointed out, every Bill passed by the Legislative Assembly of Part C State is required to be submitted to the President for his assent. If the President, on receipt of a report from the Chief Commissioner of a State or otherwise, is satisfied that a situation has arisen in which the administration of the State cannot be carried on in accordance with the provisions of the Government of Part C States Act, he may, by order, suspend the operation of all or any of the provisions of this Act, which means that he may supersede both the Council of Ministers and the Legislative Assembly. It should be noted that since the Constitution has placed the Part C States under Central administration, this position cannot be altered except by amending the Constitution.

Table of Seats in the Legislative Assemblies of Part C States

State	*Total number of seats*	*Seats reserved for Scheduled Castes*	*Seats reserved for Scheduled Tribes*
1	2	3	4
Ajmer	30	6	..
Bhopal	30	5	2
Coorg	24	3	3
Delhi	48	6	..
Himachal Pradesh ..	36	8	..
Vindhya Pradesh ..	60	6	6

The State of Pondicherry—The former French settlements now form part of the Indian territory. Chandernagore was ceded to India by a Treaty of Cession with effect from June 9, 1952. The other settlements, namely, Pandichery, Karaikal, Mahe and Yanam were transferred to the mother country by an agreement concluded between France and India on October 21, 1954. Chandernagore has been merged in West Bengal. The other territories are being administered as a unit of the Indian Union. The State of Pondicherry, as this unit is called, resembles a Part C State so far as its administrative structure is concerned. The State has a Chief Commissioner as its executive head, and a Representative Assembly has been provided for by an order of the Central Government.

The territories in Part D of the First Schedule and other territories not specified in the Schedule—The territories mentioned in Part D of the First Schedule are the Andaman & Nicobar Islands. These territories and any other territory not mentioned in the First Schedule are to be administered by the President acting, to the extent he thinks fit, through a Chief Commissioner or any other authority to be appointed by him. The President has been empowered to make regulations for the peace and good government of these

territories and to amend or repeal any law made by Parliament or any existing law which is applicable to such territory.

High Court in Part C States—Parliament has been empowered to create High Courts for Part C States or to declare any existing court as the High Court for any of these States. The same provisions which apply to the High Courts in Part A States are to apply to them.

It has been provided that every High Court which was exercising jurisdiction in relation to any of these States immediately before the commencement of the Constitution shall continue to do so after its commencement.

CHAPTER XXXII

RELATIONS BETWEEN CENTRE AND STATES

Distribution of Legislative Power—In every federal government, there is clear demarcation between the sphere of the Centre and that of the Units. In other words, there is division of legislative power between the Centre and the Units. In India, too, the new Constitution has divided the legislative powers between the Union and the States.

Generally speaking, there are two ways of dividing the powers between the federal government and the States. The federal government may be given a number of specified powers and the rest may be vested in the States. This scheme is followed in the American and the Australian Constitutions. Secondly, the States may be given a number of specified powers and the rest of the legislative field may be left to the Centre. This scheme is followed in the Canadian Constitution.

In India, the division of legislative powers is more or less of the Canadian type. (This statement does not apply to Kashmir.) But there are some novel features of our Constitution in this matter. Our Constitution embodies three Legislative lists, namely, the Union List, the State List and the Concurrent List (The Lists are summarisad below). As laid down by Article 246, Parliament has exclusive power to make laws in respect of the matters enumerated in the Union List. The Legislatures of States for the time being specified in Parts A and B of the First Schedule have exclusive power to make laws for such States or any part thereof with respect to any of the matters enumerated in the State List. In respect of matters enumerated in the Concurrent List, both Parliament and the Legislatures of any of the States specified in Parts A and B of the First Schedule have authority to

legislate. For territories not included in the States specified in Parts A and B of the First Sshedule, Parliament has authority to legislate on any matter whatsoever. The Legislatures of Part C States, therefore, enjoy legislative power by devolution, Parliament retaining legislative sovereignty over the whole field. The residual powers of legislation have been vested in the Centre, that is, in Parliament. In case of inconsistency between the laws made by Parliament and those made by the State Legislatures, it is the former which will prevail and the State laws will, to the extent of the inconsistency, be void. It is provided that in respect of matters enumerated in the Concurrent List a law made by the Legislature of any of the States specified in Parts A and B and of the First Schedule shall, in spite of its inconsistency with any earlier law made by Parliament, prevail, if the State law in question has been reserved for the consideration of the President and received his assent. Parliament can, however, at any time enact a law repealing or amending such a State law. Apart from these general provisions, the Constitution has also provided for the acquisition of power by Parliament to legislate on such matters in the State List as assume national importance and also for the voluntary surrender to the Centre by one or more States of any subject falling within their legislative ambit.

Article 249 lays down that if the Council of States passes a resolution by a majority of two-thirds of the members present and voting declaring that it is necessary in the national interest that Parliament should make laws with respect to any matter in the State List, Parliament shall have the authority to legislate on that matter while the resolution remains in force. Such a resolution shall remain in force for a period not exceeding one year. This period may be extended by a further period of one year at a time by subsquent resolutions. A law made by Parliament under this Article shall cease to have effect at the expiration of a period of six months after the resolution has ceased to be in force.

It must be understood that the authority of Parliament to legislate on a matter in the State Lists shall not take away the power of a State to legislate on it, but in the case of inconsistency between the Federal law and any State law on such a matter, it is the former which is to prevail.

According to Article 252, if all the Houses of the Legislatures of two or more States pass resolutions requiring Parliament to regulate any matter falling exclusively within their legislative ambit, Parliament may pass an Act to regulate such matter in the States concerned. Such an Act may be adopted by any other State if a resolution in that behalf is passed by the House or Houses of the Legislature of the State. Such an Act can only be amended or repealed by Parliament.

As has been already mentioned, when a Proclamation of Emergency is in operation Parliament shall have the authority to make laws for the whole or any part of India on any of the matters in the State List. Such laws shall cease to have effect at the expiration of six months after the Proclamation has ceased to operate. But, again, it must be understood that this power of Parliament does not take away the power of the States to legislate on any matter within their jurisdiction, but in the case of inconsistency between the federal law and the State law, it is the former which is to prevail.

The Union List—Defence of India; the armed forces; arms, ammunition and explosives; atomic energy; foreign affairs; diplomatic representation; United Nations Organisation; war and peace; citizenship; extradition; passports and visas; railways; airways; ports; lighthouses; posts and telegraphs; telephones; wireless; broadcasting; currency; coinage; legal tender; foreign trade; banking and insurance; patents; copy-right, trade mark; standards of weights and measures; oilfields and mineral resources; industries the control of which is declared by Parliament to be expedient in the public interest; historical monuments of national

importance; census; Union Public Services; inter-state migration; taxes on income other than agricultural income; customs duties; excise duties on all goods manufactured in India except alcoholic liquors and narcotics; corporation tax; estate duty in respect of property other than agricultural land; residuary matters.

The State List—Public order; police, health and sanitation; local government; intoxicating liquors; burial and cremation grounds; education (with some exception); libraries; agriculture; land tenure; forests, fisheries; industries (excepting those mentioned in the Union list); trade and commerce within the State; betting and gambling; treasure trove; land revenue; taxes on agricultural income; duties in respect of succession to agricultural land; excise duties on alocoholic liquors and narcotics; sale and purchase tax; tolls, taxes on luxuries and entertainments; jurisdiction and powers of all courts, except the Supreme Court, in respect of any of the matters in the State List.

Concurrent List—Criminal law and procedure; marriage and divorce; bankruptcy and insolvency; trust and trustees; evidence and oaths; civil procedure; contempt of court; vagrancy; lunacy and mental deficiency; adulteration of foodstuffs and other goods; drugs and poisons; economic and social planning; trade unions; labour welfare; charitable institutions; price control; factories; electricity; newspapers, books and printing presses.

Each Sovereign in its Sphere—It is clear that subject to the provisions of the Constitution, both the Union and the States (of Part A and B of the First Schedule) are sovereign in their respective spheres. Parliament cannot encroach on the legislative territory of the State, nor can any State encroach on the federal sphere. If either of the two tries to intrude on the other's sphere, the Judiciary will have the authority to prevent it from doing so. If any federal law, in violation of the Constitution, seeks to regulate any matter reserved to the States, the Judiciary will have power to

declare it unconstitutional and void. Similarly, the States will be kept within their own sphere by the Judiciary and will not be allowed to usurp any part of the territory reserved to the Union. Thus, according to the scheme of the Constitution both the Union and the States are expected "to whirl contentedly" within their respective orbits. It must be clearly understood, however, that this relationsship subsists only between the Union and the States specified in Parts A and B of the First Schedule. As regards other States and territories, Parliament has full authority to legislate on any matter notwithstanding that such a matter is one enumerated in the State List.

Administrative Relations between the Centre and the States: The executive power of the Union, as a general rule, extends only to those matters in regard to which Parliament has exclusive power to make laws. Parliament has, however, the power to extend the Union's executive power to concurrent subjects by making express provisions. When a Proclamation of Emergency is in operation, the Union executive can give directions to any State in any matter as to the manner in which the executive power thereof is to be exercised.

The Constitution lays down that the executive power of the States shall be so exercised as to ensure compliance with the laws made by Parliament and not to impede or prejudice the exercise of the executive power of the Union. The Union can give necessary directions to the States for these purposes.

The President may, with the consent of a State government, entrust to the officers of the latter any functions in relation to any matter to which he executive power of the Union extends. A law made by Parliament may confer powers and impose duties on the officers of a State notwithstanding that the law relates to a matter falling outside the legislative jurisdiction of the State. It should be understood that extra costs entailed on the State finances on account of

such laws of Parliament or the Union government's directions must be paid by the Union.

Financial Relations—The financial provisions of the new Constitution are more or less similar to those of the government of India Act, 1935. The sources of revenue have been distributed between the Centre and the autonomous States (that is, Part A and Part B States). But whereas these States are to retain the entire proceeds allocated to them, the proceeds of some of the heads of revenue which fall within the Centre's jurisdiction are to be, or may be, assigned wholly or partly to these States.

The main sources of Central revenue are the following :— Income-tax ; Customs ; Excise duties on tobacco and all other goods produced in India, except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics ; Corporation tax ; taxes on capital value of companies ; income from the Railway and Postal departments ; income from general administration and coinage. Some other taxes to be levied by the Centre are to be allocated wholly to the autonomous States.

The main sources of revenue of the autonomous States are the following :—Land revenue ; taxes on agricultural income ; duties in respect of succession to agricultural land ; estate duty in respect of agricultural land ; taxes on lands and holdings ; taxes on mineral rights ; duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics ; taxes on the entry of goods into a local area ; taxes on the consumption and sale of electricity ; taxes on the sale or purchase of goods other than newspapers ; taxes on advertisements other than advertisements published in newspapers ; taxes on goods and passengers carried by road or on inland waterways ; taxes on vehicles, taxes on professions, trades, callings and employments ; taxes on luxuries, entertainments, amusements, betting and gambling ; stamp duties ; and shares of

Income-tax and allocations from the proceeds of certain other taxes to be levied by the Centre.

Let us see how the proceeds of some of the heads of revenue which fall within the Centre's legislative jurisdiction are to be or may be assigned wholly or partly to the autonomous States :

(1) The following duties are to be levied by the Union but are to be collected and wholly appropriated by the autonomous States :—(a) Stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts ; (b) excise duties on medicinal and toilet preparations containing alcohol or opium or Indian hemp or other narcotic drugs and narcotics.

(2) The following duties and taxes are to be levied and collected by the Union but shall be wholly assigned to the autonomous States within which they are leviable according to principles of distribution laid down by Parliament by law :—(a) duties in respect of succession to property other than agricultural land ; (b) estate duty in respect of property other than agricultural land ; (c) terminal taxes on goods or passengers carried by railway, sea or air ; (d) taxes on railway freights and fares ; (e) taxes other than stamp duties on transactions in stock-exchanges and futures market ; (f) taxes on the sale or purchase of newspapers and on advertisements published therein.

(3) The following taxes are to be levied and collected by the Union but are to be distributed between the Union and the autonomous States within which they are leviable according to principles prescribed by the President :—taxes on income other than agricultural income.

It must be understood that the net proceeds of the taxes on income, of which a share is to be distributed among the autonomous States, must not include any proceeds attributable to the Centrally-administered areas or taxes payble in respect of Union emoluments.

It is provided that after a Finance Commission has been constituted (see below) the President in fixing the principles of distribution of the taxes on income must take into consideration the recommendations of the Finance Commission.

(4) The following taxes which are to be levied and collected by the Union may, if Parliament so provides by law, be wholly or partly distributed between the autonomous States within which they are leviable according to principles of distribution laid down by such law:—Union duties of excise other than such duties of excise on medicinal and toilet preparations as have been mentioned in item(1). The duties of excise on medicinal and toilet preparations mentioned in item (1), it should be noted, are to be collected and wholly appropriated by the autonomous States.

The Finance Commission—The Constitution provides for the setting up of a Finance Commission. A Finance Commission is to be appointed by the President within two years from the commencement of the Constitution, and thereafter at the expiration of every fifth year or earlier.

The duty of the Commission, it is provided, shall be to make recommendations to the President regarding (a) the distribution between the Centre and the autonomous States of the proceeds of such taxes as are to be or may be divided between them; (b) the principles which should govern the grants-in-aid from the Centre to the States; (c) the continuance or modification regarding financial agreements with States in Part B of the First Schedule; (d) any other matter that may be referred to the Commission by Parliament.

The recommendations of the Commission as well as a memorandum on the actions taken thereon must be laid before Parliament.

The first Finance Commission, appointed by the President in November, 1951, submitted its report in December 1952.

CHAPTER XXIII

AMENDMENT OF THE CONSTITUTION

The procedure laid down by the Constitution for its amendment is neither too easy as in England, nor too difficult as in the United States. In England an ordinary legislation of Parliament can amend the constitution. In the United States, however, every amendment must be proposed either by a two-thirds majority of each House of Congress or by a special convention called by Congress, if two-thirds of the State legislatures ask for the calling of such a convention. The amendment is then submitted either to the State Legislatures or to special State Conventions called for the purpose. If three-fourths of the States agree to the amendment, it becomes part of the constitution.

The Constitution of India, however, strikes a middle course thereby avoiding extreme rigidity or extreme flexibility. The general provision laid down for amendment is that an amendment to this Constitution can be initiated only by the introduction of a Bill in either House of Parliament. If such a Bill is passed by each House by a majority of the total membership of the House and at least a two-thirds majority of the members present and voting and thereafter assented to by the President, the Constitution will stand amended in terms of the Bill. (Art. 368).

It has been provided that if such a Bill seeks to amend any of the following provisions of the Constitution, it must be ratified by at least half the Legislatures of the States specified in Parts A and B of the First Schedule, before it is presented to the President for assent:—

(1) Article 54, which deals with the election of the President.

(2) Article 55, which deals with the manner of election of the President.

(3) Article 73, which deals with the extent of the executive power of the Union.

(4) Article 162, which deals with the extent of the executive power of the States in Part A of the First Schedule.

(5) Article 241 dealing with the High Courts in States in Part C of the First Schedule.

(6) Chapter IV of Part V, which deals with the Union Judiciary.

(7) Chapter V of Part VI, which deals with High Courts in Part A States.

(8) Chapter I of Part XI, which deals with Legislative Relations.

(9) The Legislative Lists.

(10) Representation of States in Parliament.

(11) Article 368 itself which lays down all these procedures for amendment.

Thus, it will be seen that the provision for amendment of the Constitution is in conformity with the principles of federalism. The Central Legislature has not been given authority to change the distribution of powers made by the Constitution, or rather, it can change the demarcation of legislative and executive spheres only with the consent of at least half the Legislatures of the autonomous States. If the Centre had been given the power of altering the division of powers, as laid down by the Constitution, then certainly the Indian Constitution would not have been federal in type. For in that case, the Centre would have been supreme and in a position easily to destroy the autonomy of the States. The emergency provisions of the Constitution, however, and certain other provisions (see Ch. XVIII), which empower Parliament to legislate on State subjects in certain specified situations, greatly qualify the federal character of our Constitution and make it fundamentally different from other

federal Constitutions such as those of the U. S. A. and Australia.

It may be noted that the State Legislatures have been given no power to amend their own constitutions. In Canada and the Commonwealth of Australia, the Provinces and the States respectively can amend their own Constitutions within the federal frame-work. Differences of political evolution explain this difference.

Simpler Procedure for Amending Certain Provisions—Though as a general rule, the Constitution cannot be amended except by following the procedure described above, there are a few exceptions to the rule. In respect of a few particular matters, Parliament can amend the Constitution by passing an ordinary law—that is, a law passed by a simple majority. A law which increases or diminishes the area of any State or alters the name or boundary of any State or forms a new State can be passed by Parliament by a simple majority though its effect is to amend the Constitution.

Similarly, Parliament can pass by a simple majority a law creating or abolishing the Legislative Council of a State though such a law necessrily results in amendment of the Constitution. The Fifth Schedule to the Constitution which deals with provisions relating to the Scheduled Areas and the Scheduled Tribes can also be amended in this manner.

Thus, we see that three different procedures for amendment have been laid down in the Constitution. These procedures, arranged in a descending order of difficulty, are as follows :—

(1) The Legislative Lists and certain other provisions described above can be amended only if each House of Parliament passes the amending Bill by a majority of its total membership and by at least a two-thirds majority of the members present and voting, and if the Bill is thereafter

ratified by at least half the Legislatures of the Part A and Part B States and then assented to by the President.

(2) The bulk of the Constitutional provisions including those on fundamental rights can, however, be amended if each House of Parliament passes the amending Bill by a majority of its total membership and by at least a two-thirds majority of the members present and voting, and if thereafter the Bill is assented to by the President.

(3) In respect of a few matters, Parliament can amend the Constitution by passing an ordinary law.

CHAPTER XXXIII

SCHEDULED CASTES, TRIBES, AREAS ETC.

The Scheduled Castes and the Scheduled Tribes—The President has been empowered by the Constitution to specify with respect to any State the groups or races or castes who are to be deemed the Scheduled Castes in relation to that State. Parliament alone has been authorised to include in or exclude from the list so specified by the President any groups or castes or races or any part of them. Under this provision, the President has already specified the Scheduled Castes for the various States. The President's orders provide that no person who professes a religion other than Hinduism shall be deemed to be a member of a Scheduled Caste. But every member of the following castes, namely, Ramdasis, Kabirpanthis, Mazhabis and Sikligars, resident in Punjab or the Patiala and East Punjab States Union, shall, in relation to the State, be regarded as a member of the Scheduled Castes whether he professes the Hindu or the Sikh religion.

Also, every member of the Kabirpanthi, Mazhabi, Ram Dasia, Ravidasi or Raidasi or Sikligar caste resident in the State of Delhi and Kabirpanthi or Julaha or Keer, Mazhabi, Ramdasi or Ravidasi, Ramdasia or Sikligar caste resident in the State of Himachal Pradesh shall, in relation to that State, be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religion.

Similarly, the President has been empowered to specify by public notification the tribes or tribal communities who are to be deemed as the Scheduled Tribes in relation to any State. Parliament alone has been authorised to alter the list so specified. The President has already issued orders embodying lists of the Scheduled Tribes in the various States.

Special Provisions for the Scheduled Castes and Tribes: The Constitution has provided for reservation of seats in the House of the People and in the Legislative Assemblies of the States for the Scheduled Castes and the Scheduled Tribes. These provisions, however, are to cease to have effect at the expiration of a period of ten years from the commencement of the Constitution. The Constitution further directs that in making appointments to services and posts in connection with the Union or State affairs, the claims of the Scheduled Castes and the Scheduled Tribes must be taken into consideration. Provisions have also been made for liberal State assistance to raise the living standards of the Scheduled Tribes.

Scheduled Areas: To ensure peace and good government in areas predominantly inhabited by the Scheduled Tribes, the Constitution has provided for the creation of what are known as Scheduled Areas. The President has been empowered to declare which areas are to be regarded as the Scheduled Areas in relation to any State. The administration of the Scheduled Areas has been placed under the control of the State Executive, which, in this matter, is to be under the general control of the Union Executive. The Governor or the Rajpramukh has been authorised to make regulations for the peace and good government of the Scheduled Areas and also to modify any State or Union Law in their application to such areas. These regulations, however, will not be valid unless assented to by the President.

Administration of the Tribal Areas in Assam: Special provisions have been laid down in the Sixth Schedule to the Constitution for the administration of the tribal areas in Assam. The reason for the distinction made between the tribes of Assam and those of the rest of the country is that, culturally, the former are greatly different from the latter. Whereas the tribes in other parts of the country belong more

or less to the Hindu culture, the tribes in Assam do not do so. They have a distinct culture of their own.

The tribal areas of Assam have been divided into two Parts—Part A and Part B.

(A) Part A includes the following areas :—The United Khasi-Jaintia Hills District, (2) The Garo Hills District, (3) The Mizo District, (4) The Naga Hills District, (5) The North Cachar Hills and (6) The Mikir Hills. These are called autonomous districts. They have been given a large measure of autonomy in internal matters. There is in each autonomous district a District Council, and in each region inside the district inhabited by a distinct tribal element, a Regional Council. These Councils enjoy a large measure of legislative power in regard to allotment or occupation or use of land, the management of non-reserved forests, the administration of villages and towns including village and town police and public health and sanitation, the appointment or succession of chiefs, the inheritance of property, marriage and social customs. The membership of the Councils consists mainly of representatives elected on the basis of adults franchise.

(B) Some frontier tribal areas of Assam have been grouped as Part B. These are :—(1) North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District and Misimi Hills District. (2) The Naga Tribal Area.

These are mostly areas in which there is as yet no settled administration. Parts of these areas are yet almost unexplored and unpenetrated by the administrative authorities in India. In the Naga Tribal Area, even head hunting still goes on. These areas, it has been felt, should be kept under Central administration for some time to come. Accordingly, the constitution provides that these areas are to be administered by the President through the Governor of Assam as his

agent. The Governor of Assam in discharging his functions in respect of these areas as the agent of the President shall, it is provided, act in his discretion, that is, independently of the advice given by the Ministry of the State. The Governor has been empowered, whenever he thinks fit, to apply to these areas, with the approval of the President, any of the provisions that are applicable to the autonomous districts.

CHAPTER XXXIV

INDIA AND THE COMMONWEALTH

India is a member of the Commonwealth of Nations, which is more commonly known as the British Commonwealth. At the Commonwealth Prime-Ministers' Conference held in London in April, 1949, the decision about India's continuing membership of the Commonwealth was taken unanimously. On April 29, 1949, a declaration was made by the Commonwealth Prime Ministers about their decision on this matter. The declaration contained the following:—

"The Government of India has informed the other governments of the Commonwealth of the intention of the Indian people that under the new Constitution, which is about to be adopted, India shall become a Sovereign, Democratic Republic. The Government of India has, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations as such as the head of the Commonwealth. The Governments of the other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this declaration.

"Accordingly, the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress"

This London agreement about India's membership of the Commonwealth was ratified by the Indian Constituent Assembly on May 17, 1949.

The word "British" seems to have been dropped by common agreement from the term "British Commonwealth". It is believed that the Prime Minister, Pandit Nehru, per-

suaded the other members of the Commonwealth to drop this epithet from the term. It need hardly be pointed out that patriotic Indians do not relish the suggestion about British superiority which the epithet implies.

It is important to note that India as a member of the Commonwealth does not pay allegiance to the Queen. The Queen is regarded as a mere symbol of Commonwealth association. And recognition of the Queen as a symbol of the association cannot be avoided so long as India desires to remain in Commonwealth. For, it should be clear, the Queen is the only link with the Commonwealth which is common to all the members and the Queen's headship, however symbolical, cannot be dispensed with without breaking the link with the Commonwealth. Other nations cannot regard India as part of the Commonwealth unless she has this link, which means in practice that India cannot claim any economic advantage in the international field as a member of the Commonwealth without recognising this link. The international system, called the Commonwealth of Nations, is held together by the link of the Queen.

Of course, from the theoretical point of view, it is difficult to refute the criticism that India's Republican status and her continuing membership of the Commonwealth cannot be reconciled to each other. For, theoretically, a Republic can have nothing to do with a King and Queen. Since the Queen is to be "the head of the Commonwealth", it may be argued, as soon as India declared herself to be a Republic, she went out of the Commonwealth. Many people, including some eminent persons, have argued in this way and have held that a Republic can never be made to fit in inside the Commonwealth. For instance, General Smuts made the following statement in April, 1949: "There is no middle course between Crown and Republic, between in and out of the Commonwealth. If in some nebulous or muddled way you can be both in and out of it, the whole concept of the Commonwealth goes and what remains is a mere name with-

out substance, the grin without the cat in Alice in Wonderland."

In practice, however, it need hardly be stressed, India's membership of the Commonwealth does not compromise her Republican status. As Pandit Nehru, Prime Minister of India, pointed out in course of a broadcast in May, 1949, "It must be remembered that the Commonwealth is not a Super-State in any sense of the term. We have agreed to consider the King as the symbolic head of this free association. But the King has no function attached to that status in the Commonwealth. So far as the Constitution of India is concerned, the King has no place and we shall owe no allegiance to him." Thus, to India, the Queen is a mere symbol without any constitutional significance.

Acceptance of the British Sovereign as a symbol, however, has the following implications. India cannot pass without the assent of other members of the Commonwealth any law which may have the effect of altering the laws relating to the Succession to the Throne or the Royal Style and Titles. India also cannot set up a separate dynasty. Of course in strict law, there is nothing to prevent India from passing such a law. But according to a convention already established among the members of the Commonwealth India cannot pass a law of this nature. It stands to reason that India cannot disregard this convention without at the same time going out of the Commonwealth. Also, according to this convention, neither the U. K. Parliament nor the legislature of any other member of the Commonwealth can pass such a law without India's assent.

In strict law, it must be admitted, the status of India inside the Commonwealth is unequal to that of the United Kingdom. For the British Parliament, in theory, has the authority to make laws for India and it may be argued that even the Indian freedom is based on laws made by Parliament, which can be abrogated by it. But these legal and constitutional niceties need not be made much of. In prac-

tice, they mean nothing. India is a fully sovereign country in every sense of the term and has the power to go out of the Commonwealth whenever she may choose to do so.

It is interesting to note that at the time of the coronation of Queen Elizabeth II in the middle of 1953, proclamations were issued in all Commonwealth countries, excepting India, specifying the new style and titles of the Queen. Though these style and titles differ from country to country, they have a common element, namely, that they all refer to Elizabeth as the Queen and as the Head of the Commonwealth. The British form is:

Elizabeth the Second, by the grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories, Queen, Head of the Commonwealth, Defender of the Faith. Pakistan's proclamation named Elizabeth as follows: Elizabeth the Second, Queen of the United Kingdom and her other realms and territories, Head of the Commonwealth. No proclamation was required for India because being a Republic, she owes no allegiance to the Queen and recognises her only as Head of the Commonwealth.

Membership of the Commonwealth has another implication. Indian citizens resident in the United Kingdom have the same legal status and treatment as they enjoyed as British subjects formerly. In fact a Bill, called the India (Consequential Provision) Bill has been passed by the British Parliament enabling Indian citizens to continue to enjoy these rights. Similarly, British nationals resident in India are entitled to a similar treatment. In other countries of the Commonwealth, too, the citizens of India are entitled, on the basis of reciprocity, to some special privileges, which, however, are more hypothetical than real.

Membership of the Commonwealth, according to the Indian Prime Minister, has resulted in palpable benefit to India in economic and political spheres.

CHAPTER XXXV

INDIAN STATES REORGANISED

The long-standing demand for the reorganisation of India on linguistic basis was partially acceded to by the Government of India in 1953 when they took the decision to separate Andhra from Madras and make it an independent State. Andhra came into existence as a separate State on October 1, 1953. The birth of Andhra as a separate State gave the signal, as it were, for the opening of the flood-gates of linguistic agitation all over India. Particularly in the south, people began to demand vehemently that territories inhabited by people speaking the same language should be brought together under unified administration. Having already conceded the principle of linguistic reorganisation of States by the creation of the new state of Andhra, the Government found it difficult to resist the demand which was being backed by millions of people. They ultimately bowed to the public opinion and on December 29, 1953, appointed a Commission, consisting of Shri Saiyid Fazl Ali, Shri Hriday Nath Kunzru and Shri Kavalam Madhava Panikkar, to go into the entire problem of reorganisation of States and to make suitable recommendations. In their terms of reference to the Commission, the Government stressed that in approaching the problem of reorganisation the importance of a number of factors had to be borne in mind. Apart from language and culture, financial, economic and administrative considerations, they said, had an important bearing on the problem. And the most essential consideration was preservation of the unity and security of India.

The Commission submitted its report to the Government on September 30, 1955. The following were the main recommendations of the Commission: (1) The constitutional disparity existing between the different States of the Indian

Union should disappear. (2) Part B States should be equated with Part A States by omitting Article 371 from the Constitution and by abolishing the institution of the Rajpramukh. (Article 371, as originally enacted, placed the Part B States under general control of the Centre for a period of ten years from the commencement of the Constitution.) (3) The States should be reorganised so as to form sixteen States and three Union territories, the States being the following—Andhra, Assam, Bihar, Bombay, Hyderabad, Jammu and Kashmir, Karnataka, Kerala, Madras, Madhya Pradesh, Orissa, the Punjab, Rajasthan, Utttar Pradesh, Vidarbha and West Bengal. Delhi, Manipur, and Andaman and Nicobar Islands should be made Union territories.

The Commission's recommendations were widely discussed all over the country for a number of months. Early in 1956, the Government of India announced their decisions which differed in some respects from the Commission's recommendations. On the basis of these decisions the States Reorganisation Bill, 1956 was drafted and sent to the State Legislatures for their opinion. The Bill was thereafter introduced in Parliament and became an Act on August 31, 1956. The reorganisation scheme, as embodied in this Act, made necessary certain consequential amendments to the Constitution. The Constitution (Seventh Amendment) Act, 1956 was passed by Parliament to effect the necessary changes in the Constitution. Another Act, the Bihar and West Bengal (Transfer of Territories) Act, 1956 was passed to effect transference of certain border territories from Bihar to West Bengal as part of the general scheme of reorganisation.

All these Acts came into force on November 1, 1956. The broad features of reorganisation may be briefly described here. The former State of Hyderabad has been partitioned on linguistic lines and its three parts, speaking Marathi, Kannada and Telugu, have been merged in Bombay, Mysore and Andhra respectively. The former State of Ajmer has been merged in Rajasthan, and Coorg in Mysore. The

Vidarbha area of the former State of Madhya Pradesh has been merged in Bombay, as well as the former states of Saurashtra and Kutch. The new bi-lingual State of Bombay thus consists of the territories of former Bombay excluding some Kannada-speaking areas which have been merged in Mysore, and the territories of Vidarbha, Saurashtra and Kutch, and the Marathi-speaking areas of the former State of Hyderabad. A small portion of the territory of the former Madras State, including the greater part of Malabar district, has been merged in Travancore-Cochin to form the new State of Kerala. (Five Tamil-speaking taluks have been transferred from Travancore-Cochin to Madras). The remainder of the territory of the old Madhya Pradesh and the former States of Bhopal, Madhya Bharat and Vindhya Pradesh have been merged to form the new Madhya Pradesh. The former States of Punjab and PEPSU have been integrated into the new Punjab State.

STATES AND TERRITORIES IN INDIA TO-DAY

The political map of India, as reorganised since November 1, 1956 under the Acts mentioned above, is as follows :

There are now fourteen States and six Union territories in India. The States are : Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal and Jammu and Kashmir. The following are the Union territories : Delhi, Himachal Pradesh, Manipur, Tripura, Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands.

All the States except Jammu and Kashmir, have been placed on the same constitutional footing, their relations with the Centre being the same as those that existed between the former Part A States and the Centre. Jammu and Kashmir continues to have the special constitutional position that has been accorded to it under agreements entered into between

the Union Government and the Government of the State. The office of the Rajpramukh has been abolished, so that the Governor is now the executive head in each of the States except Jammu and Kashmir where the head of the State is known as Sadar-i-Riyasat.

As for the Union territories, they have been placed under Central administration. The President has been empowered to administer them, subject to laws made by Parliament. The President can, however, carry on the administration of a Union territory through an administrator appointed by him. He can also appoint the Governor of a State as the administrator of an adjoining Union territory. The President's power in respect of the two Union territories which lie outside the mainland of India, namely, the Andaman and Nicobar Islands and Laccadive, Minicoy and Amindivi Islands, are greater than in respect of the others. He can make regulations for the peace, progress and good government of these islands. And any such regulation may repeal or amend any Act of Parliament or any existing law applicable to these islands. [The Ministries and Legislatures in Delhi and Himachal Pradesh have ceased to exist with effect from November 1, 1956.]

Zonal Councils—The States Reorganisation Act has provided for the creation of a number of advisory bodies known as Zonal Councils. Under the Act, as from November 1, 1956, a Zonal Council has been constituted for each of the following Zones:—(a) the Northern Zone, comprising the States of Punjab, Rajasthan and Jammu and Kashmir and the Union territories of Delhi and Himachal Pradesh; (b) the Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh; (c) the Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Assam, and the Union territories of Manipur and Tripura; (d) the Western Zone, comprising the States of Bombay and Mysore; and (e) the Southern Zone, comprising the States of Andhra Pradesh, Madras and Kerala.

Each Zonal Council consists of the following members: (a) a Union Minister nominated by the President; (b) the Chief Minister of each of the States included in the zone and two other Ministers of each such State nominated by the Governor; [In the case of Kashmir, the Sadar-i-Riyasat nominates the two Ministers.] (c) where a Union territory is included in the zone, no more than two members from each such territory nominated by the President.

It has been provided by the Act that if there is no Council of Ministers in any State, three members from that State are to be nominated by the President to represent the State on the Zonal Council. It further provides that in the case of the Eastern Zone, the person for the time being holding the office of the Adviser to the Governor of Assam for Tribal Areas is to be a member of the Zonal Council.

Each Zonal Council has the following persons as advisers to assist it in the performance of its duties :—(a) one person nominated by the Planning Commission; (b) the Chief Secretary to the Government of each of the States included in the zone and (c) the Development Commissioner or any other officer nominated by the Government of each of the States included in the zone. Each Council has a secretarial staff. The Chief Secretaries of the States represented on the Council are each to function as the Secretary of the Council by rotation, their term of office being one year at a time.

The Zonal Councils are advisory bodies. A Council may discuss any matter in which some or all the States represented on it have a common interest, or the Centre and any of the States have such interest. In particular, it may discuss matters relating to economic and social planning, border disputes, linguistic minorities, inter-State transport and any matter connected with the reorganisation of States. It has power to advise the Central Government or the State Governments concerned on any of these matters.

The Legislatures—The States Reorganisation Act provides that the reorganisation would not affect the constitu-

tion or duration of the existing House of the People. (The general elections are due early in 1957). The reorganisation, however, made necessary redistribution of the existing members of the Council of States among the various States as from November 1, 1956. The States Reorganisation Act provides for such redistribution.

The S. R. Act has provided for a Legislative Council for the new Madhya Pradesh and for the reconstitution of the Legislative Councils of the reorganised States of Bombay, Madras, Mysore and Punjab. The appended table shows the allocation of seats in the Councils as they are to be after reconstitution. Transitional provisions have been made, for the period between November 1, 1956 and such reconstitution of the Councils, for representation in them of all parts of the new States.

The allocation of seats in the House of the People as it is to be after the new elections in 1957, and the number of seats in the Legislative Assemblies as they are to be after those elections are shown in the appended tables.

Allocation of seats in the Council of States

TABLE

1.	Andhra Pradesh	18
2.	Assam	7
3.	Bihar	22
4.	Bombay	27
5.	Kerala	9
6.	Madhya Pradesh	16
7.	Madras	17
8.	Mysore	12
9.	Orissa	10
10.	Punjab	11
11.	Rajasthan	10
12.	Uttar Pradesh	34

13.	West Bengal	15
14.	Jammu and Kashmir	4
15.	Delhi	3
16.	Himachal Pradesh	2
17.	Manipur	1
18.	Tripura	1
	Total	220

Allocation of seats in the House of the People and the total number of seats in State Legislative Assemblies

TABLE

	States	Number of seats in the House of the People	Number of seats in the Legislative Assembly
1.	Andhra Pradesh ..	43	301
2.	Assam ..	12	108
3.	Bihar ..	53	318
4.	Bombay ..	66	396
5.	Kerala ..	18	126
6.	Madhya Pradesh ..	36	288
7.	Madras ..	41	205
8.	Mysore ..	26	208
9.	Orissa ..	20	140
10.	Punjab ..	22	154
11.	Rajasthan ..	22	176
12.	Uttar Pradesh . ..	86	430
13.	West Bengal ..	36	252
14.	Jammu and Kashmir ..	6	
15.	Delhi ..	5	
16.	Himachal Pradesh ..	4	
17.	Manipur ..	2	
18.	Tripura ..	2	
19.	Andaman and Nicobar Islands ..	1*	
20.	Laccadive, Minicoy and Amindivi Islands ..	1*	
21.	Part B Tribal Areas ..	1*	
	Total ..	503	

* To be nominated by the President.

Allocation of Seats in the Legislative Councils

Name of State	Total Number of Seats.	Seats for Local Authorities.	Seats for Graduates.	Seats for Teachers.	Seats for Members of Legislative Assemblies.	Nominated.
1	2	3	4	5	6	7
1. Bihar ..	72	24	6	6	24	12
2. Bombay ..	72	24	6	6	24	12
3. Madhya Pradesh	72	24	6	6	24	12
4. Madras ..	50	16	6	4	16	8
5. Mysore ..	52	18	4	4	18	8
6. Punjab ..	40	13	3	3	13	8
7. Uttar Pradesh ..	72	24	6	6	24	12
8. West Bengal ..	51	17	4	4	17	9

CHAPTER XXXVI

THE ENGLISH CONSTITUTION

THE HISTORICAL BACKGROUND

The English constitution is a product of a historical evolution extending over roughly fourteen centuries. Slowly and gradually, brick upon brick, the magnificent structure of the English constitution grew up through the endeavours and struggles of scores of generations of men. It represents a glorious victory of the forces of democracy over autocracy and authoritarianism. It embodies the wisdom of centuries.

The story of how the English constitution developed during this long period is too long to be told in a few words. Only a brief reference to the main landmarks of this fascinating history will be attempted here.

Magna Carta—It was in the reign of King John in the thirteenth century that the English constitutional development reached an important milestone. John was an extremely selfish and tyrannical ruler. By his foolish acts and policies he had alienated the sympathies of all classes of people. The barons of England, supported by the common people, rose against him and forced him to sign a document which is known as the Magna Carta or the Great Charter (1215). Magna Carta is said to be the most important constitutional document in English history. It is based on the principle that the people are to be governed by fixed laws and not by the arbitrary will of any ruler. The Great Charter represents the first successful attempt of the people to put checks on the arbitrary power of the ruler. The Charter contained sixty-three clauses most of which are today of purely historical interest. And since it was drawn up by the barons, most of the clauses related to the grievances of this aristocratic class. Nevertheless, there were provisions in it

which related to other classes also including the common people. From the constitutional point of view, two provisions of the Charter are most important. It laid down, in the first place, that no freeman was to be imprisoned, outlawed or punished except by the judgment of his equals or by the law of the land. And, secondly, it declared that the right of justice should not be sold, denied or delayed to any one. These two provisions thus laid down two highly important safeguards of civil liberties. The Charter also contained another provision which sought to check arbitrary imposition of tributes on the feudal landlords—a provision which was later interpreted as laying down the principle that there could be no taxation without the consent of Parliament.

Magna Carta was, so to say, a compact between the king and the people whereby the king was made to recognise that the people had certain rights which no ruler could violate. Laying down for the first time in English history certain important rights of the people, the Great Charter became the starting point of English liberties.

Confirmatio Cartarum—Edward I, the greatest of Plantagenet kings was forced by discontented barons to confirm the Magna Carta with the addition of one more clause to it; this clause laid down that in future there could be no new taxation by the king without the consent of Parliament. This is known as Confirmatio Cartarum or confirmation of the charter. While the Magna Carta sought to restrict arbitrary exactions from the feudal landlords, the Confirmatio Cartarum went a step further by making the ruler renounce his claim to arbitrary taxation in general. This marks the beginning of Parliamentary control over taxation.

The Petition of Right—In the seventeenth century, in reign of the Stuart Kings, progress on the path of constitutional freedom was tremendously accelerated. In fact, the Stuart period is marked throughout by the struggle for supremacy between the King and Parliament. The second

ruler of the Stuart dynasty, Charles I, was an arbitrary ruler and he believed in the divine right of the King to rule his subjects arbitrarily. He soon came into conflict with Parliament which sought to assert the rights of the people as against the ruler. In 1628 Parliament, led by Eliot and Wentworth, drew up what has come to be known as the Petition of Right and forced Charles to give consent to it. The Petition of Right is regarded as the second great charter of English liberties. It declared the following acts to be illegal: (1) to levy taxes or to demand loans or gift without Parliamentary consent; (2) to imprison men without cause shown; (3) to billet soldiers and sailors on householders against their will; and (4) to issue commissions of martial law in times of peace. Charles I, it need hardly be said, had been guilty of all these acts and the Petition of Right sought to stop such illegalities on the part of the ruler. The Petition of Right, which was consented to by Charles, though unwillingly, became henceforth the law of the land. In spite of the Petition of Right, however, Charles continued to violate the principles embodied in this document and pursued policies which resulted in a violent conflict between the King and Parliament. In the civil war which resulted from the quarrel, the Royalist party was defeated by Parliamentary party and Charles I was executed.

Experiment With a Written Constitution—The execution of Charles I was followed by the abolition of monarchy and the House of Lords by Parliament, known as the Rump Parliament. England was also declared by this Parliament to be a Commonwealth. Cromwell dissolved the Rump Parliament and set up a military dictatorship. At his instance, a constitutional document, known as the Instrument of Government was drawn up. Under this Instrument, Cromwell became Lord Protector for life. He was to be assisted by a Council of State. The entire executive power was vested in Lord Protector and the Council of State. England, Scotland and Ire-

land were to be united in a single Commonwealth. Parliament, representing the three countries, was to be vested with the legislative power. It was to consist of one house only and was to be elected every three years on the basis of a reformed electoral law.

The Instrument of Government is a highly interesting document because it is the first written constitution known to modern history. Its great constitutional importance in the history of England lies in the fact that it sought to change some of the basic features of the English constitution. Whereas the English constitution is an unwritten constitution in the sense that there is no single document which can be referred to as the constitution of the country, the Instrument of Government was a written constitution. Secondly, under the English constitution Parliament has the power to change or repeal any constitutional law, however fundamental it may be. In other words, the English constitution is a flexible one. Under the Cromwellian regime, however, Parliament was not given any power to legislate on constitutional matters which were supposed to have been laid down once for all by the Instrument. Thus, the Instrument of Government represented an attempt to make the English constitution a rigid one. Thirdly, whereas the English constitution is based on the system of constitutional monarchy, the Instrument of Government was a Republican constitution, that is, it was a constitution which did not recognise any king.

Cromwell's military despotism created a strong reaction in favour of restoration of monarchy. His death in 1658 was followed by disorders which further strengthened the forces favouring restoration. Ultimately monarchy was restored in 1660 and Charles II, son of Charles I, ascended the throne. The Republican experiment thus came to an end. With the restoration of monarchy, Parliamentary Government was also restored because Charles II, who had taken warning from the fate of his father, wisely refrained from going against the wishes of the people.

Habeas Corpus Act—Charles II's reign was marked by further advance on the path of constitutional progress. It was during his reign that the system of appropriation of supplies was established; under this system, grants made by Parliament are limited to definite purposes. Perhaps the most notable event, from the constitutional point of view, of this reign is the passing of the Habeas Corpus Act (1679). The Act provided that no person was to be imprisoned without a writ or warrant stating the charge against him and gave the prisoner the right to obtain either a speedy trial or release on bail. The Act thus provided a powerful safeguard of personal liberty which is the very soul of all other kinds of liberty. The Habeas Corpus Act has been indeed a corner-stone of British liberties.

In this reign also certain events took place which affirmed the principle of ministerial responsibility. These have been dealt with below.

The Bill of Rights (1689)—Charles II was succeeded by James II who tried to rule in an arbitrary manner. Ignoring the wishes of the people, James II adopted a number of highly unpopular policies. He also violated laws of the realm regardless of public sentiment. A conflict arose between the King and Parliament and a number of political leaders jointly invited William, Prince of Orange, to come to England and save the people from the tyranny of James. William, who was a son-in-law of James, arrived in England and marched on London. James fled from the country. A Parliament, known as Convention Parliament, assembled and offered the crown to William and Mary, daughter of James. William and Mary thus became the King and Queen. The Convention Parliament also drew up a Declaration of Rights which was soon turned into what is known as the Bill of Rights. This is regarded as the third great charter of English liberties. The Bill of Rights may be said to have completed the work which Magna Carta had begun. The Bill of Rights declared, among other things, the following acts to be illegal: (1) the

maintenance of a standing army and (2) levying of money without the consent of Parliament. It further declared that Parliament should be freely elected and should have freedom of speech and debate. Sessions of Parliament should also be held frequently. The Bill of Rights also asserted that subjects should be given the right to petition the King.

The proceedings which resulted in the expulsion of James II from the throne and the accession of William and Mary as well as the drawing up of the Bill of Rights are known in English history as the Revolution of 1688-89. It was, of course, a bloodless revolution. Nevertheless, its results were highly important from the point of view of constitutional principles. In the first place, Parliament by placing William and Mary on the throne destroyed the Stuart theory of divine hereditary rights of Kings. For William and Mary became King and Queen not because of any hereditary right but as the result of people's choice. The position of the King thus now resembled that of an official who has been appointed to perform certain duties and who is liable to be dismissed if he neglected those duties. Secondly, the Revolution finally established the supremacy of Parliament over the King. It was a triumph of popular rights over the so-called divine rights of the King. It was a victory of Law over Prerogative. It established on a firm foundation the principle that Parliament, and not the King, was to control and direct the affairs of the nation.

The Mutiny Act— Besides the Bill of Rights, another measure of great constitutional importance was passed by the Convention Parliament. This was the Mutiny Act. This Act empowered the King to maintain a standing army and to enforce discipline in the forces by martial law. The Act was passed, however, for one year so that the King would be compelled to summon Parliament every year to seek the renewal of its provisions. The Act was an ingenious device to make the King dependent on Parliament. Henceforth,

it became impossible for the King to maintain a standing army without summoning Parliament every year.

The Act of Settlement (1701)– Twelve years after the Revolution of 1688-89, the Act of settlement was passed. This Act provided for the protestant succession to the throne. It further laid down that judges were to receive fixed salaries and were not to be removed from office unless Parliament presented an address to the King for such removal. It also provided that no royal pardon could be produced as an answer to impeachment. This clause sought to ensure that ministers were held responsible for all official acts; it thus confirmed the principle of ministerial responsibility which had begun to be vaguely recognised at that time.

The Act of Settlement has a three-fold importance from the constitutional point of view. By providing for protestant succession to the throne, it confirmed the principle that Kings held their position not by hereditary right but by the right conferred on them by Parliamentary Acts. Secondly, the Act of Settlement secured the independence of the judiciary by making their salaries fixed and their tenure independent of the will of the monarch. Thirdly, it established on a firm foundation the principle of ministerial responsibility.

Thus, the main principles on which the modern constitution of Britain is based were established practically by the beginning of the eighteenth century. But this does not mean that the English constitution as we know it today is exactly what it was at the beginning of the eighteenth century. The constitution has continually evolved through the eighteenth and nineteenth centuries up to the present day. During this period, numerous developments took place and Parliamentary Acts were passed which made the constitution more and more democratic till it has reached the present completely democratic form. The most important of these Acts and developments will be referred to at the appropriate places. The constitution of Britain, like that of any other country, is, however, something living and not something dead. In

response to the changing requirements of political life which is essentially dynamic in character, the English constitution has still been evolving and changing, though the change is not always discernible in a short period.

Development of Parliament—The preceding sections have dealt with the story of how political power was gradually transferred from the hands of the King to those of the people and how the latter secured their constitutional rights and liberties. This section will be chiefly concerned with how Parliament, a wonderful political institution, developed through the centuries.

The origin of Parliament can be traced to very early periods in English history. In the period of the Anglo-Saxon conquest (roughly some fourteen centuries ago), there was a body known as the Folk-moot. This body was nothing but the assembly of the whole folk or tribe. It decided questions of peace and war as well as other matters of general interest to the people. It is the Folk-moot that foreshadowed the future House of Commons. Another body, known as the Witenagemot, developed later. It was an advisory body having an aristocratic composition. Its membership was confined to important and leading personages like free-land holders, members of the royal family, archbishops and bishops. This body may be said to be the embryo of the future House of Lords. After the Norman conquest, Witenagemot was transformed into the Great Council which became an assembly of feudal vassals. The Council helped the King to decide policies of State. It appears that the name Parliament came to be applied to the Great Council about the year 1246.

In 1213 King John, hard pressed for money, called upon the counties to send "four discreet knights" each to the Council in order to represent the landholding and other moneyed interests so that they might be made to agree on behalf of these interests to a levy on their possessions. Thus the practice originated of calling Parliaments representing substantial elements for the purpose of raising money needed

by the monarch. Henry III who succeeded John also resorted to this device once to raise money at a time of grave financial difficulties. As a result of his quarrels with the barons, Henry III was defeated by the former under the leadership of Simon de Montfort, a foreigner. After his victory over the King, Simon became practically the dictator and the need for raising funds led him to convene a Parliament in 1265. This Parliament of Simon represents a landmark in English history because the common people were for the first time given representation in it. This Parliament is thus the starting point in the growth of the House of Commons. Besides the barons, the clergy and the knights who used to be hitherto the only persons privileged to sit in Parliament, two burgesses representing each of 21 boroughs or towns attended this Parliament of 1265. Since the common people of the towns were for the first time represented in this Parliament, Simon de Montfort is called by some the father of the House of Commons. In 1295, Edward I convened a Parliament which gave such a balanced representation to various elements in the population that it has come to be known as the "Model Parliament." Over four hundred persons attended the "Model Parliament". Among them were archbishops, bishops, abbots, earls, barons, knights of the shire and 172 persons representing the common people of the boroughs or towns and the cities. Since then, Parliament became a more or less established feature of English political life.

It must have been noted by the intelligent students that the representative principle originated in the need felt by Kings in difficult situations to raise sufficient funds to tide over the difficulties. The representatives of the counties and towns were called upon to attend Parliament so that they might agree, on behalf of the people they represented, to levies proposed by the monarch. And from the beginning, the representatives of the counties and boroughs, that is, the knights and burgesses were chosen by some sort of election. Thus, the principle by which people are elected to Parliament

to represent certain classes or interests originated not in any theoretical or doctrinal consideration, but in the practical necessity of raising money from the people.

Originally, Parliament used to meet as a single body and not in two Houses. During the fourteenth century, however, the bicameral principle gradually developed as the elected and nominated members began to sit in separate groups. Ultimately in this way two Houses came into being —the House of Lords and the House of Commons. In the House of Lords sat members who attended in response to individual summons issued by the monarch. In the House of Commons sat those who were elected by counties and boroughs as their representatives. The bicameral system became fully established by the end of the fourteenth century. The House of Commons, containing the representative element, soon came to realise that the monarch wanted to use it chiefly as a device for raising money. The House wanted to utilise this position as a method of exerting pressure on the King and assume an increasingly greater control over finance. In 1407 Henry IV formally accepted the principle that the money grants should be first approved by the Commons before they are considered by the House of Lords. Thus began a process which ended in the control over the purse passing completely to the hands of the people's representatives.

It was the control over the purse which also enabled Parliament gradually to assume control over legislation. Originally Parliament had no power of passing laws. In course of time the individual members gained the right of petitioning the King, and gradually this developed into the right of the members to present petitions collectively. Later the practice grew of giving the requests presented to the monarch a legislative shape. The dependence of the monarchs on Parliament for funds compelled them more and more to agree to such laws. It is in this way that the Parlia-

ment gained the power of law-making which gradually evolved till Parliament became the supreme law-making authority in the realm.

How the House of Commons became a fully democratic body—Up till 1832, the House of Commons was far from a democratic body. Representation in the House used to be controlled by the monarch and the big land-owners. In the early years of the nineteenth century, there was no equality of representation in the House. While certain old and insignificant boroughs, which came to be known as rotton boroughs, were represented in the House, big industrial cities which had grown up as a result of the Industrial Revolution did not enjoy such representation. For instance, towns like Manchester and Birmingham could not return any member, while ruined boroughs like Gatton and Old sent their representatives to Parliament. There was also no uniformity of franchise, different classes of people being given the right of voting at different places. This highly undemocratic state of affairs was allowed to continue because it suited the interests of the land-owners who, directly or indirectly, controlled the representation from both counties and boroughs. This undemocratic system, however, gave rise to intense public resentment and agitation as a result of which the Reform Act of 1832 was passed. The Act disfranchised all boroughs having less than 2,000 inhabitants and laid down that boroughs having a population of 2,000 to 4,000 were to return one member each. A large number of seats were thus gained for distribution among the big counties and the unrepresented towns. The right of voting was given in boroughs to owners or occupiers of house worth £10 a year, and in counties to persons owning land worth £10 a year or paying an annual rental of £50 for their holdings. The Reform Act of 1832 transferred the political power in in England from the hands of the landed aristocracy to those of the middle classes. It did not, however, establish democracy, as artisans and the working classes were not given

the franchise. Still, it was a great stride in the direction of democracy in the true sense of the term.

As a result of continued agitation for further extension of franchise, the Second Reform Act was passed in 1867. By reducing property qualification for voters, the Act largely admitted the urban working classes to the franchise. The Act of 1867 was passed chiefly as a result of a remarkable campaign carried on by an ardent group of reformers known as chartists.

Agricultural labourers and miners were, however, still without the vote. These people were enfranchised by the Representation of the people Act of 1884 which was sponsored by Gladstone. An Act providing for redistribution of seats was passed in 1885.

These Acts greatly democratised representation in the House of Commons. The goal of complete democracy, however, was yet to be reached. There were still glaring defects in the system of representation. Women could not vote at Parliamentary elections. And the men who were given the right to vote still voted as owners or occupiers of houses or lands and not as persons. In other words, the right of voting depended on certain property qualifications and could not be claimed by a person on the simple ground that he was an adult citizen of the state. Voting was thus a privilege of 'property' and not of the citizen as such. Citizens who lacked the property qualification could not vote.

Obviously this defective system could not be regarded as final by the common people of Britain who are highly democratic by temperament. The pressure of public opinion led to a thorough overhaul of the electoral system in 1918. The Representation of the People Act of 1918 gave the vote to every male British subject who was 21 years of age or over and did not suffer from any legal incapacity. The Act of

1918, therefore, completely democratised the system of representation so far as men were concerned. As for women, the Act, while enfranchising the women for the first time, did not grant them complete equality of voting right with men. While in the case of men the qualifying age was fixed at 21, in the case of women it was fixed at 30. Secondly the women could not qualify for voting as simple citizens; they had to fulfil certain other conditions. There was, therefore, a marked discrimination in favour of men in the electoral law. The main reason for this discrimination was that the war had so greatly reduced the man-power of Britain that if men and women were given the same electoral rights, the number of male voters would have been much less than that of the female voters—in fact, the number of female voters would have preponderated by several millions. The framers of the law were anxious to avoid such a situation.

Everyone could see, however, that complete equality between men and women in the sphere of electoral rights was now only a matter of time. Agitation for bringing the voting rights of women on the same level with those of men continued for some years and the demand was granted by the Representation of the People (Equal Franchise) Act of 1928. The Act reduced the qualifying age for women voters to 21 years and removed all other discriminatory provisions in respect of them so that women, like men, could now vote as simple citizens. The goal of equal voting rights for both sexes was thus reached. The electoral system was, for all practical purposes, fully democratised.

Even now, it should be noted, the principle of 'one man, one vote', which is supposed to be the essence of democracy was not established in Britain. Before 1918, a person could have more than one vote. If he resided in one constituency, maintained an office in another and had a country house in still another constituency, he could vote in all the three constituencies. Plural voting of this kind is inconsistent with the principle of democracy and was vehemently objected to by

reformers and progressive people. The Representation of the People Act of 1918 restricted this right of plural voting by reducing to two the number of votes a person could cast in a given election. Under this law, a person could exercise a vote on the basis of residence and another vote in a different constituency if he "occupied" land or other premises of an annual rental value of £10 for the purpose of business, trade or occupation. The Labour Party was, however, strongly opposed to plural voting and on the assumption of power in 1945, the party took steps to abolish it. The Representation of the People Act of 1948 states that "a person shall not be entitled to vote....in more than one constituency." Thus was established in Britain universal adult franchise or the principle of 'one man, one vote', after a struggle extending over a long period. The system of representation in the House of Commons is now, therefore, completely democratic.

Development of the Cabinet System—The Cabinet occupies a pivotal position in the English constitutional system. The Cabinet's functions and its relations with other branches of the government will be explained in a separate chapter. Only the story of how the system grew and developed through the centuries will be described here.

Originally, the body known as the Privy Council was the King's adviser. The Privy Council, however, became too large in size in course of time for proper performance of advisory functions. The Kings consequently began to depend more and more on a small trusted group of members of the Council for advice and assistance. One of the earliest instances of this practice would be found in the reign of Charles II who drew about himself a trusted group of Ministers known as the Cabal. (This word is derived from the initial letters of the Ministers' names which were Clifford, Ashley, Buckingham, Arlington and Lauderdale). Gradually this practice of setting up a small group of Councillors as advisers of the King developed into the modern Cabinet system. It

must be remembered, however, that whereas the small groups of Councillors who used to advise the King in the past were creatures of the monarch, the modern Cabinet is a creature of Parliament. The practice on the part of Kings to depend for advice on a small group of trusted Councillors used to be, however, very much resented by Parliament and even opposed.

In the reign of William and Mary (1689-1701), the King found it convenient to select ministers entirely from the party commanding a majority in the House of Commons. This ensured both harmony and efficiency. Thus a very important step was taken in the direction of the modern Cabinet system. The system progressed considerably during the reign of George I and mainly as a result of an accidental circumstance. George I could not speak English and had very little knowledge of English politics. He, therefore, depended completely on the advice of his ministers and did not interfere with their policies. This helped greatly the process of transference of power from the King to the Cabinet.

Again, because of his ignorance of English, George I would not attend Cabinet meetings. In the absence of the King one of the Ministers, Robert Walpole, began to preside at the meetings of the Cabinet and came to be known as the Prime Minister. Walpole is thus the first Prime Minister of England. Walpole also chose his own colleagues and the King had nothing to do with their appointment. Not only that, Walpole insisted on a homogenous Cabinet and refused to retain in his Cabinet any member who failed to agree with him. He dismissed at least two ministers who opposed his policies. Thus originated the principle of joint Cabinet responsibility. In 1742, when the House of Commons showed lack of confidence in him, Walpole promptly resigned and thereby helped to establish the principle that a Cabinet functions only so long as it enjoys the confidence of the House of Commons. Thus by 1742, the year in which Walpole resigned as the Prime Minister, all the main principles

of the Cabinet system, namely, responsibility to the House of Commons and joint responsibility of the Ministers were firmly established.

With the growth of the Cabinet system, the power of the King was gradually transferred to the Cabinet which began to function as a body representing the will of the people. The all-powerful King was thus transformed into a mere constitutional head acting entirely on the advice of his Cabinet. It is, of course, not easy for a sovereign to reconcile himself completely to the position of being a mere nominal head. From the time of George V, however, the English monarchs have acted as purely nominal heads and have not shown the slightest tendency of asserting their own will in any official matter. The English monarchs are now, therefore, completely reconciled to their position of being purely constitutional heads. They reign but do not govern.

CHAPTER XXXVII

CHARACTER AND CONTENT OF THE ENGLISH CONSTITUTION

Written or Unwritten ?— If an Indian is asked to show a copy of the constitution of his country, he will produce a printed volume entitled *The Constitution of India.* It is a document which was drawn up by the Constituent Assembly of India and contains the fundamental rules on which the system of government in the country is based. Similarly, if an American is asked to show a copy of the American constitution, he will be able to do it by producing a small document—much smaller than the Indian Constitution—which is known as the Constitution of the United States, and which contains the basic laws governing the United States. But if an Englishman is requested by some one to show him a copy of the English constitution, he will not be able to do it because there is no one single document containing the fundamental laws of the country. There is no document known as the English Constitution, just as there is *The Constitution of India* or *The Constitution of the United States.* An Englishman cannot even refer a person to a number of documents and say that these documents, taken together, form the country's constitution.

What is then meant by the English constitution ? Does such a thing exist or does it not ? Some authors have been known to maintain that there is no such thing as the English constitution. In reply to Burke's famous defense of the English constitution in his Reflections on the French Revolution, Thomas Paine wrote: "can Mr. Burke produce the English constitution ? If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a constitution exists or ever did exist". Alexis de Tocqueville, the great French writer on constitutional

subjects, also opined that the English constitution did not exist. His main grounds for this conclusion were, in the first place, that there was no written document known as the English constitution and, secondly, that those laws of England which were known as constitutional laws could be changed and even abrogated by Parliament as easily as any ordinary law of the realm. Parliament, for instance, can abolish the monarchy as easily as it can abrogate, say, a law relating to the movement of foodgrains in a locality. Generally, what is known as the constitution of a country cannot be amended by ordinary legislative procedure. Special procedures are laid down in the constitution itself for the amendment of its provisions. This is done beacuse the constitution is regarded as superior to ordinary law with special sanctity attaching to it. Because there is no written document embodying the fundamental laws of Britain, as there is in India or in America, the constitutional laws of Britain can be changed as easily as ordinary laws.

Nevertheless, England has a constitution—a constitution that is the oldest among the modern constitutions. What is the nature of the English constitution ? Though there is no one document known as the English constitution, some of the principles of this constitution are undoubtedly to be found in some documents such as the Magna Carta, the Bill of Rights and the Act of Settlement of 1701. These documents are thus parts of the English Constitution, though they do not, even taken as a whole, constitute the whole of the English constitution. Apart from these written laws, there is a large body of unwritten laws, customs, usages, interpretations, and understandings which form as fundamental parts of the constitution as the written laws. Thus we reach the following conclusions on the nature of the English constitution: (1) There is no one single document—nor even a number of related documents—which can be called the English constitution. (2) The English constitution is partly written and partly unwritten. (3) Both the written and the

unwritten parts of the constitution can be modified or abrogated by Parliament as easily as it can change or repeal ordinary laws. The English constitution is thus a highly flexible constitution.

Law and Convention—The elements constituting the English constitution can be broadly divided into two categories—(1) law, and (2) convention. It might be supposed that law means the written parts of the constitution, while convention consists of the unwritten constitutional principles. But that would be incorrect. Laws are those constitutional principles which will be recognised and enforced by courts, whether those principles are written or unwritten; conventions are those constitutional principles which courts will not recognise, nor enforce. It must not be supposed, however, that conventions are less important than laws in the governance of the country. Though courts do not, recognise them, they are as important as laws and the system of government will be unworkable without them. If a convention comes to be recognised by courts, it will cease to be a convention and become a law.

Laws—While the elements constituting the English constitution can be broadly divided into two categories, namely, laws and conventions, laws can be, again, divided into four categories. (1) In the first place, there are some documents embodying solemn compacts or agreements which were drawn up in times of political turmoil or national crisis. The Magna Carta, the Petition of Right and the Bill of Rights fall in this category. Those portions of these charters or agreements which have not been repealed still retain the force of law. (2) Secondly, there are parliamentary enactments which form parts of the constitutional framework. Laws providing for the setting up of courts or other administrative machinery, for imposing restrictions on the powers of the executive, for the conferring of franchise rights and for other electoral matters are all constitutional laws. Following are some of the Acts falling in this category of consti-

tutional laws: The Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Reform Acts of 1832, 1867 and 1884, the Judicature Acts of 1873-76, the Parliament Act of 1911, the Ministers of the Crown Act of 1937, and the Parliament Act of 1949. There are a host of other enanctments which deal with some feature or features of the constitution and are, therefore, laws of the constitution. (3) Thirdly, judicial interpretations in respect of constitutional issues sometimes amount practically to new laws. Since these decisions are usually followed and enforced by courts, their effect is practically the same as that of laws enacted by Parliament. (4) Fourthly, there are some rules of common laws—unwritten legal principles—which relate to powers and functions of various branches of the Government and are, therefore, constitutional laws. The principle that courts must enforce all Acts passed by Parliament is such a common law or unwritten law. This principle has never been embodied in any law passed by Parliament. Yet it is one of the most fundamental principles of the English constitution. The prerogative of the crown is also based on common law, that is, it grew up entirely on the basis of usage which has acquired the force of law. The system of jury trial and freedom of speech and assembly are also based on common law. There is no enactment guranteeing these rights to the people, yet these are recognised and enforced by courts.

We thus conclude: (a) Laws of the constitution are those rules, whether written or unwritten, which are enforced by courts. (b) There are four elements in laws, namely, fundamental political engagements, Acts or statutes, judicial decisions and rules of common law. The first three are written laws, the last being unwritten law. (c) All constitutional laws, whether written or unwritten, can be changed or repealed by Parliament by passing laws.

Convention—What are conventions of the constitution? Conventions are rules based on custom or practice which regulate, to a very large extent, the relations between public

authorities and the working of the political machinery. Unlike laws, they are not recognised or enforced by the courts. Yet they are no less important than laws. Without conventions, it will be difficult—in fact, almost impossible—for the constitutional machinery to function. Conventions, it has been well said, clothe the dry bones of the law with flesh, make the legal machinery work, and keep the constitution abrest of changing social needs and ideas.

Almost the entire Cabinet system is based on conventions. Under this system, the King always accepts the advice of the ministers who represent the people. But this is wholly a convention. There is no Parliamentary law laying down that the King must accept the advice of the ministers. And the courts will not enforce this principle. Yet this convention is always observed. It grew up through a long course of struggle between the monarch and the people during which power was gradually transferred from the former to the latter. It ensures that while power is exercised in the name of the king, it is really the people's representatives who exercise the power. Thus this convention, namely, that the king must act according to the advice of the Ministers, reconciles an ancient institution—Kingship—with a modern political system, namely, democracy. This explains why it has been said that conventions help constitution keep abrest of the changing social needs and ideas.

Again, an essential principle of the Cabinet system is that when a Ministry loses the confidence of the House of Commons, it must resign (or advise the King to dissolve Parliament so that fresh elections may be held.) It is easy to see that unless such a Ministry resigns, the governmental machinery will come to a dead stop. For all laws proposed by such a ministry will be thrown out by the House. The House will also refuse supplies to such a ministry. This explains why it has been said that conventions make the legal machinery work.

Conventions are thus an essential element in the constitution. Some of the most important conventions of the constitution, besides the two mentioned above, are the following: (1) Parliament is to be convoked at least once a year; (2) the King is to assent to all Bills passed by Parliament; (3) the King is not to attend cabinet meetings; (4) when the House of Lords sits as a court, only the law lords are to attend; (5) all royal prerogatives are to be exercised by ministers.

It should be noted that the principle that the people are the ultimate sovereign and the will of the people must be carried out by the Government is also a constitutional convention and not law. If a person goes to an English court with the complaint that the Government have not carried out the will of the people as expressed at the elections, the court will refuse to entertain that complaint. For the will of the people is not law unless it is embodied in a formal Act of Parliament. In other words, under the English constitutional system, Parliament is the legal sovereign while the people are the political sovereign. This is why even if a legislative proposal is drawn up in the form of a Bill and supported by cent per cent voters at a referendum, courts will refuse to recognise it as law or to give effect to it. (Of course, Parliament can, if it so desires, pass an Act providing for the passing of laws by referenda, in which case the courts will have to recognise such laws as valid.)

Just as the Cabinet system is based on conventions, the whole concept of "His Majesty's Opposition" is the product of conventions. It is quite possible to run the government without an Opposition. With the help of its majority a Government can easily change the rules and Standing Orders in such a manner as to prevent the Opposition members from participating in the work of Parliament. Yet it is the convention to have an Opposition in Parliament. The idea on which this convention is based is that a democratic system functions efficiently only when there is an Opposition to criticise the Government's policies and to draw their attention to the

defects in those policies or in their execution. Quite a number of Parliamentary conventions are based on this fundamental idea. For instance, in the committees of the House of Commons, the Government and the Opposition are represented according to their party strengths. This is nothing but a convention. Nothing would prevent the Government, if it so chose, from constituting the committees wholly with men belonging to its own party. Yet this is not done. Presence of the Opposition members on the Committees is regarded as indispensable. Another convention is that a speech from the Government side is to be followed by a speech from the Opposition. Though this convention inevitably delays the passing of legislation and raises controversy and criticism, the Government never thinks of violating this convention.

What gives conventions force ? —Why are conventions observed ? Conventions are not laws and are not enforced by courts. Why are they observed then ? Why are they not violated even when a Government finds that to act according to a convention will mean creating a difficult or embarrassing situation for itself ? What gives them force ? Or, in other words, what is the sanction behind conventions ?

According to Dicey, conventions are observed mainly because violation of conventions would lead ultimately to the violation of laws. For instance, there is a convention that Parliament shall be convened at least once a year. Now, if the Government refuses to observe this convention, the annual Army Act will expire and the Government will have no legal power to maintain discipline in the Armed Forces. Secondly, the annual taxes will lapse and in the absence of Parliamentary authorisation of expenditure, the Government will have no authority to pay the salaries of its servants including the members of the Armed Forces. The result will be a completely chaotic situation and breakdown of the system of law and order. This is why, Prof. Dicey maintains, conventions are observed.

While there is no doubt that this is one of the reasons why conventions are observed, this is far from being the only reason. Parliament, as has been already indicated, is legally all-powerful. It can, therefore, change the laws in such a manner that the violation of a particular convention or a set of conventions will not result in the violation of laws. For instance, Parliament can pass a permanent Army Act and pass laws authorising both taxation and expenditure for a number of years. (Already certain taxes are raised and certain charges are paid without annual authorisation.) If Parliament passes such laws, violation of the convention whereby annual meetings of Parliament are held, will not result in the infraction of any law.

There must be, therefore, certain other reasons which give conventions their force. One of these reasons is that conventions are, so to say, "a code of honour"—they are rules of the political game. Self-respecting people will, therefore, shrink from the idea of violating these rules. Politicians are always conscious that they are playing a game which is being witnessed by the entire nation and any violation of its rules will meet with strong public disapproval and condemnation.

Public opinion is thus the ultimate sanction behind conventions. If a ministry which has lost the confidence of the House of Commons refuses to resign, it will be severely condemned by the public. A countrywide agitation may also be launched to unseat such a ministry. This is why no ministry thinks of violating the convention whereby it is required to resign on an expression of no-confidence by the House of Commons.

Appearance and Reality—The English people have a deep love for old traditions. There are few peoples in the world whose love of the past is as deepseated as that of the English. This is why the English people have never thought of completely breaking with the past. Even their revolutions have not resulted in complete overthrowing of

all ancient traditions and institutions. While they have continually advanced on the path of constitutional progress, they have clung to old names and forms some of which seem to be entirely out of tune with the spirit of modern times. For instance, while they have built up a completely democratic constitutional system, they have kept the ancient institution of hereditary kingship associated with that democratic set-up. Not only that, they have managed to preserve kingship in such a manner that it really performs certain inportant functions in this democratic system. (This will be explained later.) They have thus harmoniously blended the new and the old, the past and the present. It has been possible to achieve this harmony mainly because the past institutions have been made to change their real character considerably, while preserving their old form. Thus, while monarchy continues to exist, it is not monarchy in the old, sixteenth century sense. The arbitrary ruler of those days has been transformed into the constitutional monarch. In the past, the king reigned and also governed. Today he reigns but does not govern.

This blending of the past and present in the constitution has resulted in a peculiar contrast between appearance and reality. Old forms are continuing but their substance has changed. Old names continued to exist but the things have been transformed beyond recognition. The Queen still refers to the people as "my people" and the people are often referred to as Her Majesty's loyal subjects". Justice is Queen's justice, law is Queen's law, government officials including ministers are all "servants of the Crown". The navy is Her Majesty's navy and the air force is the Royal Air Force. Thus outwardly the constitutional system looks as if the all-powerful monarch of the past is still governing the people of England. But the reality is entirely different. It is the people's representatives who hold and exercise all governmental power. Parliament frames the laws. The Cabinet, aided by subordinate officials, exercises the executive power. The judges appointed by the executive

under the laws made by Parliament exercise the judicial power. Thus in appearance, the English constitutional system is one in which the people are ruled by the King. In reality, it is a system in which the people are governed by the people themselves—"government of the people, by the people and for the people".

Strange Old Customs—Owing to Englishmen's strong sense of the past, certain old customs and practices have survived to this day which seem strange and even ridiculous to foreigners. Some of these customs and outworn ceremonies are associated with Parliamentary work. Most of these customs originated in some real necessity and had some utility in the past but today they have only a symbolical significance —nothing more than that. A few examples of these strange old customs will be given here.

When the Sovereign comes to the House of Lords to deliver the Speech from the Throne (a speech written by the Prime Minister), the Commons is summoned there to hear it. A messenger bearing a black rod is sent with the summons. When the messenger reaches the House of Commons, the door is slammed in his face. It is only after repeated knocking that the door is opened and the messenger is allowed to enter. What is the meaning of this peculiar custom ? It symbolises the fact that the House had to struggle hard to have its rights recognised by the monarch.

And strange as it may seem, there is a ban against the entry of the Sovereign to the House of Commons. This strange prohibition originated over three hundred years ago. In 1642, King Charles I went to the House of Commons with a body of armed men to arrest five members including Pym and Hampden who had incurred his displeasure. The members concerned, however, escaped but Parliament decided that, if the rights of the people were to be safeguarded, the Sovereign must not be allowed to set foot in the Commons.

Before the opening of each session of Parliament a ceremonial procession searches the vaults and cellars of West-

minster Palace (in which Parliament sits). The custom dates back to 1605 when there was a plot, known as the Gun-powder plot, to blow up Parliament and kill the King and members together. The conspirators had placed barrels of gun-powder in the cellars under the House of Lords. The conspiracy was, however, foiled. One of the conspirators, Guy Fawkes, was arrested while he was about to set fire to the gun-powder and he, along with some others, were executed. Since then, Parliament has been always searched before the opening of a session. While the search may not be entirely meaningless today because conspiracies cannot be called a thing of the past, what is strange and ridiculous is the quaint sixteenth century ceremonies associated with it. The guards who carry out the search wear sixteenth century dresses and carry Elizabethan lanterns in hands although the electric light makes the lanterns utterly useless.

Again at the end of every sitting, when the speaker leaves the chair, the doorkeepers cry "who goes home." The practice dates back to the days of Stuart rulers when guards would be sent to the House from time to time in the evening to escort those who wanted to leave through the hazardous London streets of those days. The members, of course, do not need any escort now, but the old custom continues. And as the members move out of the House, the attendants repeat the words: "The usual time to-morrow, sir, the usual time to-morrow", as if the members did not know that Parliament would sit at the usual hour the next day. It has been rightly said that "the Parliament at Westminster is not only a busy workshop; it is a museum of antiquities".

Have these antiquated ceremonies any utility? It is believed that these ceremonies awe the new members and help in maintaining a sober, polite atmosphere in Parliament—an atmosphere conducive to smooth work in a spirit of compromise between the Government and the Opposition.

CHAPTER XXXVIII

THE BASIC FEATURES OF THE ENGLISH CONSTITUTION

The basic features of the English constitution as it is today will be briefly considered in this chapter.

Unitary Constitution—The constitution of England is unitary, not federal. In a federal system, the governmental power is distributed between a central government and a number of local governments. And neither the centre nor any local government, acting alone, can change this distribution of power. Thus in a federal state, such as, India or the U.S.A., there are a number of governments besides the Central Government and a number of legislatures besides the central legislature. In England all power is vested in a single government and Parliament is the only legislature in the country. In England there are, of course, some local authorities. But these local governments have been created by the one Government in the country (which has its seat in London) in which all power is vested; at least the former depend for their existence on the will of the latter. In a typically federal country, like the United States, however, the Central Government cannot make or unmake the local (that is, the State) Governments.

Sovereignty of Parliament—Parliament is sovereign in Britain. Sovereignty of Parliament means, in the first place, that Parliament can enact, modify or repeal any law on any subject. Secondly, it means that laws passed by Parliament cannot be set aside by any other authority. Parliament's position is thus one of unchallenged supremacy in the constitutional system of Britain. This position is the result of the fact that the British constitution is an unwritten constitution. In almost every country in which there is a written constitution, the Judiciary has the authority to declare a law

unconstitutional and set it aside if the law violates any of provisions of the constitution. In India, for instance, the Judiciary can set aside a law passed by Parliament as unconstitutional, if the law infringes any of the provisions of the Indian constitution. The Judiciary in Britain cannot, however, declare an Act of Parliament to be unconstitutional. This subject of Parliamentary sovereignty will be dealt with in greater detail in the chapter on Parliament.

No Fundamental Rights in Britain—In Britain, there are no fundamental rights. This is also a result of the fact that there is no written constitution in Britain. Usually, in a country in which there is a written constitution, certain important rights, called fundamental rights, are expressly guaranteed by the constitution itself. Enumeration of these rights in the constitution gives them a sheltered position and invests them with a special sanctity. For, in the first place, the constitution cannot be amended as easily as an ordinary law. All written constitutions lay down certain special procedures for their amendment. The rights guaranteed by a written constitution cannot be amended, therefore, except by following the special procedure laid down by the constitution itself. Secondly, the very fact that certain rights have been incorporated in the fundamental law of the land, invests them with a special sanctity. They come to be looked upon by the public as something sacred or at least something which must not be frivolously interfered with. And this sentiment of the public in respect of the rights acts as a powerful safeguard against arbitrary interference with those rights by the executive.

In Britain, no right is fundamental because the country has no written constitution. Of course, there are some constitutional documents in Britain, such as the Bill of Rights of 1689, which lay down certain rights of the people. There are also Parliamentary Acts, such as the Habeas Corpus Act of 1679, which guarantee important rights to the people. But all these Acts and documents can be modified or repealed by

Parliament as easily as it can amend or repeal any other law. No special procedure is required to amend those laws. These laws do not owe their origin to any authority higher than Parliament, and are, constitutionally, of the same status as any other law including the most insignificant pieces of legislation. In countries with written constitutions, as has been stated, the fundamental rights usually enjoy a higher status than other rights because they cannot be modified as easily as other rights, and because they have been guaranteed by a body higher in authority than the legislature. (Constitutions are usually drawn up by constituent Assemblies or conventions, which are supposed to have a higher authority than the legislatures which are, after all, creations of the constitutions).

The British Parliament can thus, by passing a law following the usual procedure, modify or completely take away all the rights of the British people. It can in a few minutes destroy all civil liberties, kill democracy and set up a dictatorship. It can authorise imposition of death sentence on people without holding trials. It can even simply authorise killing of innocent people.

Does it mean that the British people enjoy no rights? Far from it. The fact is that the British people enjoy far greater civil liberties than most other peoples in the world. Most of the civil liberties in England like freedom of speech or association are based on the principle that a person can do or say anything unless he violates any law or infringes any right of any other person. This principle is an unwritten law, a common law, but it safeguards liberties no less effectively than any written provision of any constitution. There are also some written laws—some Parliamentary Acts—which guarantee a number of valuable rights to the people including freedom from illegal imprisonment, right of franchise, right to be elected as a member of Parliament and the like.

It is, of course, true that Parliament, by passing a law by a simple majority, can repeal or modify all these written and unwritten laws and take away the rights they provide for. Legally, all rights of the British people are at the mercy of Parliament. But while there is no legal restriction on the power of Parliament to take away any of the rights of the British people, there are other restrictions which operate quite effectively in ensuring that Parliament does not arbitrarily interfere with the rights enjoyed by the people. In the first place, the British people deeply cherish their liberties and are vigilant about them. The members of Parliament, deeply imbued as they are with the British love of liberty, can never think of unnecessarily curtailing or restricting the liberties of their fellowmen. Moreover, they are conscious that any attempt to restrict the liberties beyond the extent necessitated by any given situation is sure to be opposed by public opinion and even resisted by them. The ultimate safeguards of the British liberties lie in the national character and the strength of public opinion.

It must not be supposed, however, that the British Parliament never puts any restriction on any of the civil liberties of the people. It does restrict those liberties whenever either the internal or external situation calls for such restriction. Particularly in times of war, the British Parliament imposes stringent restrictions on the liberties of the people in the interests of safety and security of the State. During World War I, the Defence of the Realm Acts of 1914-15 imposed stringent restrictions on the civil rights of the British people. Also during World War II, drastic restriction of those rights was authorised under the Emergency Powers (Defence) Act of 1939. But even during such national emergencies, the public opinion oppose restrictions which are not manifestly necessitated by the situation. It also vehemently opposes continuance of any restriction, imposed during any emergency, beyond the period of the emergency. Thus, as soon as the emergency period is over, the restrictions are with-

drawn and things return to normal. It should also be noted that even where rights are guaranteed by written constitutions drastic curtailment of those rights in emergencies is authorised by the constitutions themselves. The Constitution of India, for instance, which guarantees a large number of fundamental rights authorises stringent restriction of those rights in situations of emergency like war, invasion or internal disturbances.

Limited Separation of Powers—According to the theory of separation of powers, the executive, legislative and judicial powers should not be concentrated in the hands of the same body of persons but must be vested in three separate authorities or bodies of persons who are to act, as far possible, independently of each other. In the British system of government, however, this theory has very limited application. In Britain, the executive and the legislative authorities are, so to say, interlocked. The members of the Ministry are, in the first place, required to be members of the legislature, that is, Parliament. It is the Ministry, secondly, which is responsible for drafting all important legislation and piloting such legislation through Parliament. And since, under the modern party system, the Ministry can always count upon the support of its majority in the House of Commons for the passing of the Bills introduced by it in Parliament, the legislative power of the Ministry is, from the practical point of view, almost absolute. We may say that in Britain, all executive and legislative power is concentrated in the hands of the Ministry, subject to a general control of Parliament. Only the judicial power in Britain may be said to be in the hands of an independent authority, that is, an authority which acts independently of the executive and the legislative branches of government. Under certain Acts of Parliament, judges enjoy fixed salaries and guaranteed tenure of office during good behaviour, and they can be removed only by the crown on request from the two Houses of Parliament. (Judges of county courts and justices of the peace can,

however, be removed by the Lord Chancellor.) These provisions enable the judges to function independently of the executive and the legislative authorities.

It should be noted that wherever there is a Parliamentary system of government on the British model, as there is in India, Australia, Canada and South Africa, the executive and the legislature are interlocked, the former being responsible to the latter. In all such countries, therefore, there is only a very limited separation of powers. Under a Presidential system of Government, as in the U.S.A., the executive is not responsible to the legislature. In a such a system, the principle of separation of powers is found in operation in a purer form.

How the British Constitution changes—From what has been already stated, it should be obvious that changes in the British constitution are brought about in three ways, namely, (1) through Parliamentary enactments, (2) through the growth and decay of conventions and (3) through judicial decisions.

From the principle of Parliamentary sovereignty it follows that Parliament can change the constitutional laws by legislation. Some of the important Acts by which Parliament has changed the constitution in recent years are the following—Parliament Act of 1911, Parliament Act of 1949, the Representation of the People Act of 1918 and the Representation of the People (Equal Franchise) Act of 1928.

What has been stated about conventions ought to make it clear that the growth of new conventions as well as the decay of old ones also bring about constitutional change. Similarly, judicial interpretations often introduce changes in the constitution. The operation of both conventions and judicial interpretions can, however, be modified and even nullified by Parliament by law.

CHAPTER XXXIX

THE CROWN

Gladstone once stated that the distinction between the terms 'King' and 'Crown' was the most vital distinction in English constitutional practice. While the meaning of the term King is not difficult at all to understand and is, in fact, readily understood by all, the meaning of the term Crown is, however, less easy to grasp. This is because the term King denotes something that one can easily picture in one's mind, but the term Crown denotes an entity of which it is difficult to form a mental picture. Formerly the executive power of the State was vested solely in the King. In course of time, however, while the kingship continued, the power of the King began to be transferred to the representatives of the people. As a result of this development the executive power has now come to be vested in the Crown. What is the Crown then ? The term Crown has been defined by an authority thus : "The term, the Crown, represents the sum total of governmental powers and is synonymous with the Executive." The Crown is the supreme executive authority in the state.

Who exercises the Crown powers ? Most of the powers of the Crown are now-a-days exercised by the Ministers in their official capacity, because Parliamentary statutes confer them on the Ministers concerned. Sometimes even a single Minister exercises powers on behalf of the Crown. There are other Crown powers which are exercised by the Queen on the advice of the Ministers ; for the exercise of these powers the Ministers are held solely responsible. In the exercise of a few powers of the Crown, the Queen is called upon to exercise her personal judgment—for instance, in the choice of a Prime Minister. (In certain circumstances, dissolution of Parliament also may require the exercise of personal decision on the part of the Sovereign.) Certain Crown

powers are formally exercised by the Queen on the supposed advice of the Privy Council; in reality, these powers are also exercised by the Ministers who are held responsible for their exercise. To sum up, with rare exceptions, all Crown powers are now exercised by the Ministers, though in the exercise of some of them the Sovereign is associated as a nominal head.

While the Sovereign can die, the Crown cannot die, because while the former is a person, the latter is an institution. This is the meaning of the saying: "the King is dead, long live the King." It says, in other words, that the Sovereign may die, but the Crown never ceases to exist.

Again, while in course of history the powers of the King have steadily declined, the powers of the Crown have steadily increased. Though this statement may sound paradoxical, yet it is true. The struggle for democracy has gradually shorn the monarch of almost all his personal powers. But the gradual expansion of the activities of the state has necessitated the granting of more and more powers to the executive and this is how the powers of the Crown have steadily increased. People have not grudged this enhancement of the powers of the Crown because, whatever may be the theoretical or formal position, these powers are exercised by the people's representatives. Today, on account of the vast expansion in the social welfare activities of the state in Britain, a tremendous volume of power has been concentrated in the hands of the Crown.

To conclude: (1) The Crown denotes the supreme executive authority in Britain. (2) In a microscopic number of matters, the Crown powers are exercised by the Queen in her discretion. Over the rest of the vast field of executive action, the Crown powers are exercised by the Ministers, though in some matters these powers are exercised in the name of the Queen. (3) Though Sovereigns die, the Crown never ceases to exist. (4) While the powers of the King have steadily declined during the past few centuries, the

powers of the Crown have steadily increased and are still increasing.

Prerogatives of the Crown—The powers of the Crown are derived from two sources—(1) statute, and (2) prerogative. The term statute means laws passed by Parliament. But what is the meaning of prerogative ?

Prerogative is "that group of powers of the Crown not conferred by statute but recognised by law as belonging to the Crown." In other words, prerogative means those discretionary powers of the Crown which Parliament has not conferred on it but which are based on common law and are, therefore, recognised by courts. For instance, the Crown's power of summoning and dissolving Parliament is a prerogative power. Again, the power of the Crown to declare war or make peace is also a prerogative power. No Parliamentary law has given the Crown the power of summoning and dissolving Parliament or the power of declaring war or making peace. Yet common law recognises that the Crown possesses these powers.

There was a time, before the birth of Parliament, when all powers of the King were supposed to be derived from prerogative, that is, from his supreme discretionary authority as the Sovereign. After the birth of Parliament and with the struggle for popular rights, the powers of the King began to be transferred to Parliament and the courts. Yet the King was supposed to retain a residue of his prerogative power, which he could exercise in his discretion and without authorisation by Parliament. The Stuart Kings used to claim that their prerogatives were above law. Through the revolution of 1688-89 and the Act of Settlement it was settled that the King's prerogatives were not above law but based on law. Thereafter as the Cabinet system developed and began to be firmly established, it became a settled principle of the constitution that the prerogative powers of the Crown must be exercised through Ministers responsible to Parliament.

In respect of the prerogative powers of the Crown, the following points should be clearly noted. (1) Prerogative powers are not derived from statutes, yet law recognises that the Crown possesses those powers. (2) With very rare exceptions, the prerogative powers are exercised by the Ministers.

In choosing a Prime Minister, the Queen may exercise her own discretion, thereby exercising a prerogative power without the advice of the Ministers.

(3) For the exercise of prerogative powers, just as for the exercise of statutory powers, Ministers are responsible to Parliament. In other words, Parliament has the authority to criticise Ministers for the exercise of prerogative powers, and also to express its lack of confidence in it. (4) Parliament has no right to be consulted in advance in respect of the exercise of prerogative powers. (5) Parliament, however, can modify or take away prerogative powers by legislation. This follows from the principle of Parliamentary sovereignty. (6) If, however, Parliament does not by express words take away a prerogative power but only legislates in respect of a matter which is regulated by prerogative power, it will have the effect of suspending the exercise of the prerogative power, not abrogating it.

Examples of important prerogative powers are given below.

Prerogatives relating to foreign affairs and national emergencies—The Crown has the prerogative power to declare war and to make peace. The Crown alone, again, has the power of concluding treaties. None but the Crown can negotiate, sign or ratify any treaty. For its validity, a treaty concluded by the Crown does not require the approval of Parliament. Nowadays, however, some treaties are made conditional on confirmation by Parliament. It is also now-a-days regarded almost as a binding constitutional convention that treaties involving cession of British territory require Parliamentary approval given by a statute.

It is easy to see, however, that though treaties, speaking generally, do not require Parliamentary approval for their validity, the Crown will not conclude any treaty unless it is sure of Parliament's support. It should also be obvious that that the Crown will not declare war unless Parliament's support is behind such a move, because no war can be conducted if Parliament refuses supplies. The question of parliamentary approval, however, does not ordinarily raise any difficulty because the treaty-making power is really exercised by the Ministers (though it is exercised in the Sovereign's name), and the Ministers normally command a majority in Parliament.

Prerogatives relating to the Legislature and the Judiciary —The Crown enjoys the prerogative power of summoning, proroguing and dissolving Parliament. It has also the prerogative power to create new peers to ensure the passage of a Bill in the House of Lords. These prerogative powers, it should be noted, are formally exercised by the Sovereign on the advice of the Ministry. The Sovereign has the right to assent to, or withhold assent from, Bills. This is also a Crown power and is exercised by the Queen on the advice of the Ministry. Assent to Bills passed by Parliament, however, follows automatically because no Bill can be passed without the support of the Ministry which normally commands a majority in Parliament. The Crown has also the prerogative power of making laws for certain colonies by issuing Orders in Council.

The Crown enjoys important prerogative powers in the judicial sphere. All criminal prosecutions are made in the Crown's name. The Crown has the right to pardon convicted offenders or remit or reduce sentences; this power is exercised on the advice of the Home Secretary. The Crown has the power to grant special leave to appeal from the courts of the Empire to the Judicial Committee of the Privy Council.

Other Important Prerogatives—Among other important prerogatives of the Crown are those relating to (a) the Armed Forces, (b) appointments and honours and (c) certain other matters.

(a) As has been already pointed out, the Bill of Rights prohibits the maintenance of a standing army in peace time without Parliamentary authorisation, and this applies to all forces that serve on land. Parliament has, therefore, to pass an annual to Act to legalise the Army, Air Force and Marines. It is, however, by virtue of the prerogative that the Crown controls these forces and determines everything relating to their disposition and organisation. The Navy is a prerogative force, that is, it is maintained without any direct authorisation by Parliament. (The recruitment and discipline of the Navy are now regulated by certain Acts). The Sovereign is the commander-in-chief of the armed forces. All officers of the Army, Navy and Air Force are appointed either by the Crown or under authority granted by the Crown.

(b) The Queen alone can confer honours and decorations. She alone can create peers. Ministers and Judges of the Supreme Court are appointed by her. The Queen is also the head of the Anglican Church and appoints the bishops and the arch-bishops. All these prerogative powers are, it should be understood, exercised by the Queen on the advice of the Prime Minister.

Appointments to all posts in the Civil service are made by virtue of the Crown's prerogative power. In the exercise of this power, however, the Queen plays no part. These appointments are made by the ministerial heads of departments.

(c) It is also by virtue of the prerogative power that the Crown regulates coinage, creates corporations by royal charter, erects and supervises harbours, and enjoys the sole right of printing or licensing others to print the Bible, the Book of Common Prayer, as well as State papers.

The Sovereign (Monarch)—The present ruling dynasty has held the throne in Britain for nearly two centuries and a half under the terms of the Act of Settlement passed in 1701 during the reign of William III. The Act provided that in case William and his sister-in-law, Anne, died without heirs, the English Crown was to pass to Electress Sophia of Hanover and her protestant heirs. Sophia was a granddaughter of James I and widow of a ruler of a German state, electorate of Hanover. After William's death, Anne succeeded to the throne in 1702. Anne died without heir in 1714 and in that year under the Act of Settlement George I, son of Electress Sophia, ascended the throne of England. This dynasty has reigned in the country since then. Formerly, this dynasty used to be called the Hanoverian Dynasty. The name 'Hanoverian' has, however, some German associations. This fact led in 1917, when there was strong anti-German feeling in Britain, to the adoption of a new name for the dynasty, namely, the House of Windsor.

On the death of George V in 1936, his eldest son, Edward VIII, ascended the throne. Edward VIII abdicated (1936), and an Act of Parliament, known as His Majesty's Declaration of Abdication Act, 1936 laid down that Edward VIII or his descendants should not thereafter have any right of succession to the throne. The Act further provided that the person who was then next in line of succession (George VI) should succeed. George VI died in 1952 and was succeeded by his eldest daughter Elizabeth II, who is the present reigning monarch. The coronation of Queen Elizabeth was held in June, 1953.

Roman Catholics and persons who marry Roman Catholics cannot succeed to the throne. (Bill of Rights). Under the Act of Settlement, the Sovereign must "join in communion with the Church of England as by law established". The Sovereign must, therefore, profess the protestant faith. If after ascending the throne, a monarch adopts Roman Catholicism, he will lose his title to the throne.

Succession to the throne follows the hereditary principle, the males being preferred to females, and the elder members being preferred to younger ones. (That is, the title to the throne is determined on the same principles of primogeniture and preference of males over females, which governed the inheritance of real property in Britain before 1926.) When a monarch dies, his eldest son succeeds to the throne. If the eldest son is not living, his eldest surving son succeeds, or if he (the former) has no son, his eldest daughter succeeds. If there is no heir in this branch of the family, the second son of the late monarch inherits the throne. If the second son is not living, his son or daughter succeeds and so on.

Parliament has the power to change the line of succession or to install a new dynasty on the throne. Since, however, the monarch is also the Head of the Commonwealth, any alteration in the law relating to succession to the throne or the Royal Style and Titles requires the consent of the Parliaments of all Dominions. (The Statute of Westminster, 1931). Such consent had to be taken at the time of the passing of His Majesty's Declaration of Abdication Act, 1936, referred to above.

Immediately on the death or abdication of a Sovereign, the royal dignity vests in his heir; there is, therefore, no interregnum. If a minor succeeds to the throne, the Royal functions are exercised by a Regent till the Sovereign comes of age at eighteen. Also, in the case of a Sovereign's total incapacity to perform the Royal functions, a Regent has to perform them. The person who is legally next in line of succession and is a British subject of not less than 21 years becomes the Regent. In case of illness of the Sovereign or his temporary absence from the realm, the Sovereign may appoint Counsellors of State to perform such of the royal functions as may be delegated to them by letters patent. The power to dissolve Parliament otherwise than on the express instructions of the Sovereign cannot be so delegated nor the power to grant titles and rank. The Counsellors

must be the wife or husband of the Sovereign and, with certain exceptions, the four persons next in the line of succession.

The style and titles of the Sovereign have changed from time to time. Formerly, the style and titles included the words 'Emperor of India'. Thus the style and titles of George V was as follows: "George the Fifth, by Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." After the passing of the Indian Independence Act in 1947, the phrase "Emperor of India" was dropped on June 23, 1947 so that after that date the then King, George VI's style and titles were as follows: "George the Sixth, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith." The style and titles of the Sovereign were further changed at the time of the coronation of Queen Elizabeth, when each of the Dominions adopted a different form of Royal style and titles. (See Ch. on Britain and the Commonwealth). The British form of the Royal style and titles is now as follows: "Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories, Queen Head of the Commonwealth, Defender of the Faith."

The Functions of the Sovereign (Monarch)—The Sovereign is a constitutional monarch. The Queen reigns but does not govern. This does not mean, however, that she has no duties to do in connection with the government of the country. The Queen has to sign numerous state papers and to take part in innumerable acts of government. She cannot, however, perform any public act except on the advice of the Ministry. The State papers signed by her bear countersignature of at least one of the Ministers, thus indicating that the act has been done on the advice of the Ministry. And for all public acts of the Queen, the Ministers are responsible to Parliament.

There are many functions which the Queen performs by proxy, for instance, signifying assent to Bills passed by the two Houses of Parliament (See Ch. on Parliament). But there are certain highly important acts which the Queen has to do personally. She receives ambassadors from foreign countries. (This is done in the presence of a Minister). She confers honours and titles and creates peers. She often reads the Speech from the Throne at the opening of a Parliamentary session. The Speech from the Throne which usually deals with general state of public affairs and outlines the legislative programme before Parliament is prepared by the Ministry. The Queen has to appoint the Prime Minister to form a new Ministry. If there is any party with a clear majority in the House of Commons, the Queen has no real option in choosing the Prime Minister because the leader of the majority party can alone form a stable Ministry and must be designated as the Prime Minister. If, however, no party has any clear majority in the House of Commons, the Sovereign enjoys a real discretion in appointing the Prime Minister. This is one of the very few cases in which the Sovereign is called upon to exercise his personal judgment. Sometimes, in dissolving a Parliament also the Sovereign enjoys a real discretion. A dissolution, of course, is always authorised on the advice of the Prime Minister. But if, to take a hypothetical case, a Prime Minister dies at a moment of crisis which calls for dissolution and fresh election, the Queen may have to exercise her personal judgment in ordering a dissolution. Some believe that the Sovereign may, in certain situations, dismiss a Ministry to bring about a dissolution. But no Sovereign has taken such a step since 1783, and it is difficult to believe that such a step may ever be taken in future. It is interesting to note that in 1913 King George V was urged by Unionists to dismiss the Ministry of Herbert Asquith and to dissolve Parliament on the ground that the Ministers had no mandate from the electorate on the question of Irish home rule. George V, however, refused to do that.

The Queen plays a very important role in acting as a critic and counsellor of the Ministry in the day-to-day functions of the Government. Of course, the advice of the Queen need not be accepted by the Ministry but she has a right to give counsel. In fact, as Bagehot pointed out, the Sovereign has three rights—the right to be consulted, the right to encourage and the right to warn. The Queen's position, moreover, is so exalted and she is held in so high respect that whatever advice she may have to offer is always considered with respect by the Ministers, though such advice is not binding on them. Again, a Queen who has reigned for a long time comes to possess a wide experience of public affairs and this fact gives her counsel great weight. The Queen also stands above party politics and increase or decrease in the popularity of any party does not affect her position. On account of this peculiarly advantageous position of hers, the Queen can easily take an impartial view of things and can consider every issue from the point of view of the national interests. This is an additional reason why the Queen's advice and criticism command respect. Thus though the Queen has no real power, her influence over public affairs is far from inconsiderable.

Why Does Monarchy Survive?—There is hardly any doubt that monarchy as an institution is out of tune with the spirit of the modern times. Particularly, in the British constitutional system which is based on democratic principles, the institution of monarchy seems to be a useless anachronism. It is also a fact the Sovereign has no real power and is only a figurehead. Foreigners sometimes wonder why the British people have not yet abolished monarchy but have kept it preserved, in this age of democracy, in their national life along with practically all the traditional pomp and pageantry associated with this institution. Why are the British people who are so jealous of their democratic rights still keeping alive this institution which seems so incongruous with the spirit of their democratic

constitution with its universal adult franchise and Parliamentary system of Government ? Why does the monarchy survive in Britain ?

How greatly the British people love and cherish this institution of monarchy was evidenced by the profound enthusiasm and excitement which were evoked by Queen Elizabeth's coronation ceremony in June, 1953. On that occasion, the London Economist, one of the most influential English journals wrote : "A coronation is the most magnificent ceremony of that most magnificent ceremonial institution, the British Crown.....As the peers of the realm in the Abbey, so the people in their hundreds of thousands in the streets, and in their millions upon millions on the radio, are come to recognise their undoubted Queen and to return loyal homage for her solemn oath. All this, of course, is symbolism. But every society has its symbols, and the believers in constitutional monarchy (who include many of the most intelligent and cultured peoples of the world) can at least claim that their symbols, being alive, are more natural for a human society."

In fact, monarchy not only survives in Britain, its popularity and prestige have increased during the past fifty years. Queen Elizabeth II, the present reigning monarch, is really more popular than was Queen Victoria during her reign. The reason for monarchy's survival and increasing prestige are the following :—

(1) The British people have a deep love for the past. They are actually a conservative people, compared to most other peoples of the world. It has been well said that the British are conservative even in their revolutions. In the past they revolted more than once against arbitrary rulers. They executed a tyrannical King (Charles I) and expelled another from the throne (James II) ; yet they did not think of abolishing monarchy. Monarchy represents a very ancient tradition and the Queen symbolises in her person, as nothing else does, national history and culture extending

over several centuries. This is one of the reasons which explain British deference for this institution and its survival through the upheavals and agitations that built up democracy in the country. It is highly significant that even the Labour Party which is wedded to socialism does not, as a party, favour abolition of monarchy, though there may be individual members of the party who advocate such abolition. At a conference of the Labour Party in 1923 a vote was taken on the question—"Is republicanism the policy of the Labour Party?" The result of the voting showed that the great bulk of the party did not favour republicanism or a democratic constitution without monarchy.

(2) The Queen is a symbol of national unity. She is "a magnet of loyalty." For common people it is easier to feel loyal towards a Sovereign than towards any abstract idea of democracy. Loyalty towards the Sovereign, however, really amounts to loyalty towards the Government and the law. Thus, though a symbol, the Sovereign plays an important role in creating all around a sense of respect for law and justice. For law is "Queen's law" and justice is "Queen's justice".

(3) The Queen is also a symbol of stability in the midst of changes going on all around. She helps to create a comfortable feeling in the mind of the masses that everything is all right, whatever changes may be taking place in the political or the economic sphere. "With the Queen in the Buckingham Palace, people sleep the more quietly in their beds."

(4) Continuance of monarchy has not prevented the growth of democracy. The monarchs have gradually reconciled themselves to their position of being a mere nominal head. And they have assumed an increasingly neutral role in public affairs. Of course this has not taken place in a day. Even Queen Victoria was far from neutral in her attitude to public affairs. She tried to meddle actively in politics to create difficulties for the party she did not like

namely, the Liberal Party. She tried to thwart Liberal policy in 1880. In 1886, she tried to prevent the formation of Mr. Gladstone's government and later she tried to bring about its fall. She even tried to strengthen the opposition against the Liberal Government of Mr. Gladstone by trying to bring about an alliance of the opposition parties, the conservatives and the Liberal Unionists. There is reason to believe that if Queen Victoria's son, Edward VII and his grandson, George V, had been as partisan as she was in their attitude to public affairs, monarchy in England would have faced a serious crisis and might have even been abolished. Fortunately, Edward the VII was not very partisan in his outlook, while George V consciously tried to be a neutral ruler. He fully realised that a twentieth century ruler will not be tolerated long if he took sides in politics and tried to help one group or to oppose another. He, therefore, performed the Royal functions with a perfectly neutral attitude. He was thus a constitutional monarch in the true sense of the term. By his attitude of perfect neutrality in politics and pains-taking devotion to public duties, he endeared himself so greatly to the people that the prestige of the throne was vastly increased during his reign. It is highly significant that during the twenty-six-year period covered by George V's reign, five Emperors, eight kings and eighteen minor dynasties disappeared from the governments of the world; and yet it is exactly during this period that the British throne grew more popular and more secure than ever. This fact constitutes a great tribute to King George V's wisdom, vision and his ability to adapt himself to the wishes of the people. King George VI who reigned from 1936 to 1952 was also a highly popular ruler because he, too, following in the footsteps of his father, tried to and succeeded in performing his functions with an attitude of perfect neutrality. Queen Elizabeth II has also been acting as a perfectly constitutional ruler and has not shown any desire to have any real power for herself or to force her personal likes and dislikes on her Ministers. This is why she enjoys

greater popularity than did Queen Victoria. A writer has justly remarked: "If in the person of Queen Elizabeth II, Her Britannic Majesty is more majestic than in the person of the great Victoria, it is because she seeks to rule only in the hearts of her people."

(5 "A royal family sweetens politics by the seasonable addition of nice and pretty events"—so said an authority on the British constitutional system. It may be said today that the British royal family sweetens not only politics but also social life. By taking part in various kinds of social functions and activities, from football matches to state dinners, the Queen makes the social life more pleasant than it would otherwise have been, and thereby strengthens the ties which bind her to the hearts of the people.

(6) The monarch is the Head of the Commonwealth. The Queen is the only link which binds the Commonwealth countries, including India, together. If this link is broken the Commonwealth will fall asunder. If today India refuses to recognise the British Sovereign as the Head of the Commonwealth she will at once cease to be its member. Formerly Parliament used to legislate for those countries which are now members of the Commonwealth. But today, for all practical purposes, Parliament does not enjoy any power to make laws for these countries. This is the reason why it has been said that the British crown is the last link that survives between Britain and the self-governing dominions (and the crown in this case is inseparable from the monarch in whose name the crown powers are exercised). [Also see Ch. on Britain and the Commonwealth.]

(7) If monarchy is abolished in Britain, the question will naturally arise of making provision for the office of a chief executive—say of a President, who will be the head of the State. But any attempt to create such an office will raise a storm of controversy as to what are to be the powers and functions of the new head of the State. These

considerations point to another reason why monarchy survives in Britain. It should also be noted that an elected President or Governor, will not be as valuable as a symbol for the people of the British colonies or the Dominions as the monarch is.

"The Queen can do no wrong"—This saying means that the Queen cannot be held responsible for any act done in her name. It is the Ministers who are to be held responsible for the policies of the Government and the public officials are to be held responsible personally for any illegal act that may have been committed by them even in their official capacity. Secondly, the saying means that the monarch is immune from legal processes. Just as the Queen cannot be held responsible for her public acts, so too she cannot be called to account in any court of law for her private conduct. Even if she, as Dicey said, shoots the Prime Minister, she cannot be legally proceeded against. She cannot be arrested, nor can her goods be seized.

CHAPTER XL

PRIVY COUNCIL, MINISTRY AND CABINET

The Privy Council—It has been already stated that formerly the King used to perform all executive acts with the advice of the Privy Council. In course of time the Council became too unwieldy a body for proper performance of its advisory function, and the King drew about himself a small group of trusted councillors whom he used to consult for advice on public issues. From this practice grew up the modern cabinet system. The Cabinet has now superseded the Council as a deliberative body. It is the Cabinet and not the Privy Council that determines the policies of the Government. Nevertheless the Privy Council continues to exist and performs some important functions. The most important function of the Council is to issue orders, called Orders in Council, by which important decisions of the Cabinet are given the force of law. Of course, in many cases the individual ministers can issue orders under the authority conferred by statutes on them. The monarch also can execute a number of documents (of course on Ministerial advice). Still, Order in Council is the most important method of giving effect to executive decisions. Thus while the Cabinet deliberates and decides, its decisions are given the force of law by the Council. True, the issuing of Orders in Council is a mere formal act on the part of the Privy Council because the order is in reality the order of the Cabinet. Nevertheless the Cabinet as such cannot issue orders. The Council or rather the Queen in Council (see below) can issue such orders. This should make it clear that the Privy Council still plays an important role in the British constitutional system.

Who are members of the Privy Council? The Monarch appoints the members of the Council on the advice of the Cabinet. All members of the Cabinet are by convention made members of the Privy Council. In fact, till recently the

Cabinet was unknown to law and it is as a member of the Privy Council that a Cabinet member was required to take the oath which enjoins secrecy about the deliberations of the Cabinet. Apart from the Cabinet Ministers, members of the Royal family, the Archbishops of Canterbury and York and Lords Justices of Appeal are sworn members of the Council. Ambassadors to foreign countries, the Speaker of the House of Commons and certain other dignitaries are also usually made members of the Council. A few representatives of the Dominions, mainly the Prime Ministers, are also included in the Council. Apart from these members, persons who have distinguished themselves in the fields of art, science, literature, or by any other kind of public service, are often made Privy Councillors as a mark of honour. The Monarch can remove a Councillor by striking his name from the roll of members. Membership of the Council can also be cancelled by an Order in Council. Usually, however, a person who has been appointed a Councillor remains so for the rest of his life. Most of the Privy Councillors are, therefore, either members of the existing or past Cabinets. At present the total number of members of the Council is about 300. Every member of the Council is entitled to the appellation 'Right Honourable'.

The Privy Council is called together in full strength only on rare occasions like the coronation of a Sovereign. Its meetings are, however, held frequently to issue Orders in Council but usually four of five members attend such meetings, the quorum being three. The Privy Council has a number of standing committees, the most important of them being the Judicial Committee of the Privy Council which is a final court of appeal from Dominions, colonies and other overseas territories. Among other standing committees are Committees of the Privy Council for Scientific, Industrial, Agricultural and Medical Research.

The Lord President of the Council who ranks high in the order of official precedence is a Cabinet Minister who is

responsible for all statutory duties of the Council and for all formal business done by the Council Office. The Privy Council Office functions under the Clerk of the Council.

Order in Council and the Queen in Council—As has been already pointed out, Orders in Council are executive orders which are promulgated to give the force of law to important decisions of the Cabinet (that is, those decisions which do not call for legislative action). These orders are drawn up by Government departments according to directions given by the Cabinet. Orders in Council are formally approved by the Sovereign at Privy Council meetings which are usually attended by four of five councillors including two or three Cabinet Ministers concerned. Technically, the authority which functions at such a meeting of the Council is not the Council alone but the Queen in Council. True, the Queen in Council's function is purely formal because it gives merely formal approval to decisions that are actually made by the Cabinet. Nevertheless, the Queen in Council performs an essential, legal function in the constitutional system because the Cabinet as such cannot issue orders having a legal effect.

The Ministry and the Cabinet—It is sometimes mistakenly supposed that the Ministry and the Cabinet are terms which mean the same thing. Actually, however, their meanings are different.

The Cabinet is only an inner circle of the Ministry. The Cabinet consists usually of the most important Ministers including the Prime Minister. While, in peace time, the total number of Ministers is about 70, the number of members in a Cabinet hardly exceeds 20. Thus the majority of Ministers always remain outside the Cabinet. It should be noted that it is the Cabinet which determines the policies of the Government, co-ordinates the work of the various departments and is the central directing force in the government. If all the Ministers were to be included in the Cabinet it would be too large for proper performance of its deliberative and

policy-making functions. In fact, in times of war, the Cabinet is reduced to a very small size so that policy decisions can be made expeditiously.

From the point of view of functions, an important difference between the Ministry and the Cabinet is that while the Cabinet meets and deliberates as a body, the Ministry never meets as a body.

The Prime Minister is chosen by the Sovereign. And all other Ministers are appointed by the Crown on the advice of the Prime Minister. While in times of peace the Ministry consists of some 70 members, the number is increased in times of war. During both World War I and World War II, the number of Ministers was increased to over 100.

The Ministers can be broadly divided into the following four categories: (1) Heads of departments such as the Chancellor of the Exchequer, the Secretary of State for Home Affairs, the Secretary of State for foreign Affairs, the Minister of Education, the Minister of Health, the Minister of Town and Country Planning and the Minister of National Insurance. (2) Some high officials who do not head any department, e.g., the Lord Chancellor, Lord Privy Seal and Lord President of the Council. (3) Junior Ministers including Parliamentary Secretaries—there being such a Secretary in every department while there are two or three such Secretaries in some departments. [If the Minister is a Secretary of State, the Parliamentary Secretary is called the Parliamentary Under-Secretary of State. These Parliamentary Secretaries and Under-Secretaries must be distinguished from permanent secretaries and under-secretaries. Whereas the former are Ministers, the latter are civil servants. It should be noted that in India, Parliamentary Secretaries are not regarded as Ministers.] (4) Five members of the Royal household are also ranked as Ministers. Among them are the Comptroller and the Treasurer.

How the Prime Minister is chosen—It has been pointed out that it is on the Prime Minister's advice that the Crown

appoints all other Ministers. The first step in the formation of a new Ministry is, therefore, the appointment of the Prime Minister. The Queen alone can choose and appoint him. And in making this appointment the Queen is called upon to exercise her personal discretion. Here is thus one of those rare public acts in performing which the Queen can exercise her personal discretion. Of course, in these days of rigid party system, the Sovereign seldom enjoys any real discretion in naming a Prime Minister. The leader of the party which commands a majority in the House of Commons has of necessity to be appointed as the Prime Minister because he alone can form a Government that can hope to get its legislative proposals as well as the budget approved by Parliament. A situation is, however, quite conceivable in which no party has a clear majority in the House of Commons. In such a situation the Sovereign can make a genuine choice. In 1924, for instance, the elections did not return any of the three parties, Conservative, Liberal and Labour, with a clear majority. King George V called upon the Labour leader, MacDonald, to form the Ministry and thereby exercised a real discretion. (He could have also asked the Liberal leader, Asquith, to form the Ministry. The question of Conservatives did not arise because they had been defeated in the elections.)

It is now almost certain that no member of the House of Lords will be appointed as the Prime Minister. In 1923, when the Conservative Party was returned to power, Lord Curzon who was a leader of this Party expected to be appointed by the Sovereign as the Prime Minister. King George V, however, called upon Stanley Baldwin, a member of the House of Commons to form the Ministry. Apparently King George V felt that since the Ministry was responsible to the House of Commons which was the more powerful House and had control over finance, it would be difficult to carry on the work of the government smoothly if the Prime Minister was not a member of that House. Under the British system,

a Minister cannot speak in the House of which he is not a member. Had Lord Curzon been appointed the Prime Minister, he, being a member of the House of Lords, would not have been able to be present in the House of Commons to give that leadership to the government side which is vitally needed for carrying out smoothly the Government's legislative programme and timely passing of the budget. Since 1923, therefore, it has become almost a binding principle that the Prime Minister should be a member of the House of Commons. In fact, during the past half a century, no Prime Minister sat in the House of Lords. The last Prime Minister who was a member of the House of Lords was Lord Salisbury (1895-1902).

Formation of the Ministry—After his appointment, the Prime Minister immediately proceeds to present the list of his Ministers to the Sovereign. It is, however, not an easy job to form a Ministry. The Prime Minister's personal likes and dislikes are far from being the deciding factor in this matter. There are quite a number of important considerations to which the Prime Minister must give due weight in making up his list. The following considerations influence the choice of persons for inclusion in the Ministry:—(a) It is a convention that every Minister must be a member of the one or the other House of Parliament. The convention, however, does not require that every Minister must be a member of Parliament at the time of his appointment. But it does require that if a Minister is not a member of either of the Houses at the time of his appointment, he must qualify himself with a seat either in the Commons or the Lords within a short time. (There is no definite time limit but the convention is that it must not be more than a few months). The usual arrangement through which such a Minister is provided with a seat in the House of Commons is this: The Prime Minister asks a sitting member of the party representing a safe constituency to resign his seat. The Minister concerned is then set up as a candidate in that constituency

and returned to the House. The member who gives up his seat is usually rewarded with some suitable office. The Minister concerned may also be made a member of the House of Lords through being created a peer.

(b) The Prime Minister must also see to it that both Houses are suitably represented on the Ministry. This is necessary because Government policy must be defended and the legislative programme piloted in both the Houses. Under the existing law, apart from the Lord Chancellor, a few departmental heads must be chosen from among the members of the House of Lords. Since a Minister cannot speak in the House of which he is not a member, if the head of a department sits in the House of Commons, a Parliamentary Secretary or under-secretary (who is a junior Minister) represents that department in the House of Lords, and vice versa.

(c) Normally Ministers are chosen from the same party, that is, the majority party. For neither harmony nor efficiency can be achieved in the functioning of the Ministry if members of different parties holding diverse views on the important issues are included in the Ministry. This principle of party unity among Ministers has been consistently followed since the days of Queen Anne (1702-14). The rule, however, has its exceptions. Sometimes, particularly in times of crisis, coalition Ministries are formed because it is believed that it is difficult to cope with critical situations unless all parties sink their differences and jointly support the Government at least till the crisis is over. Thus Coalition Ministries were formed both during World War I and during World War II. In 1931 a 'national' or coalition Ministry was formed under the Labour leader, Ramsay MacDonald. This Ministry contained members belonging to all the three parties. This MacDonald Ministry was not, however, a coalition Ministry in the true sense of the term because the majority of the Labour Party withdrew its support from it. But the important point to note is that it was not based on the principle

of party unity but was composed of members representing all the three parties. This kind of composite or 'national' Ministry continued till after the outbreak of World War II. In 1940, under the Premiership of Mr. Churchill, a full-fledged coalition Ministry was formed which continued in office till the end of the war in 1945. The elections in 1945 returned the Labour Party with a big majority and Mr. Attlee formed a purely one-party Ministry. Thus, it was in 1945 that, for the first time since 1931, a purely one-party Ministry was formed in Britain. Since then this one-party principle has been followed without a break. The British people, generally speaking, do not view with favour the coalition principle and believe that for proper functioning of democracy, the responsibility for carrying on the work of government should be exclusively placed at any given time in the hands of a single party. It is only in times of national crises that, in their opinion, departure from this principle is permissible.

(d) The Prime Minister also has to satisfy the ambitions of leaders of groups inside the party. Unless such leaders are included in the Ministry, the resulting dissatisfaction among their followers may undermine unity and solidarity of the party. (e) Some young and active members of the party have also to be included in the Ministry so as to give them the necessary training for future leadership of the party. (f) The question of geographical distribution, too, has some importance, and the Prime Minister has to see to it that no part of the country remains unrepresented on the Ministry. (g) Persons who have distinguished themselves by their ability to speak and debate forcefully must also, as far as possible, be taken into the Ministry.

Following the submission by the Prime Minister of his list of Ministers to the Queen, they are formally appointed by her (the Queen, in collaboration with the Privy Council) and an announcement to this effect is published in the "London Gazette."

The Size and Composition of the Cabinet—The Cabinet, being the inner circle of the Ministry, is a much smaller body than the latter. Since 1919, the total number of Cabinet members has been usually twenty to twenty-two. In times of war, this number is greatly reduced in order to achieve greater expedition in taking decisions and issuing directions, as well as to ensure better co-ordination. Thus, on the outbreak of World War II in 1939, Prime Minister Chamberlain cut down the size of the Cabinet to make it a small body of nine members. When Mr. Churchill came to power in 1940, he reduced the number to five. These small war-time Cabinets are known as 'War Cabinets.' During World War I also, Prime Minister Lloyd George had constituted a War Cabinet whose membership varied from five to seven. It is the usual practice that the members of 'War Cabinets' are freed from departmental duties so that they can give undivided attention to work of over-all co-ordination and direction.

Since the Cabinet is the policy-making body and the central directive force in the governmental machinery, all heads of important departments are included in it (except of course in war-time or in times of other crises). And apart from departmental heads, certain Ministers holding offices of great honour and historical prestige are included in it, e.g., the Lord President of the Council and the Lord Privy Seal. Thus the Cabinet is sure to contain the following Ministers: The Chancellor of the Exchequer, the First Lord of the Treasury (this office is now-a-days held by the Prime Minister himself), the Minister of Defence, most of "the principal Secretaries of State" such as the Secretary of State for Foreign Affairs, the Secretary of State for Home Affairs, the Secretary of State for Commonwealth Relations and the Secretary of State for Colonial Affairs; and, as has been already indicated, the Lord President of the Council, the Lord Privy Seal and the Lord Chancellor. Apart from these Ministers, the heads of some other departments may

also be included in the Cabinet depending on the importance of the departments concerned at a given moment. Sometimes the importance of the person concerned is also a decisive factor, whether he heads an important department or not.

Cabinet Meetings—The meetings of the Cabinet are held in private, no outsider being allowed to be present at such meetings. Of course, Ministers who are not members of the Cabinet are sometimes invited to attend meetings of the Cabinet when matters affecting their departments are considered or when it is believed that they may be able to offer valuable suggestions regarding any particular subject. The Prime Minister presides at the meetings. There is, however, no rules of procedure nor any fixed quorum. As a rule, decisions are arrived at not by voting but through discussion in a spirit of give-and-take till a generally acceptable view emerges. Sometimes, however, but very rarely, a matter is put to a formal vote but essentially all desisions of the Cabinet are a product of compromise and mutual adjustment. Much depends on the personality of the Prime Minister. A Prime Minister with an impressive personality is sure to dominate the discussion at the Cabinet meetings and to get his views accepted by his colleagues on most occasions. Generally, there are four or five outstanding figures in every Cabinet who play a guiding role in its deliberations and thus in formulating its policies.

Cabinet—a Conventional Organ—The Cabinet was formerly unknown to law, the entire Cabinet system having grown up on the basis of convention. It was in 1937 that law recognised, for the first time, the existence of the Cabinet. The Ministers of the Crown Act of 1937 which fixes salaries of the Ministers also contains provisions for the salaries of the Cabinet Ministers. Thus this Act recognised that there is an organ of government known as the Cabinet.

But though law recognises today the existence of the Cabinet, it is still a conventional organ. There is no law

which defines the powers and functions of the Cabinet. Nor is there any law laying down its composition or its position in the constitutional system. The powers and functions of the Cabinet are still based on convention. It is also interesting to note that membership of the Cabinet as such does not give a person any legal authority. It is by virtue of being a Minister that he exercises his powers. Again, the Cabinet as such cannot issue any order. The decisions of the Cabinet are usually given effect to where necessary by orders in Council, while individual Ministers issue directives according to those decisions through their respective departments. Those Cabinet decisions which involve legislation are embodied in Bills which are then piloted by the Cabinet in Parliament and passed with the help of Government majority.

The powers and functions of the Cabinet—The Cabinet determines the policies of the Government, and is the central directive force in the constitutional machinery. It occupies a pivotal position in the British constitutional system. Lowell has called it "the keystone of the political arch", while Sir John Marriot has described it as "the pivot round which the whole political machinery revolves."

The Cabinet not only determines the policies of the Government, it directs the execution of those policies and co-ordinates the activities of all governmental departments. It is the custodian of executive power and controls the exercise of that power. Of course, executive power is actually exercised through a vast body of offisials including individual Ministers but the ultimate control over the exercise of this power rests in the hands of the Cabinet.

As the supreme policy-making body in the constitutional system the Cabinet has to consider and take decisions on a large variety of subjects relating to the internal and external affairs of the country. It has to consider all major issues relating to national income and expenditure, and to decide whether any existing policy relating to these matters requires

modification or whether a new policy should be adopted. The budget is prepared according to its directives. The Cabinet determines the role that the Government is to play at a given time in the sphere of social welfare activities. It considers the major issues relating to preservation of law and order in the country and modification of policies or initiation of new policies in this field are matters which are entirely decided upon by them. The Cabinet lays down the policies to be followed in the external affairs of the country. Negotiations with foreign countries are carried on according to its directives. It takes decision on questions relating to war and peace. It considers the drafts of treaties. And final decisions on such treaties can also be taken by the Cabinet alone.

Apart from these purely executive functions, the Cabinet plays a pivotal role in the sphere of legislation. The Cabinet prepares the speech from the Throne which outlines at the opening of a Parliamentary session the Government's legislative programme. It gets Bills drafted according to its policies. It introduces those Bills in Parliament, explains them, defends them, replies to criticisms and finally gets them passed with the help of its majority in Parliament. All important legislative measures emanate from the Cabinet. And no law can be passed unless the Cabinet gives its support to it. For opposition by the Cabinet to any legislative proposal means opposition by the majority in the House of Commons. The Cabinet is thus supreme both in the sphere of execution and legislation. Bagehot described the Cabinet as "the hyphen that joins, the buckle that binds, the executive and the legislative departments together." The Cabinet not only binds the two departments together, it dominates and controls both of them. In fact, the Cabinet plays such a dominant role in the process of law-making that an author has rightly remarked that now-a-days it is the Cabinet that legislates with the advice and consent of Parliament.

The Cabinet also performs a few functions of a judicial character. It is on the advice of the Cabinet that the

Crown's prerogative power of pardoning convicted offenders and of remitting or reducing a sentence is exercised.

The Prime Minister—Formerly the office of the Prime Minister was unknown to law. Today, however, the existence of this office is recognised by law including the Ministers of the Crown Act, 1937. But though recognised by law, this office, like the Cabinet system as a whole, is still based on convention. The powers and functions of the Prime Minister are neither defined, nor regulated by law.

The Prime Minister is the most important and powerful functionary in the British governmental system. He is the key man in the Cabinet. His position in relation to other Cabinet Ministers has been described by saying that the Prime Minister is the *primus inter pares*—the first among equals. This phrase is, however, misleading because it suggests that the Prime Minister's powers stand after all on a footing of equality with those of other Ministers, his position being only a little more dignified than that of the rest of the Cabinet members. Actually, however, the Prime Minister wields far greater power than any of the other Ministers and in dignity he towers above them all. His position in the Cabinet is more accurately described by the phrase *inter stellas luna minores*—"a moon among lesser stars,"—than by the phrase *primus inter pares*.

The Prime Minister chooses the other Ministers in the Cabinet. If any Minister disagrees with him, the Prime Minister can force his views on him or force him to resign. He can also secure the removal of a Minister from the Cabinet by the Sovereign. He thus not only chooses his colleagues, he can "shuffle his pack" as he pleases. He presides over Cabinet meetings and, if he is a man of outstanding personality, he dominates the discussion at such meetings. He maintains a general supervision over the activities of his colleagues and helps co-ordination of such activities. If the Prime Minister is a man of exceptional calibre, he is sure to wield almost dictatorial powers. There is little doubt, that when such

a man is at the helm of affairs, most of the Government policies are likely to be his policy.

In Parliament, the Prime Minister has to speak on all general questions of policy and on all important Bills. His speeches are regarded as the most authoritative expositions of government policies. He has to intervene in the debate whenever the government policy on any important subject comes under fire from the Opposition benches. It is he who usually opens the debate on important issues, and bears the main burden of replying to Opposition charges and criticisms. This is why it is necessary that the Prime Minister should sit in the House of Commons because it is this House that constitutes the chief theatre of legislative battles. It is unlikely that any Prime Minister will ever again sit in the House of Lords.

Although in theory every Minister who is in charge of a department has a right of access to the Sovereign, it is the Prime Minister, who is practically the only "channel of communication between the Cabinet and the Sovereign." As a rule, other Ministers do not now-a-days exercise their right of access to the Sovereign to discuss official policies. It is the Prime Minister who discusses policy matters with the Queen and keeps her constantly informed of the Cabinet decisions as well as of the progress of Parliamentary work. (One of the surviving rights of the Sovereign is to have prompt and full information). It is regarded as unconstitutional for the Sovereign to deal with individual Ministers behind the Prime Minister's back.

The British Prime Minister is thus one of the most powerful functionaries in the world. And when a person of exceptional ability like Mr. Churchill happens to hold this office, he wields a power second only perhaps to that of a dictator in a totalitarian regime.

The American President and the British Prime Minister—See Ch. XV.

The British Prime Minister and the Prime Minister of India—See Ch. XV.

Collective Responsibility—It has been already stated that one of the basic principles of the Cabinet system of Government is collective responsibility of the Cabinet (indeed of the Ministry as a whole).

The Cabinet in Britain is collectively responsible to the House of Commons. This means that all Cabinet Ministers accept responsibility for the policies of the Government and they stand or fall together. The defeat of a Minister in Parliament means the defeat of the entire Cabinet. In other words, the defeat of a Minister leads to the fall of the entire Ministry. Similarly, an attack against a Minister is an attack against the Cabinet as a whole. (It is important to note that though the Ministry as a whole does not determine the policies of the Government, these being determined by the Cabinet, the defeat of those policies in Parliament brings about the fall not only of the Cabinet but of the entire Ministry). Under the system of collective responsibility, when a proposal has been made by a Minister it is regarded as the proposal of the Government, though it may not have been approved by the Cabinet.

Under this system, when a decision has been taken by the Cabinet, the members who fail to agree with it must either resign, or if they do not resign, must be prepared to defend that decision. It is a logical corollary to the principle of collective responsibility that no Cabinet Minister or his Parliamentary Secretary can be allowed to vote against a Government proposal. There have been, however, some deviations from this rule in the past. Sometimes, controversial questions used to be left as "open questions" and the Ministers were allowed to speak or vote on them as they liked. For instance, some Ministers of the coalition Government of Mr. MacDonald were allowed to speak and vote against the Government on the tariff question. These exceptions, however, only prove the rule.

Under the system of collective responsibility, no Minister may make any statement that goes against the policy of the Government. The system further requires that no Minister shall make, without consulting his colleagues, any statement that may commit the Government in any way.

Collective responsibility, however, does not mean that the Cabinet will accept responsibility for any personal faults, lapses or errors of judgment of any Minister. For such faults or lapses, responsibility will be fixed on the Minister concerned and he alone, and not the Cabinet, will be called upon to resign. For instance, in 1947, Hugh Dalton, Chancellor of the Exchequer in the Labour Government of Mr. Attlee had to resign because he was guilty of an act of indiscretion. Mr. Dalton had, in an unguarded moment, given advance information about the budget to a reporter with the result that the information appeared in the newspaper concerned fifteen minutes before the Chancellor rose in the House of Commons to deliver his budget speech. None held the Cabinet as a whole responsible for this act of indiscretion on the part of one of its important members.

By collective responsibility is, of course, meant political responsibility and not legal responsibility. For an illegal act committed by any individual Minister, he alone will be liable in law and not the Cabinet.

The system of collective responsibility of the Ministers, it should be noted, also exists in India. But whereas in Britain, the system is based entirely on convention, in India it is based on express provisions of the Constitution which says: "The Council of Ministers shall be collectievly responsible to the House of the People."

HER MAJESTY'S OPPOSITION

The very fact that the group of members opposing the Government in Parliament is known as Her Majesty's Opposition symbolises the idea that a democratic government cannot be properly carried on without an Opposition. The

Opposition, in fact, is as indispensable a part of the governmental system as the Government itself. Unless there is an Opposition to oppose the Government, to criticise its policies and to expose the defects of those policies, the Government will tend to be autocratic and the libetries of the people will be gravely endangered.

Recognition of the indispensability of an Opposition is brilliantly enshrined in the British constitutional system in the law which provides for the payment of a salary to the Leader of the Opposition. Under the Ministers of the Crown Act, a salary of £2000 a year is paid to the Leader of the Opposition. The Act defines the Leader of the Opposition as "that member of the House of Commons who is, for the time being, the leader in that House of the party in Opposition to Her Majesty's Government having the greatest numerical strength in that House." In case of any doubt as to which Opposition party has the greatest numerical strength in the House, the Speaker's decision is final.

If the person who is chosen as the leader of the largest opposition group, and who, therefore, becomes the Leader of the Opposition, is not already a privy councillor, he is immediately made one. The Leader of the Opposition is provided with an office by the Govennment. The Prime Minister constantly consults him in arranging the business of the House. (During World War II, when technically there was no opposition, payment of salary to the Leader of the Opposition was suspended).

CHAPTER XLI

ADMINISTRATIVE DEPARTMENTS

While the Ministers are concerned with the laying down of policies, the actual work of administration in Britain is carried on by the government departments. A department is headed by a Minister. The heads of all important departments are included in the Cabinet in peace time. Each departmental head has a Parliamentary Secretary or a junior Minister to assist him. In some departments, there are two or three Parliamentary Secretaries. (A Parliamentary Secretary is also a Minister. Where the Minister is called a Secretary of State, the Parliamentary Secretary is designated as the Parliamentary Under-Secretary of State).

Besides these Ministerial office-holders, there is in each department a Permanent Secretary who is a civil servant. Under the Permanent Secretary are a hiearchy of officers known as Principal Assistant Secretaries, Assistant Secretaries, Principals and so on. While the Ministerial office-holders come and go with the rise and fall of Ministers, the Permanent Secretaries and other civil servants in the departments continue in office entirely unaffected by change of Governments. The former constitute the political element, the latter the expert element. The former are primarily concerned with policies, the latter with the execution of those policies. A combination of these two elements helps to make the government both democratic and efficient.

Some of the departments trace their origin to a remote past, while others are of comparatively recent growth. The two World Wars added greatly to their number. Expansion in recent years of the social welfare activities of the state has been a potent factor making for the multiplication of departments. Due to various historical factors, there is no uniformity in the names of the departments. Some of

the departments are known as offices of the Secretaries of State because they trace their origin to the ancient office of the King's Secretary. The Home office and the Foreign office are among the departments belonging to this category. Some departments are called Ministries, e.g., the Ministry of Health, the Ministry of Education and the Ministry of Transport. One or two departments are also known as Boards, such as the Board of Trade.

The Treasury—One of the most important departments is the Treasury. It is in charge of a Board known as the Treasury Board. The Board as such, however, never meets except to perform some minor functions. The work of the department is, therefore, carried on by the members of the Board individually. Among the members of the Board, the First Lord of the Treasury stands highest in rank, though the Second Lord, with his staff, performs most of the functions. The First Lord of the Treasury is nowadays the Prime Minister himself. The Ministers of the Crown Act, 1937 has tied the two offices together by laying down that a salary of £10,000 a year should be paid "to the person who is Prime Minister and the First Lord of the Treasury." The Second Lord of the Treasury is better known as the Chancellor of the Exchequer and his position corresponds to that of the Finance Minister in other countries. All financial business of the Treasury is done by the Chancellor of the Exchequer with his staff. Among the chief functions of the Treasury in relation to public finance are consideration of the financial policy of the Government, preparation of the budget and ensuring that the expenditure of the various departments do not exceed the amounts authorised by Parliament.

The Treasury performs certain other functions which have little to do with purely financial matters. Through its Establishments division, the Treasury controls the organisation and conditions of service of the whole body of civil servants. It makes rules and regulations for their classification, remuneration, promotions, pensions and the like. The

First Lord of the Treasury is the head of the Establishments division. The Civil Service Commission which conducts examinations and interviews for recruitment to the civil service is a sub-ordinate department of the Treasury.

The control of the Treasury is, therefore, all-pervading. Not only is the money spent by every other department subject to Treasury control, the number and salaries of the civil servants in each department are subject to Treasury approval.

Foreign Office—This department deals with the foreign affairs of the country. It is presided over by the Secretary of State for Foreign Affairs. It controls the British Foreign Service which is a big organisation functioning throughout the world.

Commonwealth Relations Office—This department is concerned with relations between Britain and other members of the Commonwealth, that is, the Dominions and India and Pakistan. The Dominions are Canada, Australia, New Zealand, South Africa and Ceylon, which are all self-governing territories.

Colonial Office—The affairs of non-self-governing territories within the British Empire are controlled by this department. It recruits, appoints and directs the work of, colonial governors and other administrative personnel. The ministerial head of the department is known as the Secretary of State for Colonial Affairs.

The Board of Trade—The Minister who heads this department is known as the President of the Board of Trade. The Board originated as a Privy Council Committee. The Board, however, never meets as such and its work is carried on by the President and some other officers. It is chiefly concerned with the regulation of trade and industrial affairs of the nation and to advise on national policies relating to industry and commerce.

The Ministry of Health—This department deals with matters relating to sanitation, housing, poor-relief and some other allied matters. The work of local government authorities in these fields is supervised by this department.

The Ministry of Education—This Ministry maintains a general supervision over the educational work carried on by the education committees of the country and county-borough councils. It is responsible for national policy in the field of education and fixes standards relating to personel, equipment and things of this nature.

The Ministry of Tranasport—All important inland transport services in Britain including railways and bus and truck lines have been nationalised. These services are now operated by a British Transport Commission and five 'executives' under it. The chief function of the Ministry of Transport is to supervise the work of these agencies.

Home Office—The Home Office performs a wide variety of functions. It lays down police regulations for the whole country, enforces factory acts and controls matters relating to aliens and naturalisation. It supervises the work of both parliamentary and local elections. It regulates the sale of poisons and intoxicating liquors.

The Ministry of Labour and National Service—This Ministry administers laws relating to employment exchanges, unemployment insurance, wage standards and industrial disputes. It helps the non-official agencies like trade unions to maintain satisfactory relations between the employers and workers.

The Admiralty—This department which controls the Navy is in charge of a Board known as the Board of Admiralty. The Board is presided over by the First Lord of the Admiralty (a Minister) and has among its members a number of naval experts.

The War Office—This department controls the Army and is managed by a body known as the Army Council. The

Army Council is presided over by the Secretary of State for War (a Minister).

The Air Ministry—It controls the Air Force. It is under the Air Council which is presided over by the The Secretary of State for Air.

Ministry of Defence—Formerly there was no Minister of Defence. During World War II, the need was felt for the creation of such an office for better co-ordination of the three service departments, namely, the Admiralty, the War Office and the Air Ministry. Prime Minister Churcill had assumed the title of Ministry of Defence during the war. After the war, the office of a Defence Minister was placed on a regular basis. The Minister of Defence co-ordinates the activities of the three service departments, and has no separate department in his charge. Formerly the heads of the Admiralty, the War Office and the Air Force used to be included in the Cabinet. Since the creation of the office of the Defence Minister, these three Ministers have lost their Cabinet seats, their departments being now represented in the Cabinet by the Defence Minister.

Besides these Ministries, there are a large number of other Ministries, such as the Ministry of Food, Ministry of National Insurance, Ministry of Town and Country Planning, Ministry of Fuel and Power, Ministry of Works and Ministry of Civil Aviation.

Though the Administrative Departments are concerned chiefly with the execution of laws, belonging as they do to the Executive branch of the Government, they nowadays wield considerable legislative and judicial power. Parliament has been increasingly delegating to the Executive the power of making laws and also entrusting it with functions of a judicial character. The subject of delegated legislation and administrative justice will be discussed later.

Advisory Committees—To ensure that the departments may be guided in the formation of policies, as well in their

execution, by expert knowledge and first-hand information, there is a system of advisory Committees in Britain. These advisory Committees consist of non-official experts and are attached to particular departments to advise them on matters with which they are concerned. Various Acts have provided for the creation of such advisory committees, though sometimes such committees are also set up by executive orders without Parliamentary authority. These committees play a valuable role in the administrative system of the country. They make available to the Government expert opinion and advice which often prove very helpful. They also help in strengthening public confidence in the Government because their very existence constitutes an assurance to the public that the officers in the departments are taking their decisions on the basis of specialised knowledge. The function of these committees is, however, purely advisory. Their advice is not binding on the officials concerned. Nor are they responsible for any decision made by the Government.

The Civil Service—See Ch. XVI.

CHAPTER XLII

PARLIAMENT

The British Parliament as we know it today is a product of a long course of historical evolution. Its history has been already discussed. (See Chapter on Historical Background). In this chapter will be studied the composition, powers, functions and privileges of Parliament, as well as parliamentary procedures.

Parliament consists of the Sovereign (King or Queen), the House of Commons and the House of Lords. The House of Commons is the more powerful of the two Houses and also the more important from the constitutional point of view. Let us deal with this House first.

Representation in the House of Commons—Formerly representation in the House of Commons was far from democratic. Today, however, the House is a fully democratic body. It has been described in the chapter on 'Historical Background' how representation in the House of Commons was more and more democratised by a series of statutes till it became fully democratic in 1928, when the qualifying age for women voters was reduced from 30 to 21.

When one remembers that the Constitution of India has at one stroke replaced an undemocratic electoral system in the country by universal adult franchise and the principle of 'one man one vote', one cannot fail to be struck by the fact that the British people took more than a century to place their electoral system on a fully democratic basis. It will be recalled that it was not till the year 1918 that men in Britain could vote as simple citizens. Till that year, a person had to satisfy certain property qualifications before he could enrol himself as a voter. It was the Representation of the People Act, 1918 which, for the first time, established a system of adult franchise for male citizens (not for women).

Before 1918, again, women in Britain had no right to vote in Parliamentary elections. It was in that year that the parliamentary franchise was extended to them for the first time in British history. But even at that time women were not given equal voting rights with men. While the qualifying age for male voters was fixed at 21 years, that for women was fixed at 30 years. Women were, besides, subjected to some other requirements which did not apply to men. This situation continued until 1928 in which year women were given equal franchise with men, their voting age being reduced to 21, and all other tests being abolished.

Thus the franchise may be said to have been placed on a completely democratic basis in 1928. But the principle of 'one man one vote' was yet to be established. Before 1918, a person could vote in more than one constituency at a given election if he possessed certain property qualifications in relation to constituencies other than the one in which he resided. If he, for instance, lived in one constituency, maintained an office in another and owned a house in still another constituency, he had the right to vote in all three constituencies. The Representation of the People Act, 1918 restricted this system of plural voting by reducing the number of votes a person could cast at an election to two—one on the ground of residence and another on the basis of a specified property qualification. But the Representation of the People Act, 1948 has abolished plural voting completely by laying down that a person shall not be entitled to vote in more than one constituency.

Thus free India achieved at one stroke what Britain took over a century to accomplish. It must not be forgotten, however, that the famers of the Indian Constitution had before them the results of the constitutional experiments in a large number of countries including Britain, and could draw upon the experience of all of them.

Composition of the House of Commons—The total number of members in the House of Commons has varied from

time to time. For many years before 1922, the total membership of the House was 707. In that year, Ireland seceded from the United Kingdom (with the exception of a few counties in the northern part of the island), as a result of which the total number was reduced from 707 to 615. In 1944, the number was increased to 640. This number was reduced to 625 by the Representation of the People Act, 1948.

At present the House of Commons consists of 630 members. All of them are directly elected from territorial constituencies. And every constituency is a single-member one.

Elections—Though the life of a Parliament has been legally fixed at 5 years, nowadays a Parliament is usually brought to an end through dissolution. A Royal proclamation is issued dissolving an existing Parliament and at the same time summoning a new one. On the eighth day following the proclamation (excluding Sundays and holidays), all nominations have to be made. And nine days after the date of nomination, polling takes place simultaneously in all constituencies, excluding, of course, those in which candidates have been returned unopposed. Votes are cast in accordance with the system of secret ballot. Every voter receives a a ballot paper on which is printed the names of the candidates. He goes to a screened compartment where he is alone and marks the name of the candidate of his choice with a cross. He then folds the ballot paper and drops it into the ballot-box.

The counting of the votes is done by the Returning officer and the candidate receiving the highest number of votes is declared elected.

Sessions and Duration of Parliament—It is a convention of the Constitution that Parliament must be convened at least once a year. Normally, Parliament is in session for the greater part of the year. The two Houses sit, usually, from the end of January or the earlier part of February to the end

of July or the first part of August. They reassemble after the recess in October or November and continue their sittings till a few days before Christmas. This period of about a year constitutes a session. The two Houses must be summoned to meet simultaneously and must be prorogued together.

A session is opened by a Speech from the Throne which is delivered in the House of Lords. The Speech is usually read by the Sovereign himself and the members of Commons are summoned to the House of Lords to hear it. When the Sovereign does not attend in person, he is represented by five Lords Commissioners and the Speech is read by the chairman of the House of Lords, the Lord Chancellor. The Speech from the Throne reviews the general state of national affairs and outlines the legislative programme before the session.

Formerly, the maximum life of a Parliament used to be seven years. The Parliament Act of 1911 reduced it to five years. Unless earlier dissolved, therefore, a Parliament will now continue for five years at the end of which it will, automatically go out of existence. Usually, however, a Parliament's existence is ended by dissolution before it reaches the end of its term. In abnormal situations, a Parliament's life may be extended by law beyond the maximum period of its existence. This was done during both World War I and World War II—the Parliament elected in 1910 continued in existence till November 1918, while that elected in 1935 continued its existence till 1945.

Formerly the death of the Sovereign would automatically bring about the dissolution of Parliament. The Representation of the People Act, 1867, however, made the duration of Parliament independent of the life of the Sovereign. If the Sovereign dies after a dissolution but before the date fixed for the meeting of the new Parliament, the old Parliament is revived for a period of six months, which means that such a Parliament will sit for six months unless sooner dissolved.

The Speaker—The most important officer of the House of Commons is the Speaker. The majority party selects one of its members as the Speaker at the opening of a new Parliament. The selection is usually made after consultation with leaders of other parties. When a suitable person has been decided upon, he is formally elected on the floor of the House primarily, or sometimes exclusively, by the votes of the majority party. Once elected, a person holds this office till the Parliament goes out of existence.

The Speaker presides over the sittings of the House. He maintains order and discipline at such sittings. He enforces the rules of procedure and gives rulings when questions relating to procedure are raised in the House. His rulings are final and cannot be questioned by anybody. The Speaker has the power to decide whether a given Bill is a money Bill or not, and in this matter, too, his decision is final. All speeches and remarks in the House are addressed to "Mr. Speaker". In the absence of the Speaker, the Chairman or Deputy Chairman of Ways and Means presides over the House.

The Speaker's office is a highly dignified one and is of great antiquity. Formerly when the House of Commons had no legislative power it used to send its petitions to the King through this officer. And it is because this officer used to be the spokesman of the Commons in its dealings with the Sovereign he came to be known as the Speaker.

The Speaker's position is a strictly non-partisan one. He does not take part in debates. Nor does he vote except when there is an equality of votes. He is expected to give his rulings in such a way that everybody may have faith in his impartiality. And, speaking generally, a Speaker's impartiality is seldom questioned. This is because the traditions associated with this office are very high and its incumbents have always been known to try hard to live up to those traditions. While the Speaker maintains a strict neutrality inside the House, outside also he scrupulously avoids political

partisanship. He does not take sides in political controversies. He does not even attend party meetings. He refrains from being a member of any political club. And if he stands for re-election to Parliament, he does not carry on any election campaign to support his candidature. He is supposed to be above all controversy and partisanship. The Speaker thus pays a very high price for his office. He has to, so to say, sign his own political death warrant. But he is amply compensated for all this. As an incumbent of a very exalted office, he is treated with great respect both inside and outside the House. It has become almost a convention that if a Speaker stands for re-election, he is allowed to be elected un-opposed. This tradition was violated in 1935 when a rival candidate was put up in the constituency of Speaker Fitz Roy. But this aroused great indignation in the country and a proposal was put forward by important sections of the public that there should be a law providing for automatic re-election of the Speaker from his constituency. Though such a law has not been enacted, the tradition in respect of unopposed re-election of the Speaker will, it appears, continue to be adhered to by the political elements in the country. Another custom relating to the Speaker's office is that when a person who has served as the speaker is re-elected to Parliament, he is once again elected to this office without opposition, whatever party may be in power. The last occasion when such re-election of a former Speaker was opposed was in 1835. Since then all Speakers have been re-elected to the office without opposition. Mr. Clifton Brown who became Speaker of the House of Commons in 1943 was a man of Conservative antecedents. Yet when the Labour Party came to power in 1945, Mr. Clifton Brown was re-elected as the Speaker, though this Party which commanded a majority in the House could have easily elected one of its own members to that office.

Neither the Speaker of the American House of Representatives nor that of the Indian House of the People is as non-partisan as the Speaker of the House of Commons.

While the former are expected to be impartial in performing their functions inside the respective Houses, they are regarded as party men and behave as such when outside the House.

The Committees of the House of Commons—The Commitees of the House of Commons can be broadly divided into five categories: (1) the Committee of the Whole, (2) the Select Committees on public bills, (3) Sessional Committees on public Bills, (4) Standing Committees on public bills and (5) Committees on private Bills.

The Committee of the Whole—When the entire House sits as a committee, it is called the Committee of the Whole. When the House sits as such a committee, instead of the Speaker, the Chairman of Ways and Means or his Deputy presides. Like the Speaker, the Chairman and Deputy Chairman of Ways and Means are elected by every newly elected House of Commons for the duration of the Parliament. Their chief function is to preside over the deliberations of the House when it sits as Committee of the Whole. They also preside over the House as such in the absence of the Speaker. When, however, the House sits as Committee, the Chairman of Ways and Means (or in his absence his Deputy) does not take his seat in the Speaker's chair but in the chair of the clerk of the House.

In the Committee of the Whole, there is greater flexibility of debate than in the House as such. While in the House as such members are not permitted to speak twice on the same subject, in the Committee of the Whole, they are allowed to speak any number of times. Also, a motion need not be recorded in the Committee of the Whole and debate cannot be forced to an end by the application of the device of putting the 'previous question'. In the Committee of the Whole, therefore, debate proceeds in an informal atmosphere. When the Committee finishes its work, its decisions are reported to the House as such by the Chairman of Ways and Means.

Formerly the House used to meet very frequently as the Committee of the Whole to consider various kinds of public Bills. Nowadays, a very limited number of matters are considered by the Committee of the Whole, namely, (1) Money Bills, (2) provisional orders and (3) any other matter that the House may like to consider in this manner because of special urgency or importance. When the House sits as the Committee of the Whole to consider budget estimates of expenditure and the Appropriation Bill for the authorisation of such expenditure, it is termed the Committee of the Whole on Supply or simply the Committee on Supply. When the Committee of the Whole considers matters relating to the revenues and the Finance Bill for authorising taxes, it is called the Committee of Ways and Means.

Sometimes the Administrative Departments have to issue "provisional orders"—orders for which Parliamentary confirmation will be ultimately needed and which will be invalid without such confirmation. When Parliament assembles these orders are placed before it in the form of bills, which are considered in the Committee of the Whole.

Select Committees—Select Committees are set up by the House or by a Committee of Selection to consider given subjects including Bills that may be referred to them. When they finish their work, they go out of existence. Each Committee consists usually of 15 members. It selects its own chairman. Sometimes the chairman is named in the motion relating to the Committee's appointment. Select Committees keep records of their proceedings and submit reports to the House.

Sessional Committee—When a Select Committee is appointed for the whole of a session it is known as a Sessional Committee. A good example is the Committee of Selection which is set up at the beginning of every session.

Standing Committees—A few Standing Committees, nowadays four, are set up at the first session of a new Parliament.

Their members are chosen by the Committee of Selection. Each Standing Committee consists of 20 regular members to whom are added from 10 to 30 more members by the Committee of Selection for the consideration of particular Bills. The total membership of a Committee varies between 30 and 50. Representatives of all major political parties are included in these Committees so that their party composition is more or less like that of the House. Unlike a Select Committee, a Standing Committee does not deal with any given subject. All kinds of Bills (except Money Bills, private Bills and Bills for confirming provisional orders) may be sent to them for consideration. A Standing Committee is, so to say, the House in miniature. By considering the Bills in details, the Standing Committees help the House to save its time. The chairman of the Committees are named by the Speaker from a chairmen's panel nominated by him.

Committees on Private Bills—These Committees consider private Bills, i.e., Bills relating to some particular locality or person or body of persons. Each Committee consists of four persons chosen by the Committee of Selection.

The Committees, it should be clear, greatly relieve the House of its heavy burden of work. By giving detailed consideration to the Bills, they also ensure a closer and more careful scrutiny of the provisions than would be otherwise possible.

The Question of Reform of the Electoral System—Though the system of election for the House of Commons is a highly democratic one, there are many people who do not regard it as an ideal system. The system is criticised mainly on two grounds.

(1) In the first place, it is pointed out that it does not ensure majority election in the constituencies, which are all single-member ones. Since the fights are in many cases three-cornered, a person receiving a little more than one-third of the votes cast, and sometimes even less than that, can get elected. The result is that it is possible for a party to capture

a majority of seats by polling less than half the total votes cast. In fact, a situation is quite conceivable in which a party getting roughly one-third of the votes can come to power by an overwhelming majority. In 1945, the Labour Party recieved 48 per cent of the popular votes and captured 70 per cent of the seats.

The critics insist that to ensure majority election in the single-member constituencies the 'alternative vote' system should be adopted. Under this system, in the case of the three-corned fights the voters should be asked to indicate their first, second and third preferences on the ballot papers. If none of the candidates receives a majority of the first preference votes, the candidate who has received the smallest number of votes is to be excluded from the contest and his votes should be distributed between the two remaining candidates according to second, and if necessary, third preference. The person who gets the majority of the total votes as a result of this operation is to be declared elected.

(2) A second criticism levelled against this system is that it does not ensure proper representation to minorities. Let us suppose that a small party sets up candidates in thirty constituencies and polls a total of, say, 1 million votes but gets defeated in all of these constituencies. Is it not unfair that these one million people who have supported this small party will have no representation in the House of Commons ? It cannot be denied that the present single-member plan does not ensure representation to the parties in proportion to their respective strength. A party getting one-third of the total votes may secure the majority of seats while another getting hundreds of thousands of votes may not get a single seat. Also, "it is mathematically possible for one party to obtain the largest aggregate of votes in the country and yet not win a single seat in the House." This will be clear if one reflects that one party's support may be thinly spread throughout the country, while other parties may have strong following in particular parts of the country. To remedy this situation,

some advocate the adoption of a system of proportional representation in Britain in place of the present single-member plan.

While there is no doubt that the adoption of a system of proportional representation would ensure the resresentation of minorities in the House in proportion to their electoral strength, such a system is sure to break up the present two party system in the country. For a system of proportional representation will encourage the growth of small parties and will result in the membership in the House being divided among a large number of parties none of which, probably, will command a majority by itself. This will make coalition governments inevitable and will introduce into the political life an element of serious instability. This is why the proportional representation system is not favoured by the public opinion in Britain.

The House of Lords—The House of Lords has been rightly described as a modern anachronism. Its composition is as undemocratic today as it was centuries ago. Not even a single member of the House is elected on a democratic basis. While Britain has marched steadily on the path of democracy until it has become today one of the foremost democracies of the modern world, the House of Lords has continued unchanged through all these political changes. It will be recalled that before the passing of the Reform Act of 1832, the House of Commons was in reality, though not in form, as undemocratic as the House of Lords. But while the former has been continually democratised till it has become today a fully democratic Chamber, the House of Lords has remained as undemocratic as ever. It has withstood the forces of progress and held its ground, "lifting its ancient towers and battlements high and dry above the ever-rising and roaring tide of democracy." Like the institution of Monarchy, the House of Lords reflects the British people's deep love of the past and the conservatism inherent in their character.

The members of the House of Lords can be broadly divided into two categories: (1) temporal peers and (2) Lords spiritual. The total number of temporal peers, which varies, is at present over 820. The total number of Lords Spiritual is 26. The temporal peers can be, again, divided into five categories—(a) Princes of the Royal Blood; (b) hereditary peers of the United Kingdom; (c) representative peers of Scotland; (d) Irish representative peers and (e) Lords of Appeal in Ordinary.

(a) Some members of the Royal family, known as Princes of the Royal Blood, sit in the House of Lords by virtue of hereditary peerages conferred on them. The Heir Apparent who belongs in this category sits by virtue of being the Duke of Cornwall.

(b) The hereditary peers of the United Kingdom constitute by far the biggest of these groups. In fact, nine-tenths of the total number of members of the House of Lords are of this category. A hereditary peerage of the United Kingdom carries with it the right to a seat in House of Lords. In other words such a peer sits in the House of Lords by his own right. The Scottish and Irish peers do not possess this right.

(c) The Act of Union of 1707, under which England and Scotland were united into Great Britain, provided that Scotland should send 16 representative peers to the House of Lords. When a new Parliament is summoned, the Scottish peers meet in Edinburgh and elect 16 of their number to sit in the House of Lords as Scottish representative peers.

(d) The Act of Union, 1800 which united Great Britain and Ireland into one country gave the peers of Ireland the right to elect for life 28 of their number as their representatives to the House of Lords. No election has, however, taken place since 1922 when the Irish Free State was created. The number of Irish representative peers in

the House of Lords has, therefore, continually dwindled since that date till it was reduced to five in 1954. In a few years, there will be none of them left.

(e) There are nine Lords of Appeal in Ordinary. They are appointed by the Crown under certain Acts of Parliament to perform the judicial functions of the House. The House of Lords, it must be remembered, is not only a legislative Chamber but also the highest court of appeal in Britain. When the House sits as such a court to dispose of the appeals, it is attended only by the Lord Chancellor, who presides, the Lords of Appeal in Ordinary and such other members who hold or have held high judicial offices. In theory, of course, every member of the House has the right to participate in any judicial sitting of the House. By convention, however, only the members just mentioned attend such sittings. The peerages of the Lords of Appeal in Ordinary are not hereditary. They are life peers, that is, they sit for life.

The Lords Spiritual are twenty-six in number. They are all bishops of the Church of England. The Arch bishops of Canterbury and York and the bishops of London, Durham and Winchester enjoy a statutory right to a seat in the House of Lords. The remaining 21 seats are filled from among the other English bishops according to seniority of appointment.

Creation of Peers—To create new peers is a prerogative power of the Crown. The Sovereign creates a peerage on the advice of the Cabinet. As a matter of practical fact, it is the Prime Minister who exercises this power, because it is usually on his advice that new peerages are established.

There is no limit to the number of peers that the crown may create. This power is, therefore, an important weapon in the hands of the Crown to force the House of Lords to assent to measures which it may be unwilling to pass. For the Crown can at any time create a sufficient number of peers to obtain a favourable majority in the House of Lords. The

passing of at least two important measures, to which the Lords were bitterly opposed, was secured in the past by the threat that the Sovereign was going to create, if necessary, a sufficient number of peers to secure a majority favourable to the government in the House of Lords. These two Bills were the Reform Bill of 1832 and the Parliament Bill of 1911. Since, however, the Parliament Act of 1911 has considerably curtailed the powers of the House of Lords and the House can no longer finally obstruct the passage of a Bill which the House of Commons is bent on passing, the power to create new peers has lost its importance as a weapon to put pressure on the House of Lords.

Powers of the House of Lords—Formerly the two Houses of the British Parliament were, from the stirictly legal point of view, equal. Every legislation required the assent of both the Houses. In practice, however, the House of Commons, from a very early date came to enjoy a primacy in matters relating to public finance. It came to be regarded as the exclusive right of the Commons to grant or refuse supplies to the Crown. The House of Lords could reject a Bill relating to public finance but not amend it. For amendment of such a Bill by the Lords would mean infringing the right of the Commons exclusively to determine matters of public finance. The Lords, however, undoubtedly possessed the right to reject such Bills until 1911, although a convention had grown up that they should not do so when it was clear that the will of the people was behind the stand taken by the House of Commons. In 1909, however, the House of Lords rejected the Finance Bill because it was opposed to increased taxation which the Bill sought to impose on land and other forms of wealth. This raised the question of legally curtailing the powers of the Second Chamber. A Liberal Government headed by Herbert Asquith was then in power. It resolved upon a drastic reduction of the powers of the conservative upper House. A heated controversy followed. A general election was held in 1910 which was fought mainly on the

issue of the Second Chamber's powers. The election returned the Liberals to power once again. This meant that the will of the people supported the Liberals' proposal for curtailing the powers of the House of Lords. A Parliament Bill providing for such reduction of the Lords' powers was introduced in Parliament. The House of Lords could, of course, obstruct its passage but a threat that if it tried to do so, the Sovereign will create a sufficient number of new peers to secure its passage in the House finally made the Lords yield. The Parliament Act, 1911 has greatly reduced the powers of the Lords. It made the House completely powerless in matters relating to public finance, and also curbed its powers, to a very great extent, in non-financial matters. In regard to Money Bills, the Act provides as follows: "If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to his Majesty and become an Act of Parliament on Royal assent being signified, notwithstanding that the House of Lords have not assented to the Bill." Two things should be clearly noted. The House of Lords cannot amend any Money Bill. And, secondly, if the House of Lords does not pass a Money Bill within one month after it has been sent up by the House of Commons, it will be regarded as having been passed by it. A Money Bill has been defined as a public Bill which contains only provisions dealing with taxation, appropriation, supply, audit of public accounts and pubilc loans. The Speaker has been empowered to decide whether a particular Bill is a Money Bill or not. And his decision on this matter is final and unchallengeable.

In regard to public Bills other than Money Bills, the Parliament Act, 1911 provided that if the House of Commons passed such a Bill in three successive sessions and if the Lords refused in each of those successive sessions to

pass it, the Bill might be presented for Royal assent and would become an Act on receiving such assent even though the Lords have not approved of it. The effect of this provision curtailing Lords' power in respect of public Bills (other than Money Bills) was that if the Commons so decided it could pass a law alone by following the prescribed procedure. The House of Lords could only delay the passing of such a Bill by a period of two years but could not obstruct it finally. And even this delaying power has been further curtailed by the Parliament Act, 1949.

The Parliament Act, 1949 was sponsored by Mr. Attlee's Labour Government which came to power in 1945 and which was anxious to pass a large number of social welfare legislations to which the Lords were known to be opposed. It is interesting to note that this measure was bitterly opposed by the Lords and had to be passed following the procedure laid down by Parliament Act, 1911. After the Lords threw out the measure in three successive sessions, it was submitted for Royal assent and became an Act on receiving such assent. The Parliament Act, 1949 provides that if the House of Commons passes a public Bill (other than a Money Bill) in two successive sessions, and if the Lords refuse to pass it in each of those two successive sessions, the Bill can be presented for Royal assent and will become an Act on such assent being signified. It is required that one year must elapse between the date of the second reading of the Bill in the House of Commons in the first of those sessions and the date of its third reading in that House in the second. The effect of this Act has been to reduce the Lords' power to delay a Public Bill (other than a Money Bill) from two years to one year. Thus today the House of Commons can, if the Lords bitterly oppose a Bill, pass the measure alone in one year's time. The House cannot, however, pass in this manner a Bill which seeks to extend the duration of Parliament. For the passing of such a Bill the concurrence of both Houses is necessary.

The Lord Chancellor—The Lord Chancellor presides over the House of Lords. Except in times of war, the Lord Chancellor is always a Cabinet member. His position as the Speaker of the House of Lords presents a sharp contrast with that of the Speaker of the House of Commons. Whereas the Speaker of the House of Commons is a non-partisan functionary and does not take part in the deliberations of the House, the Lord Chancellor is a partisan figure and freely takes part in the deliberations of the Lords. In fact, the Lord Chancellor is often the principal spokesman for the Government in the House. When, however, he participates in the deliberations of the House, he temporarily leaves his seat as the Speaker of the House, his place being then taken by a Deputy Speaker. Order in the House is enforced not by the Lord Chancellor but by the House itself. And members while speaking do not address the chair but the Lords themselves, their speeches beginning with the words, "My Lords." The Lord Chancellor need not be a peer because the woolsack on which he sits is in theory outside the precincts of the House. Invariably, however, the Lord Chancellor is made a peer if he is not already one. And it is as a peer, not as the presiding officer of the House of Lords, that the Lord Chancellor enjoys membership of the House. And as a member he also votes like any other member The Lord Chancellor has no casting vote. The Speaker of the House of Commons, it will be recalled, cannot vote like other members but has a casting vote when there is a tie.

The office of the Lord Chancellor is invariably held by a man of great judicial experience because he has to preside as a judge over the two highest courts in the land, namely the Judicial Committee of the Privy Council and the House of Lords. The judicial functions of the House of Lords will be dealt with in a separate chapter. It should be noted that though the Lord Chancellor has to preside over the two highest courts in the country, he is a member of the executive—a Cabinet member. From the theoretical point of view,

this position is highly anomalous. According to the theory of separation of powers, judges ought to be independent of the executive, if justice is to be properly ensured. In practice, however, the Lord Chancellor's position as a Cabinet member does not affect his judicial impartiality. That is because the traditions associated with this office are very high, and the incumbents always try to live up to those traditions. There has seldom been any reason to question their impartiality.

Committees of the House of Lords—As in the House of Commons, there is a Committee of the whole of the House of Lords, which means the entire House sitting as Committee. There is no system of Standing Committees in the Lords, although there is a committee of textual revision which is appointed at the beginning of every session and is referred to as a "Standing" Committee. The House appoints Select Committees to deal with particular matters.

Adjournment, Prorogation, Dissolution— When the proceedings of a House is suspended during a session, the House is said to be adjourned. When a session is brought to a close, Parliament is said to be prorogued. Each House adjourns itself. The Crown cannot adjourn either. But the Crown alone can prorogue. And whereas each House can adjourn itself at any time so that the two Houses may be adjourned on different days, prorogation of the two Houses must take place simultaneously. When a Parliament is prorogued all pending business lapses. All Bills pending at the end of a session have, therefore to be reintroduced and made to pass through all the usual stages.

Dissolution means the ending of a Parliament. The Crown alone can dissolve. The decision to dissolve a Parliament is taken by the Cabinet and a Royal proclamation is thereupon issued, dissolving the Parliament and summoning a new one. Dissolution is the usual method of terminating a Parliament in Britain. A Parliament will, of course, automatically go out of existence on the expiration of the period

of its duration (5 years). But almost invariably its end is brought about by dissolution before its life expires.

The system of dissolution has one great advantage. It ensures close correspondence between public opinion and the views of Parliament. Whenever a Ministry is confronted with any issue of great importance on which the people did not express themselves at the preceding elections, it feels called upon to dissolve Parliament so that the people may get an early opportunity to give its mandate on the question through the new elections. If, again, a Ministry loses the confidence of the House of Commons but feels that the people are behind it, it may dissolve Parliament and appeal to the country. The people thus get an opportunity to express their views on the policies of the Government. If they support those policies, the Government is returned to power once again. If they disapprove of those policies, the Government is defeated at the elections and resigns before the new Parliament meets. In this way, the system of dissolution ensures that Parliament always truly reflects the popular will at least on all important issues. In other words, it ensures that people are ruled by themselves. If Parliament had a fixed term of five years, it might often happen that Parliament's views and public opinion greatly diverged and in such a situation, the people would have no remedy at all, because no change of Government would be possible till after the expiration of the term of the Parliament. In France where dissolutions are rare because they are difficult to bring about, there is often a big gap between the will of the people and that of the Legislature. In America there is nothing like dissolution because the terms of the Legislatures in that country are fixed by law. In India, the Constitution has empowered the executive, both at the Center and in each State, to dissolve the popularly elected Chamber.

The power to dissolve the Legislature, it should be noted, enables the Government in office to hold the elections at a time most convenient to it. It can dissolve Parliament just

at a moment when the situation in the country is markedly favourable to it and the prospects of its victory in the elections are bright. Governments in Britain have often dissolved Parliament to take advantage of a favourable turn in public opinion in the country, or of an occasion which raised their popularity to its highest level.

Following a dissolution, summons are issued to the peers to meet in new Parliament while the constituencies of the House of Commons are called upon to select members for that House.

Privileges of Parliament—The members of both Houses enjoy perfect freedom of speech while taking part in the parliamentary proceedings. No action can be brought against any member of Parliament for anything said by him in course of such proceedings. "The privilege of freedom of speech extends to words spoken outside the House of Commons if spoken in the essential performance of duty as a member, e.g., a conversation on parliamentary business in a Minister's private house. Conversely, it does not extend to casual conversation in the House of Commons on private affairs."

Also, no member of Parliament can be proceeded against for anything contained in a publication made by the authority of either the House of Lords or the House of Commons.

The House of Commons possesses the right to decide whether a member is qualified or not to sit in the House. It can expel a disqualified member and declare his seat vacant. The House of Lords also decides the right of newly elected peers to sit and vote.

Both Houses possess the right to commit persons for contempt. But whereas in the case of the House of Commons the prisoner is entitled to release when the House is prorogued, the House of Lords "can commit a person for a definite term, and the imprisonment is not terminated by prorogation of Parliament."

The Functions of Parliament—The main functions of Parliament are two-fold, namely, (1) control of the executive and (2) legislation. Apart from these two, Parliament has some judicial and other functions.

Control of the Executive—Control of the Executive is the function of the House of Commons alone. The House of Lords has no say in this matter. While the defeat of the Government in the House of Commons on an important issue is a serious matter because, on such defeat, the Government must either resign or appeal to the country by dissolving the House, the Government's defeat in the House of Lords has no such political consequence. A Government can, therefore, ignore defeats in the Lords. It ought to be remembered that the House of Lords does not also play any part in the formation of a Government. It is the leader of the party that can command a majority in a newly-elected House of Commons who is called upon by the Sovereign to form a Government. In fact, if the House of Lords, which is an undemocratic House, had any role to play in the making or unmaking of Governments, the British constitutional system would be an undemocratic one.

Parliament exerts its control over the Executive through questions in the House of Commons, through debates on important issues and particularly the debates on the estimates, through votes of censure and votes of no-confidence. At every sitting a portion of the time is regularly allotted for questions. Any member of the House of Commons may address a question to any Minister. And this device of questioning is usually used to focus public attention on important matters. Very often a question is nothing but an indirect expression of dissatisfaction with the Government's policy relating to a particular matter. Any member, again, can bring a motion of censure against the Government. Such motions are usually brought against individual Ministers. They raise debates on the Government's policy in any particular field. A motion of censure is seldom carried. The

same is true of a vote of no-confidence. While a censure motion is, ordinarily, directed against a particular policy of a Government, a motion of no confidence is directed against its policies in genaral. A censure motion or a motion of no-confidence, if passed, would involve the resignation of a Ministry. Such motions, however, are usually defeated. That does not mean, of course, that they are useless as a device for controlling the Executive. Such motions and the debates raised by them serve as a warning to the Government and usually result in reconsideration and revision of those policies.

Legislation—Parliament makes laws on both public and private matters. The legislative as well as financial procedure has been dealt with below.

Judicial and other functions of Parliament—It has been already stated that the House of Lords is the highest court of appeal in the realm in both civil and criminal matters. This is a purely judicial function. Another judicial function of Parliament is impeachment. Both these subjects have been dealt with in the chapter on 'the Judiciary'.

Among other functions of Parliament are those relating to the setting up of enquiry committees and receiving of petitions. Either House can set up an enquiry committee to make an investigation into any matter of public importance. The House of Commons can receive petitions from any subject and can debate them.

Another function of Parliament is to present addresses to the Sovereign for the removal of judges.

Public Bills and Private Bills—Bills may be broadly divided into two categories—(1) public Bills and (2) private Bills. A public Bill is one that seeks to alter the general law of the realm. A private Bill is one that seeks "to alter the law relating to some particular locality, or to confer rights on or relieve from liability, some particular person or body of persons." A private Bill may, for instance, be

brought to grant a pension to an individual or to confer new powers to a local authority such as a county council. It must not be supposed that all Bills introduced by private members are private Bills. Private members can also introduce public Bills. And sometimes they do introduce such Bills although important public Bills almost invariably emanate from the Government. Now-a-days increasing use of provisional orders (already dealt with in this chapter) has greatly reduced the number of private Bills. (A 'private member' means any member who is not a member of the Ministry).

The procedure relating to the passing of a public Bill is different from that relating to the passing of a private Bill.

Legislative Procedure—In this section will be described the process by which a public Bill is passed by Parliament and becomes an Act.

The legislative procedure is complicated. Broadly, the process of legislation is as follows: A Bill is introduced in either of the two Houses where it receives three readings and then sent to the other House, wrich also gives it three similar readings. The Bill is then submitted for the Royal assent. On receiving the Royal assent, the Bill becomes an Act of Parliament—a law of the realm.

Let us now study the legislative process in greater detail.

A person intending to introduce a Bill, say, in the House of Commons is required to give notice of such intention. Thereafter, when the Speaker calls upon him to do so, he presents his Bill at the clerk's table. The clerk then reads aloud the title of the Bill and the 'first reading' is over. The Bill is then printed. Thereafter, on a previously appointed day, the Bill is taken up for a second reading. The introducer of the Bill moves that it "be now read a second time" and a debate begins in the House on the merits and principles of the Bill. It should be clearly noted that at the second

reading stage it is only the general principles and aims of the Bill that are debated. Detailed consideration of its provisions is not allowed at this stage. When the debate is over, the motion before the House is put and, if it is a Government Bill, the motion is usually carried. If the Bill is a private one, the motion may or may not be carried, depending on the majority opinion of the House. The second reading stage thus comes to an end, and then follows the Committee stage.

A Bill which has been passed at the second reading stage is referred to one of the five Standing Committees in the House or, if the House so decides, to the Committee of whole House. The Money Bills and Bills confirming provisional orders are invariably referred to the Committee of the whole House. Sometimes measures of constitutional importance or such measures as are considered by the House to be of great urgency are considered by this Committee. When the House sits as the Committee of the whole House, it is presided over not by the Speaker but by the Chairman of Ways or Means or his Deputy. Sometimes, after the second reading, the Bill is referred to a Select Committee. When the Select Committee reports on the Bill, it is sent to a Standing Committee or is referred to the Committee of the whole House. It is at the Committee stage that the provisions of the Bill are considered in all its details. Amendments are also freely moved and made at this stage. The Bill as amended by the Standing Committee or the Committee of the whole House is reported to the House. The House then further considers the Bill. Amendments may be moved at this stage and consideration may be made in some detail. If the House considers it necessary, the Bill may at this stage be again referred to the Committee.

When the report stage is over, the Bill is submitted to a third reading. A debate takes place once again. But at the third reading stage only verbal changes are allowed to be made in the Bill. The motion for the third reading is then

put to a vote and the result of the voting announced. It need hardly be said that the motion is usually carried if the Bill is a Government-sponsored one. For rejection of the Bill by the House means a Government defeat which seldom takes place.

When a Bill has been passed by the House of Commons it is sent to the House of Lords. The procedure in the House of Lords is substantially the same as in the Commons. Every Bill is put through three readings in this House also. After the second reading, a Bill is usually referred to the Committee of the whole House. It then goes to the Committee for Textual Revision. The Bill, as reported by this Committee to the House, is then voted upon. The result of the voting decides the fate of the Bill. The procedure in the House of Lords is, it should be noted, simpler than in the House of Commons. While Bills, as a rule, may originate in either House, Money Bill must be introduced in the House of Commons and judicial Bills in the House of Lords. Non-controversial Bills are usually introduced in the House of Lords.

When a Bill has been passed by both Houses, it is submitted for the Royal assent, and on such assent being signified, it becomes an Act The Sovereign may in person signify his assent to a Bill. But usually the Sovereign's assent is given by proxy. The usual procedure for the bestowing of the Royal assent has been described by Sir Courtenay Ilbert as follows: "The assent is given periodically to batches of Bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the House of Lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats..... At the bar of the House stands the Speaker of the House of Commons, who has been summoned from that House. Behind him stand such members of the House of Commons as have followed him through the lobbies. A clerk of the House of Lords reads

out in a sonorous voice, the commission which authorises the assent to be given. The clerk of the Crown at one side of the table reads out the title of each Bill. The clerk of the parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the King's assent is signified: 'Little Peddington Electricity Supply Act, Le Roy le veult ("The King wishes it")'. Between the two voices six centuries lie."

While a Bill cannot become an Act until it receives the Royal assent, now-a-days such assent has become a purely formal affair. Royal assent to Bills passed by Parliament has never been withheld since the days of Queen Anne. There is no likelihood of its being ever withheld in future.

How the Differences between the two Houses are resolved —It is quite possible that a Bill passed by one House and sent to the other is amended by the latter in a manner to which the former does not agree. When such differences arise between the two Houses, messages are exchanged between them to effect an adjustment. Either House may also demand a econference of the chosen representatives of the two Houses to consider the matter and arrive at a settlement. Now-a-days, however, such conferences have become practically obsolete. And though messages are exchanged between the Houses with a view to resolving their differences, in practice a settlement is arrived at more by informal talks between the party leaders than by the formal exchange of views through written messages. It is important to remember that in matters in which the two Houses finally disagree, the House of Commons can have its way by passing a Bill in two successive sessions according to the procedure prescribed by Parliament Act, 1949, and then presenting it for the Royal assent.

In America, in case of difference of opinion between the House of Representatives and the Senate, a compromise is effected by means of a conference committee on which both

Houses are represented. In India, in case of final disagreement between the two Houses of Parliament over the provisions of a Bill, the President can summon the two Houses to meet in a joint sitting to consider and vote upon the Bill.

Closure—Closure is a device which is employed to cut short discussions in the House of Commons. Had there been no such device, it would be difficult for the House of Commons, burdened as it is with a heavy load of work, to finish its business within the time at its disposal. There is, however, no closure system in the House of Lords.

There are three principal forms of closure, namely, (1) the simple closure, (2) the guillotine closure and (3) the 'Kangaroo' closure.

(1) The method of simple closure is as follows. When a discussion on any question is in progress, any member may rise in his place and move 'that the question be now put'. If the chairman does not refuse to put the motion on the ground that it is an abuse of the rules of the House or an infringement of the rights of the minority, the motion 'that the question be now put' is put and voted upon without debate. If the motion is carried, the debate is brought to an end. The motion can be, however, carried only if not less 100 members vote in its favour. The simple closure is also used in committees to shorten debates.

(2) Sometimes the House by a resolution allots various periods of time for different parts of a measure. When the time allotted for any part comes to an end, discussion on that part of the measure is immediately terminated and it is voted upon. This is known as the guillotine closure.

(3) When a Bill is being discussed on the report stage, the Speaker can select only those amendments to a motion which, in his opinion, require consideration. Thereupon only those amendments and none else can be discussed. This form of closure is known as the 'Kangaroo' closure, because the Speaker makes his selection of amendments by hopping,

'kangaroo' fashion, from proposal to proposal. The Chairman of the Committee of the whole House as well as the Chairman of Standing Committees can also bring debates to an end by applying the 'kangaroo' closure.

Financial Procedure—Control over finance is one of the main functions of Parliament. The Government cannot spend a farthing unless it is authorised to do so by a Parliamentary Act. Nor can it impose a tax or raise a loan except under the authority of a Parliamentary Act. Thus Parliament exercises control over both expenditure and revenue.

(1) Let us first deal with the procedure by which Parliament authorises expenditure. The estimates of Government expenditure are presented to the House of Commons every year in January or February. (The financial year begins on April 1). The estimates for each kind of service is presented by the Minister concerned. For instance, the estimates for the Army by the Secretary of State for War, for navy by the First Lord of the Admiralty and so on. The estimates are divided into groups which are known as "votes". The Committee of Supply which is a form of the Committee of the whole House passes a series of resolutions approving the votes. Each vote is passed by a separate resolution. These resolutions are then reported back to the House and are agreed to by it. While these resolutions as agreed to by the House give the Government authority to spend the amounts granted for each service, they do not give it the authority for the actual withdrawal of money from the Consolidated Fund. This authority is given by the Committee of Ways and Means, (another form of the Committee of whole House) which passes a number of resolutions authorising the withdrawal of moneys from the Fund. The resolutions are reported to the House which then formally agrees to them. When all the resolutions referred to above have been passed by the Committee of Supply and the Committee of Ways and Means, and agreed to by the House, an Act, known as the Appropriation Act is

passed. The Appropriation Act authorises the issue of all sums voted by the House from the Consolidated Fund. This Act also limits the expenditure of each Department to the sums specified in it. The Act thus ensures that no money is spent in excess of the sums voted by the House and that the sums voted for one purpose cannot be spent for another.

Twenty-six days are allotted for the consideration of the Estimates by the House. The consideration, however, must be completed by August 5. Discussions on the Estimates in the Committee of Supply give an opportunity to the Opposition to criticise the policies of the Government and the work of the departments concerned. A member can move to reduce a vote but not to increase it. Since motions for the reduction of votes or sums asked for by the Government are regarded by them as a matter of confidence, such motions are invariably rejected or withdrawn. The result is that the grants requested by the Government are all voted. The House has therefore little real control over the Government expenditure.

No grant can be asked for unless recommended by the Crown; nor can any motion for a charge on the public revenue be moved without such recommendation. By this rule, private members are effectively prevented from making the Government incur such expenditure as would suit their personal and private ends.

Not all expenditure of the Government, it is important to note, is annually voted. Roughly a quarter of this expenditure is usually authorised by statutes which remain in force until repeald by Parliament. In other words, expenditure so authorised continues from year to year under the respective Acts till the latter are modified or repealed by Parliament. Expenditures falling in this category are known as Consolidated Fund services or charges and include outlays for the royal establishment, interest on national debt, salaries of the Lord Chancellor, the Judges of the Court of Appeal, the Judges of the High Court of Justice and certain other charges.

Other expenditure which have to be voted annually by the House of Commons is known as Supply Services. The main items of expenditure in the Supply Services are those for the Armed Forces and the Civil Services. The financial procedure described above, it should be clear, relates to the Supply Services which, unlike Consolidated Fund Services, have to be voted annually.

(2) Let us now see how the revenue is raised. It has been already stated that the Government cannot impose a tax or raise a loan without the authority of an Act of Parliament. It must be clear, however, that it is, the Lower House of Parliament, the House of Commons, which controls both expenditure and the raising of revenue. The House of Lords does not enjoy any control over these matters.

The financial year begins on April 1 and ends on March 31. Every year, shortly after April 1, the Chancellor of the Exchequer presents his Budget to the House of Commons sitting as the Committee of Ways and Means. The Budget contains, apart from estimates of expenditure, proposals for raising revenue to meet this expenditure, including proposals for alteration of existing taxes and for imposition of new taxes, if any. Now while estimates of expenditure are already known to the public because they have been earlier presented to Parliament, the taxation proposals remain a closely guarded secret till the opening of the Budget.

As soon as the Budget has been presented, the Committee of Ways and Means passes resolutions approving the Chancellor's proposals for taxation. These resolutions are embodied in the Annual Finance Act which authorises the Government to raise the taxes in question. Thus the financial proseedings culminate in the passing of two annual Acts, the Appropriation Act and the Finance Act; the former authorises the issue of money from the Consolidated Fund for meeting the expenditures of the Government, the latter authorises the raising of revenue.

It should be noted that whereas the Committee of Supply votes the grants, the function of the Committee of Ways and Means is the raising of revenue. The Committee of Ways and Means also, it will be recalled, authorises the actual withdrawal of money from the Consolidated Fund. Both of them are Committees of the whole House and are presided over, not by the Speaker, but by the Chairman of Ways and Means (also known as the Chairman of Committees) or his Deputy.

Just as a portion of the expenditure is authorised by statutes which continue from year to year and, therefore, do not have to be voted erery year, so also some of the taxes are authorised by statutes of this character and do not require annual sanction of Parliament. In fact, the bulk of the revenue is raised under the authority of statutes which continue till they are repealed, while a comparatively small portion is raised under the authority of annual Acts. The bulk of the expenditure, on the other hand, has to be voted annually, only a small portion being sanctioned by statutes which continue until repealed.

The raising of loans also requires authorisation by Parliamentary Acts.

Votes on Account and Consolidated Fund Acts— The financial year, as has been pointed out, expires on March 31 but the new Appropriation Act is not passed until July or August. If the Government had to depend solely on the Appropriation Act for authorisation of the new year's expenditure, it will be impossible to run the government between April 1 and the passing of the Appropriation Act (because no money could be spent during this period for the Army, Navy or the Civil Services). To circumvent this difficulty, the Committee of Supply passes, prior to April 1, a number of resolutions, known as votes on account, authorising expenditure to a limited extent for the various services. And the Committee of Ways and Means passes a number of resolutions authorising the issue of the necessary money out of the Con-

solidated Fund. These resolutions are embodied in an Act, known as a Consolidated Fund Act. It is this Act which authorises the Government to incur expenditure on the various services till the annual Appropriation Act is passed. Sometimes it becomes necessary to pass more than one Consolidated Fund Act before the Appropriation Act is passed.

Votes of Credit—In times of emergency, particularly in times of war, the House of Commons may vote a large grant without earmarking it for any particular purpose. It is from such grants that extra-ordinary expenditure are met in times of emergency. Votes of this kind are known as votes of credit.

The House of Lords and Money Bills—It has been already stated that the House of Lords cannot amend any Money Bill. A Money Bill is a public Bill which is certified by the Speaker as containing only provisions dealing with taxation, supply, appropriation, audit and a few other matters. All Money Bills, however, must be sent to the House of Lords. If a Money Bill which has been passed by the House of Commons and sent to the House of Lords at least one month before the end of the session is not passed by the Lords without amendment within a month after it is sent up to that House, the Bill is submitted for the Royal assent and becomes an Act of Parliament on receiving such assent. It should be clear that the Appropriation Bill, the Finance Bill and the Consolidated Fund Bills, being invariably certified by the Speaker as Money Bills, can neither be amended by the Lords nor can be held up by it for more than a month. And these Bills become Acts whether assented to by the Lords or not. Bills which deal with financial matters but are not Money Bills according to the definition given in the Parliament Act, 1911, cannot be passed without the assent of the Lords. The House of Commons, however, denies the right of the Lords to amend any financial measure, and the Lords have practically cased to claim this right. "When a

Bill is introduced in the House of Lords, the financial clauses are printed but are only moved in the commons at a later stage."

Bills which deal with taxation or the raising of loans by local authorities cannot be certified as Money Bills and, hence, do not come under the operation of the Parliament Act, 1911.

Control over Finance—How Far Effective—Though the Government can neither spend money nor raise revenue without Parliamentary authorisation, Parliament's control over finance is in reality far from effective. In the first place, the accounts are presented in a way that is not easily intelligible to persons who are not experts. Secondly, it is difficult for most members to have access to facts the knowledge of which is essential for effective criticism of the estimates. Thirdly, while a private member can move to reduce an item of expenditure or to reduce a tax, he cannot move to increase any expenditure or enhance any tax. (This is because the Government of the day is regarded as solely responsible for taxation and expenditure). As a matter of practical fact, however, the private members can neither reduce nor increase any expenditure or tax. The Government can always count upon a well-disciplined party majority to reject proposals for reduction of either proposed taxes or expenditure, and to pass the official proposals in toto. And since, under the British system, a proposal for reduction of tax or estimated expenditure is usually looked upon by the Government as a matter of "confidence", particular care is taken by the Government side in the House to see to it that all official proposals are passed without amendment. And this is what is usually done. Members of the Party in power refrain from criticising the Government to avoid causing embarrassment to it. And the criticism of the Opposition is not allowed to have any effect on the Government's proposals. The result is that Parliament has very little real control over public finance. The real control in this sphere rests in the hands of the Cabinet.

How a member of the House of Commons gives up his seat—A member of the House of Commons cannot give up his seat by simply resigning from it. If any member wants to be relieved of his duties, he usually applies for the nominal office of the steward of the Chiltren Hundreds. The holding of this office disqualifies him from membership of the House and thus results in automatic vacation of his seat. The person concerned, of course, presently resigns the office so that the next person desiring to retire may apply for it.

The heir of a peer, it should be noted, cannot refuse to accept his peerage. He must accept and hold it till death. He thus remains a member of the House of Lords till death. (This does not apply to Scottish and Irish peerages which do not carry with them the right to a seat in the House of Lords).

Sovereignty of Parliament—A basic feature of the British Constitution is sovereignty of Parliament.

Sovereignty of Parliament means that Parliament can make laws on any subject and can repeal or modify any law whatsoever. And no court can challenge any Act of Parliament. Once a law is enacted by Parliament, it becomes binding on all concerned including the courts. Of course, the courts can interpret a statute, but they cannot question its validity. All decisions and interpretations of courts can be reversed by Parliament if it decides to do so.

Parliament can declare acts that are held by courts to be legal as illegal. Similarly it can indemnify an illegal act and declare it as legal. Parliament can abolish the monarchy. It can place in the hands of the executive all legislative power. It can abolish the courts and place in the hands of the executive all judicial power. It can repeal all statutes, however old or important they may be. In fact, it has very often modified or repealed such statutes. It can pass laws taking away all liberties of citizens and setting up a dictatorship.

Parliament, of course, does not do anything that would be shocking to the conscience of civilised human beings because its members are all civilised persons and belong to a society in which traditions of law and morality have struck deep roots. But Parliament undoubtedly possesses the power to do anything, good or bad, subject to the limits of physical possibility. Some one has remarked that Parliament can do anything except make a man a woman and a woman a man. But as has been pointed out by Sir Ivor Jennings, this remark is wrong. For if Parliament enacts that a man should be a woman, he would be regarded as a woman so far as law is concerned and would be deprived of all privileges and rights which he can normally claim as a man.

"Parliament", says Jennings, "can legislate for all persons and places. If it enacts that smoking in the streets of Paris is an offence, then it is an offence. Naturally, it is an offence by English law and not by French law, and therefore it would be regarded as an offence only by those who paid attention to English law. The Paris police would not at once begin arresting all smokers, nor would French criminal courts begin inflicting punishments upon them. But if any Frenchman came into any place where attention was paid to English law, proceedings might be taken against him. If, for instance, a Frenchman who had smoked in the streets of Paris spent a few hours in Folkestone, he might be brought before a court of summary jurisdiction for having committed an offence against English law."

A corollary to the principle of parliamentary sovereignty is the rule that no Parliament can bind its successors. For if a Parliament could bind its successor, the latter would not be sovereign. A Parliament can freely alter any law passed by its predecessors, however important it may be. If any provision of any law made by a Parliament is found to be inconsistent with any law made by an earlier Parliament, the latter would be regarded as having been repealed by implication.

It is important to note that though Parliament is sovereign in theory, there are many practical limitations to the exercise of its sovereignty. In making laws, Parliament can neither ignore principles of morality nor public opinion. It has constantly to keep in mind its responsibility to the electorate which has elected it. Whenever Parliament is confronted by any issue of fundamental importance on which it has no mandate from the electorate, it hesitates to pass a law on the subject and often refrains from passing such a law, although theoretically it is fully competent to pass it. In such a situation, it is usual for the Cabinet to dissolve the existing Parliament and seek the mandate of the people on the issue in question through fresh elections. This clearly illustrates the practical limitations to the theoretical sovereignty of Parliament.

In India, the United States, Australia, South Africa, and in almost all countries in which there are written constitutions, the Legislatures are not sovereign. In these countries the judiciary has the power to declare laws made by the Legislature to be unconstitutional and void on the ground that they violate the written provisions of the constitution. In India, for instance, the courts declare from time to time laws or particular provisions of laws to be void on the ground that they conflict with the provisions of the Constitution. In Britain, however, as has been already noted, courts do not possess this power of judicial review. All laws made by Parliament are binding on the courts. The courts in Britain can, however, declare rules or by-laws or statutory Orders-in-Council made by the Executive to be illegal and void if they come into conflict with any Act of Parliament.

CHAPTER XLIII

DELEGATED LEGISLATION AND ADMINISTRATIVE JUSTICE

Delegated Legislation—Though legislation is the function of Parliament, it is not always possible for Parliament to make laws on every subject, important and unimportant, nor to make laws covering all possible situations. Parliament, therefore, often delegates its legislative power to administrative authorities (and sometimes to professional bodies). When it so delegates its power, we speak of delegated legislation. Suppose Parliament enacts a law relating to agriculture and provides that the Ministry of Agriculture and Fisheries shall make by-laws or regulations under that law. The framing of such by-laws and regulations by that Ministry will be delegated legislation.

Though the practice of delegation of legislative power by Parliament is very old, it is only in recent years that such delegation has been frequent and the volume of delegated legislation has grown enormously. An idea of the volume of delegated legislation made every year can be obtained from the fact that in 1946, 66 public general statutes were submitted for the Royal assent while, in the same year, the total of rules and orders formulated by the deparments under the authority of statutes totalled 2,287.

What are the reasons for such enormous growth in the volume of delegated legislation in recent years ? The chief reason is to be found in the fact that the state in Britain, as in many other countries, is increasingly becoming a welfare state as distinguished from a police state. It has been assuming an increasingly bigger role in the social and economic life of the nation. With a view to promoting social welfare, the state in Britain now regulates the economic

affairs of the nation to a very great extent, regulates conditions of service for the workers, maintains a comprehensive system of unemployment and old age benefits, and carries on various activities in the field of public health. Such an expansion of the functions of the Government has resulted in the need for a corresponding multiplication of laws. It is simply impossible for Parliament to make the vast mass of laws that are now necessary to carry on the various activities of the state. For, in the first place, Parliament has no time to frame all these laws. Secondly, it lacks the expert knowledge without which laws relating to many of the economic and other activities of the state cannot be framed properly. Thirdly, it is not possible for Parliament to foresee the innumerable difficulties and contingencies that are likely to arise in the actual administration of the laws which affect millions of people, and to provide for them. Fourthly, in times of emergency when the Government has to meet extraordinary situations and is required to exercise powers far greater than it does in normal situations, it can hardly function efficiently unless it enjoys wide rule-making powers. All these factors have made inevitable increasing delegation of legislative power to administrative authorities.

Such delegation has been severely criticised by many. Critics point out that Parliament has been gradually abdicating its law-making function and making the executive more and more powerful in the sphere of legislation. In the past, it is the King who used to make the laws. Through a long course of struggle extending over centuries, Parliament gradually wrested the law-making power from the King. Now, it is said, Parliament is once again restoring the law-making powers to the Executive and setting up a kind of government that is nothing but despotism or at least a new variant of the ancient despotic rule of kings.

While it cannot be denied that this criticism has much force in it, the situation is not as bad as some of the critics try to portray it. For, in the first place, it should be noted that

Parliament is sovereign in the legislative field and that the power it delegates can be taken away by it at any moment if it suspects that the delegated power is being abused. Secondly, many statutory rules and orders are required to be laid on the table of the House of Commons for 40 days before they can go into effect. Thirdly, some of the rules cannot be effective unless approved by an affirmative resolution passed by both Houses (sometimes by the House of Commons alone.) Fourthly, rules and regulations made by administrative departments are subject to judicial review. In other words, the courts can declare them invalid and refuse to enforce them if, in their opinion, there is no statutory authority behind them or if in making them the administrative authorities have exceeded the powers conferred by Parliament.

It may be added here that since 1944, a Select Committee of the House of Commons, which has come to be known as the Scrutiny Committee, regularly scrutinises the rules and orders laid before the House and draws its attention to such of them as may require close examination by the House.

Administrative Justice—Connected with the phenomenon of delegated legislation is that of administrative justice. For, while administrative justice is no new development, its importance has grown steadily with the growth of social welfare legislation. For when such a legislation is enacted, Parliament not only authorises the administrative department concerned to issue rules and orders under the Act, it also, very often, sets up special tribunals to settle disputes that may arise as a result of the operation of the Act. Members of these tribunals are usually appointed by the Ministers. Sometimes, instead of a tribunal, the Minister heading the department concerned is authorised to settle disputes.

At present, there is hardly any department which is not required to perform some judicial functions. A few examples of administrative adjudication may be given here. The Treasury appoints Special Commissioners of Income Tax who

hear appeals from the rulings of inland revenue officials. The Ministry of Transport appoints officials who hear appeals in respect of granting of licences of various kinds. The Ministry of Health constitutes the final appellate authority to dispose of appeals in respect of matters affecting the rights of some kinds of property-owners. Similarly, there are tribunals to hear disputes relating to pensions, to determine claims relating to various kinds of benefits such as old age and unemployment insurance benefits and to settle disputes of various other kinds. In some cases the jurisdiction of courts is barred, no appeal being allowed from the decisions of the tribunals. In other cases, appeals to courts are allowed on questions of law only, while in still others, appeals are allowed on questions of both law and facts.

Like delegated legislation, administrative justice also has been a target of severe criticism. In 1929, Lord Hewart, Lord Chief Justice, wrote a book, entitled *The New Despotism*, severely criticising the system of administrative justice. It is pointed out by critics that to allow administrative authorities to perform judicial functions is to take away one of the vital safeguards of the liberties of the citizens. It is the ordinary courts that have always stood between the tyranny of the powers that be and the rights of the citizens. It is they who have always determined the line where the power of the state ends and the freedom of the individual begins. The placing of judicial powers in the hands of the administrative authorities, by removing this essential safeguard, places the citizens at the mercy of the officials of the various departments. The critics argue further that a basic feature of the English constitutional system has been in the past what is known as "the rule of law." And one of the principles of the rule of law is "equality before the law or the equal subjection of all classes to the ordinary law of the land *administered by the ordinary law courts.*" While France and other continental countries have had a system of administrative courts from very early days, in England there were no such courts, and

it is the ordinary courts which decided questions relating to the claims of citizens against the state, just as they decided disputes affecting private individuals. This was a system which, it is argued, ensured justice to the citizens far better than a system in which administrative tribunals hear and decide claims of citizens against the state.

In short, it is held by the critics that the system of administrative adjudication goes against the very central principle of the theory of separation of powers. And it cannot be denied that the members of the administrative tribunals who are in most cases appointed by the Ministers can never be expected to act as independently as the judges of the higher courts in performing the judicial functions entrusted to them.

But there are arguments on the other side also which may be briefly noted here. In the first place, it is well to remember that government being an organic unity, complete separation of powers is an absurdity and that it has never been possible to put the Executive and the Judiciary into two water-tight compartments. Always the Executive has been entrusted with functions that brought it into close relations with the judicial sphere. Particularly, in the matter of the appointment of judges the Executive has always wielded considerable authority (see chapter on 'the Judiciary'). Also, the Executive, in performing administrative functions, have always had to decide some questions of judicial or quasi-judicial nature. Secondly, with the expansion of social welfare activities of the state, the points of contact between the governmental machinery and the life of the citizens have multiplied vastly with the result that innumerable disputes arise almost daily between the authorities and citizens. In the past, the number of such disputes was very small and could be easily disposed of by the ordinary courts. Today, however, their number has increased so greatly that it is not possible for the courts to cope with them. In other words, administrative adjudication has become in these days an

unavoidable necessity. Thirdly, procedure in courts is dilatory and expensive, while that in administrative tribunals is inexpensive and speedy. It would be impossible to work the social welfare schemes properly, had there been no machinery for speedy settlement of disputes that arise out of the working of those schemes. It has to be conceded also that whatever criticisms may be levelled against the system of administrative adjudication from the theoretical point of view, in practice the system, speaking generally, has not worked as unsatisfactorily as might be supposed. Disputes are settled, on the whole, fairly, which is a tribute to the impartiality of the members of the tribunals. Nevertheless, there is much scope for improvement in the system and various suggestions for improvement have been put forward by competent persons. An important suggestion is that there should always be a right of appeal to the High Court on points of law from the decisions of administrative tribunals. The right to be represented by counsel, it is further suggested, should not be taken away except in cases of a very simple description. Thirdly, it has also been urged, the reasons for decisions should be made available to the parties concerned and summaries of decisions on leading cases should be published.

CHAPTER XLIV

POLITICAL PARTIES AND GOVERNMENTS

The Cabinet System presupposes the existence of Parties—The basic principle underlying the Cabinet system of government is the collective responsibility of the Ministers to the popularly elected chamber. This system can hardly function without organised political parties. In fact, it presupposes the existence of parties. It would not have been possible for the Cabinet system of government to grow in Britain if the country's political life did not get organised from an early period on party lines. It is because rival political organisations with different programmes and ideologies try to gather popular support behind them and to get hold of governmental power to implement their respective programmes that the Cabinet system works properly. When a party is returned to power it enjoys complete authority over the governmental machinery and accepts full responsibility for the country's administration, while its rival party or parties oppose it in the House of Commons. When its rivals come to power, it goes into opposition, while the new Government exercises complete control over the administration. When a Government loses the confidence of the House of Commons it has to resign, so that the opposition may take over the administration. It may also in such a situation dissolve Parliament and appeal to the country. But if the appeal fails, that is, if it fails to obtain a majority in the new House of Commons, it has no other alternative except to resign. Thus the Cabinet system of government is a political game which is best played when the participants in the game are organised parties.

How difficult it would be for the Cabinet system to work if there were no political parties in the country will be clear if we consider a hypothetical situation. Let us suppose that

the members of a newly elected House of Commons are all non-party individuals and that a Government has been somehow formed with a number of these members. Such a Government will lack unity of outlook and will find it almost impossible to evolve an agreed policy in regard to the various issues confronting the country. It will be, therefore, difficult for such a Government to accept joint responsibility to the House in regard to the activities of the departments which would be under different Ministers. And it will be meaningless for it to resign *en bloc* in such a situation, particularly because there would be no alternative team ready to take over the administration.

These considerations make it plain that the Cabinet system cannot work without parties. And this explains why in England the development of the Cabinet system and the growth of political parties have been closely inter-related.

The Cabinet System works best under a Two-Party System—While it is possible to carry on Cabinet government in a situation in which the electorate is organised into three or more political parties, the Cabinet system works best under a two-party system. For under a multi-party system, coalition Governments become unavoidable, and such Governments are proverbially unstable. In France where there is a Cabinet system of government, it works in a highly unsatisfactory manner because of the existence of numerous political parties in that country. Governments in that country are almost always formed on the coalition basis and are extremely unstable. Under a two-party system this element of instability in the country's government is avoided. Secondly, "it is the great advantage of the two-party system that it concentrates power and responsibility at any given time in a single, recognisable, unified group of leaders, and back of them a single party." In a bi-party system, the party in power is always conscious that it alone and none else will be held responsible by the public for the Govern-

ment's policies and the activities of the various departments. This consciousness on its part makes it very careful in formulating policies; and since success of the Government's policies will mean enhancement of the party's popularity, the members of the party in power, particularly the Ministers, exert themselves to the utmost in carrying out the policies adopted by them.

Britain, the native habitat of the Cabinet system of Government, has always been broadly speaking, a bi-party country (see next section). This is the reason why the Cabinet system of Government has been so great a success in that country. In fact, this very system of Government has helped the growth of a bi-party political system by tending "to identify all political elements at any given time with either the 'ins' or the 'outs'." There are, however, other factors which contributed towards the development of the bi-party system in the country, among them the homogeneity and the smallness of the country.

For a number of years between the two World Wars, however, the two-party system in the country was replaced by a three-party pattern, owing to the development of the Labour Party into a major political organisation. But the old bi-party pattern has been, in effect, once again restored. The decline of the Liberal Party has now left only two major parties in the political field—the Conservaties and the Labourites.

A Brief History of Political Parties in Britain—The history of the growth of political parties in Britain goes back to the Elizabethan age when the Puritans opposed the Queen's arbitrary policies. In the reign of Charles I, who was a despotic ruler and offended the people by adopting a series of arbitrary policies, the opposition of the Puritans to the King intensified. In 1640, Charles I convened a Parliament which became famous as the Long Parliament. It was in Long Parliament that parliamentary parties may be said to have made their first appearance. The Puritans captured a

number of seats in this Parliament where they opposed the King's policies and stood for constitutional Government. The other party supported the King and the Royal prerogatives. When Charles's arbitrary policies threw the country into a civil war, the supporters of the King came to be known as Cavaliers and the supporters of parliamentary Government Round-heads. ('Cavaliers' meant horsemen or gentlemen, while the term 'Round-head' was applied to the King's opponents because of the close-cropped hair of the puritans who led them.)

After the Restoration, the two opposing parties in Parliament came to be known as the Court Party and the Country Party. When in 1679, Charles II dissolved Parliament to prevent the passing of the Exclusion Bill which sought to exclude his brother James, Duke of York, from succession to the throne, an intense agitation followed. The Country Party sent petitions to the King urging him to summon Parliament, while the Court party sent counter-petitions expressing their abhorrence of such an attempt to coerce the King. The rival parties, as a result, came to be known as Petitioners and Abhorrers. These names, Petitioners and Abhorrers soon came to be supplanted by the terms Whig and Tory. ('Tory' is an Irish word which means a robber; 'Whig' means whey-faced). The Tories were supporters of the King and the royal prerogatives. While the Whigs stood for constitutional Government. These two names continued for a century and a half. A few years after the passing of the Reform Act of 1832 the names Whig and Tory gave way to the terms Liberal and Conservative respectively. The word Tory, however, is still applied to the Conservatives.

It should be noted that Cavaliers and Roundheads, the Court Party and the Country Party, Petitioners and Abhorrers were not political parties in the true sense of the term. They were merely factions, because they considered each other as the enemies of the state and each of them

tried to destroy its rival. Genuine political parties are groups of people who are organised on the basis af political programmes and who recognise each other's right to exist and to come to power by convincing people about the merits of their respective programmes. Political parties in this sense did not exist in England till the early eighteenth century.

In the middle of the nineteenth century, the controversy over the tariff policy caused splits in both parties—the Liberals and Conservatives. A few years later the parties rallied under two great leaders, Gladstone and Disraeli, the former Liberal and the latter Conservative. The parties came to power by turns. The Liberals held power during 1868-74, 1880-86, 1892-95 and 1905-1915 and the Conservatives during 1874-80, 1886-92, and 1895-1905.

Since the union of Great Britain and Ireland in 1801 another party had come into existence—the Irish Nationalists who demanded 'Home Rule' for Ireland. At the beginning a small party, the Irish Nationalists gradually grew in strength. In 1886, Gladstone introduced a Home Rule Bill seeking to give a separate Parliament to Ireland. This caused a split in the Liberal Party. Those members of the Liberal Party who opposed the granting of 'Home Rule' to Ireland joined the Conservatives who thenceforth came to be known also as Unionists. The term Unionists continued to be used for many years. The creation of Irish Free State in 1922 resulted in the disappearance of the Irish question from the British politics. Since that time the term Conservative has again been in full use.

Towards the close of the nineteenth century a new political element entered British politics. The Second and Third Reform Acts, enacted in 1867 and 1884 respectively, had enfranchised the working classes. This new electoral element and socialistic ideas contributed to the growth of a new party in the country—the Labour Party. In 1893 an Independent Labour Party was formed but it could not

make much impression in the country's politics. In 1900, another organisation known as the Labour Representation Committee came into being. In the general elections of 1906, the Labour Representation Committee captured 29 seats in the House of Commons. In that year it changed its name into 'Labour Party'. The Labour Party captured 40 and 42 seats respectively in the general elections of January, 1910 and December, 1910. In the elections of 1918 it won only 57 seats and it was only after the war that it rose to the rank of a major party by capturing 142 seats.

PARTIES AND GOVERNMENTS SINCE 1900

It has been already noted that the Unionists (Conservatives) were in power from 1895-1905. In the early years of the present century when a Conservative Ministry headed by Mr. Balfour was in office, a split occurred in the party over the issue of tariff reform. The Colonial Minister in Balfour's Ministry had proposed a system of preferential tariffs for the coloniol produce causing a violent difference of opinion in the party's ranks. This split in the Conservative Party enabled the Liberals to come to power in the general elections of 1906 by a majority hitherto unknown in the history of British politics. Mr. Campbell-Bannerman formed a Liberal Ministry.

The Liberals and the Reform of the House of Lords in 1911—In 1909, when a Liberal Ministry headed by Mr. Asquith was in power, the House of Lords precipitated a great constitutional controversy by rejecting the Finance Bill. The issue was whether the House of Lords could reject a Money Bill and whether the Lords, by rejecting the Money Bill, had not violated the right of the Commons which represented the voice of the people. Mr. Asquith dissolved Parliament and in the elections held in January, 1910 was returned to power once again. The Upper House then gave way and the Finance Bill was passed. Mr. Asquith did not rest content with this. He immediately brought forward

proposals for curtailing the powers of the House of Lords. A fresh general election was held in December 1910 in which the House of Lords question figured as the main issue. The elections returned the Liberals to power once again. The Parliament Act which considerably reduced the powers of the House of Lords was passed in 1911. The provisions of the Act have been already discussed.

World War I and Coalition Government—When World War I broke out in 1914 the Liberals were in the saddle under the premiership of Mr. Asquith. To meet the exigencies of the war adequately, the need was felt for bringing together in the Government the ablest men of all parties on a coalition basis. Already on the eve of the war, the parties had concluded a truce whereby they agreed to put political controversies in the cold-storage for the duration of the war. In May, 1915, a Coalition Government was formed under the premiership of Mr. Asquith. David Lloyd George (Liberal) became Premier in 1916. A section of the Liberal party, on account of internal dissensions, seceded from the party in 1915 and went into opposition. In 1918, while the war was still on, the Labour party also went into opposition.

Parliament was dissolved immediately after the armistice was signed on November 11, 1918. The elections took place in December. The Coalition Government contested the elections and was returned with a large majority. It secured 478 seats. Labour captured 63 seats, while the Independent Liberals got only 28. The great majority of seats captured by the coalition had fallen to the share of the Unionists (Conservatives). The members of the Unionists not only constituted the largest single party group in the House of Commons, they constituted an absolute majority in the House. In such a situation a coalition could hardly function properly, particularly because a Liberal leader headed the Cabinet. There arose internal differences in the Cabinet. The coalition, however, carried on for another four years. When the general election was held in 1922, the Conserva-

tives contested the elections as an independent party and was returned to power with an absolute majority.

The First Labour Government (1924)—In 1923, the Conservative Prime Minister Stanley Baldwin unexpectedly brought about a dissolution of Parliament and went to the country on the question of protective tariffs. The elections did not return the Conservatives with a majority. Neither of the other two parties, the Liberals and the Labour, also had an independent majority. No party was, therefore, in a position to form a Government independently. Though the Conservatives had captured more seats than either of the other two Parties, they could not, obviously, be asked by the Sovereign to form a Government because they had fought the elections on a definite programme and had been defeated. The Labour Party had secured 191 seats, while the Liberal had obtained 159 seats. King George V took the surprising, but logical, step by asking the Labourites to form a Government. Labour leader, MacDonald, formed the first Labour Government of Britain (1924). But, as has been already pointed out, the Labourites lacked an independent majority in the House of Commons; and they were kept in power through the support of the Liberals. Its position was, therefore, very precarious from the outset. A few months later, the Liberals withdrew their support from the Government and the MacDonald Ministry was defeated in the House of Commons on a question relating to the checking of the activities of the Communists. The Prime Minister advised the King to dissolve the House of Commons and appealed to the country. The elections (1924) returned the Conservatives to power. The Conservative leader, Stanley Baldwin formed a Government which remained in power for five years.

The Second Labour Government and 'National' Government—The general elections of 1929 resulted in serious discomfiture for the Conservatives. Their seats in the House of Commons were reduced from 400 to 269 (in a House of 615

members). The Labour party obtained 289 seats and was, invited to take the helm. Thus the second Labour Government of Britain came into being under the premiership of Mr. MacDonald. The second Labour Government too was, like the first in 1924, dependent on the support of the Liberals. Its weak position was further weakened when, in 1931, MacDonald decided to adopt drastic economic measures to meet the alarming situation that had developed on the economic front as a result of the depression which had started in 1929. There was sharp disagreement in the Cabinet and among the party members over the proposed measures. MacDonald resigned and the second Labour Government thus came to an end.

A 'national' Government was thereafter set up with MacDonald as the Prime Minister. Though the 'national' Government was headed by a Labour leader, the bulk of its supporters belonged to the Conservative party, only a small number being Labourites and Liberals. The bulk of the Labourites went into opposition. So the Government could not be called a coalition in the strict sense of the term.

The 'national' Government, with a view to seeking popular approval of the new arrangement, brought about a general election. The election returned the Government with a majority of 556 seats. The Labour Party, which had expelled MacDonald and other leaders associated with the 'national' Government, received an appalling set-back. It obtained only 52 seats.

Government on this 'national' basis continued for about a decade. During this period party lines became blurred and the political situation confused. Prime Minister MacDonald's position was anomalous and unenviable from the very beginning. The Conservatives constituted an overwhelming majority among the supporters of the 'national' Government. In fact, they had an absolute majority in the House of Commons and could form a Government independently. MacDonald was, therefore, reduced to the position of a puppet,

the Government being run in reality by the leaders of the Conservative party.

In 1935, MacDonald resigned and the Conservative leader Baldwin became the Prime Minister. A few months later (1935), a general election was held. The 'national' Government contested it once again on the 'national' basis and secured 431 seats of which 387 seats fell to the share of the Conservatives. The Conservatives thus constituted, by themselves, an absolute majority in the House of Commons. The Labour party obtained 154 seats—a remarkable recovery after the disastrous set-back of 1931.

A word may be added about the position of the Liberals. The split that occurred in the Liberal Party during World War I marked the beginning of almost a steady decline in its fortunes. The two wings of the party worked as separate parties for some time under the leadership of Lloyd George and Asquith. A reunion was effected before the elections of 1923 in which the Party did fairly well. The elections of 1924, 1929 and 1931 saw the Party losing ground continuously. The Party joined the 'national' Government under MacDonald in 1931. Thereafter, another split occurred in the party, one group supporting the 'national' Government another opposing it. In the elections of 1935, the two wings of the party together secured only 54 seats. In the next elections which were held ten years later, in 1945, the Liberals obtained only 12 seats. There is little likelihood of the Liberals ever recapturing their old position and popularity. The single-member system of elections operates against third parties and the programme of the Liberals has also lost its electoral appeal.

World War II and Coalition—Neville Chamberlain succeeded Stanely Baldwin as the Prime Minister in 1937. In September, 1939 when World War II started, Chamberlain formed a War Cabinet of seven members. He also invited both the other parties, the Labour and the Liberals to join the Government on a coalition basis. While pledging sup-

port to the Government in its war efforts, both parties declined to accept the offer. The Labourites and the Conservatives, however, concluded an electoral truce under which neither party was to put up candidates against the other in by-elections that might have to be held from time to time during the war.

People were not satisfied with the way the Chamberlain Government was conducting the war and the need for a change of administration was widely felt. The matter was brought to a head when the British suffered some serious reverses at the hands of the Germans in the early months of 1940. In May, 1940, Winston Churchill was brought to the helm of affairs and the Government was placed on a coalition basis. Both the Labourites and Liberals joined the coalition. Churchill formed a War Cabinet of five members for efficient prosecution of the war.

The Elections of 1945 and Labour Victory—The coalition came to an end after the surrender of the Germans in May, 1945. The elections—the first since 1935—were held in July. The results of the elections confounded all political prophets. The Labour Party obtained 393 seats—an absolute majority in a House of 640. It surpassed the wildest expectations of the Labourites themselves. The Conservatives won 198 seats. The Liberals got only 12 seats. Mr. Attlee formed the third Labour Government of Britain. Unlike the first two Labour Administrations, this Government was not dependent on any other party's support, commanding as it did a comfortable independent majority in the House of Commons. With the formation of this Government, normal party Government was restored in Britain for the first time since 1931.

The great victory of the Labour Party was a clear endorsement by the people of the Party's socialistic programme. The Attlee Government, therefore, immediately embarked on a legislative programme designed to nationalise

a number of industries and to expand the social welfare activities of the state. It passed legislations nationalising the coal industry, the electrical industry, the gas industry, the transport services and the iron and steel industry. It also nationalised the Bank of England and vastly expanded the scope of social security programmes. It also introduced a comprehensive scheme of National Health Service designed to provide for adequate medical care of the entire population of the country. The Labour Government, further, took steps to regulate town and country planning on uniform and centralised lines by passing an Act, known as the Town and Country Planning Act, in 1947.

Elections of 1950—The general elections of 1950 resulted once again in Labour victory but with a greatly reduced majority. In a House of 625, the Labour majority over all other parties came down to only 7. The Government was formed by Clement R. Attlee, and the administration was carried on the basis of this precarious majority for about a year and a half. In October 1951, the country went to the polls with the hope of electing a more stable government.

Elections of 1951—The general elections resulted in defeat of the Labour Party and return to power of the Conservatives. But the Conservative majority was far from substantial, being only 16 in a House of 625. The Government was formed by Winston S. Churchill. The Churchill Government reversed in some respects the policy that was being followed by the Labour Party in the economic sphere. Notably, the iron and steel industry was denationalised by them. But they left practically untouched most of the other measures the Attlee Government had taken to build up a socialist economy in Britain.

On April 5, 1955, Sir Winston Churchill resigned on account of failing health. He was succeeded by Sir Anthony Eden, who dissolved Parliament, seeking a fresh mandate from the people.

Elections of 1955—The elections, which were held in May, 1955, returned the Eden Government to power with an increased majority. In the new House of 630 members, the Conservative majority over all other parties, immediately after the elections, was 60.

Party Policies and Programmes—In the past, the policies and programmes of the rival political parties in Britain never presented any sharp contrast. The boundary lines between the parties were sometimes very shadowy. Broadly, however, the programmes of the Whigs and the Tories or the Liberals and the Conservatives could be easily distinguished. While the Tories stood for the established order of things, for the *status quo*, and looked askance at all proposals for change and reform, the Liberals stood for progress. The Tories supported the prerogatives of the Crown, and stood for the preservation of the vested interests including those of the landholders and the big business. They always sought jealously to safeguard the rights of private property at home, and to preserve the imperial interests of Britain abroad. They did not believe in giving rights of self-government to the colonial peoples except in compelling circumstances. The Liberals on the other hand believed in promoting the welfare of the working class and other poorer and under-privileged sections of the population. They tried to help small-scale industry and agriculture and to safeguard the interests of the common consumers as against those of big producers. In imperial matters, they stood for granting greater rights to the colonial peoples.

Nevertheless, it should be clearly understood, both parties stood on the same ground in matters fundamental—in matters which go to the roots of social and political life. Both parties accepted the capitalist order of society. Both believed in private enterprise and a competitive economy. And on questions of franchise, trade, commerce and social welfare legislations their programmes did not differ fundamentally. The difference lay mainly in emphasis, timing,

degree and matters of detail. It is also interesting to note that the leaders of both parties belonged, generally speaking, to the same strata of society and had almost the same social and political outlook. Laski says: "The men who directed the destinies of both circles (parties) came, broadly, from the same social environments; they spoke the same language; they moved in much the same circles; they depended on the same common stock of ideas. They thought in the same way because they lived in the same way. Members of either wing could cross to the other (and many did so) without any alteration of fundamental doctrine." In short, for all practical purpose, the Whigs and Tories, or the Liberals and Conservatives were two wings of the same party rather than two different parties. Laski correctly says that "since 1689, we have had for all effective purposes, a single party in control of the state. It has been divided, no doubt, into two wings. It has differed within itself upon matters like the pace of change and the direction of change; it has never seriously differed upon the fundamental principles of change."

This situation was completely changed when the Labour party entered the political stage. The Labour Party has an ideology and programme that fundamentally differ from those of the other parties. Whereas the Conservatives (and also the Liberals) stand for the preservation of the capitalist order of things with a competitive economy and the freedom of private enterprise, the Labour's ideal is socialism. In other words, the Labour Party believes in the abolition of capitalism, taking over by the state of all means of production including the industries so that these may be operated by the state for the welfare of the people. The party believes that socialism can be brought about by gradually expanding, through legislation, the sphere of state ownership and control, and, as has been already stated, Mr. Attlee's Labour Government which came to power in 1945 nationalised a very large sector of the country's economy.

In the British political field today, therefore, stand face to face two fundamentally opposed political doctrines, one aiming at the preservation of the existing social order, the other at replacing it with a new order of things. In this situation, parties advocating a middle position can hardly hope to exist. This is the chief reason for the progressive decline of the Liberal Party after the rise of Labour. The Liberal Party's role in British politics appears to have definitely ended.

Party Organisation —Each of the major parties maintains a countrywide organisation. Unlike parties in most other countries, the political parties in Britain at least the bigger ones, are "combinations not of individuals as such, but rather of regional societies and associations." They are federal in structure, the local units enjoying a very large measure of autonomy. At the local level, the Conservatives and the Liberals have party associations in the constituencies which are managed by elected committees. There are party units in parishes, boroughs and at the country level, whose organisation is not uniform but varies at different places and levels. The local units send their delegates every year to an annual conference—which is known as 'the Conference' in the case of the Conservatives and 'the Assembly' in the case of the Liberals. This conference discusses the party policies and also lays down broad principles and programmes. The conference also elects some officials and appoints certain committees. It does not, however, elect the main leader of the party. The party's representatives in Parliament elect this functionary.

The Labour Party's local units consist of trade unions, socialist societies and constituency labour organisations. The constituency labour party consists of local branches of trade unions, socialist and co-operative societies and unattached party members. It is managed by an elected committee. The supreme policy-making body in the Labour party is the party Conference to which the trade unions, socialist societies

and other local organisations send their delegates. The Conference holds an annual meeting every year. Sometimes it also holds special meetings. The Conference lays down policies for the guidance of its members and these policies are regarded as binding on its members. In the case of the other two parties, the resolutions of the Conference or the Assembly have no such binding effect and the party leaders can disregard them with impunity. The Conference elects a National Executive Committee, consisting of 12 representatives of the trade unions, 7 representatives of the constituency parties, one representative of the socialist and co-operative societies, 5 women members elected by the whole conference, plus the treasurer, the secretary and the leader of the party in their ex-officio capacity. The secretary and the treasurer of the party are chosen by the Conference, while the party leader is elected by the representatives of the party in Parliament. The National Executive Committee carries out the decisions of the Conference, takes necessary steps to keep the party well-represented in the constituencies, supervises the work of the party headquarters in London and performs some other functions.

What has been said above will make it clear that the Labour Party's organisation is far more centralised than that of the other two parties. The Labour Party alone has a written constitution, the provisions of which are binding on the entire organisation. And the Labour Party Conference is a policy-making body in a real sense because its decisions are mandatory, while the decisions of the Conservative Conference or the Liberal Assembly are at best recommendatory. Again, the choice of candidates for parliamentary elections lies, in the case of the Conservatives and the Liberals, entirely in the hands of the constituency organisations. The Labour candidates, however, cannot be finally adopted until each candidate is approved by the National Executive. Not that the National Executive frequently sets aside the choice of the constituency party

organisation in this matter. But it undoubtedly has this power, and occasionally, though very rarely, exercises it.

Each party's representatives in Parliament constitute "the parliamentary party". In the case of the Conservatives and the Liberals, the parliamentary party is free to take decisions on any matter, irrespective of their promises to the constituents or the decisions of the party Conference or Assembly. Labour's "parliamentary party", however, is not so free to take their decisions. The constitution of the Labour Party lays down that the parliamentary representatives shall, singly and collectively, "act in harmony with the constitution and standing orders of the party". In each case, "the parliamentary party" elects the party leader. The Conservatives elect their leader for as long as he may be willing to serve, while the Liberal and the Labourites elect their leader for a year at a time. In the case of the party in power, the leader becomes the Prime Minister, while in that of the main Opposition group, the leader becomes the Leader of the Opposition. The leader enjoys considerable authority in formulating the policies and directing the activities of "the parliamentary party". The leader of the Conservative "parliamentary party" enjoys almost a dictatorial authority in laying down the policies of the entire party organisation. "The parliamentary party" also elects, in each case, a deputy leader and appoints whips. The Government whips, usually four in number, hold ministerial positions—the chief whip being the Parliamentary Secretary to the Treasury and the others holding positions of Junior Lords of the Treasury.

The parties are believed to control considerable financial resources. While the funds of the Labour party are derived mainly from a system of regular contributions by affiliated organisations, the Conservatives and the Liberals have no such system, their funds being derived form donations by party members, particularly the richer ones. The Conservatives, needless to say, enjoy the fattest purse, counting as

they do among their members most of the richest persons in the country.

The parties carry on propaganda activities on an extensive scale. They have their own newspapers and monthly magazines. Among the monthly magazines may be mentioned the *Tory Challenge* (Conservative), the *Liberal Magazine* and the *Labour Woman.* The newspapers, the *Daily Telegraph,* the *Daily Herand* and the *News Chronicle* are the party organs of the Conservatives, the Labourites and the Liberals respectively. Besides these newspapers and periodicals, a stream of books and pamphlets regularly issues from their propaganda machines. These deal with the respective party points of view in respect of the various issues before the country.

Each party has its own youth organisations too, such as the Young Conservative Organisation, the National League of Young Liberals, and the Labour League of Youth. The parties also maintain political clubs and conduct summer schools and the like. Through various affiliated associations they try to develop contact with different sections of the people. The Carlton Club of the Conservatives is one of the oldest political clubs. The Fabian Society is among the most important associations for propagating the ideals and objectives of the Labour party. All these associations, clubs, youth organisations and agencies are like so many transmission belts connecting the parties with different sections of the public and helping them not only to propagate their views widely but also to draw within their fold new members and supporters.

CHAPTER XLV

THE JUDICIARY

The judicial organisation in the United Kingdom lacks uniformity. There is one form of organisation in England and Wales, while in Scotland prevails a different scheme of courts. In Northern Ireland, again, there is still another form of organisation. The House of Lords is, however, the highest court of appeal from the courts of England, Wales and Norhtern Ireland in both civil and criminal matters and also from the courts of Scotland in civil cases only.

England and Wales—A uniform and integrated judicial system prevails in England and Wales. On the civil side, the chief lower courts are the County Courts. These courts have jurisdiction only in cases in which the claim does not exceed £200. (There are some exceptions to this rule). A County Court is presided over by a judge appointed by the Lord Chancellor. The cases are tried by the judge sitting alone but in some cases a jury may be demanded. From decisions of the County Court an appeal lies to the Court of Appeal, which is a part of the Supreme Court of Judicature.

The Supreme Court of Judicature which stands just below the House of Lords in the judicial hierarchy consists of two parts—(1) the Court of Appeal and (2) the High Court of Justice. The High Court of Justice has three divisions—(a) Chancery, (b) the Queen's Bench Division and (c) Probate, Divorce and Admiralty.

When the plaintiff's claim exceeds the jurisdiction of the County Courts, the action is brought in the appropriate branch of the High Court of Justice. From the decisions of the High Court an appeal lies to the Court of Appeal on questions of law, and from this court the appeal can be taken to the House of Lords (on questions of law).

On the criminal side, the Justices of the Peace or Magistrates constitute the lowest rung of the judicial ladder. They are appointed by the Crown on the recommendation of the Lord Chancellor. The Justices of the Peace are not paid any salary for their services. In cases involving minor offences, a Justice of the Peace, sitting alone, can decide the case and punish the offender. If the offence is of a more serious character, the J. P. (the Justice of the Peace) holds an enquiry and commits the prisoner for trial. On the nature of the crime depends in which court the accused will be tried. For certain offences, the accused is tried by the Court of Petty Sessions consisting of two or more Justices of the Peace. From the Court of Petty Sessions an appeal lies to the Quarter Sessions which consists of all the Justices of Peace in the county and meets quarterly.

Cases involving grave offences are tried at Assizes. The Assize Courts are held by one or two Judges of the Queen's Bench Division of High Court who go out 'on circuit'. England and Wales are divided into seven circuits for the purpose. The accused is entitled to be tried by a jury of twelve persons (usually two women and 10 men). The jury gives the verdict on facts. If the jury unanimously finds the prisoner guilty, the judge pronounces the sentence. If the jury pronounces the accused to be not guilty he is released. If the jury fails to agree, a new trial may be held with a new set of jurors.

From the Courts of Assize (and also from the Quarter Sessions) an appeal lies to the Court of Criminal Appeal. Such an appeal lies only against conviction or sentence but not against acquittal. From the Court of Criminal Appeal an appeal can be taken to the House of Lords only if the Attorney-General certifies that the case involves a point of law of public importance.

The judiciary is entirely appointive, that is, the judges are appointed, not elected. The Justices of the Peace and the County Court Judges are appointed by the Crown on

the recommendation of the Lord Chancellor. The Judges of the High Court and the Court of Appeal as well as the Lords of Appeal in Ordinary are appointed by the Crown on the recommendation of the Prime Minister. These judges of the higher courts can only be removed by the Queen on an address presented to Her Majesty by both Houses of Parliament. Their salaries are also charged on the Consolidated Fund so that these may not be subjected to the vote of the House of Commons every year. All this helps in ensuring the independence of the Judiciary.

Scotland —On the civil side, the most important lower court in Scotland is the Sheriff Court. From the Sheriff Court an appeal lies to the Court of Session which has jurisdiction over the whole of Scotland. From decisions of the Court of Session an appeal lies to the House of Lords.

On the criminal side, the Justices of the Police Courts have jurisdiction to deal with petty offences. But "the bulk of the criminal work is done by the Sheriff Court." From the decisions of the Sheriff Court, an appeal lies to the High Court of Justiciary. Appeals against convictions by the latter court are heard and finally disposed of by three or more Judges of this court. There is no appeal to the House of Lords from the final decisions of the High Court of Justiciary.

The House of Lords—Though theoretically every member of the House of Lords can attend when the House sits as highest court of appeal, by convention only the following members may attend—(1) the Lord Chancellor, (2) the nine Lords of Appeal in Ordinary and (3) other members of the House who hold or have held high judicial office. A judicial sitting of the Lords can take place even when Parliament is prorogued. Any three of the Law Lords can hear and dispose of appeals. The judicial decisions of the House of Lords are binding on itself, that is, the House cannot overrule its own decisions.

Impeachment—The House of Commons has the power to impeach any person before the House of Lords for any crime. But impeachment has practically gone out of use, there having been no impeachment since 1805.

CHAPTER XLVI

THE BRITISH COMMONWEALTH AND EMPIRE

The United Kingdom—England and Scotland united into Great Britain in 1707. Great Britain and Ireland united in 1801 into a United Kingdom. Ireland, with the exception of six northern counties, seceded from the union in 1922 and, after remaining in the British Commonwealth as a member for twenty-six years, became an independent republic in 1949.

To day, England and Wales, Scotland and Northern Ireland constitute the United Kingdom of Great Britain and Northern Ireland. England, Wales and Scotland have a common legislature, namely, the Parliament of the United Kingdom. Northern Ireland has her own Legislature, known as the Parliament of Northern Ireland (see below). Though England and Wales and Scotland are under the same Legislature and the same Central Government, Scotland has her own system of law and courts. Her administration is also loosely co-ordinated with that of England and Wales. The day-to-day administration of Scotland is largely conducted from the Edinburgh office of what is known as the Scottish office. The Secretary of State for Scotland is the ministerial head of the Scottish office which functions through four departments—the Department of Agriculture for Scotland, the Scottish Education Department, the Department of Health for Scotland and the Scottish Home Department. The day-to-day activities of all these departments, as has been indicated, are carried on from Edinburgh, the London office of Scottish office being more or less a liaison office. In matters relating to economic affairs and defence, however, the administration is completely centralised and uniform for both England and Wales, and Scotland. There is a Standing Committee in the House of Commons—the Scottish Committee—which includes, among others, all members representating the Scottish constituencies. This Committee considers all Scottish Bills—Bills which deal with matters exclusively relating to Scotland.

Northern Ireland—Northern Ireland is an autonomous unit in the United Kingdom. It has its own Legislature—the Parliament of Northern Ireland. The parliament has two Houses. The Lower House is called the House of Commons and the Upper House, the Senate. The parliament can make laws on all subjects excepting a few which are reserved for the Parliament of the United Kingdom. The reserved subjects are defence, foreign relations, coinage, foreign trade and matters relating to the Crown. The parliament of Northern Ireland is subject to the Legislative supremacy of the Parliament fo the United Kingdom. The latter can modify or repeal any law passed by the former. In the event of a final disagreement between the House of Commons and the Senate, a joint session of the two Houses may be convoked by the Governor-General who is the chief executive. If the Bill is a money Bill, a joint session may be convoked in the same session that the Bill is rejected by the House. In case of other Bills, the joint session can be called only if the Bill is passed in two successive sessions by the House of Commons.

Though the executive power is vested in the Crown, it is exercised on behalf of the Crown by a Governor-General and a responsible ministry. The government is based on the Cabinet system.

Northern Ireland does not enjoy any independent status in international affairs. Its foreign relations are under the complete control of the foreign office at London.

Though it has a Legislature of its own, Northern Ireland enjoys representation in the United Kingdom Parliament, its quota of representation being 13 seats.

Colonies, Protectorates, Trusteeships and dominion Governments—The component parst of the British Commonwealth and Empire overseas can be broadly divided into four categories, namely, (1) Dominions, (2) Colonies, (3) Protectorates and (4) Trusteeships. (Although India and Pakistan are members of the commonwealth, they, being indipendent Republics, fall in none of these categories). This subject has been dealt with in an earlier chapter.

CHAPTER XLVII

THE GOVERNMENT OF THE UNITED STATES

THE HISTORICAL BACKGROUND

Colonisation—The territory which is now comprised in the United States began to be colonised very early in the seventeenth century. From that time on, a great stream of migration rolled to that land from Europe and continued for over a hundred years. During the first three quarters of the seventeenth century, England was the chief source of immigration, ninety per cent of those who came to America during this period being English. There thus grew up in America an English colonial empire consisting of a number of colonies. All these colonies were strung along the eastern coast of the country.

The migration was caused by a variety of factors, economic, political and religious. In 1620, a band of Puritans, known as Separatists, who had earlier migrated from England to Holland to avoid religious persecution, crossed the Atlantic in the 'Mayflower' and founded the 'Pilgrim' colony of New Plymouth. These emigrants came to be known as the Pilgrim Fathers. During the earlier years of the reign of Charles I, who ascended the throne in 1625, many Puritan groups in England followed the example of the Pilgrim Fathers and founded similar colonies on the eastern coast of America. A group of colonies, called New England colonies, which were predominantly Puritan in faith thus grew up on the Atlantic coast. During both the reign of charles I and the Cromwellian regime, many people emigrated to America to escape political persecution and oppression. The economic opportunities which the New World had to offer was, in fact, the most important single factor in impelling people to leave their homes and to travel to an unknown land beyond the seas.

The atmosphere which the immigrants breathed in the New World was in sharp contrast to what they were accustomed to at home. Life here was free from petrified traditions, and vested interests. There was complete political and religious freedom in this land. There were also unlimited economic opportunities. Before the settlers spread unlimited horizons promising endless scope for expansion and prosperity to them all and to their children's children. Under the impact of this situation the old-world traditions which the settlers had brought with them became greatly modified. A foundation was thus laid for the growth in America of a civilisation very different from that of the Old World in many respects,—a civilisation in which liberty and dignity of the human individual are the key-notes. The love of freedom which characterises the American civilisation is reflected in every American institution, including the fundamental law of the land, the American constitution. The provisions of the American constitution which was framed in 1787 become clearly intelligible only when this background of American civilisation and its traditions of freedom are borne in mind.

Political Institutions before 1776—Before independence, in each of the thirteen colonies the Crown was supreme. The Crown exercised its powers in each colony through a colonial governor who acted as the executive head. The governor could summon the colonial legislature and dissolve it at will. He could also veto laws passed by the legislature. He was the head of the colonial militia and, as the executive head, enjoyed the power of the pardon.

There was a legislature in each colony, and it was bicameral in all of the colonies except three. The lower chamber was popularly elected, the franchise being based mainly on property qualifications. The upper chamber was in most cases nominated bodies. The functions of the upper chamber were more executive and judicial than legislative. The legislatures exercised complete control over finance and

could, therefore, make the governor conform to its will. Being dependent on the Legislature for his pay, the governor would hardly dare go against its wishes.

All of the colonies had a more or less uniform system of courts. From the highest courts of these colonies appeal lay to the privy council. Appeals to that body were, however, not frequent before 1750. From about that time till the declaration of independence, appeals used be carried to that body more frequently.

Though the Crown had the power to veto colonial acts, and frequently exercised the power, it was made largely ineffective by the colonial legislatures which often got around the veto it by re-enacting the laws. The Legislatures claimed the exclusive right to pass laws on matters relating to their internal affairs. They refused to recognise the right of Parliament to pass any law on any matter concerning their affairs. The colonist, however, gave allegiance to the Crown. But they maintained that their colonies were not "part of the dominions of England but part of King's dominions". In other words, they held that the different parts of the Empire had a common executive, namely, the Crown, but each part had a legislature of its own. The legislature of no part of the Empire, could in their opinion, claim jurisdiction over another part. And it should be noted that it was attempt on the part of the British Government to pass laws imposing taxes on the colonial peoples which precipitated the American revolution.

The Attainment of Independence—In 1767 Parliament enacted a number of measures imposing duties on paper, glass, lead and tea exported from Britain to the colonies. The duties, known as Townshend duties (because they were sponsored by Charles Townshend, the British chancellor of the Exchequer) were designed to raise revenue to be utilised, in part meeting certain expenses of the colonial administration. An intense agitation followed in the colonies which denied the right of Parliament to impose taxes on

their people. The colonies, the patriots argued, were not represented in Parliament and there could be no taxation without representation. The opposition to the duties became gradually so strong that in 1770 Parliament decided to repeal all the duties excepting one—the "tea tax". The 'tea tax' was retained as a symbolic assertion of Parliament's right to tax the colonies. There must always be one tax to keep up the right, said George III. As a result of this action on the part of Parliament, the agitation subsided, but the retention of the 'tea tax' caused much resentment among a section of the patriots. This extreme element tried to convince the people that this tax symbolised the right claimed by Parliament to tax the colonies. Until this tax was withdrawn, their cause could not be said to have triumphed. And the tax sought to keep alive a principle which might in future seriously affect the liberties of the colonial people. These patriots assiduously carried on their propaganda and their influence soon became widespread. The colonists also continued their boycott of tea from British sources which had started since the imposition of the tax in 1767. On December 16, 1773, a number of patriots boarded three tea ships belonging to the East India Company which had arrived at the port of Boston and threw the cargo into the water.

Greatly offended at this action of the patriots, Parliament decided to take deterrent measures. It suspended the constitution of Massachusetts and passed a number of Acts designed to bring the insurgents under control. These Acts are known as 'Coercive Acts'. The other colonies were alarmed at these developments. The need for evolving common measures to meet what was regarded as a common danger was felt everywhere. On September 5, 1774, the representatives of the colonies met in Philadelphia "to consult upon the unhappy state of the colonies". This was the first Continental Congress. It resolved that no obedience was due to the Coercive Acts. It addressed to the people of Great Britain and the colonies a Declaration of Rights and

Grievances. It also addressed a petition to the King setting out the grievances of the American people and their stand in respect of the issues involved.

In April, 1775, a clash occurred in Massachusetts between the royal forces and the patriots and this gave the signal for revolution. The Second Continental Congress met in Philadelphia on May 10, 1775 and declared: "Our cause is just. Our union is perfect. Our resources are great and, if necessary, foreign assistance is undoubtedly attainable....The arms we have been compelled by our enemies to assume, we will employ for the preservation of our liberties, being with one mind resolved to die free men rather than live slaves." The Congress appointed Colonel George Washington commander-in-chief of the American forces.

On July 4, 1776, the Congress adopted the Declaration of Independence which was drafted by a committee headed by Thomas Jefferson. The Declaration, a historic document, said: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness."

This Declaration marks the final break between Britain and the American colonies. "By this pronouncement the colonies became states, each independent of the crown and politically independent of the others."

The struggle continued for six years and came to an end with the surrender of Lord Cornwallis with his army of 8,000 to the American forces at Yorktown on October 19, 1781.

The Framing of the Constitution—In 1777, the continental Congress adopted what are known as "Articles of Confederation and Perpetual Union." These were ratified by the thirteen states by 1781. These Articles constituted a compact between the thirteen states whereby they entered into a confederation. While retaining their sovereignty, the states delegated certain powers to the confederation, such as the power to manage the war, to control foreign relations, to make peace, to establish a postal service, and to issue paper currency to meet the expenses of war. These powers were to be exercised by a Congress to which the states were to send from two to seven members each. The members representing each state were to have only one vote. Thus the federal compact between the states was based on a mutual recognition of two fundamental principles, namely, the sovereignty of each state, and the legal equality of the states irrespective of differences in size and population.

Between 1776 and 1780, all the States adopted new constitutions replacing their old colonial system of Government. While these constitutions differed in many respects from one another, they were similar in their basic features. Each constitution provided for a governor who was to be the chief executive. The governor was to be elected either by the legislature or directly by popular vote. The legislature in most cases was a bicameral one. Each constitution provided for a judiciary. Most of the constitutions contained a "bill of rights" guaranteeing certain fundamental rights to the citizens. In some of them, the principle of separation of powers found express or tacit recognition.

The states were so jealous of their sovereignty that they gave the confederation only a very limited set of powers. The organ of the confederation, the Congress, had no power to tax, nor any to regulate trade. It did not also possess any power to settle disputes among the various states. In short, the confederation lacked most of those powers without which

it could not function as an affective central authority in normal times.

When the war of independence ended, the states found themselves in a desperate economic situation. Currency had greatly inflated because of the war-time issue of paper money by the confederation. There was disconent among the common people. Traders were unwilling to accept the depreciated money in settlement of their claims. The effect of economic depression were intensified by a tariff war which broke out among the states themselves. There were quarrels between some of them over certain other matters. The confederation could do nothing to prevent these developments or to deal with them properly because it lacked the necessary powers. The situation drifted fast towards economic chaos and civil war. The danger of foreign intervention was also there.

Sensible people felt the need for strengthening the hands of the confederation so that it could effectively deal with certain matters which required centralised control and administration. In February 1787, the Continental Congress asked the states to send their delegates to a convention in Philadelphia to revise the Articles of Confederation with a view to strengthening the hands of the confederation.

On May 25, 1787, 55 delegates representing 12 states assembled in Independence Hall in Philadelphia and began their deliberations. Rhode Island was the only state which did not send its representatives. This was because she was afraid that the setting up of a strong national government would result in the curtailment of her sovereign powers. The 55 delegates included some of the greatest figures in American history—George Washington, Benjamin Franklin, James Madison and Alexander Hamilton. None of the delegates, however, were directly elected by popular vote. All of them were either chosen by the state legislature or appointed by the governor under authority conferred by the legislature.

George Washington was elected Chairman of the Convention.

Though the delegates were authorised only to revise the Articles of Confederation, they put aside this document and proceeded to draft an entirely new constitution embodying a new scheme of national government. The deliberations of the delegates ended on September 17.

The draft constitution was to come into force on ratification by not less than nine states. By the end of 1788, having been ratified by the required number of states, it became operative. Soon after elections were held in the various states. George Washington was elected the first President of America. The new Government assumed office on April 30, 1789.

New York was chosen as the temporary capital. Maryland and Virginia donated a portion of their territory for a permanent federal capital. This small piece of territory is known as the District of Columbia and herein is situated the city of Washington, the seat of the Federal Government.

The constitution of the United States which was framed in 1787 is still the fundamental law of the land. The very fact that it has survived the social and political changes of over hundred and fifty years and continues to be the basis of the constitutional structure of the country to this day is itself a tribute to the genius and foresight of its framers. "The statesmen of 1787," says Munro, "at any rate, gained their objective. They created a union that has endured. Their roll of parchment still governs their children's grandchildren, after the lapse of over a hundred and fifty years. Their thirteen states have grown to forty-eight; their three million people have grown nearly fifty-fold. Faulty though their work may have been in spots, can there be any greater tribute to its worthiness than that it has served so long?"

CHAPTER XLVIII

THE BASIC FEATURES OF THE U. S. CONSTITUTION

The Constitution of the United States is a short document containing seven Articles to which are appended 22 amending provisions. It is the shortest constitution in the world.

The Constitution provides for the creation of a Federal Government and defines the powers and functions of the different branches, executive, legislative and judicial, of this Government. It also contains a 'bill of rights'. The basic features of the Constitution are five in number. These are being described below.

Principle of Popular Sovereignty—The Constitution of the United States is based on the principle of popular sovereignty. The preamble to the Constitution says: "We the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

It may be argued that none of the delegates to the Convention of 1787 which framed the Constitution was directly elected by the people. But that does not alter the fact that the Constitution itself is based on the principle of popular sovereignty. For, in the first place, the Constitution provides for a Government which is to be run by the elected representatives of the people. In other words, it provides for a democratic government. Secondly, the people of the United States have for over one hundred and fifty years accepted the Constitution as reflecting and representing their will. By accepting the Constitution as their fundamental law and ordering their political life

according to its provisions, they have given their seal of approval to this document.

It may be noted here that the members of the Indian Constituent Assembly, too, were not directly elected by the people. They were elected by Legislative Assemblies which themselves were elected on the basis of a limited franchise embracing only 13 to 14 per cent of the people. Nevertheless, the Constitution framed by the Indian Constituent Assembly gives full recognition to the principle of popular sovereignty and enfranchises the entire adult population of the country. The framers of the Indian Constitution, though they were not directly elected by the people, believed in democracy and have built a democratic system of Government for the country.

A Grant of Powers—Broadly speaking, there are two ways of distributing powers between a federal government and the constituent states. The states may be given a list of specified powers and the rest of the legislative field may be left to the Centre. Or alternatively, the Centre may be given a list of specified powers and the rest of the legislative field may be reserved to the states. The Constitution of the United States follows the latter plan. It is a grant of powers to the Centre. The Constitution gives a number of specified powers to the federal Government and states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

This plan of distribution of powers has been, it is interesting to note, followed in the Australian Constitution, while the Constitution of Canada has adopted the other method, namely, that of granting the states a number of specified powers and leaving the rest of the field to the Centre. The division of powers in the Indian Constitution is more or less of the Canadian type.

The following are some of the powers granted by the Constitution to the federal Government: taxation for

federal purposes, regulation of inter-state commerce, army and navy, foreign relations and treaties, postal service, admission of new states, currency and coinage. The following are some of the powers which are reserved, by implication, to the states: taxation for state purposes, regulation of trade within a state, civil and criminal law, education, control of local government, organisation and control of corporations, highways and traffic.

It must be added that in spite of the clear demarcation of the respective spheres of the Centre and the states in the constitution, it has not been possible to confine the Centre's powers within the limits originally intended by the framers of the Constitution. The powers of the federal Government have steadily grown. This development has been inevitable because the growth of population, progress of industrialisation and technological advance have more or more given rise to problems requiring greater central control. The extension of the Centre's powers has been brought about mainly through judicial interpretations of the words and phrases contained in the Constitution. Whatever might have been their original meaning, they have been always interpreted by the Judiciary in a manner suited to the needs of the times.

Separation of Powers—The principle of separation of powers finds recognition in the American Constitution to a very marked degree. According to this principle, the three organs of government, executive, legislative and judicial, should be separate and independent of each other. The framers of the Constitution took particular care to vest the executive, legislative and judicial powers of the federal government in three separate and independent organs. Three separate Articles deal with the powers of these organs. Article I states: "All legislative powers herein granted shall be vested in a Congress of the United States." Article II states: "The executive power shall be vested in a President of the United States." Article III says: "The judicial power

of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The framers of the Constitutions were anxious to ensure that none of these organs encroached on the sphere of the others.

A government being, however, an organic unity, a *complete* separation of powers is neither practicable, nor desirable. The framers of the Constitution were well aware of this, and they provided for points of contact between the executive, legislative and judicial branches of government. They wanted to ensure that through these points of contact the different branches were enabled to exert a checking and balancing influence on each other's activities. Thus while vesting the legislative power in the Congress, the Constitution gives the President the power to veto legislation. Again, to ensure that the veto power is not used to set up an executive despotism, the Constitution empowers the Congress to override the President's veto by passing a vetoed law once again by a two-thirds majority in each house. Similarly, while vesting in the President the power to make appointments, the Constitution lays down that this power shall be exercised with the advice and consent of the Senate. Thus, the Senate—the Upper House of the Legislature—can refuse to confirm the appointments made by the President and can thereby render them nugatory. The Constitution gives the President the power to negotiate treaties, but no treaty can be valid unless approved by a two-thirds majority of the Senators present. The President is empowered by the Constitution to appoint the federal judges including the judges of the Supreme Court, but he is not given the power to remove them. The Constitution, however, provides against the possibility of the judges becoming tyrannical by making them removable by impeachment. While the Congress is given power to determine the number of judges and to fix their salaries, the Constitution lays down that the judges' salaries shall not be diminished during their conti-

nuance in office. Thus, the Constitution sets up an elaborate system of checks and balances designed to ensure that the activities of the three governmental organs checked and balanced each other so that none could become too powerful.

It must be added that in times of emergency requiring unified direction of the activities of entire governmental machinery, it is not possible for any governmental system to adhere strictly to the principle of the separation of powers. In America, too, the principle of separation of powers is largely set aside in times of grave emergency. In such times, the executive branch of the government dominates the legislative branch in a manner which would be unthinkable in normal times. This happened during the two World Wars. This also happened during the economic depression of the thirties, when a programme of legislation formulated by the President Roosevelt, which was designed to cope with the serious situation that had developed on the economic front, was passed by the Congress without demur within an extremely short space of time.

The growth of delegated legislation and administrative justice in the United States, as in many other countries, has also considerably broken down the lines which divided in the past the respective spheres of the three branches of the Government. Now-a-days, under authority conferred by statutes, the administrative authorities in the United States regularly make innumerable by-laws and regulations which have the force of law (delegated legislation). Administrative bodies and departments, further, decide in these days a host of judicial and quasi-judicial issues affecting private rights (administrative justice).

Judicial Supremacy—A fourth basic feature of the American Constitution is the principle of judicial supremacy. In the United States, the Supreme Court has the final say in matters relating to the interpretation of the Constitution. The Supreme Court is, in other words, the final authority to settle disputes as to the jurisdictions of the different

branches of government, as well as to decide whether a law or an executive action violates the Constitution or not. The Supreme Court can declare any law, federal or state, as unconstitutional and void if it contravenes the provisions of the Constitution. This power is known as the power of judicial review.

The English constitutional system, unlike the American, is based on the principle of Parliamentary sovereignty. Parliament has the last say in everything in the United Kingdom. A law passed by Parliament becomes automatically binding on everybody including the courts. And Parliament can set aside judicial interpretations in relation to any matter whatsoever by passing a law on that subject. The Constitution of India, on the other hand, does not recognise the principle of Parliamentary sovereignty. Like the American, the Indian Constitution makes the Judiciary supreme in matters relating to the interpretation of the Constitution.

The Bill of Rights—The first ten amendments to the American Constitution, which are known as "the Bill of Rights", guarantee certain fundamental rights to the citizens, such as freedom of speech, press or assembly, the right to bear arms and the right not to be deprived of life, liberty or property without due process of law. These fundamental rights cannot be abridged or abrogated except by amending the Constitution. These provisions of the Constitution are, therefore, a bulwark for the protection of civil liberties against invasion by the governmental authorities.

Most modern constitutions, including the Indian, have followed the American practice in this respect. Almost all of them contain provisions which guarantee certain fundamental rights to the citizens. Part III of the Indian Constitution is exclusively devoted to the enumeration of fundamental rights.

CHAPTER XLIX

HOW THE CONSTITUTION HAS CHANGED AND DEVELOPED

It would be entirely wrong to suppose that the short document known as the Constitution of the United States contains the whole body of the American constitutional law. This document is only the foundation on which has been built, through the generations, an imposing structure of constitutional law and usage. Statutes, usages and judicial interpretations are the chief factors that have contributed to this development. The American Constitution, in its broader sense, is thus made up of five main elements, namely, (1) the document known as the Constitution of the United States including the twenty-two amendments, (2) statutes, (3) judicial decisions, (4) executive orders, and (5) usages and customs.

The Constitution left many matters to be dealt with by the Congress by passing laws. While, for instance, the Constitution provided for the Supreme Court, it left it to the Congress to provide by statutes for the subordinate federal courts. The entire organisation of the subordinate federal judiciary has, therefore, been provided for by statutes passed by the Congress. Similiarly, many other vital constitutional matters are regulated by statutes.

Judicial decisions have considerably added to the volume of the constitutional law. It is mainly through the judicial interpretations of the words and phrases contained in the Constitution that the Constitution has been made to keep pace with the march of time. New developments in the social and economic field have called for the assumption of new powers by the federal authorities and the Supreme Court has continually expanded and enlarged, by interpretation, the meaning of the words of the Constitution to find in them the basis for such powers. The meaning of the

words used in the Constitution has thus been changed in a manner which it would have been impossible for the framers of the Constitution to even dream of. Today it is impossible for a person to understand the full implication of the words and phrases of the Constitution by simply reading them. One must delve into the thousands of judicial decisions which have interpreted the Constitution if one wants to grasp clearly the meaning of these words and phrases. For instance, the phrase "due process of law" has been made by the Supreme Court to mean much more than what these innocent-looking four words would convey to a lay mind.

Executive orders which are issued under authority derived from statutes have the force of law. These orders sometimes relate to important functions of the administrative departments and the rights of the citizens. They too are, therefore, a source of constitutional law.

Usages form an important element in the Constitution in the broader sense. (The term Constitution, when used in the broader sense, includes the entire body of constitutional law and customs.) In every country customs or usages play an important role in the political life of the people. In America, too, various customs have grown round the constitutional laws and they regulate the political affairs of the country in a considerable measure. Some of the usages of the Constitution have considerably modified the working of certain political institutions or have greatly changed their spirit. For instance, the framers of the Constitution intended that the President of the United States should be indirectly elected and provided for a special electoral machinery for the purpose. But while that machinery functions today as it did when the Constitution first came into force, the President of the United States is today, for all practical purposes, directly and not indirectly elected. How this has come about will be explained in the next chapter. Here the important point to note is that this change in the working of the electoral machinery provided

for by the Constitution for Presidential election has been the result of certain usages. The Constitution of the United States, again, says nothing about the Cabinet of the President. But, in practice, the President appoints a Cabinet and from time to time holds cabinet meetings. This is the result of certain usages or conventions that have grown into a permanent feature of the Constitution (in the broader sense). It should also be noted that almost the entire party system in America which plays a vital role in the political life of the country is based on usages. Only a small sector of party activities has in recent years come to be regulated by law. The bulk of the activities of parties, however, still lies outside the scope of laws.

How the Constitution is amended—The Constitution of the United States is a rigid one. It cannot be easily amended. The Constitution lays down the following procedure for its amendment: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress....."

The following points should be cartfully noted about this procedure.

(1) An amendment may be proposed either by the Congress by a two-thirds majority, or by a special convention called for the purpose by the Congress on the application of two-thirds of the states. After it has been proposed in the required manner, an amendment will be deemed as part of the Constitution if the legislatures of three-fourths of the several states or special conventions in three-fourths of the states ratify it. There are, therefore, four different ways of

amending the Constitution. These are: (a) The Congress may propose an amendment by a two-thirds majority and submit it for ratification to the legislatures of the states. If ratified by three-fourths of the legislatures the amendment will be deemed to have been adopted. (b) The Congress may propose an amendment by a two-thirds majority and then submit it for ratification by special conventions in the states. When ratified by three-fourths of the conventions, the amendment will become part of the Constitution. (c) An amendment may be proposed by a special convention called by the Congress on the application of the legislatures of two-thirds of the several states. If ratified by the legislatures of the three-fourths of the states, the amendment will be deemed to have become part of the Constitution. (d) Finally, an amendment may be proposed by a special convention called by the Congress on the application of the legislatures of two-thirds of the states and then submitted for ratification by special conventions in the states. If ratified by three-fourths of the conventions, the amendment will be regarded as adopted.

Though the Constitution can be amended in any of these four ways, virtually one method, namely, the first, has been followed so far in amending it. The first ten amendments were proposed by the Congress in 1791 and submitted for ratification to the state legislatures. This created a precedent which has been followed so far almost without break. Twenty-two amendments have been so far adopted and only in the case of one, the twenty-first amendment, the ratification was made by special state conventions. In the case of all other amendments, the Congress proposed and the state legislatures ratified. The twenty-first amendment was also proposed by the Congress.

(2) Legislative measures passed by the Congress have to be submitted to the President for his assent. But amendments to the Constitution proposed by the Congress by a two-thirds majority are not submitted to the President.

The President has, therefore, no power to veto any proposed amendment.

(3) The two-thirds majority required in both Houses of the Congress for proposing an amendment means two-thirds of the members present and not two-thirds of the total number of members.

(4) So far only twenty-two amendments have been adopted, the last of them having been ratified in 1951. Of these the first ten amendments were adopted in 1791. Thus during a period of over 160 years only twelve amendments have been adopted. Why is it that so few amendments have been made during such a long period ? It is because usages, statutes and judicial decisions have continually changed the Constitution and have helped it to keep pace with the march of time so that the need for amending the basic document has not arisen frequently. Only when it has not been possible to achieve the desired objective through usages, Acts, or judicial interpretations, the Constitution has been formally amended.

In sharp contrast to the procedure for constitutional amendment in America is that in Britain. The British Parliament can at any moment amend the Constitution by passing a law according to the usual legislative procedure. Thus whereas the American Constitution is very rigid, the British Constitution is very flexible. The Constitution of India steers a middle course between the two extremes. It is neither too flexible, nor too rigid. (The procedure for constitutional amendment in India has been described in connection with the study of the Indian Constitution.)

CHAPTER L

THE FEDERAL GOVERNMENT

The President of the United States—The Constitution says: "The executive power shall be vested in a President of the United States of America". The Constitution does not vest any executive power in the Vice-President or the Cabinet or any other officer. The President is the sole repository of the executive power. He, however, exercises this power through a vast hierarchy of officials.

The President lives in Washington in an official residence known as the White House. He is elected for a term of four years. The presidential election is, therefore, held every fourth year. To be eligible as the President, a person must be at least 35 years of age. He must have been, further, a natural-born citizen and must have been at least fourteen years a resident of the United States.

The presidential election takes place in November every fourth year and his inauguration takes place on January 20 following the election.

In case of the removal of the President from office, or of his death, resignation or incapacity, the Vice-President succeeds to the office of the President. The Constitution empowers the Congress to determine the order of succession to the presidential office in case the Vice-President is not available for any reason to succeed to that office. Accordingly the Congress has passed legislation providing for succession to the presidential office. The order of succession is as follows: Speaker of the House of Representatives, President pro tempore of the Senate, Secretary of State, Secretary of the Treasury, Secretary of Defence, Attorney-General, Postmaster General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labour.

The President can be removed from office by impeachment for treason, bribery or other high crimes and misdemeanors.

The presidential election and the powers of the President will now be considered in some detail.

How the President is Elected—The framers of the Constitution laid down an indirect method for electing the President. The majority of them were opposed to the idea of direct election of the President because they felt that such election would result in the choice of demagogues rather than of far-seeing and able statesmen. The method of election embodied in the Constitution is as follows:

Each state is to choose, in such manner as the legislature thereof may direct, a number of electors equal to the combined quota of the State's representatives and senators in the Congress. The electors are then to meet in their respective states and to vote by ballot for the President and Vice-President, one of whom at least must not be an inhabitant of the same state as the electors. They must name in their ballots the person voted for as the President as well as the person voted for as the Vice-President. When the ballots have been counted, a certificate is to be sent to Washington attesting the result of the election. The President of the Senate shall then open the certificates in the presence of both Houses of Congress and counting of the votes will take place. The person who receives a clear majority of the total electoral votes as President shall be declared elected as President. And the person receiving a clear majority of electoral votes as Vice-President shall be the Vice-President.

If no candidate for the presidential office receives a clear majority of the electoral votes, the House of Representatives shall choose a President from among the three candidates who stand highest in the list. In choosing the President the members of the House are to vote by states and not as individuals, the representation from each state having one vote. The votes of a majority of the states is necessary to a choice.

Similarly, if there is no clear majority of electoral votes for any candidate for the vice-presidentship, the Senate

chooses one of the two highest candidates as the Vice-President. In making this choice, the Senators vote as individuals, a majority of votes being necessary to a choice.

Thus the Constitution clearly provides for an indirect method of election of the President (and also of the Vice-President). He is to be elected by an Electoral College the members of which are first to be chosen by the several states. But mainly as a result of the growth of the party system, it has come about that the President of the United states is now, in reality, directly elected by the people, though the election takes place according to the procedure laid down in the Constitution. The election is indirect in form only. It is direct in substance. In the summer of the election year the major political parties hold national conventions which nominate the candidates for the offices of the President and the Vice-President of each party. The conventions also nominate the presidential electors of each party to vote for the party candidates if elected. In November, people of the various States elect the presidential electors. The voters know who are the candidates in the field for the offices of the President and the Vice-President. They also know which group of persons standing for election to the Electoral College will vote for the candidates of their choice. When the presidential electors, therefore, meet to choose the President and the Vice-President, they do not exercise their free choice. Having been nominated by the parties, they are already pledged to support their party candidates. They invariably vote for these candidates. Thus they act as if they are merely a number of ballots cast by the people in favour of this or that candidate for the presidential and vice-presidential offices. As soon as the electors have been elected, people know who has been elected as the President and who as the Vice-President. For how the electors will cast their ballots is already known.

Thus the election of the President (and also of the Vice-President) has become, for all practical purposes, a

direct election. It is as if the Electoral College does not exist at all.

To sum up, the framers of the Constitution intended that the President should be indirectly elected, but custom has so modified the working of the Constitution that the President is now directly elected by the people through an Electoral College. This illustrates how greatly custom can sometimes modify the spirit of an institution without bringing about any formal change in the letter of the law.

The President's Powers—The President of the United States is one of the most powerful functionaries in the world. He is the executive head of the federal government. In fact, the executive power is solely vested in the President. All other officers of the federal government receive from the President their right to exercise executive power and are responsible to him. The chief function of the President is to enforce the Constitution, the laws made by the Congress and the treaties. For the convenience of discussion, the powers of the President may be grouped under four heads—executive and judicial powers, powers relating to legislation, appointive power and powers in the field of foreign affairs.

Executive and Judicial Powers—The President enforces the federal laws, treaties and the Constitution through a vast body of officials appointed by him or by his immediate subordinates. To carry on his executive functions, he has to issue innumerable rules, regulations and orders which are known as executive orders. He cannot however issue an executive order which contravenes the provisions of the Constitution or of any validly enacted law.

The President is the Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States. As the Commander-in-Chief, he enjoys tremendous powers in times of war. Even in peace time he can take such action as can throw the country into war. He can, for instance, order the navy to seize the ships of a State

which has in his opinion committed acts of agression. Although, under the Constitution, the Congress alone can declare war, the Congress has never done so except on the President's recommendation.

The President appoints the judges of the Supreme Court and also the judges of all subordinate federal courts. These appointments, however, require confirmation by the Senate.

The President can pardon crimes against the federal laws. He can even pardon a man before he is convicted. He can shorten a prison term or reduce a fine. He can stay the enforcement of a penalty. It is important to note, however, that the President has no power to pardon offences against the state laws. Nor can he grant pardon in the case of an impeachment. The President himself can be removed from office by impeachment.

Powers relating to Legislation—The Constitution empowers the President to recommend measures to the Congress. The President sends messages to the Congress from time to time recommending the adoption of measures considered desirable by him. Such messages are usually sent at the beginning of each congressional session. Sometimes special messages are sent dealing with particular subjects. Very often the President gets a measure drafted by the Department concerned and brings it before the Congress through some member of either of the two Houses.

While the time for regular sessions of the Congress is fixed by law and the President has no power to alter the dates for the holding of such sessions, he can call special sessions of the Congress to consider particular matters. The President can also increase the length of a regular session by threatening that unless the Congress passed the measures before it adjourns in that session he would call a special session immediately after adjournment.

The President cannot adjourn the Congress unless the two Houses fail to agree as to the time of adjournment. The President cannot dissolve the Congress. In fact, "the power

to dissolve any legislative body before its term expires does not exist in the United States". While the Senate is a permanent House, one-third of its members retiring every second year, the House of Representatives continues for its full two-year term at the expiration of which it automatically goes out of existence.

An important power of the President in relation to law-making is the veto power. Every Bill when passed by both Houses of the Congress must be presented to the President. The President, if he approves of the measure, can sign it. If he disapproves, he can veto it. If the President signs a Bill which has been passed by the Congress and presented to him, it becomes law. If the President vetoes the measure, it cannot become law unless it has been again passed by each House of the Congress by a two-thirds majority. This is known as passing a law over the President's veto. A measure so passed becomes law in spite of the President's disapproval.

If the President fails to sign a Bill within 10 ten days after it reaches him (not counting Sundays), it becomes law without his signature. If, however, the Congress has meanwhile adjourned, the Bill does not become law unless signed by the President within the ten-day period. It should be clearly noted that when the Congress has adjourned before the expiration of ten days after a Bill has reached the President and the latter has not signed it within this ten-day limit, the Bill becomes dead. This is known as "the pocket veto". Many unimportant Bills passed towards the end of a congressional session die every year in this way. While the President's veto power is said to be a qualified veto because it can be over-ridden by the Congress, the pocket veto is an absolute veto.

Appointing Power—All officers of the federal Government are appointed by the President or his immediate subordinates. (The offices of the President and the Vice-President are the only two elective posts in the entire administrative

set-up of the U. S. Government.) The appointive offices are divided by the Constitution into two categories. First, those higher offices which are to be filled by the President with the consent of the Senate. Second, those 'inferior' offices which may be filled, if the Congress so provides, by the President alone, or by the heads of departments or by the courts. The Congress determines by legislation which class or classes of appointments are to be submitted to the Senate for confirmation, and which class or classes shall not require such confirmation.

Among the officers who are to be appointed by the President with the consent of the Senate are the following: Cabinet members, assistant secretaries and under-secretaries of the departments, all federal judges including judges of the Supreme Court, ambassadors and members of the various federal commissions such as the Federal Trade commission, the Interstate Commerce Commissions. While the Senate has the right to refuse to confirm an appointment made by the President, such refusals are very rare.

More than 95 per cent of the federal appointments 'however' do not require senatorial confirmation. A large percentage of these positions are still "treated as patronage and are filled on the recommendation of the congressmen from the districts concerned." The great majority of the subordinate officers in the federal service are 'however' recruited through the civil service system. That is, they are recruited through examinations held to test their fitness for the posts concerned.

The above should make it clear that, in spite of the introduction of the civil service system, the appointing power in the hands of the President still remains very considerable. Appointments made by him are rarely refused approval by the Senate. The President has also the power to remove officers for incompetence. Removals from office by the President do not require senatorial approval.

Powers in relation to foreign Affairs—The President of the United States is responsible for the country's relations with foreign powers. The President appoints, with the concurrence of the Senate, ambassadors, ministers and consuls. He can also appoint any number of personal representatives to carry on talks or negotiations with foreign governments. Appointment of such personal representatives and agents does not require senatorial approval. The President receives foreign ambassadors and other public ministers. Through the Department of State, headed by the Secretary of State, he maintains contact with foreign governments and takes the necessary steps for the protection of American citizens and interests abroad. This power of appointing ambassadors and maintaining contacts with foreign Governments enables the President to recognise, or to refuse recognition to, new governments or nations. Refusal on his part to exchange diplomatic representatives with a new government will mean refusal of recognition to that government.

The President can negotiate treaties with foreign Governments. No treaty, however, becomes binding on the United States unless it is approved by the Senate by a two-thirds majority of the members present.

The requirement of the Senate's approval to treaties undoubtedly handicaps the President to a great extent in handling foreign affairs. But the President can often easily circumvent this difficulty by concluding an "executive agreement" with the Government concerned instead of a formal treaty. For unlike a treaty, an "executive agreement" does not require the Senate's concurrence. "Executive agreements" are supposed to deal with matters which are not of sufficient importance to warrant conclusion of a formal treaty. As a matter of practical fact, however, highly important matters are often dealt with by "executive agreements", which, therefore, constitute a great source of the President's power in foreign affairs.

As the Commander-in-Chief of the Army and Navy, he exercises control over the disposition of the armed forces. And this also is a great source of the President's powers in foreign affairs. He can order the forces to any part of the world. He can even order them to invade foreign territory if he considers it necessary to protect the interests of the country or its citizens. In fact he can exercise his power as the Commander-in-Chief of the Army and Navy in such a manner as to make war inevitable.

The Cabinet—The Constitution does not say anything about the Cabinet. Every President has, however, appointed a council of advisers known as 'the President's Cabinet'. The Cabinet has become a permanent feature of the U. S. Government.

The members of the Cabinet are appointed by the President, and are responsible to him. Each member heads an Executive Department. The law does not specify any special qualification for Cabinet members. The President, therefore, can appoint any person as a Cabinet member. If, however, he appoints any member of the Senate or the House of Representatives as a member of his Cabinet, the appointee ceases to be a member of the Congress. For the Constitution lays down that "no person holding any office under the United States, shall be a member of either house during his continuance in office." The President can dismiss a Cabinet member at any time he pleases. Such dismissals are, of course, rare. The President can consult individual members of the Cabinet on any matter relating to the particular departments they head or he can call meetings of the entire Cabinet to discuss such matters as he may lay before it. The advice of the Cabinet is not binding on the President who is always free to take his own decision on any matter. The Cabinet meetings are secret. The members of the Cabinet are required not to make public anything about discussions held in such meetings.

Each member of the Cabinet, as has been already stated, is the head of an Executive Department. He manages the Department with the assistance of a vast body of officials serving under him.

It will be interesting to compare the position of the members of the President's Cabinet with that of their British counterparts. Whereas in Britain the members of the Ministry must be members of Parliament, in America the Cabinet members cannot sit in either House of Congress. They cannot appear on the floor of either House to participate in debates or to answer questions. The Cabinet members in America are mere servants of the President who can appoint or dismiss them at will. The President is also entirely free to accept or reject their advice. Not so is the Prime Minister of Britain. He does not enjoy a completely free hand in choosing his colleagues on the Cabinet. He cannot avoid including in it the leading figures in the party who are members of Parliament. He cannot also normally ignore their advice without bringing about discontent among the members of the Party and thereby weakening the position of the Government.

The Cabinet in Britain is responsible to the House of Commons and if it loses the confidence of the House it must either resign or appeal to the country. If the appeal goes against it, that is, if it fails to get itself returned to power in the elections, it has no alternative except to resign. The American Cabinet, on the other hand, is responsible only to the President. The Congress cannot remove it from office by passing a no-confidence resolution against it or in any other way.

While the British Prime Minister undoubtedly dominates the political scene in Britain, he does not completely overshadow his colleagues. The President in America, on the other hand, completely throws his Cabinet into the shade. "The President" says Laski. "in a word symbolises the whole nation in a way that admits of no competitor while

he is in office. Alongside his, the voice of a Cabinet officer is, at best, a whisper which may or may not be heard." All Government policies in the United States are regarded as the President's policies. And the success or failure of them primarily affects his popularity and prestige.

The Vice-President—The Constitution provides for a Vice-President of the United States. Like the President, the Vice-President is also elected by the people through an Electoral College. In fact the President and the Vice-President are elected by the same Electoral College. The method of electing the Vice-President has been already described in connection with the presidential election.

The Vice-President is elected for a term of four years. The Constitution does not give him any executive powers. He presides over the Senate. He is, however, not a member of that body and cannot vote except in case of a tie. In case of death, resignation, removal or incapacity of the President, the Vice-President succeeds to his office. In the absence of the Vice-President, or when he succeeds to the Presidential office, the Senate is presided over by a president pro tempore chosen by that body.

The Constitution says that no person who is ineligible to the office of the President shall be eligible to that of the Vice-President. This means that to be eligible to the office of the Vice-President, a person must be a natural-born citizen, must be at least 35 years of age and must have been a resident of the United States for at least fourteen years.

The Vice-President can be removed from office by impeachment for treason, bribery or other high crimes and misdemeanors.

If a vacancy occurs in the office of the Vice-President, it is not filled till the next election.

Executive Departments and Independent Agencies—There are at present nine Executive Departments. Each Department is headed by a Cabinet member. Each is divided into several bureaus, divisions, offices or services.

Work in every Department is carried on by a vast hierarchy of officials.

The Department of State is headed by the Secretary of State. This officer ranks next to the President and the Vice-President. He is the President's adviser on foreign affairs. The Department of State handles matters relating to foreign affairs. It supervises the Foreign Service of the United States, helps in the negotiating and enforcing of treaties, issues passports and collects information relating to the affairs of other countries. It also publishes all federal laws and treaties.

The Department of the Treasury manage the financial affairs of the country. It collects taxes, borrows money, pays bills, supervises coinage and printing of paper money and performs various other allied functions. Strangely, however, the Treasury Department does not prepare the budget. The budget is prepared by an officer known as the director of the budget who has no connection with the Treasury Department.

The Department of Defence is responsible for national security. It is a combination of three Departments—the Department of the Army, the Department of the Navy and the Department of the Air Force. At the head of the Department is the Secretary of Defence. The Department of the Army is responsible for the organisation, training, equipping of a military force and for keeping it in readiness to defend the United States and its possessions. The chief function of the Department of the Navy is to maintain a naval force for the defence of the country, while the Department of the Air Force is responsible for building up and maintenance of an air force to defend the country against aerial attack.

The Department of Justice conducts suits on behalf of the Government in federal courts, investigates violations of federal laws and prosecutes the offenders, supervises federal prisons and other penal institutions, advises the President

on matters relating to pardons and reprieves, and gives opinions on legal matters when requested by the President or by any Executive Department. The Attorney-General is the head of the Department. He is assisted by the Solicitor-General who appears on behalf of the Government in the Supreme Court of the United States. The Federal Bureau of Investigation is a branch of this Department. The F. B. I. investigates crimes against federal laws and arrests the offenders.

The Post Office Deuartment is headed by the Postmaster-General. It operates the postal service throughout the United States.

The Department of Labour handles matters relating to labour welfare. It helps in setting industrial disputes and in promoting better working conditions for the wage-earners.

The Commerce Department is responsible for the development of foreign and domestic commerce of the nation. Among its functions are conducting coastal surveys, holding decennial censuses, issuing patents, establishment of weights and measures, developing inland waterways, issuing weather forecasts and the like.

The Department of the Interior is concerned with the protection and development of the national resources of the country, as well as for promotion of general welfare. It has charge of public lands of the United States, national parks and the conservation of national resources. It is responsible for the administration of Indian affairs and of the Government of Puerto Rico and the Virgin Islands. It also exercises certain powers in relation to the territories of Hawaii and Alaska.

The Department of Agriculture is concerned with certain functions aimed at the promotion of agricultural production. It is charged with the implementation of federal laws designed to avoid excessive surpluses or shortages. It compiles agricultural statistics and issues crop forecasts. It takes steps for the study of soil, livestock,

plants and advises farmers on various agricultural problems. It maintains a credit system for agricutlure. Apart from these Executive Departments, there are other Government agencies to perform various functions. They are independent of the Executive Departments and are usually called Independent Agencies or Offices. The following are some examples of these Agencies: The Civil Service Commission which holds competitive examinations for the recruitment of various categories of administrative personnel; the Interstate Commerce Commission which is responsible for the regulation of rates and practices in interstate commerce; the Federal Security Agency which performs certain functions aimed at the promotion of social security and educational opportunity; the Securities and Exchange Commission which administers the laws enacted by the Congress to protect the investors, who buy stocks and securities, from fraud and other abuses.

The Legislative Branch of the Federal Government— The Federal Legislature is called Congress. It consists of two Chambers, the Senate and the House of Representatives. Both Houses hold their sessions in an elegant building, known as the capitol, which is situated on the Pennsylvania Avenue in Washington. The Constitution provides that Congress shall assemble at least once a year and such meeting shall begin at noon on the 3rd January, unless it fixes a different date by law. The session continues till the members vote to adjourn. The President has power to call special sessions of Congress whenever he may think it to be necessary. The President, however, cannot adjourn the Congress except in case of disagreement between the two Houses as to the time of adjournment. The President has no power to disssolve Congress before its term expires. (The power to dissolve legislatures does not exist in the United States.) The House of Representatives is elected for a two-year term. The Senate is a permanent House, one-third of its members retiring every second year.

In the November of each even-numbered year, elections are held to elect the members of the House of Representatives and one-third of the members of the Senate. A new Congress thus comes into existence every second year (although two-thirds of the Senators in any Congress retain their seats in the next). Every new Congress is designated by an ordinal number. The Congress which assembled in 1789 was the First Congress. The Congress which was elected in 1948 was the Eightieth Congress and the one which was elected in 1952 was the Eighty-second Congress.

While the Constitution vests the legislative power of the Federal Government exclusively in Congress, it is, as will be explained later, much more than a legislative body.

The Senate and its Organisation—In the Constitutional Convention of 1787, delegates from the larger states took the stand that the states should be represented in the Congress in proportion to their population or to their respective tax contributions. The delegates from the smaller states, on the other hand, insisted that all states should be given equal representation in the Congress. The states, like men, were created equal—so they argued. A compromise was finally reached which provided that in the Upper House of the Congress the States would be equally represented while in the Lower House they will be represented according to population. This plan was incorporated in the Constitution which provides that the Senate shall be composed of two senators from each State and the seats in the House of Representatives shall be allocated to the several States in proportion to their respective populations.

The Constitution as originally framed provided that the senators were to be elected by the State Legislatures. And down to 1913, the senators used to be elected by these Legislatures. In 1913, this provision of the Constitution was amended by the Seventeenth Amendment, which provides that the senators shall be directly elected by the people of

the states. Since then, the senators are, like the Representatives, directly elected by the voters of the states. Since there are 48 States in the United States, the total number of senators is 96.

In theory, the Senate represents the states as such, while the House of Representatives represents the people of the nation. At least the framers of the Constitution intended that this should be so. This is why they gave all States equal representation in the Senate. Their idea was that while the large states would dominate the House of Representatives, the Senate, in which the small states would enjoy equality of representation with the large, would effectively safeguard the interests of these small states. Thus they wanted that each House should act as a check on the other. This plan was but part of their general plan of incorporating in the Constitution a system of checks and balances.

Though to-day both senators and representatives are elected in the same way and by the same body of voters, the states still continue to enjoy equality of representation in the Senate. According to the census of 1940, the State of Nevada had a population of 110,247, while the State of New York had a population of over 13 million. Yet both are equally represented in the Senate. While this may appear to be highly anomalous, it ought to be noted that if both Houses represented the states in the population ratio, a few of the most populous states would control the entire legislative policy of the nation. At present a majority of the total membership of the House of Representatives comes from ten States. If the states were represented in the Senate in the population ratio, these ten States would dominate this House also with the result that they would be able to control the entire process of law-making and get any law passed regardless of the wishes of the other areas. The principle of equality of representation of the states in the Senate prevents this from happening. Under this

arrangement, the concurrence of the members of at least 25 states is necessary to pass a legislation.

The senators are chosen for a six-year term. No person can be a senator unless he is at least thirty years of age, is a citizen of the United States of at least nine years' standing and is, at the time of his election, an inhabitant of the state for which he is chosen.

The Senate, under the Constitution, is "the judge of the elections, returns and qualifications of its own members". It therefore hears and decides election disputes. No newly elected member can take his seat in the House until he is recognised by the Senate as having been validly elected.

When a vacancy occurs in the representation of any state in the Senate, the governor of the state can make a temporary appointment if authorised by the legislature to do so. These appointees serve till the vacancy is filled by an election. The governors of virtually all states have been empowered by the respective legislatures to make temporary appointments in the event of vacancies occurring in their representation in the Senate.

The Senate is presided over by the Vice-President of the United States who has no vote except in the case of a tie. In the absence of the Vice-President or when he succeeds to the office of the President, a president pro tempore chosen by the House presides over it. A majority of the total membership of the Senate constitutes the quorum.

The Senate has a large number of standing committees. The most important of these committees are those on foreign relations, finance, appropriations, the judiciary, naval affairs and inter-state commerce. Every measure is considered by the appropriate committee before it comes to the House for detailed consideration. The committees are appointed by the Senate at the beginning of each new Congress. On every committee, the majority and minority parties are represented in proportion to their respective strength in the Senate. The post of the chairman of a committee is a highly coveted

one and is invariably held by a member of the majority party chosen on the basis of the principle of seniority.

There is far greater freedom of debate in the Senate than in the House of Representatives. Ordinarily, a senator can speak for any length of time. The Senate, however, can, by a two-thirds majority, put a one-hour limit on speeches.

The Senate frames its own rules of procedure.

The Senate's Powers in Relation to Law-making—The Senate enjoys almost co-equal authority with the House of Representatives in the making of laws. No law can be passed without its concurrence. Any Bill can originate in the Senate, except a Bill to raise revenue. "All Bills for raising revenue", says the Constitution, "shall originate in the House of Representatives." But this limitation on the Senate's powers is of little practical significance because the Constitution empowers the Senate to amend such Bills. And very often the Senate introduces new revenue proposals into such Bills in the shape of amendments.

Although the Senate can orginate appropriation Bills, that is, Bills for authorising expenditure, all appropriation Bills as well as the annual budget are first presented to the House of Representatives. The Senate, however, has the right to amend an appropriation Bill or to introduce changes in the budget proposals.

The Senate is thus a co-ordinate, not a subordinate, branch of the Congress. The Second Chamber of the American Congress, it has been rightly said, is not a secondary Chamber.

The Special Powers of the Senate—The Constitution confers on the Senate certain special powers which it does not share with the House of Representatives. These powers relate to (a) appointments made by the President, (b) treaties, (c) trying of impeachments and (d) the election of a Vice-President when no candidate has a majority of the electoral votes.

(a) As has been already said, appointments made by the President to certain categories of higher offices are subject to confirmation by the Senate. In other words, appointments made to these offices by the President become valid only after they have been approved by the Senate. These offices include those of members of the cabinet, all federal judges, ambassadors, ministers and consuls and members of federal commissions such as the Federal Trade Commission, the Interstate Commerce Commission and the like.

The Senate has the right to refuse approval to any of these appointments but such refusals are very rare.

It must be added that the great majority of federal offices are now fillled by the heads of departments under civil service rules and do not require senatorial confirmation.

(b) While the President can negotiate treaties with foreign powers, no treaty can become binding on the United State unless it is approved by a two-thirds majority of the senators present. In the past the Senate rejected a number of important treaties including the peace treaty submitted to it by President Wilson in 1919. Over 85 per cent of the treaties submitted to it so far, however, have been approved by it.

When a treaty has been duly approved by the Senate, it becomes a law of the land and becomes binding on everybody notwithstanding anything to the contrary in state constitutions or laws. No state can pass a law that contravenes the provision of a treaty made by the Federal Government. Treaties and federal statutes have the same authority. In the case of inconsistency between a treaty and a federal statute, the one which is later in point of time prevails.

As has been already explained, the President can conclude executive agreements with foreign powers which do not require senatorial approval.

(c) "The Senate shall have the sole power to try all impeachments", says the Constitution. Any civil officer of

the United States including the President and the Vice-President can be impeached by the House of Representatives before the Senate. In trying an impeachment, the Senate can convict only with the concurrence of two-thirds of the members present; and when a person has been convicted on impeachment, he cannot be punished to any further extent than by removal from office and disqualification from holding any office under the United States. A person who has been impeached and convicted can, nevertheless, be proceeded against according to the ordinary legal procedure and can be awarded such punishment as is authorised by law.

There is only one instance of the impeachment of a President in American history. Andrew Johnson, who had succeeded to the presidential office on the death of Abraham Lincoln, was impeached in 1868. He, however, could not be convicted because the voting was 35 to 19—it fell short of the required two-thirds majority by only one vote.

(d) As has been already stated, when no candidate for the office of the Vice-President receives a majority of the electoral votes, the Senate chooses one of the two candidates standing highest on the list as the Vice-President. It is, of course, only very rarely that such a situation can arise. Only on one occasion, in 1837, the Vice-President was chosen in this manner.

The House of Representatives—The Lower Chamber of Congress is known as the House of Representatives. It has a two-year term. Elections are held in November of each even-numbered year to elect a new House of Representatives. Under the Constitution, the terms of the representatives begin at noon on January 3 following their election and end two years later exactly on that date and at that time. The Constitution further provides that the Congress shall assemble at least once a year and that such session shall begin at noon on January 3 unless the Congress fixes a different date by law.

At present the total membership of the House is 435. It has stood at that figure since 1910. The Congress has power to increase or decrease the total and to reapportion the seats among the several states according to changes in population as acertained by censuses. In the First Congress which convened in 1789, there were 65 members. The number was increased to 106 after the first census. Since then the membership increased after every decennial census (excepting the census of 1840) till it reached 435 after the census of 1910. The number has not been allowed to increase since then. After every census a reapportionment of the seats among the several states takes place. (There was, however, no reapportionment after the census of 1920).

The members of the House of Representatives must be at least 25 years of age and must be citizens of the United States of at least 7 years' standing. They must also be, at the time of their election, inhabitants of the states in which they are chosen.

The members of the House of Representatives are directly elected by voters in the states. Each state is divided into a number of congressional districts for the purpose of election. Each district elects one representative. Since the number of members allocated to each state increases or decreases almost after every reapportionment, the districts have to be redelimited from time to time. It may so happen, however, that a state has not completed such redelimitation of districts when an election comes. In such a situation, if the state's quota has been increased, the additional members are chosen at large, that is, by all the people of the State, and are known as Representatives at large. And if the state's quota has been reduced, all its representatives may be chosen in this manner so that all of them will be Representatives at large.

The House of Representatives is presided over by the Speaker. At the beginning of each Congress, the House chooses a Speaker. The choice is in reality made by the

majority party, the House only ratifying the choice formally. The position of the Speaker of the House of Representatives is in sharp contrast to that of the Speaker of the House of Commons in Britain. Whereas the latter is an absolutely non-partisan figure, the former is a partisan one. The Speaker of the House of Commons does not vote except in case of a tie. The Speaker of the House of Representatives has not only the right to vote on all questions, he frequently exercises that right. He also has a casting vote in case of a tie. If the Speaker has already voted on a question, he cannot, however, exercise his casting vote in case of a tie, and in such a case the motion is considered defeated. Unlike his British counterpart, the Speaker of the House of Representatives has the right to take part in debates and sometimes does so. When the Speaker desires to take part in the discussion, he requests some member to take the chair.

The House does much of its work through standing committees. At the beginning of each new Congress, a large number of standing committees are appointed by the House. While in theory the members of the Committees are chosen by the House, it is the party leaders who actually make the choice and the House only ratifies it. The majority and minority parties are represented on the Committees more or less in proportion to their respective strength in the House. The majority party, however, usually insists on having on each Committee a little greater representation than it would be entitled to if representation was given strictly in proportion to party strength. In other words, it wants to have and often does have a safe margin in almost every committee. Among the most important standing committees are those on appropriations, ways and means, military affairs, naval affairs, agriculture, labour and rules. Every measure is considered by the appropriate committee before the House itself takes it up for consideration. The House sometimes appoints special committees to deal with some unusual matter.

Very frequently, the whole House sits as a committee—this is known as the committee of the whole. There are important differences between the House as such and the House sitting as the committee of the whole. Whereas the Speaker presides over the House as such, he does not preside over the committee of the whole. Some member chosen by the Speaker takes the chair when the House goes into committee. Again, while a majority of the total membership (218 members) forms a quorum in the House as such, in the committee of the whole 100 members make a quorum. Procedure in the committee of the whole is also less formal. The device of the committee of the whole is frequently employed by the House to get its business done in an expeditious manner. All Bills for raising revenue and appropriating money must, as a rule, go to the committee of the whole.

The House of Representative has certain exclusive powers, that is, powers which it does not share with the Senate. These powers are: (1) the power to originate Bills for raising revenue; (2) the power to impeach civil officers (but not to try impeachments, the Senate having the sole power of trying impeachments); and (3) the power to choose a President in case no candidate has received a majority of the electoral votes.

The Powers of Congress—The Constitution of the United States, as has been already explained, is a grant of powers. By it, the people delegate certain powers to the Federal Government, that is, the Government of the United States. And the legislative power granted by the Constitution to the Federal Government is solely vested in Congress. The Constitution enumerates a number of subjects on which Congress may make laws. The following are the legislative powers granted to Congress: the power to levy taxes, to borrow money and to vote appropriations; the power to raise armies, to maintain a navy and to declare war; the power to regulate interstate commerce; the power

to coin money and to fix the standard of weights and measures; the power to set up a system of federal courts; the power to regulate matters relating to naturalisation, bankruptcy, patents and copyrights; the power to make laws for the seat of the federal Government and other places purchased with the consent of the states; and the power to make laws for putting into effect the above-mentioned powers.

The Constitution forbids Congress to do certain things. Under its provisions, the Congress cannot suspend the writ of **habeas corpus** except in times of rebellion or invasion. It cannot tax exports from any state. It cannot give preferential treatment in commerce or taxation to the ports of one state over another. The Congress cannot grant titles of nobility. It cannot pass bills of attainder or, **ex post facto** laws. A bill of attainder is a legislative measure which inflicts a penalty without a judicial trial. During the Tudor and Stuart periods of English history, bills of attainder used to be passed frequently thereby sending to the scaffold without judicial trial persons accused of treason, and depriving their descendants of civil rights. What is an **ex post facto** law ? Broadly speaking, an **ex post facto** law is one which declares to be criminal any act which was not criminal when committed.

Congress cannot claim to have any power except those granted to it by the Constitution. The Tenth Amendment to the Constitution says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the People." It cannot be validly argued that because the United States is a sovereign power, Congress possesses all powers that are inherent in sovereignty whether they are mentioned in the Constitution or not. It is an established principle of American jurisprudence that Congress has no law-making power except those granted to it by the Constitution.

Another established principle is that no state can revoke any of the powers granted to Congress by the Constitution. It is only by amending the Constitution that these powers can be altered or taken away.

It must not be supposed, however, that Congress does not possess any power except those **expressly** given to it by the Constitution. There are certain powers of Congress which are not expressly granted by the Constitution but which are implied in its provisions. The Constitution, for instance, does not mention banks or banking. Yet it has been held that Congress has power to establish banks and it has actually passed a number of laws setting up a system of federal banks. This power of Congress is said to be implied in the express power given to it to borrow money on the credit of the United States. The Constitution, again, does not give any express power to Congress to take over industries in times of war. Yet the Congress has been held to possess this power because it is said to be implied in the express power to raise and support armies. This is the doctrine of 'implied' powers. By applying this doctrine, the Supreme Court has continually expanded the legislative jurisdiction of Congress.

While legislation is the chief function of Congress, it is much more than a law-making body. It performs many functions other than the making of laws. It criticies policies of the Administration. It sometimes conducts investigations in order to find out whether laws are being properly administered or not. Either House of Congress has this power of investigation. Often this power is exercised to study matters or conditions which seem to call for new legislation. While conducting such investigations, the House concerned becomes vested with much of the authority of a court. It can take evidence on oath, compel production of documents and punish for contempt any person who refuses to give information.

Congress can, further, impeach civil officers including the President and the Vice-President for treason, bribery or other high crimes and misdemeanors and remove them from office.

Congress alone has the power to declare war. And it declares war not by passing a law but by passing a joint resolution.

All this shows that Congress is something more than a legislature.

Legislative Procedure—All Bills, excepting Bills for raising revenue, can originate in either House. The House of Representatives alone can originate Bills for raising revenue.

Every Bill is given three readings in either House and every Bill is referred to a committee and considered by it before the House takes it up for consideration.

There are, strictly speaking, no government measure in either House. Neither the President nor any cabinet member can directly introduce a measure in Congress. Bills drafted by the Executive Department are, however, often introduced through members of either House. Sometimes an individual member himself drafts a Bill. Sometimes various organisations desirous of furthering their interests through new legislation draft Bills and manage to get them introduced through some members of the Senate or of the House of Representatives. Bills are also often drawn up by the committees of Congress. At the beginning of each session, thousands of Bills are introduced.

When a Bill is introduced in either House, it is read by its title and given a number. This constitutes the first reading of the Bill. The Bill is then referred to the appropriate committee. The committee may hold hearings on the Bill when persons who favour or oppose the Bill get an opportunity to place their views before the committee. The committee may then report to the House on the Bill.

Or it may not report, in which case the Bill becomes dead. For a Bill cannot be considered by the House unless it is sent up by a committee. A committee can, therefore, kill a Bill by simply taking no action on it. But this is not final. By following a certain procedure either House can force a Bill out of the hands of a committee. This is known as 'discharging a committee'. In the House of Representatives, a motion to discharge a committee, that is, to force a Bill out of its hands and to bring it to the House for consideration, requires the signature of 218 members. If the motion is passed, the House immediately proceeds to consider the Bill. In the Senate, the motion to discharge a committee, if supported by a majority, has the effect of bringing the Bill in question before the House.

After a committee's report on a Bill has been received by the House, it is given a second reading when the Bill is discussed and debated in detail. Then follows a third reading which is purely nominal. When a Bill has been passed by one House, it is transmitted to the other. The other House has the right freely to amend its provisions. The Senate's power of amending a Bill sent up by the House of Representatives is equal to the power of the latter to amend Bills sent to it by the former. In other words, both Houses enjoy co-equal powers in this matter.

When the two Houses fail to agree on a measure, a compromise is effected by means of a conference committee composed of representatives of both Houses. The members representating either House vote as a unit. The compromise effected by the conference committee is generally accepted by both Houses. If the conference committee fails to effect any compromise, the measure fails to be enacted unless another conference committee is appointed by Congress. This, however, is seldom done.

When a Bill has been passed by both chambers, it is presented to the President. If the President approves of the

Bill, he signs it and it becomes law. If the President does not sign the Bill within a period of ten days (Sundays excepted), after the Bill has reached him, it becomes law without his signature. The President can return the Bill, if he does not approve of it, to the House in which it originated within the ten-day limit. This is known as vetoing a Bill. A vetoed Bill does not become law unless it is passed by both Houses by a two-thirds majority. If, after a Bill has reached the President, Congress adjourns before the expiration of the ten-day period, the Bill does not become law unless the President signs it within the ten-day limit. This is known as 'the pocket veto.' Many a Bill is killed every year by the application of 'the pocket veto'.

The Federal Judiciary—The Constitution provides for a Supreme Court and empowers Congress to set up a system of subordinate federal courts. By exercising this power, Congress has created a big system of federal judiciary.

The jurisdiction of the federal courts extends to all cases involving the Constitution, the federal laws and the treaties of the United States. It also extends to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States is a party; to controversies between two or more states, between the citizens of different states, and between a state or the citizens thereof and foreign states, citizens or subjects. It must not be supposed, however, that the federal courts have exclusive jurisdiction over the whole of this field. Congress has passed laws giving state courts concurrent jurisdiction with the federal courts over certain parts of the field, and assigning the rest exclusively to the federal courts. Under these laws, federal courts now enjoy exclusive jurisdiction over the following classes of controversies: all cases of crime against the United States, all suits to which United States is a party, all suits between two states, all suits between a state and a foreign

nation, and certain classes of civil cases arising under the federal laws.

The Supreme Court—The Supreme Court is the highest court in the United States. Its decisions are final. There can be no appeal from it to any other court. While the Constitution provides for a Supreme Court, Congress has been given power to fix the number of justices of the Court. In the past the Congress varied the number from time to time. It has not been, however, varied since 1869, when the number of justices other than the Chief Justice was fixed at eight. The Supreme Court thus consists at present of 9 justices—the Chief Justice and eight associate justices.

The Supreme Court justices hold office during good behaviour and cannot be removed except by impeachment. This means that a justice of the Supreme Court can hold office till death unless he is removed by impeachment. He may, retire, however, when he reaches the age of seventy or at any time thereafter. After he has served for a certain number of years, he has the option to retire with full salary. The salaries of the Supreme Court justices cannot be diminished during their continuance in office.

The justices of the Supreme Court are appointed by the President. The appointments are subject to approval by the Senate. On a number of occasions in the past, the Senate refused to approve nominations made by the President for appointment to the Supreme Bench.

Six justices form a quorum and the decision is reached by a majority. The justices who fail to agree with the decision of the majority may write dissenting opinions. A judge who agrees with the decision of the majority but for different reasons may write a 'concurring opinion'.

The jurisdiction of the Supreme Court is two-fold—original and appellate.

The Supreme Court has original jurisdiction in cases against ambassadors and other public ministers, as well as

in all cases in which a state is one of the parties and the other party is the United States, a foreign state or another state of the Union.

The Supreme Court is the highest court of appeal in the United States. It hears appeals from decisions of the subordinate federal courts and the highest state courts. By far the greater part of the court's work lies on the appellate side, cases on the original side being very few compared to the regular flow of appeals. The Supreme Court decides hundreds of appeals every year.

The Supreme Court has no advisory jurisdiction. The Court refuses to give any opinion on any issue unless it comes to it through an actual case either on the original or on the appellate side. In 1793, George Washington, the first President of America, requested the Court to give its opinion on a number of questions relating to a proposed treaty. The Court refused to give its opinion because the issues had not come before it through any actual controversy. It is interesting to note that the Constitution of India has conferred on the Supreme Court of India an advisory jurisdiction. It authorises the President of India to submit, whenever he may think it to be necessary, questions of law or fact to the Supreme Court for its advisory opinion.

The Supreme Court has the power of judicial review. (See below).

The Power of Judicial Review—The power of judicial review is the power of a court to decide whether a law is in consonance with the Constitution and to declare it to be unconstitutional if, in the court's opinion, it contravenes the provisions of the Constitution. The Supreme Court of the United States has the power to declare a law, whether passed by Congress or a state legislature, to be unconstitutional and void if, in its opinion, the law conflicts with the provisions of the Constitution. On numerous occasions, the Supremt Court has invalidated federal and state laws on the ground that they violate the Constitution.

The Supreme Court can also invalidate on this ground any provision in a state constitution or any rule or regulation issued by the Executive authorities.

The lower federal courts also possess this power of judicial review. But their decisions are not final. An appeal lies to the Supreme Court from their decisions involving interpretation of the Constitution. The decisions of the Supreme Court are, however, final. When it declares that a law is unconstitutional, it becomes completely inoperative.

The state courts, it may be noted, possess the power to declare laws passed by the state legislatures as unconstitutional on the ground that they contravene the provisions of the state constitutions.

The power of judicial review, it should be noted, exists in India. The Judiciary in India can declare any law to be unconstitutional if it violates the provisions of the Indian Constitution. This power does no exist in Britain. No court in Britain can set aside a law made by Parliament on the ground of its unconstitutionality. As soon as the British Parliament passes a law, it becomes binding on everybody including the courts.

The Constitutions of the United States and India are both federal in type. And in a federal system of government, the power of judicial review is an indispensable element. For in such a government there is division of powers between the Centre and the units, each of which is expected to keep itself within its own sphere and not to encroach on the sphere of the other. There must be, therefore, some authority with power to decide whether the activities of either of the two are encroaching on the territory of the other and to prevent it from doing so. Clearly, this power cannot be vested either in the Central Legislature or Executive or in those of the units. To give this power to the Central Legislature or the Executive will mean placing

the units at the mercy of Centre. And to vest this power in the Executives and Legislatures of the units will be to invite chaos. This power is, therefore, vested in the Judiciary. Both in the United States and in India, the Judiciary is endowed with the final authority to interpret the Constitution and, hence, to decide whether any Central law infringes the rights of the units or whether any action of the units usurps any part of the sphere reserved to the Centre. It thus prevents their encroachment on each other's territory.

Both American and Indian Constitutions, again, guarantee some fundamental rights to the citizens. These rights could hardly be real if the courts did not possess the power of judicial review, that is, the power of invalidating laws that violate the provisions of the Constitution. Whenever any law, whether federal or state, infringes any of the rights guaranteed by the Constitution, the Judiciary intervenes and declares the law to be illegal and void. The Judiciary thus prevents the Governments from infringing or taking away any of the rights conferred on the citizens by the fundamental law of the land.

In Britain, the Constitution is unitary and not federal. There is no division of powers in Britain between a centre and a number of units. There are also no fundamental rights in that country. This explains why the absence of the power of judicial review in Britain does not prevent the constitutional system from functioning smoothly. The ultimate authority in constitutional matters is vested there in Parliament.

In Australia, where there is a federal system of Government, the courts enjoy the power of judicial review. It is interesting to note, however, that in the Soviet Union the courts do not enjoy this power although the Constitution of that country is federal in type and it confers on the citizens a number of fundamental rights. The Soviet federalism is, therefore, very different in character from that of America,

India or Australia. In fact it is difficult to regard Soviet Union as a genuine federation. This point has been more fully dealt with in a subsequent chapter.

The Supreme Court's position in the U. S. Constitutional System—The Supreme Court is the guardian of the Constitution. It has the power to interpret the Constitution finally and to decide whether any law conflicts with any of its provisions. It can set aside any law or regulation which, in its opinion, contravenes any of the provisions contained in the Constitution. And the Court frequently exercises this power. There is no doubt that this power of judicial review gives the Court a great influence over the national affairs. Often the fate of important legislations depends on whether the Supreme Court will interpret the provisions of the Constitution narrowly or liberally. By interpreting the Constitution in a narrow, legalistic manner it may set aside laws that may be considered highly important from the point of view of social progress. Or, by putting a liberal construction on the words and phrases of the Constitution, it may hold such laws to be constitutional and thus facilitate social progress. Now, the Supreme Court has often been severely criticised on the alleged ground that it has on most occasions interpreted the Constitution in a legalistic spirit and thereby retarded social progress. It has, the critics have stressed, very often thwarted the will of the people by refusing to construe the provisions of the Constitution in a manner suited to the spirit and needs of the times. It has virtually acted as the third Chamber of the national Legislature.

There is no doubt about the fact that the Supreme Court's interpretations have sometimes lagged behind the spirit of the times and have tended to impede progress. As a result, the United States has witnessed from time to time heated controversies centring round the powers of the Supreme Court, and critics have advocated curtailment of its powers on the ground that its interpretations of the Consti-

tution have been, on the whole, favourable to the vested interests that are anxious to maintain the status quo.

In the early thirties of the present century, the Supreme Court invalidated, on the ground of their unconstitutionality, a number of important legislations which were designed to meet the crisis which had overtaken the country's economy. These legislations were part of President Roosevelt's "New Deal". President Roosevelt was greatly incensed by these decisions of the Court and resolved upon reorganising its personnel in such a manner as to get a majority on it favourable to the administration. Accordingly, he secured the introduction into Congress of a Bill, known as the Court Reorganisation Bill. This Bill sought to empower the President to appoint one additional justice for every member of the Court who had reached the age of seventy without retiring. Had it been passed into law, the Bill would have enabled President Roosevelt to appoint six additional justices (assuming that none of the justices over seventy retired). The Bill was, however, widely criticised by the public as an attempt by the President to pack the Court with men favourable to the policies of the administration, and was eventually rejected by Congress.

Looking back over the history of the United States, one cannot fail to be convinced that, on the whole, the Supreme Court's influence over national affairs has been far from conservative. Though it sometimes interpreted the Constitution in a manner that went against the spirit of times, it has more often construed its provisions very liberally. The growing complexity of modern life has continually called for expansion of the powers of the Centre, and the Supreme Court, by its interpretations of the Constitution, has found in it the basis for the exercise of these powers. The Court has thus made the Constitution keep pace with the march of times. If the Court did not interpret the Constitution liberally, the vast social progress made by the United States during the past fifty years would

not have been possible without frequent amendment of the Constitution.

The Supreme Court has, in fact, played an indispensable role in the U. S. constitutional system. It has protected the liberties of the citizens by standing between the power of the Government and the rights of the people. It has acted as the umpire in controversies between the national Government and the governments of the various states. It has interpreted the Constitution so as to make it keep pace with changing needs of social life. It has been, in short, 'the living voice of the Constitution' and the balance wheel of the whole constitutional system.

The Lower Federal Courts—Below the Supreme Court are the Circuit Courts of Appeals, and below the latter are the District Courts. The District Courts are the lowest federal courts.

The United States is divided into ten judicial circuits and in each circuit there is a Circuit Court of Appeals. The Circuit Courts have no original jurisdiction. They hear appeals from District Courts and thus serve to lighten the burden of work of the Supreme Court. In some kinds of cases, an appeal from a District Court can be carried directly to the Supreme Court.

The territory of the United States is divided into about a hundred districts. In each district there is a District Court. Under the law, most federal suits must be tried first in the District Courts. An appeal lies from decisions of the District Courts to the Circuit Courts and, in some cases, to the Supreme Court.

Apart from these courts, there are certain special courts to deal with certain categories of cases. For instance, the Court of Claims which was created by Congress to enable citizens to present their monetary claims against the United States, which they cannot do in the regular courts without the consent of the federal Government. Similarly, there is

a Customs Court which arbitrates disputes as to customs duties. Another special court is the Tax Court which decides disputes relating to taxes.

The judges of the District and Circuit Courts are, like the Supreme Court Justices, appointed for life or during good behaviour. They cannot be removed except by impeachment. Their salaries cannot be diminished during their continuance in office. The judges of the special courts, however, do not enjoy these privileges.

CHAPTER LI

THE STATE GOVERNMENT

The States in the Union—There were only thirteen states in America when the Constitution of the United States was framed in 1787. The number of states has gradually increased till at present there are 48 states in the Union. The following points as to the position of the states in the constitutional pattern of the Uuited States deserve careful attention.

(1) All states, irrespective of their size and population, are equal in the eye of law. The State of Texas has an area of 266,000 square miles, while that of Rhode Island is only 1200 square miles approximately. Yet both are equal before the law. Both enjoy the same rights and privileges in their internal affairs as well as in their relations to the federal Government. Each of them, for instance, can regulate its internal trade and education by passing laws on these subjects, and each is entitled to send two members to the Senate.

(2) The states are sovereign within their own sphere. The thirteen states which orginally formed the Union were very jealous of their rights and sovereignty. They were afraid to hand over any power to the Central Government which was not considered absolutely necessary for the proper functioning of a central administration. The Constitution of the United States, therefore, enumerates a number of powers and vests them in the federal Government. It does not enumerate the powers left to the States but expressly lays down that all powers not granted to the national government nor prohibited to the states are reserved to the states (or to the people). The following are some of the powers enjoyed by the States:—the power to make and enforce ordinary civil and criminal laws, the power to create and control local authorities, the power to conduct elections, the power to

make and enforce laws for the protection of life, health and morals of the people, the power to control education, the power to make laws relating to internal communication and the power to regulate internal industry and commerce.

Both the Union and the states have concurrent powers in certain matters such as agriculture, education and taxation. When there is a conflict between the federal and state statutes in any concurrent field, the federal law prevails.

(3) The federal government has no power except those granted to it by the Constitution either expressly or by implication. It cannot claim any power as being inherent in its 'sovereignty'.

(4) It is an established constitutional principle in the United States that no state has any right to revoke any of the powers granted to the federal government. Three-fourths of the states can, of course, change the distribution of powers between the national government and the states by amending the Constitution.

(5) The principle has been established through the civil war (1861-65) that no state can secede from the Union on its individual initiative. In the words of the Supreme Court, the United States is an "indestructible Union composed of indestructible states". It is, however, possible for the states to dissolve the Union by amending the Constitution.

(6) The Constitution makes it obligatory on the United States to guarantee to every state in the Union a republican form of government. The Constitution, however, does not define a republican government. Obviously, what is meant by this phrase is a form of government in which the power is derived, directly or indirectly, from the people. If, therefore, any State sets up a dictatorial form of government, Congress may refuse admission to the senators or representatives from that state till matters are set right. The Constitution, further, imposes on the federal government the obligation to protect the states against invasion. It also

empowers the federal government to intervene in any state to put down internal disturbances provided the Legislature of the state concerned requests it to do so or, if the Legislature cannot be convened, the state Executive makes such a request. Thus in case of an invasion, the federal government can intervene in a state on its own initiative, while in case of internal disorders it can intervene only if requested to do so by the state concerned. The federal government can, however, intervene in a state at any moment and on its own initiative if any internal disturbances affect or threaten to affect the proper exercise of any federal power or function. If, for instance, the postal services in any state are seriously affected by riots, the national government can immediately intervene, whether the state government has invited it to do so or not, and even if the latter opposes such intervention.

(7) The Constitution does not give the federal government any power of suspending or superseding a state government on any ground whatsoever. And under no circumstances can the federal government make laws on subjects reserved to the states. The Constitution of India, it is important to note, confers such powers on the Central Government. This point has been dealt with in an earlier chapter.

(8) The Constitution of the United States puts certain limitations on the powers of the states. The states are forbidden to pass ex post facto laws and bills of attainder. They are forbidden to grant titles of nobility. And to ensure that they do not interfere in any way with the exercise of the powers of the national government in the field of defence and foreign relations, the Constitution lays down that "no state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war,

unless actually invaded, or in such imminent danger as will not admit of delay".

The thirteenth, fourteenth, fifteenth and nineteenth amendments to the Constitution place important limitations on the powers of the states. By the thirteenth amendment, which abolishes slavery, the states are indirectly forbidden to create or maintain any institution based on slavery. The fourteenth amendment says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Though originally intended to prevent discrimination against the Negroes, this article has been later interpreted as guaranteeing equal protection of the laws to everyone within the jurisdiction of a state as well as forbidding the passing of such laws, or the taking of such executive action, as deprive any person, irrespective of race, colour or sex, of life, liberty or property without due process of law. It is the Supreme Court of the United States which has the final authority to determine the meaning of the phrase "due process of law". And the Supreme Court has always put a liberal construction on this phrase.

The fifteenth amendment forbids denial of franchise on the ground of race, colour or previous conditions of servitude. This provision which was adopted in 1870 was intended to prevent denial of the right to vote to the Negroes. It has not, however, altogether succeeded in ensuring the attainment of the objective aimed at. For though the states cannot openly deny voting rights to the Negroes, some of the southern states have prescribed literacy tests and poll tax requirements for the voters, which have the effect of keeping out millions of Negroes from the polls. Thus the fifteenth amendment has been made largely inoperative because of the refusal of the states concerned to

recognise the right of the Negroes to be treated on a plane of equality with their white brethren.

The nineteenth amendment prohibits denial of the voting right to any person on account of sex. The states cannot, therefore, deny franchise to women. At the time when this amendment was adopted (in 1920), women did not have the right to vote in the great majority of the states. Today women in all states enjoy the same voting right as men.

(9) Congress has been empowered by the Constitution to admit new states into the Union.

The State Constitutions—Each State in the United States has a constitution of its own.

A state constitution is usually framed by a special convention the members of which are directly elected by the voters. The draft constitution prepared by the convention is submitted to the people for ratification. If the required majority of voters vote for its adoption, the document is considered adopted.

How is a state constitution amended? In most states the procedure of amending the constitution is as follows. The state legislature passes resolutions embodying proposals for amendment of the constitution and then submits those proposals to the people at an election. If supported by the required majority of voters, the amendments become part of the constitution. In a number of states (at least thirteen), the people have the right to initiate proposals for amendment by means of a petition. If the petition is supported by the required number of voters, it is submitted to the people and, if approved by the required majority, is considered adopted.

The constitutions of the forty-eight states vary greatly in details. But they have a similarity in essentials. The basic features of all of them are very much alike. All of them provide for a republican system of government. They

provide for the organisation and powers of the three branches of government—the executive, the legislative and the judicial. Like the federal constitution, every state constitution embodies a system of checks and balances designed to ensure that the different branches of the government act as checks on each other's powers. Another feature common to all state constitutions is the bill of rights which confers on the state citizens certain fundamental rights. Usually a state bill of rights embodies all the safeguards contained in the federal bill of rights, that is, the first ten amendments to the Constitution of the United States.

No state constitution can contain anything inconsistent with the federal constitution. The courts, both state and federal, have the authority to declare unconstitutional any provision in a state constitution which conflicts with provisions of the Constitution of the United States.

The Governor—The governor is the chief executive in a state. In all states, the governor is directly elected by the people. The governor's term is four years in twenty-seven states and two years in twenty states. Only in one state, New Jersey, the Governor's term is three years. In the majority of the states, a governor can be re-elected at the expiration of his term. A number of states do not permit such re-election.

The Governor's powers can be conveniently grouped under two heads—(a) executive powers and (b) powers relating to law-making.

Executive powers—The Governor has the power of appointing members of various boards and commissions, such as boards of health and public service commissions. His appointments are in most states subject to approval by the upper house of the state legislature, which is known as the senate. In this matter, therefore, the Governor's power is like that of the President of the United States. Unlike the President, however, the Governor does not, in most cases,

appoint the heads of the executive departments. In most states, the heads of the executive departments, like the state treasurer and the attorney-general, are elected by popular vote. And, usually, the departmental heads cannot be removed by the Governor except with the consent of the state senate or after a hearing. As a result, the Governor's control over the actions of the heads of the departments is far from as complete or perfect as that of the President over his cabinet ministers' actions. In short, while the President enjoys a supreme position in the sphere of executive action in the national government, the Governor's position in the state government is not one of such supremacy. He has to share the executive power with a number of officials who too are popularly elected like him and over whose actions his control is at best imperfect. In recent years, some of the states have given their Governors greater powers in relation to appointment of officers.

The Governor exercises general supervision over the state administration. He is the commander-in-chief of the state militia or national guard. In many states, the Governor prepares the budget or gets it prepared by some official under his control. The Governor is the channel of official communication between his state and the federal Government, as well as between his state and other states. Whenever the federal Government or any state Government wants to communicate anything to the authorities in a state, it addresses the Governor of the state concerned, and replies to such communications are also sent through the Governor.

The Governor issues orders for special elections when vacancies occur in the state legislature. The Governor appoints a senator if a vacancy occurs when the legislature is not in session. Of course, he can make this appointment only if he is authorised by the legislature to do so. In most states, however, the legislatures usually authorise the Governor to exercise this power. The Governor is an ex-officio member of various boards and commissions. The

Governor has the power of pardoning and reprieving offenders convicted in the state courts. He cannot, however, pardon anyone convicted by a federal court; such an offender can be pardoned only by the President.

Powers relating to legislation—The governor exercises important powers in relation to law-making. The governor summons special sessions of the legislature, (the time for holding regular sessions being fixed by law). He recommends measures to the legislature in formal messages. He secures the introduction in the legislature of measures prepared by him or prepared according to his wishes through some member of his party. Usually the Governor is the leader of the party to which he belongs, and his position as a party leader enables him to exert great influence in the sphere of legislation. He can almost always depend on the members of his party in the legislature to carry out his wishes, particularly because he has a large volume of loaves and fishes to distribute.

When a measure has been passed by both houses of the state legislature, it is submitted to the Governor for his signature. He can sign the Bill, in which case it becomes a law, or he can veto it. If he vetoes the Bill, it does not become a law unless it has been passed by both houses of the legislature by a prescribed majority (usually two-thirds or three-fifths). If, however, the Governor neither signs nor vetoes a Bill within a prescribed time, the Bill becomes a law without his signature unless the legislature adjourns in the mean time. In the latter case, it does not become law unless the governor signs it within the prescribed time limit. This is known as the 'pocket veto' which kills the Bill to which it is applied. In some of the states, however, the 'pocket veto' does not exist.

The veto power of the governor, it will be seen, is similar to that of the President. There is, however, an important difference between the two. The President cannot veto individual clauses or items in a Bill. He must either veto

a Bill as a whole or leave it as it stands. But in most of the states, the governor has the right to veto individual items in appropriation Bills, that is, Bills authorising expenditure. In two states, Washington and South Carolina, the governor can veto individual items in any measure.

When one compares the position of the governor of an American state with his Indian counterpart one cannot fail to notice two fundamental points of difference. Whereas the Governor of an American state is directly elected by the people, in India the Governor of a state is appointed by the President of India. Secondly, while the Governor in America is a powerful functionary and enjoys a vast body discretionary powers, the Governor in India is a figurehead who cannot act except on the advice of the Ministry. Only in very exceptional circumstances, it appears, the Governor in India may act independently of the advice of his Ministry. But this point is not yet free from doubt. There are jurists in India who hold that the Governor does not possess an iota of discretionary power and must act on ministerial advice in both normal situations and emergencies.

The Lieutenant Governor—The constitutions of about two-thirds of the states provide for the office of a lieutenant governor. The lieutenant governor is popularly elected and has the same term as the governor. When the governor dies or resigns or is removed on impeachment, the lieutenant governor succeeds to his office. Except in a few states, the lieutenant governor presides over the state senate, that is, the upper house of the state legislature.

In states in which there is no lieutenant governor, the succession to the governorship is determined in the manner provided by the state constitution.

The State Legislature—The state legislature is bicameral in all states except one, Nebraska, which has a single legislative chamber. The upper chamber is usually called the Senate and the lower chamber the House of Representatives. (In some states the lower chamber is known as the

Assembly or the House of Delegates or by some other name of this kind). The Senate is the smaller of the two chambers. The members of the Senate are elected from senatorial districts, while the members of the House of Representatives are elected from smaller districts. The districts are redemarcated after each decennial census so that they may be approximately equal in population. The term of office of the senators is either two or four years. Only in one state, New Jersey, the senators serve three years. The members of the House of Representatives serve two years in most states, while in a few states their term is four years. Only in New Jersey, the term of office of the representatives is one year only.

The candidates for election to the legislature are in most cases nominated by direct primaries (to be described later). In some states they are nominated by party conventions or caucuses.

Formerly franchise was restricted. Now-a-days all states have a system of universal adult franchise, although some states have poll tax requirements or literacy tests for voting. In all states, of course, there is a minimum residence requirement for voters.

In most states, the sessions of the legislatures are held once every two years. Only in four states, New York, New Jersey, Rhode Island and South Carolina, the legislature meets every year. In the state of Alabama, the legislature holds a session every four years. Everywhere, however, the legislature can be called into special sessions whenever the governor may consider it necessary. Every state legislature maintains a number of committees such as committees on finance, on ways and means, on labour, on education and the like. In most cases there are separate committees for each chamber, while some states have a system of joint committees.

The Legislative Procedure—In the 47 states in which the legislature is bicameral, the legislative procedure is as follows.

Any member of either house can introduce a bill. After a bill has been introduced, it is given a first reading and referred to the appropriate committee and printed. In case of important measures, the committees hold public hearings on them and allow both advocates and opponents of the measures to appear before them. After hearing both sides, the committees decide whether they will report on the measures favourably or not. Sometimes a committee may decide not to take any action on the Bill, in which case it expires unless the house votes to take it out of the committee's hands. When a bill has been sent back to the chamber by the committee with its report, favourable or unfavourable, it is given a second reading. The main debate on the bill takes place at the second reading stage. If the bill is not defeated at this stage, it is given a third reading and then sent to the other chamber. Thereafter, the bill goes through a similar procedure in the other chamber. If the bill is passed in that chamber without amendment, it is sent to the Governor for his signature. In case of any amendment by that chamber, however, the Bill is sent back to the original chamber. If there is difference of opinion on the amendment between the two chambers, the matter is referred to a Conference Committee on which both the chambers are represented. If this Committee succeeds in arriving at a satisfactory compromise, its report is adopted by both chambers and the bill is then sent to the Governor. If the Committee fails to work out an agreed solution, the bill becomes dead.

When a Bill has been passed by the two chambers and sent to the Governor, he may sign or veto it. If he signs, the bill becomes law. If he vetoes the bill, it cannot become law unless it is passed by both chambers once again by the prescribed majority (usually a two-thirds majority). The bill, however, automatically becomes law if the Governor neither signs nor vetoes it within the prescribed time limit. To bills passed towards the end of the session of the legisla-

ture, the Governor can apply 'pocket veto', which has been already explained. The 'pocket veto' is absolute and cannot be over-ridden. In some states, however, the pocket veto does not exist.

Direct Legislation—The system of direct legislation, that is, legislation by the referendum and the initiative, widely prevails in the American states. The constitutional referendum is compulsory in forty-six states—that is, the legislature in each of these states must submit proposed constitutional amendments to the voters. If the proposals are accepted by the majority of voters they become part of the Constitution.

The statutory referendum, that is, referendum relating to ordinary laws, exists in a large number of American states. In these states, the legislature may submit a measure to the voters or a law passed by it may be withheld from going into force until the voters have expressed themselves on it. Speaking generally, the procedure for the latter kind of referendum is as follows: A law passed by a legislature does not go into effect for a certain period. During this period, a petition may be drawn up by some voters or any organisation asking that the measure be submitted to voters before it goes into effect. When the petition has obtained the requisite number of signatures, it is submitted to some designated official. The measure is then placed on the ballot —usually in an abbreviated form or by title only. If the majority of the voters support it, it becomes effective.

In case of emergencies, however, it may be necessary to put a legislation into effect immediately. The state constitutions, therefore, provide, for emergency measures which can be brought into force at once. To guard against abuse of the emergency provision, it is usually provided that no emergency measure shall be passed except by a two-thirds majority vote in each chamber.

The initiative is the device by which the people can themselves draft a proposed law or constitutional amendment for enactment. Where such a proposal goes directly to the people without prior submission to the legislature, it is called the direct initiative. Where it has to be submitted to the legislature first and does not go to the people unless the former declines to accept it, it is called the indirect intiative. Broadly speaking, the initiative procedure is as follows: The draft of a proposed law is prepared by some person or some organisation and signatures of qualified voters are collected. When the draft has received the required percentage of signatures (usually 5 to 10 per cent.) of qualified voters, it is submitted to the designated official.

The measure is then placed on the ballot at a regular or special election. If it obtains the majority of votes, it becomes law. It is possible that different groups of people may put forward conflicting proposals and these proposals may be placed on the same ballot. In such cases, the proposal receiving the greater number of votes becomes effective. (For arguments for and against direct legislation, see Chapter XIII).

The Recall—In at least eleven states in the United States, there is provision for recall, that is, removal of elective office holders by voters. This provision is, however, used very sparingly. (For the procedure for recall and related matters, see Chapter XIV).

The State Judiciary—Each state in the United States has its own system of courts. While no two states have exactly the same system, the general pattern is the same everywhere.

Contrary to popular belief, the state courts in America do not stand below the federal courts. They run parallel to the latter. In matters exclusively involving the state law and the constitution, the highest court in the state is the final court of appeal. Only in matters involving the Constitution of the United States or any federal law or

treaty, there is an appeal from a judgment of a state supreme court to the United States Supreme Court.

The jurisdiction of federal courts has been clearly defined by the Constitution of the United States. It includes, apart from the federal constitution, laws and treaties, all controversies between two or more states and between citizens of different states. Everything that falls outside the jurisdiction of the federal courts is included in the jurisdiction of the state courts. The great bulk of cases, including most cases involving civil or criminal law, originate in state courts and are finally decided there.

The most interesting feature of the state judicial system is that in most states the judges are elected by popular vote. In sharp contrast to this, the federal judiciary is appointive, all federal judges being appointed by the President. The tenure of state judges varies from state to state; it varies all the way from 2 to 21 years. Even in the same state, the terms of different categories of judges differ. The terms for judges of higher courts are usually longer than those of the lower courts. In a few states, the judges have a tenure for life or during good behaviour.

Although election by voters is the general rule, there are exceptions to this rule. In a few states, one or more grades of judges are selected by the legislature or the governor. One or two states combine the elective principle with the appointive, nomination by the governor being subject to confirmation by a majority of the voters.

In each state, there are, broadly speaking, three grades of courts.

The lowest courts are the local courts which deal with minor civil or criminal cases. These courts are usually presided over by justices of the peace, who are elected by the people. Their procedure is of a summary character. Often they conduct preliminary hearings for cases involving grave offences. Their decisions are subject to appeal to higher courts.

Above the local courts are courts which are commonly known as county courts, district courts, circuit courts, superior courts and the like. They hear appeals from the decisions of lower courts and also have original jurisdiction in regard to a wide range of cases. There may be separate courts for civil and criminal cases. Or different sections of the same court may deal with the two different categories of cases. The judges of these courts are also, usually, chosen by the popular vote. They follow an established procedure in deciding cases, and trial by jury is almost a uniform feature of this procedure. There are two types of juries—the grand jury and the trial or petit jury. The grand jury investigates and indicts; the trial jury tries. The grand jury is a body of citizens chosen by lot or some other procedure to conduct investigation into alleged offences. If the grand jury finds that there is a prima facie case against any person, it indicts him. The trial jury sits with the judge and gives its verdict on questions of fact, the questions of law being decided by the judge. The trial jury consists of not more than twelve persons, in most cases less. In many matters, the verdict of the jury is required to be unanimous, which means that if the jury fails to reach unanimity, the case has to be tried all over again, unless the case is dropped by the prosecution. In some cases an affirmative vote of two-thirds or three-fourths is required for a valid verdict. (In federal courts, however, all cases are subject to the unanimity rule).

Above the county courts is the supreme court of the state. In some states, however, there is an intermediate grade of appellate courts between the county courts and the supreme court.

The supreme court usually consists of five to seven justices. It hears appeals on points of law. In matters which relate solely to the state constitution and the laws, the state supreme court's decision is final.

CHAPTER LII

THE AMERICAN PARTY SYSTEM

The Democrats and the Republicans—The American political scene is dominated by two big political parties, namely, the Democratic Party and the Republican Party. This does not, however, mean that there are only two political parties in America. There have existed almost always some small parties in America side by side with the two major ones. But their political importance, compared to that of the two major organisations, has been minor in character.

The first President, George Washington, warned against the growth of party spirit. But already in the constitutional convention itself, party spirit had made its appearance in an embryonic form. One group led by Alexander Hamilton stood for a strong central government. The other, led by Thomas Jefferson, placed greater emphasis on state rights and opposed the granting of large powers to the central government. The one put more emphasis on order than on liberty, while the other put greater stress on freedom than on order. The former group came to be known as federalists, the latter Anti-federalists. The dividing line between the two was, however, not yet a rigid one.

In the elections of 1800, the Anti-federalists led by Jefferson came to power. Jefferson was the first party leader to become the President of the United States. The followers of Jefferson were at first known as Republicans. Later, during the administration of Andrew Jackson who was elected President in 1828, they came to be known as Democratic-Republicans and, still later, simply Democrats. Their opponents used to be called Whigs. In 1854, some Whig groups and others founded the Republican Party.

Speaking broadly, the period from 1800 to 1860 may be called the age of the Democrats. Jefferson who was elected

President in 1800 is regarded as the founder of the Democratic Party. This age of Democrats came to an end with the election of Abraham Lincoln in 1860.

The period beginning with Lincoln's election and ending in 1912 may be called the age of the Republicans. The question of slavery had split and discredited the Democrats so greatly that, during this long period, they failed to regain their lost hold on the administrative machinery. This statement is, of course, an oversimplification of the picture, for twice during this period, namely, in 1884 and 1892, the Democrats had succeeded in winning the Presidential race, Grover Cleveland, a Democratic candidate, having been elected as President in both those years.

Then in 1912, with the election of President Wilson, began what may be called another age of the Democrats—again with some oversimplification of the picture. Thrice during the post-war years—in 1920, 1924 and 1928—the Republican Party was victorious at the Presidential elections. But in 1932, Roosevelt carried the Democratic standard to victory and was re-elected at each of the three succeeding elections, that is, in 1936, 1940 and 1944. After the death of President Roosevelt in 1945, Mr. Truman became President and at the end of the term led the Democrats to victory in 1948.

Although the Republican Party won the Presidential election in 1952 by sending Mr. Eisenhower to the White House and got him re-elected in 1956, it has not yet been able to win a majority in Congress. The Democratic Party still enjoys a majority in both Houses of Congress although the margin is very slight in the Senate.

The Main Features of the American Party System—(1) America has a two-party system, the two major parties alternating in power and opposition. There are some smaller parties too but their influence among electors is very limited. The contest for presidentship—the greatest prize of American politics—is always a straight fight between the two major parties.

(2) In spite of the noisy fight that the two parties carry on with one another almost incessantly, there is hardly any fundamental difference between the ideals or the objectives of the two parties. Neither believes in extremism. Each of them has deep faith in democracy and private enterprise. Among the supporters of both of them are people representing almost every interest. Among the followers of the Republican Party are to be found both industrialists and workers. And the same is true of the Democratic Party. Broadly speaking, however, it may be said that the majority of industrialists support the Republican Party while the majority of the working class population support the Democrats. But, since both of the parties have among their followers both industrialists and workers, professionals and agriculturists, neither can take an extreme stand on any issue. The differences between the political and economic objectives of the two parties are merely differences of emphasis. Although, in that country, one of the parties may be regarded as conservative and the other liberal, from the point of view of people in India, where the party in power is pledged to the building up of a socialistic pattern of society, both parties appear to be conservative. Neither of the American parties accepts socialism and both are wedded to free enterprise. So the American party politics appear to Indians as nothing but making too much noise over minor differences in objectives.

Indeed one of the defects of the American party system is that it does not offer to the voter any choice between two real alternatives. Third parties complain that the two major parties are "in a conspiracy of agreement over policy, dividing only over the distribution of the spoils of office".

(3) The American civilisation is essentially commercial in character and the American party system, probably more than anything else, reflects this central fact of that civilisation. Monetary interests play a far greater role in the

American party system and party activities than, probably, in any other country.

As an American author has put it. "The Party can be viewed as a nation-wide trading establishment. It furnishes certain things—mainly votes—to certain of its members hoping to get into office or to stay in office. From these members it receives influence over government decisions and appointments. It sells this influence to those who will pay for it (keeping some for itself). From them in turn it gains money and favours of all types, to keep the machinery oiled and fuelled."

Thus the party derives its funds mainly from contributions from candidates and office-holders and those who expect government decisions favourable to their own particular interests. And these people contribute handsomely towards the party funds because they know that this is an extremely good investment and would bring rich dividends —mainly in the form of money and also influence.

Patronage, it has been rightly stated, is the very life-blood of the American party system. A party in power has innumerable jobs at its disposal. It rewards its supporters with jobs. In fact, the hope of getting jobs and the fear of losing jobs constitute the very motive force which runs the party machinery. This hope and fear make the party members work hard at elections. The party also sells jobs for money.

Sometimes questionable, illegal and dishonest practices are indulged in by the parties to win support or to raise funds. Supporters are not unoften shown favouritism in the matter of taxes and assessments. Large blocs of votes are controlled and considerable volumes of money raised through the distribution of government contracts, licences and the like to supporters. The richer classes can, by sheer bribery, get government decisions or policies changed in their favour or make the government adopt policies which would line their pockets.

Party Organisation—Like the constitutional set-up, the American parties are federal in their structure. Although both the major political parties have a nation-wide organisation, the state branches of either party enjoy a large measure of autonomy in state matters. The national leaders do not usually interfere in matters which relate to the internal affairs of the state. This fact must be constantly borne in mind in studying the American party system.

Each party has a pyramidal organisation, with a national committee at the top. The national committee consists of a little over one hundred members—two members, one man and one woman, from every state and a few members representing territories like Alaska. The committee is formally elected every four years at the national party convention. Actually, however, they are chosen by party leaders. In a few states, the law requires that the national committeemen be selected by state primaries. Such selection is always ratified at the national party conventions.

The committee, however, rarely meets. Its work is mainly carried on by the chairman of the national committee with the help of paid officials. The chairman who is formally selected by the national committee is really chosen for this office by the party's candidate for presidentship. And it is the chairman of the national committee who plans the strategy of the party for the presidential election campaign.

In each state there is a state committee to direct the party's affairs in internal matters. And below the state committee the party organisation branches out in county, city and town committees. In bigger cities there is a committee in each ward.

American parties function with a high degree of efficiency. In fact, the, American party system appears to be the most efficient party system in the world. Mention may be made in this connection of what are known as machines, rings and bosses.

The machine—"The machine" is frequently referred to in discussions on American party politics. A machine is nothing but a highly discinlined party organisation that works with a machine-like efficiency. The machine goes into operation with the pressing of the button, as it were, by the boss or the leader. Sometimes, a boss builds up his own personal machine, so that there may be more than one machine in a state. In times of election, however, all the machines belonging to a party work in a perfectly co-ordinated matter.

What accounts for this machine-like efficiency of party organisations in America, an efficiency unequalled elsewhere ? The main cause of this political phenomenon is two-fold. In the first place, the frequency of elections in America has greatly contributed to the building up of machines. Many state officials are elective, and every year there is some election or other in each state, and sometimes twice or thrice a year. This factor has resulted in the growth of a large class of pressional politicians in America. The system of patronage is another contributory factor in the growth of machines. A party in power has at its disposal an enormous number of jobs and other kinds of favours. The hope of getting jobs and other favours or the fear of losing them acts as a great motive force in American politics; it makes people highly active in the furtherance of party interests and also makes them hold together.

The Boss—The boss is the man who controls the machine. At his bidding, the machine goes into operation. There are unscrupulous bosses and also relatively honest bosses. But the method by which the boss maintains himself in power is always the same, namely, doing favours to people. "By doing favours, he obtains control of political power, and by means of this political power, he is able to do more favours. It is a circle hard to break."

The Ring—When a number of bosses work in close co-operation with one another, they are said to constitute a

ring. A ring wields tremendous political power. But when the bosses disagree, the ring breaks up. Among the most famous rings in American political history were the Tweed Ring of New York and the Gas Ring of Philadelphia.

Direct Primaries—Formerly candidates for the elective offices in each state as well as the congressional candidates used to be nominated by state party conventions. This system was severely criticised on the ground that, under it, it was the leaders and bosses who really nominated the candidates, the common voters having practically no say in the matter. As a result of such criticism, the system of nomination by conventions has now been replaced in most states by what are called direct primaries.

The direct primary is nothing but a primary election at which the voters of each political party choose the candidates who are to stand for election. The primary is conducted just like a regular election. The voters of each political party go to the polling booths to cast ballots for candidates of their choice. The direct primary, however, does not elect, it merely nominates.

The direct primary, it used to be believed formerly, would greatly reduce the power of party bosses in electoral matters. But experience shows that it has done nothing of the kind. It has only added one more wheel to the election machinery and has thereby added to the burden of work of the bosses. The bosses remain as powerful as ever. Only they have now to win two elections—the primary and the regular—to send their favourites to positions of power.

It may be added here that the candidates for the offices of the President and the Vice-President are not nominated by primaries. They are nominated by national party conventions.

THE CONSTITUTION OF THE SOVIET UNION

CHAPTER I

THE HISTORICAL BACKGROUND

The constitution of no country, much less that of the Soviet Union, can be understood properly unless one acquaints oneself, at least to some extent, with its historical background. And for the purpose of studying the historical background of the present constitution of the Soviet Union, it is convenient to take the Crimean War as the starting point. For this war ushered in the beginning of a process of historical change which gradually gathered momentum and culminated with explosive vehemence in the October Revolution of 1917—a revolution that has created the Russia of today. The three outstanding landmarks of the history of Russia during this period—exactly a century—that has elapsed since the Crimean War broke out in 1853 are the three Wars: the Crimean War itself (1853-56), the Russo-Japanese War of 1904-05 and the World War I (1914-18). It will help the reader to view the Russian history of this period in proper perspective if he keeps in mind that the first of these wars brought the emancipation of the serfs in Russia, the second gave her the first Parliament and the last saw the downfall of the Tsarist autocracy and the establishment of the Bolshevik regime. In each case, war had strengthened the forces of social revolution and accelerated the pace of social progress.

Emancipation of serfs and after: Before emancipation, the serfs in Russia constituted about half the population of the country. Subjected to forced labour and heavy taxation, these unfortunate people could be freely bought and sold by their owners. They could be punished and sent to Siberia at the discretion of their proprietors. They had very few personal rights. Inhuman punishment and torture were their lot. Their punishment was very often imprisonment

in underground cellers. Thousands of them were flogged and tortured to death. Deprived of basic human rights and suffering from brutalities systematically inflicted on them, this submerged humanity constituted the basis of Russian economic life. They would, however, be driven to revolt from time to time and these revolts would indicate the insecurity of a social and economic structure based on serf-ownership.

The defeat of the Tsarist Government in the Crimean War (1853-56), revealed the weakness of the system of Tsarist autocracy. It sharpened discontent. The Russian nobility were, however, not yet prepared for reform but the Tsar, Alexander II, took the initiative in emancipating the serfs. History records these famous words addressed by the Tsar to his nobility: "You know that the present system of serf-ownership cannot remain as it is; it is better that we should abolish it from above, than wait until it begins to abolish itself from below.....Gentlemen, I beg you to examine how this reform can be made." The edict of emancipation of Alexander II was issued in 1861 and the serfs freed from bondage to their masters. A part of the land belonging to nobles was transferred to the peasants. This land was, however, not to be held in personal ownership by the peasants but in communal ownership by the village group or mir.

Emancipation, however, did not bring much real improvement in the condition of the peasants. They were burdened with heavy compensation for the landlords. They were subjected to heavy taxation. They had to pay high rents to the landlords. Very often they had to till the lands of landlords with their own implements. The landlords used to impose on the peasants various kinds of exactions. As a result, millions of peasants were reduced to utter poverty. This huge army of impoverished peasants became a source of cheap labour for the industries. The emancipation of the

serf, thus, helped the growth of industrial capitalism in Russia.

Between 1865 and 1900, industrial capitalism developed at a rapid pace. The number of workers employed in big industries increased four-fold. This period saw the growth of a conscious working class movement in Russia. Workers began to be more and more organised and to press their demands for increase in wages and betterment in conditions of work. The first organisation of workers to be formed in Russia was the South-Russian Workers Union which was formed in Odessa in 1875. This organisation was, within a few months of its formation, suppressed by the Tsarist Government. The Northern Union of Russian Workers which was formed in 1878 in St. Petersburg was also similarly dealt with by the Tsarist autocracy. Yet the working class movement grew from strength to strength. The most powerful factor behind the growth of this working class movement was the dissemination of the doctrine of Marxism by a band of revolutionary intellectuals who were later to play a historic part in shaping the destiny of the land.

Tsar Alexander II (1855-81) had not only emancipated the serfs, he introduced a number of far reaching administrative and judicial reforms. A new penal code was introduced. Trial by jury was established. The entire judicial system, which was full of corruption, was remodelled on the British and French systems. The Tsar also set up new local bodies which were given a larger measure of local autonomy. But these reforms could not satisfy the people for, in spite of them, corruption could not be eliminated from the administration and peasants continued to be almost as much oppressed and unhappy as before. On March 13, 1881, the Tsar, Alexander II, issued a proclamation summoning a representative body for the introduction of further reforms. On that very day, however, he fell a victim to the bombs of revolutionaries. He was succeeded by his son, Alexander III, a typical autocrat and a confirmed reactionary.

The gowth of revolutionary movement and Marxism : The years following the emancipation of the serfs saw the rapid growth of a revolutionary movement which was later known as the Narodnik movement. It was led by middle class intellectuals who believed in ending the Tsarist autocracy and establishing a kind of 'socialism' which was not of the Marxian variety. Their goal was the establishment of a social order in which land would be owned by peasants organised in village communities and industrial production would be carried on by self-governing workshops. The Narodniks did not believe in the revolutionary potentiality of the workers. In this they sharply differed from the Marxists who believed that the workers were the chief revolutionary force in a capitalist society and would ultimately lead the struggle for the overthrowing of the capitalist order and establishment of socilism. A large section of the Narodniks believed that their goal could be attained only through terrorism and formed a secret organisation called Narodnaya Volya. Members of this group carried on secret terrorist activities, killing a large number of high officials. Tsar Alexander II was assassinated by this group.

The views of the Narodniks were sharply opposed by the Marxists who held that terrorism could not lead to the goal of social revolution. The revolution could be brought about, held the Marxists, only by a conscious and organised working class leading other conscious elements in the society in the struggle for liberation. This is why they laid the greatest emphasis on organising the working class and infusing revolutionary ideas in them. The "Emancipation of Labour" group was the first Marxist organisation to spread Marxism in Russia. This group was formed by G. V. Plekhanov in 1883 in Geneva, where he had fled to avoid Tsarist persecution.

In 1885, another Marxist organisation, the League of the Struggle for the Emancipation of the Working Class, was formed in St. Petersburg mainly as a result of the endeavours

of Vladimir Ilyich Ulyanov (Lenin), of whom the world was to hear more. In 1898, as a result of the joint endeavours of a number of Marxist groups, a first congress of such group was held in Minsk. At this congress was formed the Social Democratic Party (Russian Social-Democratic Labour Party). At the second Congress of the Party held in London in 1903, there was a split between a majority led by Lenin who later came to be known as the Bolsheviks, and a minority who came to be called Mensheviks. The split occurred mainly over an organisational question. Whereas the Bolsheviks held that the Party must be a well-knit, highly disciplined organisation of the Proletariat, the Mensheviks advocated a loose form of organisation. Behind these differences on the question of organisational discipline lay differences in ideological approach. While the Bolsheviks believed that from the very beginning the working class must fight for the leadership of the social revolution, the Mensheviks held that in the conditions prevailing in Russia at the time, the immature working class could not play a leading role in the coming revolution. The Mensheviks further believed that the bourgeoisie had a great role to play in the struggle for the overthrow of the Tsardom and in preparing the conditions for an ultimate socialist revolution. They were, therefore, opposed to forming a party or adopting a programme that was likely to frighten or alienate the bourgeoisie.

The Revolution of 1905: After the death of Alexander III, his son, Nicholas II succeeded him. The new Tsar declared that he intended to "preserve the principles of autocracy as firmly and unwaveringly as my late father of imperishable memory." This disappointed the reformers and only strengthened the forces of revolution. Little did Nicholas II imagine that history had marked Tsardom for extinction and that he was to be the last Tsar.

The out-break of the Russo-Japanese War in 1904 set in motion a new wave of unrest and agitation throughout the

country. On a Sunday, January 9, 1905, a large procession of workers led by a priest went to present a petition to the Tsar. They were greeted with bullets. Over one thousand unarmed and innocent workers were killed. This tragedy—that has come to be known as the "Bloody Sunday"—was the signal for a country-wide uprising. Large-scale strikes and peasant revolts followed. The Tsarist Government reacted to the revolution with inhuman brutality. There were a number of armed uprisings. The biggest and the most stubborn of these uprisings took place in Moscow in December, 1905. All these were brutally crushed and suppressed. The Government, however, felt the need for the introduction of some measure of reforms.

In August 1905, the Tsar issued a decree to summon a Duma or Parliament. In October, he issued a manifesto promising far-reaching reforms.

The first Duma was inaugurated in May, 1906. The Duma, however, had no real power. It could only approve Bills but could not legislate with final authority because the Tsar had an absolute veto over all legislation. The Ministers were not responsible to it. The Tsar could issue edicts on any subject through his Ministers. The Duma had, further, no right to discuss defence or foreign affairs. Election of members to the Duma was based on a system of indirect election. The franchise was withheld from a large section of common people. And the system of election was carefully designed so as to ensure that the land-owners and other property-owners enjoyed much greater representation than the poor peasants and workers.

Yet the Duma did not prove docile. It was accused of trying to control the executive and of exceeding its powers, and was dissolved in July 1906—only three months after its inauguration.

A second Duma was elected in March, 1907 but this proved more intractable and too much 'liberal'. As a result,

this Duma too was dissolved a few months after it was elected.

The electoral system was then radically revised so as to increase the representation of the land-owners and capitalists and to reduce that of peasants and workers. Also Central Asia was deprived of representation and the representation of Poland was reduced from 35 to 12. The new Duma, that was elected on the basis of this electoral system—the third Duma—proved very docile to the Government and was, therefore, allowed to exist till the end of its five-year term. A fourth Duma was elected in 1912 and was in existence till 1917.

The Bourgeois Revolution: World War I, which broke out in 1914, plunged Russia in economic chaos. A fever of discontent and agitation rapidly spread throughout the country. The repeated defeats of the Russian armies at the front seriously undermined the prestige of the Government. Discontent and disaffection also spread among the armed forces who were being driven by the Tsarist Government to senseless slaughter at the hands of the enemies. The system of distribution completely broke down in 1916. Agricultural production sharply fell on account of millions of peasants having been drafted into war service. Hunger and misery stalked the land. The revolutionary tempo of the masses rose in a crescendo. From January, 1917, began a series of strikes. On March 8, International Women's Day, working women came out into the streets of Petrograd (St. Petersbug was renamed Petrogard in 1914) and held a big demonstration against the Tsarist misrule, war and scarcity of food. Workers held a sympathetic strike. On March 9, and 10, more and more workers joined the strike and the demonstration grew in strength and volume. On March 11, the demonstration began to be gradually transformed into an uprising. Working women began to address the soldiers sent out to suppress the uprising, and to remonstrate with them:

Gradually the soldiers began to be won over to the side of revolution. The masses were caught in a wave of delirious enthusiasm which swept away the loyalty to Tsardom of thousands of soldiers. By the evening of March 12, over 60,000 soldiers joined hands with the revolutionaries. The workers began to arrest the ministers and generals of the Tsar. The proud structure of Tsardom toppled. On that date, March 12, a Provisional Committee of the Duma declared itself the new Government of the country. The Government, however, was dominated by members of the bourgeoisie and headed by Prince Lvov, a constitutional democrat. Nicholas II abdicated and nominated his brother, Grand Duke Michael Alexandrovich, as his successor. But his brother was wise enough to refuse the crown.

The Tsar and the members of his family were held prisoners for a number of months and were executed in July, 1918. Thus ended the story of Tsardom leaving a moral, written in blood, for those who oppose the will of the people. (The Bourgeois-democratic revolution is also known as the February Revolution because, according to the Julian Calendar it took place in February, 1917).

The Socialist Revolution: The policies of the Provisional Government did not satisfy the masses. For one thing, they still continued the war, whereas the masses demanded immediate stopping of war which was draining their blood, and dragging the country deeper and deeper into economic choas. The war was, obviously, being prosecuted by the Government in the interests of the bourgeoisie. The Provisional Government also refused to transfer land to the peasants and openly supported the capitalists in their disputes with the workers. The Government, in short, was a bourgeois Government and their policies were designed to further the interests of this class.

The Bolsheviks raised the slogan that all power must be transferred to the Soviets and the war must be stopped imme-

diately. At first a small minority, the Bolsheviks began gradually to find increasing support from the workers and poor peasants. A considerable section of the soldiers also began to support the Bolsheviks because they were tired of the war and wanted that it should stop immediately. Supported by the Mensheviks and Social Revolutionaries, the Government, however, adopted the policy of suppressing the Bolsheviks. The workers, under the leadership of the Bolsheviks, struck back at the Government and thus prepared the ground for another revolution. Lenin, the Bolshevik leader, arrived in Petrograd early in April, 1917. A man of iron will and razor-blade intellect Lenin ranks among the greatest leaders of men in history. From the very beginning his slogan was: 'No support for Provisional Government'. He declared that the war that was being continued by the Provisional Government was an imperialist war. The war must be stopped, said he.

The Provisional Government adopted a policy of suppressing the Bolsheviks. A number of Bolshevik leaders were put under arrest and in the month of July, a warrant was issued for Lenin's arrest. The Bolsheviks, thereafter, prepared for an armed uprising. The uprising began on November 6, 1917. Lenin personally directed the uprising from the headquarters of the Petrograd Soviet. The Red Guards and revolutionary troops surrounded the Winter Palace where the members of the Provisional Government had taken refuge. The Provisional Government was put under arrest on the night of November 7. The victory of the revolution in Petrograd was followed by victory in other areas, though in some places fighting and counter-revolutionary uprisings continued for some days more.

The Second Congress of Soviets, which met at Petrograd on November 7, the very day on which the Provisional government was put under arrest, adopted a 'decree on peace' calling upon the belligerent countries to begin peace negotia-

tions immediately and proclaiming that so far as Russia was concerned the war was at an end. The Congress also adopted a 'decree on land' abolishing private property in land and providing for transference of land to the peasants. The Congress, further, appointed a Council of People's Commissars, a sort of cabinet, with Lenin as its chairman (premier) and Trotsky as "People's Commissar for Foreign Affairs," this Council of People's Commissars being the First Soviet Government.

The socialist revolution in Russia which overthrew the bourgeoisie and ushered in an era of socialist reconstruction of society is one of the most important landmarks in the history of mankind. (This revolution is also known as the October Revolution because it took place in the month of October according to the Julian Calendar.)

CHAPTER II

THE COMMUNIST PARTY AND MARXISM

The Russian revolution of 1917 was effected under the leadership of the Communist Party and it is this party which has since been in control of the Government of the Soviet Union, being the only legal party in the state. It is a party with a clear-cut ideology. A little knowlelge of this ideology is indispensable for understanding the present structure of the Soviet state and the constitution of the Soviet Union. For this ideology not only ditermined the strategy and tactics of the revolution of 1917, the entire reconstitution of the social, political and economic life of the peoples of the Soviet Union in the post-revolutionary periods has been carried out on the basis of this ideology. This ideology is none other than Marxism, the doctrine developed by Marx and Engels in the nineteenth century, which the Communist Party adopted as the only scientific theory of social dynamics and affording the most correct guidance to the forces of social revolution. (For a discussion of the pinciples of Marxism, see Ch. XXII. Pp. 503-514).

The Party, as has been explained earlier, originally formed part of the Russian Social Democratic Labour Party, when the members used to be known as the Bolsheviks. The Bolsheviks constituted themselves into an independent party in 1912 under the name, the Russian Social-Democratic Labour Party (Bolsheviks). After the formation of the Union of Soviet Socialist Republics (1922), the Party was renamed in 1925 as the Communist Party of the Soviet Union (Bolsheviks)—C P S U (B). The word 'Bolsheviks' was later dropped from the name by a resolution adopted at the Nineteenth Congress in October, 1952. Since that time the Party has been known simply as the Communist Party of the Soviet Union—C P S U.

The Marxian Theory of the State and the Character of the Soviet State: Consistently with their theory of economic interpretation of history,* Marx and Engels held that the State is nothing but a machinery in the hands of the economically powerful class for exploiting the poor and weaker classes. In the capitalist society, the state, according to this theory, is nothing but an engine which the bourgeoisie uses to exploit the working class and hold them in check. And law in capitalist society reflects and represents only the interests of the bourgeois classes, although the bourgeois theory of law and politics seeks to conceal this class basis of the state and power.

When the bourgeoisie would be overthrown by the proletariat, the latter will be the dominant class and the system of Government will be dictatorship of the proletariat. Thus, the new state will be but a machinery in the hands of the new dominant class, namely, the proletariat, to further their interests and to expropriate the bourgeoise. Under dictatorship of the proletariat, the system of production will be placed on a socialist basis, which means that the private ownership of the means of production will be abolished and all productive wealth would be socially owned and managed. Under socialism, production and distribution will be organised on the principle: "From each according to his ability, to each according to his work." The present Soviet State is supposed to be in the stage of socialism and the government of the Soviet State is supposed to be a dictatorship of the proletariat. The first Article of the present Constitution of the Soviet Union, the Stalin Constitution, states: "The Union of Soviet Socialist Republics is a socialist state of workers and peasants." Article 12 of the Constitution declares: "The principle applied in the U.S.S.R. is that of socialism: 'From each according to his ability, to each according to his work.'"

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*See p. 504

Socialism, however, does not represent the final stage in social evolution. Socialism is supposed to end all exploitation of man by man and gradually to bring about such a fundamental transformation in social life and human character that ultimately, it is believed, the State, which is a co-ercive machinery, will wither away and all classes will merge into one class. This is the stage of communism with a classless and stateless society. The guiding principle of social life in a communist society will be: "From each according to his abilities, to each according to his needs."

The Communist Party: The Soviet Union, as has been pointed out above, is a one-party state, the Communist Party being the only party therein. No other political party is allowed to exist in the Soviet Union. The Party is not only the Central directive force in running the State machinery, it is integrated with the State in a manner that is without parallel in the world outside the Soviet sphere of influence. All the policies of the state are determined by the Party. Practically all persons in positions of high authority in the Government are members of the Party. The bulk of the Government employees of all categories belong to the Party or are sympathisers of the Party. Being the only party in the state, the majority of the membership in every Legislature in the state, whether central or local, belong to the Party, and the rest of the members are sympathisers of the Party or supporters of the Party policy. The elections are so conducted as to secure the election of only Party members or Party sympathisers. Thus, in the various Legislatures of the state, what happens is that the members of the Party, as legislators, endorse the policy determined by the Party itself and placed before them by other members of the Party, namely, the Government. Whereas constitutions, as a general rule, do not mention the names of political parties, the Soviet Constitution is an exception to this rule. The present Constitution of the Soviet Union, the Stalin Constitution, not only mentions the name of the

Communist Party, it does not, very significantly, mention the name of any other party. And the Constitution recognises the supreme position—one should say monopolistic position—of the Communist Party in the state. Article 126 of the Stalin Constitution says: "The most active and politically conscious citizens in the ranks of the working class, working peasants and working intelligentsia voluntarily unite in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to build communist society and is the leading core of all organisations of the working people, both public and state." Thus all organisations in the Soviet Union including such non-political organisations as the Trade Unions and youth organisations are controlled and led by members of the Party and their policies are ultimately determined by the highest policy-making bodies in the Party. And this could not be otherwise, because the Communist Party is the only political organisation in the state and, besides, it is a Party bound together by iron discipline and functioning in a highly organised and centralised manner. The members of the Party, inspired by almost a religious faith in the communist ideology, carry out their allotted duties with a 'fanatical' zeal. No wonder that the masses of the Soviet Union who are not allowed to organise into any other political party are guided and controlled in everything by the most highly organised party the world has ever known.

Party Organisation: The Communits Party organisation is characterised by military discipline. It is hierarchical in structure and decisions reached at higher levels are strictly binding on organs or units at lower levels. The internal discipline of the Party is based on what is known as the principle of democratic centralism.

Democratic Centralism: The principle of Democratic centralism as a basis for party organisation was formally adopted and incorporated in the Party Rules at the Sixth Congress of the Party held in 1917. The

principle, it has been authoritatively stated, means four things: (1) That all directing bodies of the Party, from top to bottom, shall be elected; (2) That Party bodies shall give periodical accounts of their activities to the party organisations; (3) That there shall be strict Party discipline and the subordination of the minority to the majority; (4) That all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members.

It is claimed by the Communists that this principle of democratic centralism embodies both centralism and democracy. In practice, however, it is found that the Party organisation is characterised more by centralism than democracy. The principle that the decisions of the higher bodies in the party are absolutely binding on lower bodies has resulted in the subordination of all lower bodies to the highest policy-making organ of the party which is known as the Presidium. There are reasons to believe that the Presidium is being, at present, dominated by one single individual, Nikita Khrushchev. In the past, Stalin dominated this body (which was known as Politbureau up to October, 1952) for about thirty years till his death in 1953. It is important to note that, the Party and the Government being closely integrated, the state organisation of the Soviet Union is also based on the principle of democratic centralism, the decisions of the higher authorities in the Government being absolutely binding on the authorities at lower levels.

The Party Structure: The primary organs of the Party are small organised groups of Party members in villages, factories, collective farms, universities, mines and the like. Formerly these groups used to be called cells; now they are termed 'primary party organs'. Usually there is such an organ in every village, factory, mine, farm or educational institution. Each of these primary units consists of at least three party members, though generally there are more members on these bodies and some of the bigger ones have executive committees and secretaries. These

primary units elect members to the town or district party concils. The party councils of towns and districts elect delegates to constitute the party councils of Regions and the latter elect delegates to the party congresses of the Union Republics. The members of the Republican party councils send delegates to the All-Union Congress of the Party which is supposed to be the repository of ultimate authority in party affairs.

The All-Union Congress meets every four years. It, however, did not meet for twelve years since 1939. The Sixteenth, Seventeenth and Eighteenth All-Union Congresses met in 1930, 1934 and 1939 respectively. The Nineteenth All-Union Congress was held in October, 1952, and the Twentieth Congress in February, 1956.

Delegates to the All-Union Congress representing the Party organisations of the Republics, autonomous republics and other regional areas are chosen on the basis of one voting delegate per 1,000 Party members and one alternate for every 2,000 members. There were 2,159 delegates at the 1934 Congress and 1,574 delegates at the Congress of 1939. The number of delegates at the Twentieth Congress, held in 1956, was 1355.

The All-Union Congress lays down the 'Party line'. The Party line is enforced between the sessions of the All-Union Congress by a Central Committee which is elected by secret ballot by the Congress. The existing Central Committee, elected at the Twentieth Congress, consists of 133 members and 122 alternate members. Though the Central Committee is supposed to carry out the policy laid down by the All-Union Congress, it modifies, when necessary, that policy in details. The decisions of the Central Committee are regarded as having the same authority as those of the Congress and are accepted without question. The Central Committee has a President, a Secretary General and a number of assistant secretaries. The

Central Committee appoints the Presidium, the Secretariat of the Central Committee and the Party Control Commission.

Immediately after the Twentieth Congress, the newly elected Central Committee elected Nikita Khrushchev the First Secretary, that is the Secretary General, of the Central Committee. The Committee elected N. M. Shvernik the Chairman of Party Control Commission.

The Presidium, however, is a far more important body than the Control Commission and eclipses in importance the Central Committee itself. The Presidium is the highest policy-making body. Up till the Nineteenth Congress (October, 1952) this body used tc be known as the Politbureu or the Political Bureau. As a result of changes made in the Party rules at the Nineteenth Congress, the Politbureau was replaced by the Presidium. The Presidium is, for all practical purposes, the old Politbureau under a new name. The Politbureau used to be a small body of thirteen to fifteen members. The first Presidium elected under the revised rules in October, 1952 was a comparatively large body consisting of 25 full members and 11 alternates. But its size was reduced after the death of Stalin and at present it is more or less of the same size as the old Politbureau.

The Presidium is the supreme pinnacle of the Party. A small body consisting of the most important members of the organization, the Presidium directs and controls the policies of the party and hence of the Government. It is this body which takes decision on all important political and economic issues and determines the stand to be taken by the Party and the Soviet Government in international affairs. During Stalin's life-time, he was the Chairman of this body (the then Politbureau) for many years and dominated the deliberations of this body. His mantle seems now to have fallen on Nikita Khrushchev. Usually the members of this body are not only the key men in the Party organisation, they are also persons holding key positions in the Government. "During the late war with Germany, the regular members of

the Politbureau were Stalin, Molotov, Zhdanov, Kalinin, Voroshilov, Kaganovich, Andreyev, Mikoyan and Khrushchev. In March 1946, Beria and Malenkov were added to the list and at the same time the alternates were announced as consisting of Shvernik, Voznesensky, Bulganin and Kosygin. In the hands of these men were concentrated the principal positions not only in the Communist Party itself, but also in the Supreme Soviet, in the Council of Ministers, in the Soviet industry and the Soviet Army." In 1948, all the eleven members of the Soviet inner Cabinet were members of the Politbureau which had then only a total of thirteen members. This gives an idea as to how closely the Party and the Government are integrated together.

Immediately after the Twentieth Congress (February, 1956), the newly elected Central Committee appointed the following persons as members of the new Presidium : Nikita Khrushchev, V.M. Molotov, L.M. Kaganovich, G.M. Malenkov, N. Bulganin, K. Voroshilov, Anastas Mikoyan, Maxim Saburov, Mikhail Pervukhin, Aleksei Kirichenko and Mikhail Suslov. (Besides them, there were six alternates, that is, non-voting members of the body.)

Molotov, Malenkov and Kaganovich were dismissed from the membership of the Presidium as well as that of the Central Committee in June, 1957 for alleged anti-party activities. Pervukhin and Saburov were also removed on similar grounds. Immediately thereafter, the appointment of a new Presidium, consisting of the following members, was announced : Nikita Khrushchev, A. Mikoyan, N. Bulganin, K. Voroshilov, N.M. Shvernik, M.A. Suslov, G. Zhukov, AB. Aristov, N.I. Belyayev, L.I. Brezhnev, Y. Furtseva, N.G. Ignativ, A.I. Kirichenko, F.R. Kozlov and Q. Kuusinev.

Zhukov was dismissed from the Presidium and the Central Committee in November, 1957.

It has been already noted how the Party organs at the intermediate levels, that is, between the highest bodies and the lowest primary organs, are elected through successive stages of indirect election. These bodies are of the same organisational pattern. The district or town council (also called 'conference') meets once a year and elects a district or town committee which usually meets once a month. This committee appoints a bureau and secretaries to carry on the day-to-day work of the Party. Similarly, the regional councils or Republican Congresses elect their committees and these latter appoint bureaus and secretaries of their own. The Party has its headquarters in Moscow.

The requirements for admission to the Party are difficult. Generally the applicants have to secure the recommendation of two or three party members of good standing and are kept on probation for a period, which may extend from one to five years, before they are given the status of full members. The membership of the Party which has varied from time to time is at present over seven million. There has been an interesting change in the composition of the Party since the middle of the thirties. Whereas before 1934, the 'Old Bolsheviks' (those who joined the party before or during the civil war period) predominated in the Party, since 1934 or thereabouts the bulk of the membership has been constituted by the 'New Bolsheviks' (those who joined the party since 1920). If the composition of delegates in Party Congresses land Conferences is any guide in this matter, the ratio between the 'Old Bolsheviks' and the 'New Bolsheviks' which was 4 : 1 before the middle of the thirties has since become 1 : 4—a complete reversal of position. It is also deserving of note that the Party Rules which formerly laid great stress on the proletarian character of the organisation were changed at the 18th Congress in 1939 so as to reduce this strees. The Old Rules said: "The Party effects the leadership of the proletariate, the toiling peasants and the toiling masses." The 1939 Rules stated: "The Party effects the leadership of the

proletariat, the peasantry, the intelligentsia—all the Soviet people." Again whereas the old Rules said that, The Party is the leading core of all organs of the proletarian dictatorship," the 1939 Rules stated that "The Party is the leading core of all organisations of toilers, both social and governmental." The Rules, as further amended at the 19th Congress (1952), declare that the Communist Party of the Soviet Union "is a voluntary militant union of like-minded Communists consisting of people from the working class, the working peasants and the working intelligentsia" whose principal object is to build a Communist society by means of gradual transition from Socialism to Communism. These changes in the Rules as well as the changes in the composition of the Party noted above reflect a development of fundamental importance in the social and political life of the Soviet Union. There has been in the Soviet Union a vast and steady expansion of the administrative machinery during the years since the revolution and a simultaneous growth in the size of the class called the intelligentsia. It is this intelligentsia that mans and runs the vast bureaucratic machinery—the biggest the world has ever seen. And though the Soviet Union is supposed to be a dictatorship of the proletariat, it is this intelligentsia, more than any other class, that controls the political power in the Soviet Union. This could not be otherwise because the administrative machinery of the Soviet Union has expanded to a point where it has brought within its scope and under its control almost every aspect of the social and political life of the people and has become practically co-extensive with eccnomic life of the state.

Stalin and Destalinization: Among the most important recent developments in the affairs of the Soviet Communist Party is what has come to be known as destalinization. This term is employed to mean not only denunciation of Stalin and the policies he followed but also discouraging any public demonstration of respect for the departed hero. An important aspect of destalinization has been removal from power of all

those who were closely associated with him in the past and are supposed still to believe in Stalinist methods.

The way in which the Soviet Union deified Stalin in his life-time and overthrew him from his pedestal within three years after his death is one of the most revealing comments on the Soviet Party system as well as the Soviet governmental system.

Born on December 21, 1879, a cobbler's son, Stalin joined the revolutionary movement in Russia at the age of fifteen. He became a member of the Russian Social Democratic Labour Party in 1898 and after the Party split into two groups, the Bolsheviks and the Mensheviks, at the second Congress held in 1903, he sided with the former. Then followed years of strenous revolutionary activity and repeated arrest and exile. He always gave strong support to methods and lines of action propounded by Lenin and rose gradually to the highest ranks of the party. In May, 1917, when the politbureau came into existence, he was elected a member of that body and was re-elected to it at every successive election till his death in 1953. He became the General Secretary of the Party in May, 1922 and held the post till the last day of his life. He took over the Premiership of the Soviet Union in May 1941 and in that office also he continued till his death.

For about three decades Stalin directed the destinies of the people in the Soviet Union and enjoyed what may be called absolute power.

Through careful propaganda, a great legend was built up around the name of Stalin and the common people in Russia came to look upon him with almost worshipful attitude. Never in history was so much praise showered on a national leader in his life time by the people as was done on Stalin. To the Russian people, Stalin symbolised all that was great and noble in Soviet society. The very acme of revolutionary virtue and constructive genius, Stalin was the greatest human being on earth. Every Soviet child was asked to emulate

the virtues of Stalin who, they were told, represented the highest ideal of individual perfection, as well as devotion to the cause of human freedom.

The following lines, taken from an authorised biography published from Moscow during the life-time of Stalin, give some idea of the place he occupied in the eyes of the Soviet people in those days :

"In the eyes of the peoples of the U.S.S.R. Stalin is the incarnation of their heroism, their love of their country, their patriotism.....

"Stalin's name is a symbol of the courage and glory of the Soviet people, a call to heroic deeds for the welfare of their great Motherland.

"Stalin's name is cherished by the boys and girls of the Socialist Land, by the Young Pioneers. Their dearest ambition is to be like Lenin and Stalin.....

"In all their many languages the peoples of the Soviet Union compose songs to Stalin, expressing their supreme love and boundless devotion for their great leader, teacher, friend and military commander."

At a secret session of the 20th Congress of the Soviet Communist Party, held in February, 1956, in the Kremlin, Nikita Khrushchev, First Secretary to the Party, delivered an astounding speech exploding the Stalin myth. He said that during the last 19 years of his life Stalin had ruled as an absolute despot. Stalin had built up a reign of terror. He pyhsically liquidated people suspected of opposition to him or his policies. He falsified and fabricated evidence against party members and murdered hundreds of old Bolsheviks including 70 out of 133 members of the Central Committee of the Party in 1937. Stalin also murdered Marshal Tukhachevsky together with 5000 other Red army officers, as a result of which the Red Army was seriously weakened and the Soviet Union was brought to the brink of disaster in World War II.

Contrary to carefully fostered popular belief, Stalin had not remained in Moscow during Hitler's attack on the city. He had fled from the city leaving its defence in the hands of Zhukov, Rokossovsky and Konev. Stalin, thus, did not give the Soviet people the kind of leadership he was supposed to have given during World War II.

Stalin suffered from delusions of grandeur and erected memorials to himself all over the Soviet land. Even inside the Kremlin he surrounded himself with his own statues.

Towards the end of his life, he developed into such a blood-thirsty autocrat that officials summoned in his presence would say goodbye to their families. "We never knew, when we entered Stalin's presence whether we would come out alive", stated Khrushchev.

Thus the world was told that the Great Stalin, the idol of the Soviet people, was really a murderous megalomaniac. This speech was the signal, as it were, of setting in motion steps to remove pictures and statues of Stalin from prominent places all over the country. A great movement was launched against the "personality cult." It was a movement for re-educating the Soviet people in matters connected with the name of Stalin. References to Stalin in the Press and in political speeches became fewer and fewer till they reached almost the vanishing point. Steps were also taken to purge historical and reference books so as to make them conform to the views of the ruling group.

Malenkov, Molotov and Kaganovich, former associates of Stalin, who are believed to be Stalinist die-hards, were expelled from the Party Presidium and the Central Committee in June, 1957, on the ground that they were opposing the party line both in domestic and international affairs. They were also relieved of all ministerial functions; at that time Molotov and Kaganovich were two of Russia's first four Deputy Prime Ministers and Malenkov was a Deputy Premier and Minister of Electric Power Stations. It may also be

mentioned that Malenkov had become the Premier of the Soviet Union on the death of Stalin. But he was removed from that office in February, 1955. Molotov was for many years the Soviet Foreign Minister. Marshal Zhukov, the great military leader of the Soviet Union, was also similarly dismissed from the Party Presidium and the Central Committee in November, 1957, on the ground that he was overglorifying his own role in the national victory in World War II and was not allowing the party machinery to work properly among the Armed Forces of the country. (A few days, earlier Marshal Zhukov had been removed from the office of the Defence Minister of the Soviet Union.)

Thus, almost all the great figures in the Soviet Union in the post-Stalin era have been disgraced within five years of the death of Stalin and have gone into political wilderness. Nikita Khrushchev, the present Premier of the U.S.S.R. and the First Secretary to the Party, now stands on the pinnacle.

But, in the Soviet Union, the unmasking of yesterday's lies does not establish the truth of today's assertions. For, if yesterday's truth is not today's truth, the latter may not be tomorrow's.

And it is important to note that the present ruling group in the Soviet Union, while they are denouncing Stalinism and purging Stalinists, have been maintaining the system which made the growth of Stalinism possible.

Affiliated Organisations: The Communist Party has built a number of other organisations in the Soviet Union whereby it extends its control practically to every layer of the society and to every age group. These organisations have been very aptly called "transmission belts" which connect the Party with the masses and transmit the propulsions generated at the centre to the circumference. Youth organisations, trade unions, consumers' co-operatives, producers' co-operatives and various other organisations to be found in the Soviet Union are in the last analysis organisations built and control-

led by the Communist Party for the purpose of bringing the entire social life within its sphere of control. Among the Youth Organisations the most important are the *Komsomol* and the Pioneers—these organisations are a medium through which the Party instils its doctrines into the mind of the younger generation.

The Komsomol and the Pioneers: The Komsomol or the All-Union Communist League of Youth is an organisation of vital importance. Youths between the ages of 14 and 26 are admitted to its membership which is said to total over 18 million at present. The organisation is widely ramified and has its branches in schools, factories and the like. The organisation provides a good training ground for future Communists though not all of its members are ultimately promoted to party membership. The *Komsomol's* activities include participation in construction projects, promotion of study and sports among youths and helping meritorious youths with scholarships. The Komsomol has also promoted some vocational training projects. In many matters, it plays a guiding role in respect of other youth organisations.

The Pioneers is an organisation of children between the ages of 9 to 14. At present, it has a membership of over 18 million. The daily activities of the Pioneers are directed by the Communist League of Youth.

Between them, these organisations cover practically the entire youth population of the country who are thus systematically indoctrinated in the principles of communism as interpreted by the Party leadership.

Trade Unions: The Soviet Union is supposed to be a worker's state in which the exploiting classes have been abolished. Theoretically, therefore, there should be no labour unions in that state since the function of labour unions is collective bargaining and the idea that workers should organise for bargaining with their own representatives is

ludicrous. Yet there are labour unions in the Soviet Union which have been organised by the Party itself. These unions discuss problems of production with the management of the factories, promote cultural activities among labourers and maintain discipline among them. The unions also administer a big sector of the social insurance schemes of the state. In 1954, there were about 43 trade unions in the state with thousands of local branches. Each of these unions is under a central organisation and has a pyramided structure with district, provincial and republican branches. All these central organisations are, however, under the control of one topmost body called the All-Union Central Council of Trade Unions. The supreme body of the Soviet trade Unions is the Congress of the Trade Unions of the USSR. This Congress is convened every four years. Between sessions of the Congress, trade union activities are directed by the body just mentioned, namely, the All-Union Central Council of Trade Unions.

It is obvious, however, that these unions are not trade unions in the true sense of the term and do not carry on any collective bargaining in the real sense. For the factories in the Soviet Union are owned and managed by the state, and both the state and the trade unions are controlled by the same party, namely, the Communist Party of the Soviet Union. There is every reason to believe that the labour unions in the Soviet Union are a machinery through which the Communist Party controls the labour population in the state.

(The consumers' co-operatives have been dealt with in a subsequent chapter.)

CHAPTER III

CONSTITUTIONAL DEVELOPMENT SINCE 1917

Immediately after the victory of the Socialist Revolution, the Second All-Russian Congress of Soviets convened a Constituent Assembly and fixed the elections for the end of November, 1917. The elections, however, returned a Socialist Revolutionary majority, the Bolsheviks getting only twentyfive per cent of the votes. When the Constituent Assembly met on January 18, 1918, it refused by a large majority to recognise the revolutionary decrees of the Second Congress of Soviets regarding the abolition of the private ownership of land, the question of peace and transference of power to the Soviets. It also refused to discuss a "Declaration of Rights of the Working and Exploited people" which was adopted by the Central Executive Committee elected at the Second Congress of Soviets. The Constituent Assembly was then dissolved as having "ruptured every link between itself and the Soviet Republic of Russia." The voice of the majority was thus suppressed by force by the Bolshevik leaders headed by Lenin.

Thereafter a Committee appointed by the Central Executive Committee of the Communist Party drafted a Constitution for Russia and this draft was approved by the Fifth All-Russian Congress of Soviets. Brought into force in July, 1918, this was a constitution, it must be understood, for the Russian Soviet Federated Socialist Republic (RSFSR) and not for the Soviet Union which was yet to come into existence.

From the civil war and confusion which followed the Revolution, a number of independent states had emerged in the non-Russian areas of the old Russian empire. In December, 1922, three of these states, Ukraine, White Russia and Transcaucasia united with the RSFSR in a federal union, thereby

bringing into existence the Union of Soviet Socialist Republics—the U.S.S.R. It may be pointed out that already, before the U.S.S.R. came into existence, the states of Ukraine, White Russia and Transcaucasia were organised on Soviet lines and on the basis of Communist ideology; they were known respectively as the Ukrainian Soviet Socialist Republic, the White Russian Soviet Socialist Republic and the Transcaucasian Soviet Federated Socialist Republic.

In July 1923, the Central Executive Committee of the newly formed U.S.S.R. drafted a new constitution for the Union, which was brought into force in January, 1924.

Twelve years later, in 1936, a new Constitution, known as the Stalin Constitution, was adopted by the Eight (Extraordinary) All-Union Congress of Soviets. This Constitution, as amended from time to time, is the present fundamental law of the Soviet Union.

The Constitution of 1918: The Constitution of 1918, which was a Constitution for the RSFSR alone, embodied a large number of revolutionary decrees and rules issued by the authorities concerned during the months immediately following the Revolution. The aim of the Constitution, it declared, was to guarantee the dictatorship of the proletariat in order to suppress the bourgeoise, to end the exploitation of man by man and to establish Socialism. Franchise was granted only to workers and to those peasants who did not exploit others for gain and also to their dependants. Kulaks, capitalists, persons living on unearned income, clergymen, members of the imperial dynasty and some categories of former Tsarist officials were excluded from the franchise. The Constitution provided for the separation of the Church from the State. It guaranteed the freedom of both religious and anti-religious propaganda. It prohibited religious instruction in schools.

The Constitution provided for the election of an All-Russian Congress of Soviets. The representatives to the

Congress were to be chosen on the basis of one for every 25,000 *voters* dwelling in towns and one for every 1,25,000 *inhabitants* living in rural areas. This disproportion was designed to give higer representation to the town-dwelling workers who were more inclined towards Socialism than the rural masses. The right of recall was guaranteed to the electors. A Central Executive Committee elected by the Congress was to carry on the functions of the Congress between its sessions, while a Council of People's Commissars, acting more or less like a cabinet, was to be responsible to the Congress and, between its sessions, to the Central Executive Committee.

The Constitution provided for a pyramidal structure of soviets rising from the local soviets through the intermediate levels of district, country and provincial congresses of soviets to the topmost body—the All-Russian Congress of Soviets. Under this Constitution, a series of revolutionary decrees were issued touching almost every aspect of the social and economic life of the people. Among the most important of these decrees were the historic one which provided for an unbroken weekly rest period of not less than forty-two hours for workers and another which granted equal rights to women with men in private life.

The first Constitution of the Soviet Union was modelled on this 1918 Constitution of RSFSR. It may be noted that this Constitution continued to be the fundamental law of the Russian Republic, that is, RSFSR, till it was placed by a new Constitution in 1937—a new Constitution framed in conformity with the Stalin Constitution of 1936.

The Constitution of 1924: The Constitution of 1924, that is, the first Constitution of the Soviet Union, provided for the creation of a central army and navy and also for a Commissariat of Foreign Affairs. Under it, certain fields of administration were left exclusively to the Union while the Central and Republican Governments were to enjoy concurrent jurisdiction in relation to a number of subjects,

such as finance, food and labour. Certain other spheres of administration, such as education and justice, were left exclusively to the Republics.

The Constitution provided for an All-Union Congress of Soviets. Delegates to the Congress were to be chosen on the basis of one delegate for 25,000 *voters* living in urban areas and one for every 125,000 *inhabitants* living in rural areas The electoral system, it will thus be seen, was weighted in favour of the town-dwellers, which is explained by the fact that the Communists had greater hold on the urban masses than on rural people consisting mostly of the peasants. Capitalists, clergymen, criminals and former Tsarist officials were excluded from participation in the choice of delegates. The All-Union Congress of Soviets which was supposed to be the highest federal body, however, met very infrequently, once every two years. A Central Executive Committee elected by the Congress acted more or less as the Central deliberative body of the Union.

The Central Executive Committee was a bicameral body consisting of a Union of Soviets and a Soviet of Nationalities. The members of the Union of Soviets were chosen on a population basis; while those of the Soviet of Nationalities were chosen on the basis of constituent Republics and autonomous Republics. The Union of Soviets was much larger in size than the Soviet of Nationalities. The Executive Committee debated policies of the Federal Government, passed the budget and approved decisions of the Presidium or the Council of People's Commissars.

The Presidium was a body created mainly for the purpose of carrying on the functions of the Central Executive Committee between its sessions. The Presidium consisted of 9 members elected by the Soviet of Nationalities and another 9 elected jointly by the two Chambers.

The Council of People's Commissars, which may be called the Federal Cabinet of the U.S.S.R., was a body appoin-

ted by the Executive Committee. The Council consisted of heads of departments, who were regular members of the body, and a few participating members representing such bodies as the State Planning Commission, the Council of Labour and Defence and the like. Lenin was the first Chairman of the Council of People's Commissars.

The Constitution of 1936: During the twelve-year period between 1924, when the first Constitution of the U.S.S.R. was brought into force, and 1936 when the Stalin Constitution was adopted, the economic life in the Soviet Union had been transformed beyond recognition. The means of production had been almost completely nationalised and industry organised on a Socialist basis. The class of landlords and capitalists had been liquidated as well the Kulaks (richer peasants). Practically the entire peasantry had been organised in collective farms and state farms. In view of these changes in the economic life of the Soviet Union, a decision was taken on February 6, 1935, by the Seventh Congress of the Soviets of the U.S.S.R. to amend the Constitution of the Soviet Union in a manner that would reflect the Socialist transformation of the Soviet life. In pursuance of this decision the Central Executive Committee of the Union of Soviet Socialist Republics appointed a drafting commission consisting of 31 members with Stalin as the Chairman. The Commission submmitted the draft to the Presidium of the Central Executive Committee in June, 1936. The draft was then published and thrown open to nation-wide discussion. The draft constitution is said to have been printed in 60 million copies and discussed in 527,000 meetings which are said to have been attended by over 36 million people. Over 150,000 amendments are reported to have been proposed, many of which must have been, of course, repetitions of the same points. The draft was submitted for approval to the Eighth Congress of the Soviets. It was adopted with some amendments and came into effect on December 5, 1936.

Stalin, delivering his report to the Eighth Congress on the draft constitution, characterised it as the legislative embodiment of the victories of socialism in the Soviet Union. According to him, the new Constitution correctly reflected the fundamental changes that had taken place in the Soviet Union since 1924. What were those changes ? To quote the words of Stalin : "The most important thing is that capitalism has been banished entirely from the sphere of our industry, while the Socialist form of production now holds undivided sway in the sphere of our industry.....In the sphere of agriculture, instead of the ocean of small individual peasant farms, with their poor technical equipment, and a strong Kulak influence, we now have mechanised production conducted on a scale larger than anywhere else in the world, with up-to-date technical equipment, in the form of an all-embdracing system of collective farms and state farms....As for the country's trade, the merchants and profiteers have been banished entirely from this sphere. All trade is now in the hands of the state, the Co-operative societies and the collective farms.....The landlord class has already been eliminated. The capitalist class in the sphere of industry has ceased to exist. The Kulak class in the sphere of agriculture has ceased to exist. And the merchants and profiteers in the sphere of trade have ceased to exist. Thus all the exploiting classes have now been eliminated. There remains the working class. There remains the peasant class. There remains the intelligentsia".

Even these classes, namely, the working class, the peasants and the intelligentsia, said Stalin, had undergone a profound change. These classes were no longer the exploited proletariat or the exploited peasantry or the exploited intelligentsia as in bourgeois countries. They had been emancipated from exploitation. In short, in the Soviet Union, contended Stalin, "exploitation of man by man has been abolished."

According to Stalin, the distinguishing features of the new constitution are the following:

(1) The Constitution reflects the Socialist principle, "from each according to his abilities, to each according to his work", because Socialism has been established in the country. It cannot incorporate in it the Communist principle, "from each according to his abilities, to each according to his needs", because communism is yet to come.

(2) The Constitution is based on the principles of socialism such as public ownership of means of production, abolition of unemployment, abolition of exploitation, provision of work for all and the like.

(3) The Constitution proceeds from the fact that all antagonistic classes have been abolished in the Soviet Union and the society now consists of two friendly classes, workers and peasants.

(4) One of the principles on which the Constitution is based is that nationalities in the Soviet Union possess equal rights in every sphere of economic, social, political and cultural life

(5) The Constitution is based on "thoroughgoing democratism" and guarantees equal rights to all citizens, irrespective of race, sex, place of residence and the like.

(6) Whereas the rights guaranteed by bourgeois constitutions are mostly formal rights because the poorer people cannot enjoy those rights for want of money or work or leisure, the Constitution of the Soviet Union not only guarantees rights but also ensures such means to the people as would enable them to enjoy those rights.

The main changes introduced by the Constitution of 1936: In view of the transformation that took place in the life of the Soivet Union between 1924 and 1936, the Constitution of 1936 introduced the following important changes in the

constitutional system: (1) The Constitution introduced a universal suffrage. Formerly, the exploiting classes, the clergymen and some other categories of citizens were excluded from the vote. In view of the abolition of the exploited classes in the Soviet Union, as has been noted above, this exclusion was considered unnecessary and franchise was extended to all citizens,"irrespective of race or nationality, sex, religion, education, domicile, social origin property status or past activities". Only lunatics and criminals were excluded from franchise. (2) The Constitution established a direct system of voting. It provided that the election to all Soviets from the lowest to the highest, that is, from the rural Soviets to the Supreme Soviet of the U.S.S.R., were to be held by direct vote of ordinary electors. Prior to 1936, only the rural Soviets used to be elected by direct vote, all the other Soviets being elected indirectly. The village Soviets used to elect delegates to the district Soviets, the district Soviets to the provincial Soviets and so on.

(3) The Constitution of 1936 introduced equal voting. "Each citizen", it says, "has one vote; all citizens participate in elections on an equal footing". Prior to 1936, the vote was unequal, the working class enjoying a proportionately higher representation than the peasants. In view of the social homogeneity achieved during the years 1924 to 1936, introduction of equal voting was now considered safe from the point of view of socialism. (4) The Constitution introduced secret voting thereby replacing the former highly undemocratic system of oral and open voting.

(5) The Constitution declared in the very first Article that "the Union of Soviet Socialist Republics is a socialist state of workers and peasants", thereby recording the fact that exploiting classes had been abolished in the Union and that Socialism had been established.

(6) Whereas the Union Constitution of 1924 did not include any Bill of Rights—this being left to the Republics—the Constitution of 1936 contained a Bill of Rights. This

too was possible because of the greater social and ideological homogeneity achieved througout the Union. It guaranteed equal rights to all irrespective of race or nationality.

(7) The Constitution formally guaranteed the right to work to citizens as well as the right to leisure, rest and the like, which indicates that the problem of unemployment had been practically eliminated from the Soviet Union during 1924 to 1936.

The Principal Features of the Stalin Constitution: The Soviet Constitution of 1936, popularly known as the Stalin Constitution, is federal in character. It provides for a Central Government as well for the Government of constituent units called Union Republics. It also makes provision for local authorities. It demarcates the sphere of the centre from the sphere of the constituent units. The very first chapter of the Constitution describes the Socialist basis of the social structure in the Soviet Union. The Constitution embodies a chapter dealing with fundamental rights and duties which presents many challenging features. It provides for administration of justice and elections to the various Legislatures and local organs of State Power. The power of amending the Constitution is vested in the federal Legislature called the Supreme Soviet of the U.S.S.R. The Supreme Soviet of the Union, which is a bicameral body can amend the Constitution by adopting proposals for amendment by not less than a two-thirds majority in each of its Chambers. The Constitution also provides for the arms, flag and capital of the Soviet Union. The Constitution contains 13 Chapters and 146 Articles.

CHAPTER IV

SOVIET FEDERALISM

For the proper understanding of the Soviet Federalism, it is necessary to understand the Soviet nationality policy.

The policy of the Tsarist Government in regard to colonial peoples was one of exploitation. These peoples led an oppressed and under-privileged life under the Tsars. They had even no cultural autonomy. The Tsarist Government tried to impose the Russian language (Great Russian) and culture on them and to suppress their own cultures and dialects. These peoples were in constant revolt against the Tsarist Government, which suppressed those revolts with unimaginable ruthlessness. It has been estimated that in the Polish insurrection of 1863, which was suppressed by the Tsarist Government, 30,000 were killed in battle and 1,500 were executed. The revolt of the Central Asian peoples in 1916 was put down by slaughtering several thousands of people. In fact, insurrections by non-Russian peoples and their ruthless suppression were a normal feature of the Russian history of the latter part of the nineteenth century. From the very beginning, even before they came to power, the Bolsheviks had evinced sympathy for the struggles of the colonial peoples against the Tsarist tyranny. A few days after the victory of the Socialist Revolution, a declaration of Rights of the peoples of Russia was issued. Signed by Stalin and Lenin, it stated: "The Council of People's Commissars has decided upon the following principles as the basis of its activity in regard to the question of nationalities in Russia—(i) The equality and sovereign rights of the peoples of Russia; (ii) The right of the peoples of Russia to determine freely how they are to be governed, including their separation and formation of an independent State; (iii) The revocation of all national privileges and restrictions; (iv) The free develop-

ment of national minorities and ethnographic groups inhabiting the Russian territory."

Thus from the very beginning, the policy of the Soviet Government towards the national minorities was in sharp contrast to the Tsarist policy of Russification—of imposing on the national minorities one language, one religion and one political system of exploitation. The Soviet Government's policy was based on a recognition of the rights of the national minorities to determine their own system of Government and to develop themselves freely according to their genius.

Stalin was the People's Commissar for the Affairs of the Nationalities from 1917 to 1923. He personally helped and directed the fight of the colonial peoples of the old empire to end the exploitation of the bourgeoisie and to set up independent governments on Socialist lines. Throughout the period of confusion, civil war and foreign intervention (1918 to 1920) which followed the Socialist Revolution in Russia, the peoples of White Russia, Ukraine, Transcaucasia and Central Asia were carrying on a struggle to overthrow the bourgeois class and to set up socialist Governments, which they ultimately succeeded in doing. And the Soviet Government, under the guidance of Lenin and Stalin, greatly helped these peoples in their fight for freedom. Without such help, the formation of the Ukrainian, White Russian, Transcaucasian and Central Asian Republics would have taken much longer time than it actually did. As has been already pointed out, all these republics emerged as independent State from the Civil War period so that by the middle of 1921 all of them had become free.

The Constitution of 1918, which was a Constitution for the Russian Soviet Federated Socialist Republic, was itself based on a federal pattern as its name indicates. It had granted autonomy to the national minorities inside the Republic (that is, to those peoples who did not belong to the great Russian stock). These minorities were organised in

autonomous republics and autonomous regions inside the R.S.F.S.R.

The same principle of recognising the autonomy of the national minorities has characterised the Soviet Government's policy throughout the history of the U.S.S.R. This principle is conspicuously reflected in the political structure of the Soviet Union with its Union Republics, Autonomous Republics, Autonomous Regions and National Areas, which have been organised on the basis of nationality and minor national groups.

UNION REPUBLICS, AUTONOMOUS REPUBLICS, AUTONOMOUS REGIONS AND NATIONAL AREAS

Union Republics: Article 13 of the Constitution of the U.S.S.R. states: "The Union of Soviet Socialist Republics is a federal state, formed on the basis of a voluntary union of equal Soviet Socialist Republics". These Republics, the constituent units of the federation, are known as Union Republics. The Union Republics which are at present fifteen in number are the following: (1) The Russian Soviet Federative Socialist Republic, (2) The Ukrainian Soviet Socialist Republic, (3) The Byelorussian Soviet Socialist Republic (White Russia), (4) The Uzbek Soviet Socialist Republic. (5) The Kazakh Soviet Socialist Republic (6) The Georgian Soviet Socialist Republic, (7) The Azerbaijan Soviet Socialist Republic, (8) The Lithuanian Soviet Socialist Republic, (9) The Moldavian Soviet Socialist Republic, (10) The Latvian Soviet Socialist Republic, (11) The Kirghiz Soviet Socialist Republic, (12) The Tajik Soviet Socialist Republic (13) The Armenian Soviet Socialist Republic, (14) The Turkmen Soviet Socialist Republic and (15) The Estonian Soviet Socialist Republic.

As their names clearly indicate, the Union Republics have been organised on the basis of nationality, the people of each Republic belonging to a distinct nationality. Each Union Republic has a constitution drawn up in conformity with the

federal Constitution. Each Union Republic is entitled to send 25 representatives (deputies) to the Soviet of Nationalities which is the second Chamber of the federal legislature, called the Supreme Soviet of the U.S.S.R.

Autonomous Republics: The Autonomous Republics are areas included within the territories of the Union Republics and organised on the basis of smaller national minorities living in the Union Republics. Each Autonomous Republic is entitled to have its own constitution which must be drawn up in full conformity with the constitution of the Union Republic. Take, for instance, the Union Republic of the R.S.F.S.R. There were, in 1957, fourteen Autonomous Republics inside the territory of this Union Republic, such as, the Tatar, Bashkir, Daghestan, etc. Similarly, in 1957, there were two Autonomous Republics inside the Union Republic of Georgia, namely, the Abkhazian Autonomous Soviet Socialist Republic and the Adjar Autonomous Soviet Socialist Republic. The Autonomous Republics have been created to satisfy the desire of smaller national groups inside the Union Republics for autonomy in matters of purely local concern. Each Autonomous Republic is entitled to send eleven representatives to the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R. In 1957, there were 18 Autonomous Republics—14 in R.S.F.S.R., 1 in Azerbaijan S.S.R., 2 in the Georgian S.S.R. and 1 in Uzbek S.S.R.

Autonomous Regions: Autonomous regions have been created on the basis of racial groups whose size or importance is not considered as entitling them to have an Autonomous Republic for themselves, but who are yet believed to have sufficiently distinctive cultural characteristics to entitle them to some measure of autonomy. In 1957, there were 10 Autonomous Regions in the Soviet Union—7 in R.S.F.S.R., 1 in the Azerbaijan S.S.R., 1 in the Georgian S.S.R. and 1 in the Tajik S.S.R. The Autonomous Regions, in general, have smaller populations than Autonomous

Republics, though some of the bigger Autonomous Regions have larger populations than some smaller Autonomous Republics. Their population varies 1 lakh to over a quarter of a million. Each Autonomous Region is entitled to send 5 representatives (deputies) to the Soviet of Nationalities.

National Areas: National Areas represent the lowest rung of racial subdivisions in the Soviet Union. Each National Area is entitled to send 1 deputy to the Soviet of Nationalities. The National Areas are, in general, very small in size but one or two of them have population larger in size than that of some of the Autonomous Regions.

How the Number of Union Republics increased from four to fifteen: As has been already noted, there were only four Union Republics when the U.S.S.R. came into existence in 1924—these being the R.S.F.S.R., the Ukrainian S.S.R., the White Russian S.S.R. and the Transcaucasian S.F.S.R. The last of these, namely, Transcaucasian Soviet Federated Socialist Republic had earlier come into existence as a result of federal union of three Republics—Georgia, Armenia and Azerbaizan.

In 1929, three central Asian Autonomous Republics, Uzbek, Turkmen and Tajik, were raised to the status of Union Republics, thus increasing the number of Union Republics from four to seven. On December 5, 1936, when the Stalin Constitution came into force, two Autonomous Republics, Kazakh and Kirghiz, were raised to the status of Union Republics, while three component parts of Transcaucasian S.F.S.R.—Georgia, Armenia and Azerbaijan—were raised to the same status, the T.S.F.S.R. ceasing to exist. The number of Union Republics thereby increased from seven to eleven.

After the outbreak of World War II the Soviet Union occupied the territories of the states of Latvia, Estonia and Lithunia, and in 1940 these were formally incorporated in

the territory of the Soviet Union as Union Republics. In the same year, two Autonomous Republics, Karelia and Moldavia, were raised to the rank of Union Republics, the number of Union Republics being thus raised to sixteen. In July, 1956, the Karelo-Finnish Republic was transformed into an Autonomous Republic (within R.S.F.S.R.), thereby reducing the number of Union Republics to fifteen. (It will be seen from what has been stated above that under the Soviet nationality policy, there is always the possibility of promotion of the racial subdivisions from one rank to another. Article 17 of the Constitution, however, gives the right of secession to the Union Republics. Whether this right of secession has any reality about it or not is to be discussed later, but even as a nominal right it becomes meaningless unless the Republic is situated in a border region of the U.S.S.R. Areas entirely surrounded by the Soviet territory can hardly be raised, therefore, to the status of a Union Republic because the right of secession would be meaningless for them.)

Peculiar features of Soviet Federalism: The Constitution of 1936, as has been already pointed out, is based on the federal principle. It sets up a federal Government and provides for governments of the constituent units. It demarcates the legislative spheres of the centre and the units. Article 20 of the Constitution says: "In the event of divergence between a law of a Union Republic and the law of the Union, the Union law prevails." Each Union Republic, says the Constitution, is entitled to have its own constitution which must be drawn up in full conformity with the Constitution of the U.S.S.R.

The Soviet federalism, however, differs from that of other federal states in some important respects. The distinctive and peculiar features of Soviet federalism are as follows:

(1) It should be noted in the first place that the Soviet Union is a federation of various nationalities, each consti-

tuent unit representing a different nationality. The people in the different states of America or those in the States of the Indian Republic do not belong to different nationalities. They belong to the same nationality. The constituent units of these states are thus not based on race or nationality as are the constituent units of the Soviet Union.

(2) The Constitution of the U.S.S.R. formally guarantees the right of secession to the constituent units, the Union Republics. Article 17 of the Constitution says: "The right freely to secede from the U.S.S.R. is reserved to every Union Republic." This right of secession for the constituent units does not exist in any other federation of the world. The Soviet leaders are proud of this provision on which is based their claim that the constituent units of the Soviet enjoy far greater freedom than those of any other federation of the world. They also point out two other Articles 18a and 18b as sustaining this claim. Article 18a says: "Each Union Republic has the right to enter into direct relations with foreign states and to conclude agreements and exchange diplomatic and consular representatives with them". And Article 18b states:—"Each Union Republic has its own Republican Military formations." Thus these Articles formally grant the right to maintain armies to the Union Republics, as well as the right to regulate their relations with foreign states. And it is on the basis of these two articles, which were incorporated into the Constitution in 1944, that White Russia and Ukraine were later admitted to the United Nations as independent members.

These rights, however, are more theoretical than real. One of the most important reasons behind the formation of the U.S.S.R. was that the units of the Union found it difficult to defend themselves unaided against possible foreign attacks. It does not seem possible, therefore, that any of the units would ever think of seceding from the Union thereby exposing itself to dangers of invasion which it cannot hope to be able to face alone. And in the present political context of

the world in which the nations are getting more and more polarised into two hostile camps, the possibility of any Union Republic seceding from the Union may be completely ruled out. It should also be noted that Article 14 of the Constitution gives the Centre the power to establish "general procedure governing the relations of Union Republics with foreign states" and also to determine the "directing principles governing the organisation of the military formations of the Union Republics." So, from the strictly constitutional point of view also, the Centre's control in the sphere of defence and foreign relations remains paramount.

(3) The Central Government of the Soviet Union enjoys far greater authority in the economic field than any other federal Government. It is the Central Government that determines the economic plans for the whole state. Formerly all heavy industries including iron and steel, oil, coal, non-ferrous metals, ship-building machine and machine tools and the like were within the exclusive jurisdiction of the Union and used to be owned and directly administered by it. And the light industries, though not directly administered by the Union, used to be controlled and directed by it. During the years 1954-1956, however, a large number of industrial establishments were transferred from the direct jurisdiction of the Union to the jurisdiction of the Union Republics. In the middle of 1957, the system of industrial management was radically reorganised so as to place administration of the industries on a decentralised basis. As a result of this reorganisation, country has been divided into a number of economic administrative areas. The administration of the industries in each economic administrative area has been placed in the hands of a Council appointed by the Union Republic concerned. While this has undoubtedly introduced a large measure of decentralisation in the sphere of industrial management, the Centre still retains general control over the whole field, for the work of these Economic Councils are

directed by the Council of Ministers of the U.S.S.R. And, it should not also be forgotten, it is the top leadership of the Communist party who determine the general economic policies for the whole of the Soviet Union. And apart from the economic field, the fields of education, public health, justice, finance, state security are also under central control, though the direct administration in these fields is in most cases carried on by the Union Republics. Article 14 which places under the exclusive control of the centre the fields of foreign trade, transport and communications, the monetary system, state insurance, matters relating to war and peace, banks, agricultural institutions and industries of all-Union importance, also gives the centre the power to determine the basic principles of legislation in the spheres of public health, education, land tenure, use of mineral wealth, forests and waters, marriage and the family system.

As has been pointed out, no other federal constitution of the world gives to the Central Government so much authority over the economic field as is done by the Constitution of the U.S.S.R. The Constitution of the United States does not give to the Centre even a vulgar fraction of these powers and under the Constitution of India which sets up a very powerful Centre, the fields of industry, agriculture, education and public health, subject to certain minor exceptions, are left to the sphere of the States.

(4) In all federal States including India, the higher Judiciary is given power to keep the Centre and States within their respective spheres of jurisdiction. This the Judiciary does by declaring unconstitutional any State law that encroaches upon the sphere of the Centre and vice versa. The Supreme Court of India possesses the final power in this matter. In the U.S.A., too, the Supreme Court enjoys the final authority in regard to this matter. In the U.S.S.R., however, though there is a Supreme Court, it has no power to declare any law unconstitutional. In the U.S.S.R., the function of interpre-

ting the laws of the Union has been vested not in the Judiciary but in a body called the Presidium of the Supreme Soviet of the U.S.S.R. which is elected by the Supreme Soviet. It is this body which has power to determine finally whether any State law is inconsistent with the provisions of any Union Law.

(5) In a genuine federation, the Central Legislature is not given power to change the division of powers between the Centre and local units. Neither in U.S.A., nor in Australia can the Central Legislature, acting alone, alter the distribution of powers. In India, too, Parliament cannot amend the legislative lists except with the consent of at least half the legislatures of the states. In the U.S.S.R., however, the Central Legislature, called the Supreme Soviet of the Union, can amend any provision of the Constitution acting entirely by itself. It can thus change at will the division of powers in the federation and can, if it so desires, reduce the jurisdiction of the Union Republics.

(6) In all discussions of the Soviet Government and administration, the fact should be constantly borne in mind that the Soviet Union is a one-party state, a dictatorship—a fact that fundamentally alters and modifies there the content of all the usual constitutional forms known in other countries. In the Soviet context, the terms "Federation", "Democracy", "Election" etc. assume meanings very different from those familiar to people in other countries. Though the constitution of the Soviet Union declares the state to be a federal one, the fact remains that it is the same party which controls the Government both at the Centre and in the Union Republics. It is a party, moreover, that is bound by an iron discipline, the decisions of the higher bodies being binding on those of the lower bodies. The Government of the Union Republics, which are controlled by Party members can, therefore, never question the decisions and directives emanating from the Central Government which is manned and controlled by the top-most leaders of the same party. In this situation, the

question of autonomy for the constituent units as well as of conflict of jurisdiction between the centre and the states becomes practically meaningless.

The case of Karelo-Finnish Republic, which was deprived of Union-Republican status and was transformed into an Autonomous Republic (within R.S.F.S.R.) in July, 1956 is particularly revealing. This Republic ceased to be a constituent unit of the U.S.S.R. because the Karelo-Finnish people had incurred the displeasure of the Party leaders. This case clearly proves that, in spite of formal declarations of federal principles in the Soviet Constitution, even the political existence of the constituent units depends on the pleasure of the Party leaders.

CHAPTER V

THE SOVIETS

The Soviet constitutional system is based on a pyramidal structure of Soviets. The word "Soviet", in Russian language, means a council. The Soviets are the organs of state power. At the lowest level are the rural Soviets and above them are the district and town Soviets, provincial (oblast) Soviets, and Supreme Soviets of the Union Republics. The Autonomous Republics, the Autonomous Regions and National Areas too have their own Soviets. At the top of the pyramid is the Supreme Soviet of the Union, the highest organ of state power in the U.S.S.R., the federal Legislature. A little knowledge of how the Soviets originated would be helpful in understanding their nature.

The Soviets first originated in the revolutionary days of 1905 when strike waves were sweeping the whole of Russia. One of the first Soviets—or Soviets of Workers' Deputies as they were called—was that formed in the month of May 1905 in the city of Ivanovo-Voznesensk. In this city, the workers formed a council consisting of delegates from a number of factories to conduct a strike on a very big scale. Later, in October of the same year, when the entire country was in the grip of a strike wave similar councils sprang up in a very large number of places including the city of St. Petersburg. These Councils were called Soviets of Workers' Deputies. Each Soviet of Workers' Deputies consisted of delegates from a number of factories and industrial concerns. A Soviet being usually a too numerous body for effective functioning in a revolutionary atmosphere, the delegates used to elect a small executive committee to carry on the day-to-day work on behalf of the Soviet. The Soviets not only conducted strikes but, in some places, took upon themselves other functions connected with the revolution. The Tsarist Govern-

ment, however, suppressed all these Soviets in a few months. But these Soviets spontaneously reappeared at the time of the revolution of February, 1917, and played a great part in the final seizure of power. From the very beginning, this time the Soviets used to have delegates not only from factories but also from soldiers' regiments. The Soviets thus came to be called in 1917 the Soviets of Workers' and Soldiers' Deputies. After the February Revolution, the Bolsheviks raised the slogan of 'all power to the Soviets.' The first All-Russian Congress of Soviets met in June 1917 and the second Congress met on November 7, 1917—a day after the Socialist Revolution had begun. It is the Second Congress of Soviets that endorsed the transformation brought about by the Socialist Revolution, elected the first Soviet Government with Lenin as its Premier and passed a number of revolutionary decrees. When the Soviet Union came into being in 1922, the place of All-Russian Congress of Soviets was taken by an All-Union Congress of Soviets. Under the Constitution of 1924, the All-Union Congress of Soviets was the highest organ of state power though it met very infrequently and between its sessions, as has been already noted, a bicameral Central Executive Committee used to carry on its work. The Eighth All-Union Congress of Soviets adopted the Constitution, known as the Stalin Constitution, in 1936. Under the Stalin Constitution, however, there is no such body as the All-Union Congress of Soviets. At present the highest organ of state power in the Soviet Union is the Supreme Soviet of the U.S.S.R. consisting of two Chambers, the Soviet of the Union and the Soviet of Nationalities.

As has been already stated, prior to 1924, only the lowest Soviets used to be directly elected by the voters; all the other Soviets used to be elected indirectly, the lower Soviets in each case electing the higher Soviets. Under the Stalin Constitution, however, the Soviets at all levels from the lowest to the highest are elected directly by the voters. The Supreme Soviet of the U.S.S.R. elects a presidium called

the Presidium of the Supreme Soviet of the U.S.S.R. It also appoints a Council of Ministers, that is, the Government of the Soviet Union. Similarly, the Union Republics and Autonomous Republics have their Presidia and Councils of Ministers. The Soviets of Oblasti (Provinces), of the districts (raioni) and of the towns have their executive committees elected by them. The village Soviets also have executive Committees as their administrative organs. The Soviets of very small localities have no executive Committees but each of them has a Chairman, a Vice-Chairman and a Secretary only.

CHAPTER VI

THE CENTRAL GOVERNMENT

The Supreme Soviet of the U.S.S.R. and its Presidium: Under the Stalin Constitution, the highest organ of state power in the Soviet Union is the Supreme Soviet of the U.S.S.R. It is a bicameral body, its two Chambers being the Soviet of the Union and the Soviet of Nationalities. The legislative power of the Central Government of the Soviet Union is vested exclusively in the Supreme Soviet of the U.S.S.R. The Supreme Soviet is elected for a term of four years. The members of the Soviet of the Union are directly elected by the voters from territorial constituencies called election districts carved out on the basis of one deputy for every 300,000 of the population. The members of the Soviet of Nationalities who are supposed to represent the various nationalities are also elected directly by the people on the basis of twenty-five members (deputies) from each Union Republic, eleven members from each Autonomous Republic, five from each Autonomous Region and one from each National Area. Both Chambers are big in size. The total number of members in each Chamber has varied from time to time (according to variations in population and number of Autonomous Republics etc.). In 1946, there were 657 members in the Soviet of the Union and 682 in the Soviet of Nationalities. In the fourth Supreme Soviet, elected in March, 1954, the membership was as follows: the Soviet of the Union, 708 members; the Soviet of Nationalities, 639 members. Sessions of the Supreme Soviet of the U.S.S.R. are held twice a year; the sessions of both Chambers begin and terminate simultaneously. The Presidium of the Supreme Soviet can convene extraordinary sessions of the body at its discretion. Extraordinary sessions are also required to be held on the demand of any one of the Union

Republics. A law is considered adopted if passed by both Chambers of the Supreme Soviet by a simple majority vote in each.

There have been four Supreme Soviets so far. The first was elected in 1937. And since elections could not be held during the war, the second Supreme Soviet was elected in 1946. The third was elected in March, 1950, and the fourth in March, 1954. The elections for the fifth Supreme Soviet are due this year (1958).

The following points relating to the character and functions of the Supreme Soviet of the U.S.S.R. deserve particular attention:

(1) The Supreme Soviet of the U.S.S.R. which is described by the Constitution as the highest organ of state power has been really placed in a supreme position, at least so far as the formal aspect of the Constitution is concerned. The Supreme Soviet of the U.S.S.R. appoints the Government of the U.S.S.R. called the Council of Ministers. It elects the Presidium (see below). It elects the Supreme Court of the US.S.R. It also elects the Precurator-General, functionary invested with tremendous power over the administration of justice. Thus it will be seen that the Supreme Soviet of the U.S.S.R. is not only the sole legislative organ of the Union, it also appoints the Executive and the federal Judiciary. This clearly violates the principle of the separation of powers. But then it must be remembered that the Soviet leaders reject the theory of separation of powers as nothing but a bourgeois fiction. Basing their analysis of political power on the Marxist theory of the state, the Soviet legal theoretician point out that in every society it is the dominant economic class that wields and controls state power. In a bourgeois society it is the bourgeoisie who ultimately control state power. But to conceal this fact, the Marxists point out, the bourgeois political science lays great stress on the theory of separation of powers in order to make it appear that power

is being justly exercised and not arbitrarily. In the Soviet Union, say the Soviet leaders, power is being exercised and controlled by one class, viz. the proletariat. Legislation, execution of laws and administration of justice must be carried on in the Soviet Union according to the will of the proletariat, so assert the Soviet Leaders. The vesting in the hands of the Supreme Soviet of the U.S.S.R. the power of legislation as well as of appointment of the executive and of the highest judiciary is thus a corollary to the principles of the dictatorship of the proletariat.

(2) The two chambers of the Supreme Soviet of the U.S.S.R. enjoy co-equal powers. They have been granted by the Constitution equal authority in the matter of initiation of legislation. This sharply contrasts with the position in other countries. In most countries the second Chambers of legislatures enjoy much less authority than the first Chamber. In India, for instance, the Lower House of Parliament, (the House of the People) enjoys far greater powers than the Upper House (the Council of States) in financial matters. The Council of States has no voice in matters relating to demands for grants. No financial Bill can be introduced in the Council of States. And the House of the People can override the decisions of the Council of States in respect of Money Bills. In Britain, the House of Commons enjoys far greater powers than the House of Lords in financial matters and can even, following a certain procedure, pass a Bill alone over the opposition of the Lords. In America, however, the power of the Senate is almost equal to that of the House of Representatives in financial matters, and the Senate enjoys some special powers not shared by the House of Representatives.

(3) The Soviet Constitution does not bar the election of Government officials as members of the Supreme Soviet. Of the members elected to the Supreme Soviet in 1937, over 300 were officials belonging to the administrative departments

and the armed forces. Under the Constitution of India, however, with certain minor exceptions, (in the case of Ministers, etc.) no person who holds any office of profit under the Government can be chosen as, or be, a member of Parliament. The American Constitution too lays down that "no person holding any office of profit under the United States can be a member of either house (of Congress) during his continuance in office." The difference in constitutional practice between the Soviet Union and other countries like India and the U.S.A. in this matter will, of course, be explained by the Soviet leaders by referring to the fact that the Soviet Union is a dictatorship of the proletariat where the officials, no less than non-officials, represent the interests of the toiling masses. It should not also be forgotten that, in the Soviet Union, practically cent per cent industrial workers as well as teachers, professors, clerks, factory managers and persons of similar categories are all Government servants.

(4) Both Chambers of the Supreme Soviet of the U.S.S.R. are elected simultaneously and for a term of four years. In most countries, however, the elections to the two Chambers do not take place simultaneously. This situation arises from the fact that the second chambers in most countries are permanent houses and a part of their membership is periodically renewed. Thus in America, one-third of the membership of Senate is renewed every two years. In India, too, one-third of the membership of the Council of States is to retire every second year, that is, a third of the membership is to be elected every two years.

(5) Both Chambers of the Soviet Union are subject to dissolution. The Presidium of the Supreme Soviet of the U.S.S.R. can dissolve both Chambers in case of final disagreement between them (see discussion on Presidium). In India, however, the Council of States, being a permanent House cannot be dissolved though the House of the people, the Lower House, is subject to dissolution. In Britain, both

Houses of Parliament are subject to dissolution but the members of the House of Lords are invariably summoned again after a dissolution. In America, neither House of the Congress can be dissolved. There, the House of Representatives is elected for a two-year term and the Executive has no power to dissolve it before the expiration of the term. And the American Senate is a permanent House, one-third of its membership retiring every two years.

(6) The members of both Chambers of the Supreme Soviet of the U.S.S.R. are directly elected by the people. In India, the members of the Lower House of Parliament only are directly elected by the people, the members of the Upper House, the Council of States, being elected by the members of the State Legislatures (apart from the twelve nominated members). In America, formerly the State Legislatures used to elect the members of the Senate, but the Constitution has been later amended and now the members of the Senate are directly elected by the people of the various States. In the case of the House of Lords in Britain, not a single member is popularly elected, over nine-tenth of the members being hereditary peers.

(7) The second Chamber of the Supreme Soviet of the U.S.S.R., which is called the Soviet of Nationalities, is the only Second Chamber in the world elected on the basis of nationalities and representing different nationalities. The people of various States in India do not belong to different nationalities; they belong to the same nationality. The members of the Council of States in India who are supposed to represent the various States represent, therefore, only some administrative areas and not different nationalities. They all belong to the same nationality. Similar is the case in the United States where the people of the various States belong to the same nationality. In the Soviet Union, however, the Union Republics are based on nationality, the people of each Union Republic belonging to a different nationality.

Similarly, the Autonomous Republics, Autonomous Regions and National Areas have been carved out on the basis of national groups. These various nationalities and national groups as such are represented in the Soviet of Nationalities.

(8) All Union Republics, irrespective of size or population, enjoy equal representation in the Chamber of Nationalities. In India, however, the various states do not enjoy equal representation in the Council of states, the Upper House of Parliament. They have been given representation in that House more or less on a population basis. In the United States, it should be noted, the various States enjoy equality of representation in the Senate, each state being entitled to send two members to that body. In Australia, too, the same rule operates, each State sending ten members to the Senate, the Upper House of the central Legislature.

(9) It is interesting to note that the Soviet Constitution provides for the representation not only of the constituent Republics in the Soviet of Nationalities but also of smaller areas included in the Union Republics, which have been given some measure of autonomy—that is, the Autonomous Republics, Autonomous Regions and the National Areas. This system does not exist in any other federal state. In India, the United States and Australia, for instance, it is only the States, and not any other areas, that enjoy representation in the Second Chamber of the federal legislature. This difference between the Soviet Union and other federal states is explained by the fact that the Soviet Union is a multinational state and that the Soviet of Nationalities is a body which has been created to give representation to the various nationalities and national groups living in the Union.

(10) "Sessions of the Soviet of the Union and of the Soviet of Nationalities" says the Constitution, "begin and terminate simultaneously." In India, however, the Constitution does not require simultaneous sessions of the two Houses of Parliament. The two Houses, therefore, may be called to meet and also prorogued at different dates.

(11) Sessions of the Supreme Soviet of the U.S.S.R. are of very brief duration—only a week or ten days. Since two sessions are held every year, the Supreme Soviet meets for a total of 15 to 20 days in a year. In India or in Britain, a single Parliamentary session often extends over a number of weeks and a budget session may very well continue for two or even three months. In America also, the sessions of the Congress are fairly long. How is it possible for the Supreme Soviet of the U.S.S.R. to transact all its legislative and other business in so short a time ? The answer to this question will be found in the fact that there is no Opposition in the Supreme Soviet of the U.S.S.R., there being only one Party in the state. The Communist Party holds a majority in both Chambers of the Supreme Soviet, and the system of election is such that even non-Party members in the Chambers are invariably supporters of the Communist Party.

(12) The fact that the Soviet Union is a one-party state, dictatorship, makes the Supreme Soviet of the U.S.S.R. a body fundamentally different in character from Parliaments and Legislatures in democratic countries like Britain or the United States or India. In the Parliament of India, for instance, almost every proposal emanating from the Government and almost every piece of legislation introduced by it is subjected to a powerful barrage of criticism from the Opposition Parties representing different shades of opinion and a vast electorate. And simultaneously a large member of journals and newspapers belonging to these Parties take up the attack and begin to rouse public opinion against what are considered to be detrimental to public interest in the proposed legislation or measure. And in most cases, this concentrated gunfire of criticism backed by public opinion makes the Government yield ground and modify their proposals, sometimes very substantially. The Soviet scene, however, presents a picture very different from this. There is no Opposition in the Supreme Soviet of the U.S.S.R. No Opposition Party is allowed to exist in the country. The

Press and the Radio and other organs of public opinion are strictly controlled by the Government. And the only point of view that is presented to the public is the point of view of the Government. It is easy to see, therefore, that the Supreme Soviet of the U.S.S.R. functions very differently from Parliaments in the democratic countries. What happens when the Supreme Soviet of the U.S.S.R. passes a legislation or appoints the Government is that members of the Communist Party (as legislators) endorse some decisions made by the top-leaders of the same Party. There is reason to believe that in most cases all important decisions are taken by the Party Presidium. And it should be remembered that decisions of the higher bodies in the party are strictly binding on the lower organs. Only in minor matters or routine affairs, it seems, modifications are allowed to be made by the Supreme Soviet in the proposals emanating from the Government

Committees: The two Chambers of the Supreme Soviet of the U.S.S.R. appoint a number of committees to deal with various matters, the most important of these committees being three standing committees on foreign affairs, budget and legislation. These Committees scrutinise the bills and budget proposals. They sometimes effect considerable modification in Bills. The Committees meet both during the sessions of the Chambers and between the sessions. Sometimes special committees are appointed to deal with matters of special importance.

The Presidium of the Supreme Soviet of the U.S.S.R.: The Supreme Soviet of the U.S.S.R., at a joint sitting, elects the Presidium of the Supreme Soviet of the U.S.S.R. The Presidium consists of a President, one Vice-President for each Union Republic, a Secretary, and fifteen other members. The President of the Presidium is popularly referred to as the President of the Soviet Union. This office was held by Kalinin from 1919 to 1946. After Kalinin's death in 1946, Shvernik was elected to the office. At present (1958),

Marshal Klementi Voroshilov is President of the Presidium. The Presidium, says the Constitution, is accountable to the Supreme Soviet of the U.S.S.R. for all its activities.

The Soviet leaders take pride in the fact that, instead of a single person acting as the President and wielding great power, they have a Presidium consisting of a number of persons. The Presidium is often referred to by them as the collegium president. The Vice-Presidents of the Presidium, as has been already stated, represent the Union Republics, each Union Republic being represented by one.

The Presidium has vast authority concentrated, at least formally, in its hands. An analysis of the functions vested in its hands by the Constitution shows that it acts as (a) a legislative body, (b) an administrative agency and also as (c) a judicial committee.

(*a*) The Presidium issues decrees which have practically the force of laws though they are not called laws because laws, strictly so called, can be passed under the Constitution only by the Supreme Soviet. Since the Supreme Soviet meets only for a few days during the year, the Presidium has to cover by its decrees many things that would normally require legislation in other countries.

The Constitution lays down that the Government of the Soviet Union, that is, the Council of Ministers, is responsible to the Supreme Soviet of the U.S.S.R. and, between its sessions, to the Presidium. In the intervals between the sessions of the Supreme Soviet, the Presidium can, on the recommendation of the Chairman of the Council of Ministers, appoint or remove individual Ministers, subject to subsequent confirmation by the Supreme Soviet.

(*b*) The Presidium of the Supreme Soviet also acts as an administrative body. It convenes the sessions of the Supreme Soviet, it conducts referenda on its own initiative or on the demand of one of the Union Republics. It institutes decorations and titles of honour including military titles,

awards medals and orders, and confers titles. It appoints or removes the high command of the Armed Forces. It ratifies and denounces treaties, appoints and recalls plenipotentiary representatives to foreign states and receives the letters of credence and recall of foreign diplomatic representatives. It orders partial or general mobilisation and, in the intervals of sessions of the Supreme Soviet, proclaims a state of war when necessity arises. It is also authorised to proclaim martial law in the interests of the maintenance of public order or of defence and security of the state. It exercises the right of pardon.

The Presidium is also authorised to dissolve the Supreme Soviet of the U.S.S.R. in case of final disagreement between the two Chambers. In the case of disagreement between the two Chambers, it is laid down, the matter is referred to a conciliation commission on which the two Chambers are equally represented. If the conciliation commission fails to arrive at an agreement or if its decision fails to satisfy one of the Chambers, the question is then considered again by the two Chambers. If the Chambers still fail to arrive at an agreement, the Presidium dissolves both Chambers of the Supreme Soviet and orders new elections. It must be understood, however, that as the same Party holds the majority in both Chambers and controls both, there is very little possibility of such final disagreement between the two Chambers.

(*c*) The Presidium performs certain functions essentially judicial in character. It annuls the dicisions of the Council of Ministers of the U.S.S.R. and also of the Councils of Ministers of the Union Republics if they do not conform to Union law. The Presidium of course is the final judge as to whether a particular decision of the federal Ministry or the Ministry of a Union Republic conforms to law or not.

The Presidium also gives interpretation of the laws of the U.S.S.R. The power of interpretation of the Union laws,

of course, enables it to have the final say on the question whether any of the laws of the constituent units of the federation conflict with the Union law and are therefore void. This function of interpretation of the Union laws, it will be seen, has not been vested in the Supreme Court though the latter is also elected by the Supreme Soviet. This will seem strange to those who are accustomed to see the function of legal interpretation being performed by the Judiciary. But, as has been already pointed out, the Marxist theoreticians do not accept the theory of separation of powers according to which the functions of law-making and interpreting of laws should be vested in separate and independent bodies. According to the Soviet constitutionalists, power in every state is controlled by the dominant economic class and since the proletariat is the dominant class in the Soviet Union which is 'a dictatorship of the proletariat', both laws and interpretation of laws in that state must reflect the will of the proletariat. By vesting the power of interpreting the laws in the hands of the Presidium, it is claimed, the Soviet Constitution has ensured that the function of interpreting the laws is performed according to the will of the proletariat, that the laws are interpreted according to the true intentions of the legislators. In India or the U.S.A., where the Judiciary alone enjoys the power of interpreting laws, the will of the people—according to Soviet theoreticians—is opposed by the will of the court or courts in question. The Soviet legal theory, it will be seen, is such as justifies the move made by the Malan Government in South Africa a few years ago to set up a High Court of Parliament as the highest court in constitutional matters.

The decisions of the Presidium, it should be clear, are very often made for them by the Party Presidium. The members of the Presidium of he Supreme Soviet are almost invariably important members of the Communist Party and one or two of its members may also be members of the Party Presidium, the highest policy-making body in the Party.

Kalinin who was the president of the Presidium of the Supreme Soviet for many years was also a member of the Politbureau for a long time. The present President of the Presidium of the Supreme Soviet, Marshal Voroshilov, is also a member of the Party Presidium.

The Council of Ministers. The Government of the U.S.S.R. or the Council of Ministers of the U.S.S.R., is appointed by the Supreme Soviet at a joint sitting. (Before 1946 it was known as the Council of People's Commissars; since then it has come to be known as the Council of Ministers). The Council of Ministers consists of a Chairman, the first Vice-Chairmen and Vice-Chairmen of the Council of Ministers, the Ministers, and also heads of some important Committees and Commissons, such as the Chairman of the State Commission for Long-term Planning and the Chairman of the State Commission for Current Planning.

The Chairman of the Council of Ministers is popularly known as the 'Premier' of the Soviet Union. Lenin held this office from the inception of the Soviet Government till his death in 1924. From 1924 to 1930 it was held by Rykov, and from 1930 to 1941 by Molotov. On May 6, 1941, a few weeks before the German attack, Stalin took over the position from Molotov. Stalin continued in this office till his death on March 5, 1953 and was succeeded by G. Malenkov. Malenkov was forced to resign on February 8, 1955 on which date N.A. Bulganin was appointed to this office. Since then Bulganin has continued in this office.*

There are a large number of Ministers on the Council. In 1924, when the creation of the Soviet Union was sealed by the adoption of a Constitution, the total membership of the Council of Ministers (then known as the Council of People's Commissars) was only ten. Since then, a steady expansion of the administrative apparatus, particularly in the

* On March 27, 1958 the Premiership was taken over by Mr. Khrushchev who now combines the two offices of the Premier and the First Secretary of the Party.

economic field, has led to a corresponding increase in the number of Ministers. In 1947 the number of Ministers was nearly sixty. In 1957, there were no less than fifty Ministries under the Council of Ministers. Increase in the number of Ministers has also brought about an increase in the number of Vice-Chairmen of the Council. Each Vice-chairman is usually given responsibility for a related group of Ministries. The Vice-chairmen are of two different categories, the first Vice-chairmen being officials of a higher rank.

The Ministries are of two types—all-Union Ministries and Union-Republican Ministries. Each all-Union Ministry, under the Constitution, administers the branch of administration under its control throughout the territory of the Soviet Union either directly or through agencies appointed by it. Each Union-Republican Ministry, however, administers the branch of administration placed under its charge through the corresponding Ministries of the Union Republics. Only in a few matters determined by the Presidium of the Supreme Soviet, the Union-Republican Ministries carry on direct administration. The Union-Republican Ministries, it will thus be seen, act more or less as co-ordinating bodies. It must be understood, however, that the ultimate control in the fields of administration entrusted to them lies in their hands.

As has been already indicated, the number of Ministries has varied from time to time. In 1957 there was an all-Union Ministry for each of the following :—aircraft industry ; automobile industry ; foreign trade ; defence industry ; general machine-building industry ; instrument-making and means of automation ; merchant marine ; oil industry construction ; railways ; machine-tool and tool industry ; building and road-building machinery industry ; shipbuilding ; transport machinery industry ; machine-building industry ; general machine-building industry ; heavy machine-building industry ; chemical industry ; radio-engineering industry ; medium machine-building industry ; electric power station construc-

tion; tractor and agricultural machine-building industry; transport construction; electric power stations and electrical engineering industry.

In addition to these all-Union Ministries, there were in 1957 the following Union-Republican Ministries: Internal affairs; defence; higher education; state control; state security; public health; foreign affairs; timber industry; meat and dairy industry; food industry; building materials industry; fish industry; agriculture; state farms; textile industry; trade; finance; paper and wood processing industry; light industry; town and village construction; geological survey and conservation of Mineral resources; culture; oil industry; communications; construction; coal industry; grain stocks; non-ferrous metals industry and iron and steel industry.

A perusal of this tediously long list will impress on the mind of the reader at least one thing, namely, how greatly public administration and economic life in the Soviet Union have merged together. In fact, economic life of the Soviet people and governmental administration have become but two aspects of the same thing. The industrial field alone claims twenty-six of the above Ministries. When it is remembered further that agriculture in the Soviet Union has been collectivised and brought under state control, the staggering dimension of the Soviet administrative machinery as well as the extent of state control over the economic life of the people will be evident.

The Council of Ministers can annul the orders and instructions of the individual Ministers. It can also suspend—but not annul—the decisions of the Councils of Ministers of the Union Republics. The Presidium, however, can annul the decisions and orders of the Council of Ministers of the Union Republics, if they do not conform to Union law. As has already been pointed out, the Presidium can also annul the orders and decisions of the central Cabinet, that is, the Council of Ministers of the U.S.S.R. if they are inconsistent

with the Union law. Since it is the Presidium which has the final word as to what a Union law means, it can annul practically any order issued by the Council of Ministers of a Union Republic.

There is reason to believe that, except in routine matters, the decisions of the Ministry are subject to control by the Party Presidium.

The Ministry of State Control: As has been indicated above, there is at present a Ministry of State Control under the Council of Ministers of the U.S.S.R. Its function is to maintain supervision over all state organs and their activities. Strange to relate, though it is a Ministary, it is nominated by the Party Central Committee. Formerly there was a Soviet Control Commission which used to be associated with the Ministry as a separate Commission and to exercise supervision over state organs and activities. After the constitutional amendment of 1947, this Soviet Control Commission has been transformed into the present Ministry of State Control. The Ministry of State Control which is nominated by the Communist Party is illustrative of the extent to which the Party and Government in the Soviet Union have become integrated.

The Economsoviet: The Economsoviet is a body consisting of the Ministers who deal with the more important industries. This body performs the function of economic supervision.

The Inner Cabinet: The size of the Council of Ministers of the U. S. S. R. has gradually become so large that the growth of a sort of inner cabinet was inevitable, for it is difficult for a body of some sixty persons to take quick decisions in times of emergency. During World War II, supreme governmental authority was temporarily vested in a sort of war cabinet called the State Committee for Defence. Stalin was the head of this body. It was this war cabinet which grew into the inner cabinet in the post-war period.

The inner cabinet consists of the Chairman of the Council of Ministers and the Vice-chairmen, each of the latter being given responsibility over a number of related Ministries. The more important decisions of the Council of Ministers, it is clear, emanate from the inner cabinet. In 1946, all the eleven members of the inner cabinet were members of the Politbureau.

CHAPTER VII

THE GOVERNMENT OF THE UNION REPUBLICS AND OTHER LOCAL GOVERNMENTS

As has been already noted, there are at present fifteen Union Republics in the Soviet Union. Of these, the Russian Soviet Federative Socialist Republic (R.S.F.S.R.) is the biggest and the most important. In size and population, it dwarfs all other Union Republics.

The R.S.F.S.R. The R.S.F.S.R. comprises over three-fourths of the total area of the Soviet Union and over one-eighth of the total land-surface of the world. Its territory extends over thousands of miles from eastern Europe to the Pacific. While its northern and eastern borders coincide with those of the Soviet Union, its southern border extends to the Black Sea. Over half the population of the Soviet Union live in the R.S.F.S.R., more than eighty per cent of them being Great Russians. A large number of racial minorities also live inside the R.S.F.S.R. These groups have been granted autonomy under the Constitution of the R.S.F.S.R. The areas inhabited by these national minorities have been carved out into Autonomous Republics and Autonomous Regions. In 1957, there were 14 Autonomous Republics in the R.S.F.S.R. and 7 Autonomous Regions.

The R.S.F.S.R. was the first Union Republic to come into existence after the Socialist Revolution. In fact, the Constitution of 1918 was the Constitution of the R.S.F.S.R., the Soviet Union having not yet come into existence. The constitution of 1918, as amended from time to time, remained the fundamental law of this Republic (also called the Russian Republic) till it was replaced by a new constitution in 1937, which was drawn up in conformity with the Stalin Constitution.

At present the highest organ of state power in the Russian Republic is the Supreme Soviet of the Republic which is a unicameral body. It is the sole legislative organ of the Republic. In conformity with the federal pattern, the Supreme Soviet of the Russian Republic elects a Presidium and appoints a Council of Ministers. The Council of Ministers carry on the administration of the Republic through a number of Ministries. These Ministries are of two types—Republican Ministries and Union-Republican Ministries. The Union-Republican Ministries function under the overall control of the Union-Republican Ministries of the U.S.S.R. Moscow which is the federal capital is also the capital of the R.S.F.S.R.

Governments in other Republics: The Governments of the other Republics are of the same pattern as that of the R.S.F.S.R. Each Union Republic has a Supreme Soviet directly elected on the basis of universal adult franchise for a term of four years. The Supreme Soviet, in each case, elects a Presidium and Council of Ministers. The Supreme Soviet has the power of adopting and amending the Constitution of the Republic within the federal frame-work. The Supreme Soviet of a Union Republic has also the power of confirming the Constitutions of Autonomous Republics forming part of it and of defining their boundaries. It approves the budget of the Republic. It decides matters relating to the representation of the Republic in international relations, subject to the general principles laid down by the federal Government in regard to foreign relations. The Supreme Soviet is the sole legislative organ of a Union Republic. Usually it meets four times a year passes laws in matters falling within the Republican jurisdiction.

The Council of Ministers appointed by the Supreme Soviet of each Union Republic is responsible to the Supreme Soviet and, between its sessions, to the Presidium elected by the Supreme Soviet. The Council of Ministers consists of a Chairman, a number of Vice-Chairmen, the Ministers and the heads of certain important bodies, such as the Chairman of

the State Planning Commission of the Republic and the Chairman of the Committee on Construction and Architecture. The Ministries are of two kinds—the Republican Ministries and the Union-Republican Ministries. The Constitution lays down that the Union-Republican Ministries (of a Union Republic) are "subordinate both to the Council of Ministers of the Union Republic and to the corresponding Union-Republican Ministry of the U.S.S.R." Thus, the Union-Republican Ministries function under the over-all control of the federal Government. Just as the decisions of the Council of Ministers of a Union Republic can be suspended by the federal cabinet and annulled by the federal Presidium, the decisions of Council of Ministers of an Autonomous Republic can be suspended by the Council of Ministers of the Union Republic. And the decisions and orders of the executive committees of all other soviets under it—the Soviets of territories, regions and Autonomous Regions, districts, towns and villages—can be annulled by the Council of Ministers of a Union Republic.

Though the Union Republics are supposed to enjoy considerable autonomy, actually such a large number of subjects have been placed under Central administration and so many subjects, besides, have been placed under the general control of the Centre that the sphere of autonomy of the Republics is very circumscribed. Thus, by Article 14 of the Constitution, the fields of foreign trade, transport and communications, the monetary system, state insurance, criminal and civil codes, citizenship, matters relating to war and peace, as well as industries, banks and agricultural institutions of all-Union importance have been left exclusively to the sphere of the Centre. And in addition to this, the Centre not only enjoys, under the same Article, the power of laying down general procedures governing questions of international relations and military formations of the Union Republics, it also enjoys the power of determining the general principles of legislation in regard to public health, education, land tenure,

use of mineral wealth, forests and waters, marriage and the family system. Thus in all important matters, the Union Republics have to function under federal control. The Governments of the Union Republics, moreover, are run by members of the same Party that controls the Central Government. The policies laid down by the highest bodies in the Party are binding on the lower organs and on the whole Party. The Governments of the Union Republics, therefore, are guided in all important matters by policies laid down by the highest policy-making organs of the Party. They enjoy some real measure of autonomy, however, in matters of routine character.

Other Local Governments: The Governments of regions (oblasti), territories (krai), districts (raioni), towns, villages as well as those of Autonomous Republics, Autonomous Regions and National Areas will be dealt with below. It must be clearly borne in mind that regions, territories, districts, towns and villages are purely administrative sub-divisions (like the divisions districts and sub-divisions in India), while the Autonomous Republics, Autonomous Regions and National Areas are racial sub-divisions, based as they are on racial or national minorities (like the autonomous districts of Assam in India). Regions, territories, Autonomous Republics and Autonomous Regions are on the same general administrative level, their administration being immediately below that of the Union Republic of which they form part.

Regions(oblasti). Regions are immediately above districts and immediately below the Union Republic. Their populations vary between one million to ten millions. Each region has a Soviet directly elected by the voters from electoral districts which vary greatly in size according to the size and population of the regions. The Soviet of a Region elects a Presidium, and an Executive Committee consisting of a Chairman, Vice-chairmen, a Secretary and members. The Executive Committee of a region Soviet can annul decisons and orders of the Executive Committees of the district, town

and village Soviets. The administrative apparatus of the oblast is generally most active in the fields of public health education, public welfare, agriculture, production and distribution and justice.

Territories: Territories are administrative divisions created in sparsely populated areas where it is not possible to set up an elaborate administrative structure. In each territory there is a Soviet directly elected by the voters. The Soviet of a territory elects an Executive Committee with a Chairman, a Vice-chairman, a Secretary and members. The territories are on the same administrative level as the regions, their administration being directly under that of a Union Republic. In 1957, all the six territories of the Soviet Union were within the R.S.F.S.R.

District Soviets: Below the regions (oblasti) are the districts (raioni). In some of the Union Republics, however, the districts are immediately below the Republic, there being no regions in them. The districts, however, are much smaller in size than what are known as districts in India. Whereas the average population of an Indian district cannot be less than several lakhs, the average population of a district in the Soviet Union, it has been estimated, is less than half a lakh. In 1957, there were 4162 districts in the U.S.S.R.

The Soviet of a *raion* is directly elected by the voters for a two-year term. There is no uniformity in the basis of representation for the *raion* soviets. Generally 1 member is elected for every 1000 of the population.

The *raion* or district soviets are similar in pattern to the soviets at higher levels. They have their Executive Committees and also a number of standing committees to deal with agriculture, public health, trade etc. The Executive Committees of *raion* soviets can veto the decisions of the executive committees of urban and village soviets within their jurisdiction. Generally the soviets of the larger cities do not come under the jurisdiction of *raion* soviets even if they are situated

within the area of the *raioni*. The soviets of such cities are directly under the Republics or under the regions where such regions exist.

Municipal Soviets: The soviets of cities are also directly elected by the voters for a two-year term. They have their Executive Committees as well as a number of standing committes to deal with such subjects as public health, education, local industry and trade.

In bigger cities like Moscow or Leningrad there are also ward soviets which help decentralisation of the activities of the city soviets.

Village Soviet: There is a village soviet or *selosoviet* in each of the larger villages. In the case of smaller villages, there is a *selosoviet* for a group of them. Each *selosoviet* is directly elected by the voters for a two-year term. Each *selosoviet* usually chooses, under the provisions of the Constitution of the Union Republic, an Executive Committee, a number of standing committes, a secretary and a number of officials. The President of a *selosoviet,* (who is the President of the Executive Committee) is an energetic official and wields great authority within the jurisdiction of the *selosoviet.* He has powers of supervision over the administration in the area falling inside that jurisdiction and can issue orders relating to various matters. From time to time the *selosoviets* hold meetings that are thrown open to all villagers. At these meetings the villagers get an opportunity to criticise the activities of the *selosoviets* and to express their views on various matters. Apart from these meetings, the voters in the villages usually meet a number of times—usually six to eight—every year to discuss their problems. These meetings help the members of the *selosoviets* to know the views of the people and to adjust their activities to such views.

Governments of Autonomous Republics, Autonomous Regions and National Areas: It has been already stated that the Autonomous Republics, Autonomous Regions and

National Areas are based on national groups. The Autonomous Republics and Autonomous Regions are on the same general administrative level as the regions and territories.

The Autonomous Republics: The Autonomous Republics have their own constitutions. The highest organ of state power in an Autonomous Republic is the Supreme Soviet of the Autonomous Republic The Soviets of the Autonomous Republics have power to adopt Constitutions for them, subject to confirmation by he Soviets of the Union Republics of which they form part. The Supreme Soviet of an Autonomous Republic is directly elected by the voters for a term of four years on a basis of representation laid down by its Constitution; usually one member is elected for 3000 to 20000 of the population. The Supreme Soviet of an Autonomous Republic elects a Presidium and a Council of Ministers. The decisions and orders of the Council of Ministers of an Autonomous Republic can be suspended by the Council of Ministers of a Union Republic. Each Autonomous Republic is entitled to send 11 representatives to the Soviet of Nationalities, the second chamber of the Supreme Soviet of the U.S.S.R. There were 18 Autonomous Republics in the Soviet Union in 1957, of which 14 were in the R.S.F.S.R.

Autonomous Regions: Autonomous Regions enjoy much less autonomy than the Autonomous Republics. The Soviet of an Autonomous Region is directly elected by the voters for a two-year term. The basis of representation for the Soviets of Autonomous Regions, which is fixed by the Constitution of the Union Republic, is one for every 1500 to 3000 of the population. The Soviets of Autonomous Regions have their Executive Committees whose decisions and orders can be annulled by the Council of Ministers of the Union Republic. There were 10 Autonomous Regions in the Soviet Union in 1957, of which 7 were in the R.S.F.S.R. The Autonomous Regions are entiled to send 5 deputies ecah to the Soviet of Nationalities.

National areas: These are areas (in most cases tiny) inhabited by people with some distinct cultural traditions or

racial characteristics of their own. They are entitled to send one representative each to the Soviet of Nationalities. They, too, have their soviets directly elected on the basis of one member for every 300 to 3000 of the population. How small are these national areas can be gauged from the fact that in 1938 the National Areas of Koryak and Evenki had a population of 13000 and 6000 respectively. It is a point of pride with the Soviet leaders that such small racial groups have been given separate representation in the Soviet of Nationalities, which shows, in their opinion, that the national minorities in the Soviet Union are treated on a basis of complete equality.

CHAPTER VIII

THE SYSTEM OF ELECTIONS

Before the inauguration of the Stalin Constitution, only the lowest soviets in the Soviet Union used to be directly elected and all the soviets above them up to the topmost level used to be indirectly elected. Thus, before 1936, the system of elections to the organs of state power was mainly indirect. Prior to 1936, the system of election was also based on open and oral voting.

Further, the electoral system was formerly weighted in favour of the town-dwellers. The urban soviets could send delegates to the All-Union Congress of Soviets at the rate of one delegate for every 25000 *voters* and the soviets in the rural areas could send delegates at the rate of one delegate for every 1,25,000 *inhabitants*. Since in urban areas a population of 50,000 to 60,000 would have 25,000 voters among them, the system gave a proportionately higher representation to the town-dwellers.

Up to 1936, some sizable sections of the population were excluded from the vote. These were the capitalists, kulaks, members of the former ruling family, clergymen, some categories of former Tsarist officials, and persons living on unearned income or using hired labour for profit.

To sum up, before 1936, the system of election was indirect and based on open voting ; the suffrage was limited and unequal. The Constitution of 1936 replaces indirect election by direct election and open voting by secret ballot, and at the same time it introduces a universal and equal franchise. The Constitution states that members of all Soviets, from the lowest to the highest, are "chosen by the electors on the basis of universal, equal and direct suffrage by secret ballot."

Direct Election.

As has already been indicated, at present all soviets, from the rural soviets to the Supreme Soviet of the U.S.S.R., are

directly elected by the voters. Voting is held by election districts.

Universal Franchise.

All citizens who have reached the age of eighteen are entitled to vote in the Soviet Union, "irrespective of race or nationality, sex, religion, education, domicile, social origin, property status or past activities." The only exceptions to this rule are insane persons and persons whose electoral rights have been taken away by punishment inflicted by the courts. It is interesting to note that though the Constitution of India, too, has introduced a system of universal franchise, the voting age is higher in India than in the Soviet Union, being 21. In Britain too, where a system of universal franchise prevails, the voting age is 21.

Formerly, every person who had reached the age of 18 could be eligible for election, that is, could stand as candidates and be elected. The age-limit has since been raised and at present the qualifying age for candidature is 23. This may be compared to the minimum age of 25 laid down by the Indian Constitution for candidature for election to the Lower House of Parliament, and of 30 for election to the Upper House. (The age requirements for election to the Legislative Assemblies and Councils in the Indian States also are 25 and 30 respectively). The Constitution of the United States, too, lays down the same age requirements, *viz.*, 25 and 30 for election to the House of Representatives and the Senate respectively.

Women in the Soviet Union have the right to elect and be elected on equal terms with men. In India, too, the position in this respect is identical to that in the Soviet Union.

The Constitution of 1936 gives to the members of the Armed Forces of the U.S.S.R. the right to elect and be elected on equal terms with other sections of the population. While the Indian Constitution gives to the members of Armed Forces the same rights of voting as those granted to other sections of the population, it does not confer on them the right to be elected. The members of the Armed forces have been debarred from electoral contests along with other sections of the Government

servants by the provision which states that persons holding offices of profit under the Government shall be disqualified to be chosen as, and to be, members of Parliament ; the same rule applies in respect of membership of the State Legislatures (the only exceptions to this rule being Ministers of the States and the Centre and holders of certain other offices declared by Parliament and the State Legislatures as not to disqualify their holders).

Equal Voting.

The Stalin Constitution lays down the principle of 'one man one vote'. The same principle has been embodied in the Constitution of India. It is interesting to note, however, that in Britain, which is one of the most democratic countries in the world, the principle of 'one man one vote' did not exist till very recently. Till as late as 1948, some people in Britain (although very few) could claim to have more than one vote on the basis of certain residential and property qualifications. The Representation of the People Act, 1948 has abolished in Britain the system of plural voting so that at present no man can have more than one vote in that country. The principle of 'one man one vote', it must be admitted, is based on the highest democratic principle that recognises the dignity of man as such.

Secret Ballot.

The Constitution of 1936 has laid down that voting shall be by secret ballot. At present, in all democratic countries including India the system of secret ballot prevails, open voting being considered as highly undemocratic.

Not Election as we know it.

The provisions of the Stalin Constitution discussed above might make it appear that one of the most highly democratic systems of elections prevails in the Soviet Union to-day. Actually, however, practice in this vital matter is very different from the principles embodied in the Constitution.

The most important stage in the Soviet elections, as they are actually held today, is the nomination stage. In every constituency, on the eve of an election, discussions are held between various groups as to who is to be nominated as the

candidate for the election. In these discussions, the Communist Party, the only political Party in the Soviet Union, plays a dominant role. The Constitution, of course, says : "The right to nominate candidates is secured to public organisations and societies of the working people : Communist Party organisations, trade unions, co-operatives, youth organisations and cultural societies." But it should be remembered that all organisations in the Soviet Union including trade unions and other organisations mentioned in this provision are controlled by the Communist Party which is not only the only political party in the state, but is perhaps the most highly organised and centralised party in the world. According to the Constitution itself, the Communist Party is "the leading core of all organisations of the working people, both public and state." The members of the party are thus in a position easily to influence and guide the discussions that are held in each constituency at the nomination stage for the selection of a suitable candidate. Ultimately at a conference called the Constituency Election Conference a single candidate is acclaimed as the choice of the constituency for the election. No doubt, the proceedings at the conference are carefully guided by Party members so that ultimately only a member of the Party or a person considered reliable by the Party is selected as the candidate. Thus, at the end of the nomination stage there remains only one candidate in the field in each constituency. The voters, thereafter, go to the polls on the appointed date to cast their ballots and nearly cent per cent ballots are cast for the only candidate that remains in the field.

Critics in other countries naturally regard soviet elections as a farce, for when the polling takes place the voters are left with nothing to select from, there being only one candidate in the constituency.

Actually, what may be called election proper is held in the Soviet Union at the nomination stage, for only one candidate emerges from that stage and the voters are left with no choice after the nomination has been made. In other countries, when there is only one candidate in a constituency, the polling operations in that constituency are dispensed with and the candidate is immediately declared elected because the voters are left with

no choice. So the operations relating to the casting of votes in the Soviet Union (after a single candidate has been chosen in each constituency) cannot be called election proper. Nor can outside opinion be misled by the results of 'the elections', for their results are a foregone conclusion.

It should be noted that the system of single candidates has no basis in the provisions of the Constitution. Nor does the Constitution sanction the system of Constituency Election Conferences held on the eve of the elections. The holding of these Constituency Election Conferences, in fact, constitutes a violation of the constitutional provisions. For, while the constitution provides for secret voting, at each of these conferences a single candidate is openly acclaimed as the choice of the electorate. It is obvious that no person who cares for personal safety would say anything at these meetings that might be interpreted as opposition to the will of the Communist Party. It is also interesting to note that since the selection, in the ultimate analysis, is made by Party members and not by the ordinary voters who are confronted with a *fait accompli* after the nomination stage—the elections, as they are practised, are not direct but really indirect.

Thus, though the Stalin Constitution provides for direct and secret elections, in actual practice, the elections are indirect and open. The elections held under the Stalin Constitution are, therefore, not essentially different from the electoral system which prevailed before 1936.

When the Stalin Constitution was adopted, people in other countries came to believe that elections in the true sense of the term would be held under that Constitution. But even in the first general elections held in 1937 under that Constitution, the system of single candidate was resorted to and this system has been adhered to ever since.

The Right of Recall.

The Stalin Constitution provides that every member of a Soviet "may be recalled at any time upon decision of a majority of the electors in the manner established by law". The Constitution thus gives to the voters what is known as the right of

recall. The right of recall is supposed to be an instrument in the hands of the voters to prevent their elected representatives from going against their wishes. The Constitution of India, it may be noted, does not confer on the voters any such right. Once elected, a legislator in India can even go against the declared wishes of his constituency without fear of being unseated by his voters, because the voters have no legal right to remove him from his position. The Constitutions of some of the American States (at least eleven) provide for the recall of the Governor and some other high officials. But this right has been very seldom used. So far only a few officials and only one Governor have been recalled. This unfortunate Governor was Governor Lynn J. Frazier of North Dakota who was recalled in 1921. Six States in America provide for the recall of judges by popular vote.

In the Soviet context, however, the right of recall can be of little significance because the elections are carefully controlled by the Communist Party so as to secure the return of only Party members or supporters of the Party.

CHAPTER IX

FUNDAMENTAL RIGHTS AND DUTIES

The Union Constitution of 1924, did not contain any bill of rights, the matter being left to the Republican Constitutions. The Stalin Constitution, however, contains a chapter dealing with "Fundamental Rights and Duties of Citizens". The Fundamental Rights enumerated in this chapter include some which have not so far found place in any constitution outside the Soviet Union, such as the right to work, the right to rest and leisure, the right to maintenance in old age and the right to education.

The Constitution of India, it should be noted, devotes an entire Part—Part III—to the enumeration of fundamental rights but these rights do not include the rights to work and leisure and the other rights just mentioned. Part IV of the Indian Constitution however, deals with certain principles called "the Directive Principles of State Policy" and the Constitution directs that "it shall be the duty of the State to apply these principles in making laws". These principles embody the highest ideals of social justice and, in particular, it is laid down by this part that the State shall endeavour to secure to all workers, agricultural, industrial or other work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It further directs that State shall endeavour to secure to all citizens an adequate means of livelihood, to prevent harmful concentration of welth and for ensuring the right to assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want. The Constitution, however, states that these principles "shall not be enforceable by any court." Thus unlike the "Fundamental Rights" sepecified in Part III of the Indian Constitution, which include freedom of speech and expression, freedom of association and assembly, and many other similar rights that are all enforceable by courts, the rights mentioned in Part IV of the Constitution are not so enforceable.

Broadly speaking, therefore, under the Constitution of India, political rights have been made justiciable while economic rights have been made non-justiciable.

There are critics who point out that the economic rights mentioned in the Soviet Constitution, too, have very little legal force. And it is difficult to assail this argument of theirs. The courts in the Soviet Union have no power to declare laws to be unconstitutional on the ground of their inconsistency with the Constitution. The right of interpreting laws has been vested in the Presidium of the Supreme Soviet of the U.S.S.R. The Soviet Government has been known to issue decrees from time to time which have had the effect of modifying the Constitution. During World War II, particularly, a number of decrees were issued which, in effect, modified some important constitutional provisions including those dealing with the fundamental rights to rest, leisure and education as guaranteed by the Constitution at that time. (These have been discussed below at the appropriate places).

But whether the Soviet Constitutional guarantees have any legal force or not, the fact remains that in practice the Soviet Government has ensured these rights on a scale unknown in any other country in the world. In fact, there is reason to believe that the rights to work, leisure and rest have been ensured to the entire population of the Soviet Union.

The Right to work.

"Citizens of the U. S. S. R.", says Article 118 of the Stalin Constitution, "have the right to work, that is, the right to guaranteed employment and payment for their work in accordance with its quality and quantity." Thus it will be seen that the Constitution guarantees employment to all citizens. This guarantee would not have been included in the Constitution, had not the Soviet Union already solved the problem of unemployment in the country. Even critics of the Soviet Union agree that unemployment as a problem has been eliminated from the land. Even in the early thirties when the world was in the grip of a great economic depression and unemployment figures rose high in all other countries, in the Soviet Union, the problem

was not of unemployment but of finding sufficient man-power for the work to be done. How has it been possible for the Soviet Union to solve a problem which even the most highly industrialised countries outside the Soviet Union have not yet been able to eradicate ? The answer to this question will be found in the planned basis of the Soviet economy. "The right to work", says Article 118, "is ensured by the socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment."

As has been quoted above, payment for work is guaranteed by the Constitution but this guarantee is subject to the important qualification that the payment is to be made according to "the quality and quantity" of the work. Thus the payment is subject to variation according to both quality and quantity. It is important to note, therefore, that the Soviet Constitution does not guarantee economic equality to citizens irrespective of the social function performed by them. In fact, there exist in the Soviet Union wide disparities of income, skilled workers getting much better pay than their unskilled brethren. Jobs requiring special skill or specialised knowledge are very highly paid in comparison with jobs requiring ordinary skill.

A certain category of workers, called Stakhanovists, are paid exceptionally high wages. Stakhanovists are workers who have displayed special skill or ability in organising production or raising output. The appellation 'Stakhanovist' is derived from the name of Stakhanov who was a coal-miner and who had reorganised his shift in a manner that resulted in considerable increase in output. Speaking of the disparity between the remuneration of a Stakhanovist and that of an ordinary worker, Trotsky wrote in his *The Revolution Betrayed :* "The real earnings of Stakhanovists often exceed by twenty or thirty times the earnings of the lower categories of workers. And as for especially fortunate specialists, their salaries would in many cases pay for the work of eighty or hundred unskilled labourers. In scope of inequality in the payment of labour, the Soviet Union has not only caught up to, but far surpasses the capitalist countries".

Probably there is exaggeration in this estimate made by Trotsky but there is reason to believe that the ratio between the highest and lowest incomes in the Soviet Union to-day is 1 : 50. Among the fortunate people who are included in the top income-group are the factory managers, writers, scientists and certain other specialists. The disparity in real income is very often greater than disparity in the money income. The factory managers, for instance, not only enjoy very high salaries, they also enjoy special housing and other privileges. In the early twenties, under the Soviet law, the income of a factory manager could not be more than 5 times the income of an ordinary unskilled worker in the factory. The fact that this 5 : 1 ratio has now risen to 50 : 1 is indicative of the trend of things in the Soviet economic life.

The Right to Rest and Leisure.

"Citizens of the U. S. S. R. have the right to rest and leisure", declares the Constitution in Article 119. The Article as originally adopted stated further : "The right to rest and leisure is ensured by the reduction of the working day to seven hours for the overwhelming majority of workers". On the eve of World War II, however, the working day was increased from seven to eight hours, and at the time of the Constitutional amendment of 1947, the provision quoted above was recast so as to reflect this change. Article 119, as it stands at present, states : "The right to rest and leisure is ensured by the establishment of an eight-hour day for industrial, office and professional workers, the reduction of the working day to seven or six hours for arduous trades and to four hours in shops where conditions of work are particularly arduous ; by the institution of annual vacations with full pay for industrial, office and professional workers and by the provisions of a wide network of sanatoria, holiday homes and clubs for the accommodation of the working people."

It will be seen, therefore, that for the overwhelming majority of workers in the Soviet Union the working day is now not of seven hours but of eight hours. The Communists were so proud of the seven-hour day originally provided for by the Constitution that this change from seven to eight hours by the Cons-

titution must be considered as a major change from their point of view. And in this matter at least, it must be admitted, there is no difference between the Soviet economy and the existing capitalist economies for in most countries the eight-hour day is the rule.

However, workers in few countries enjoy annual vacations with full pay as do the workers in the Soviet Union. There is nothing of the kind in India. The Soviet state has also built numerous sanatoria, rest-homes and clubs for the working people which the great bulk of workers in India cannot even dream of.

Right to Education.

The educational efforts of the Soviet Union have aroused the admiration of people all over the world. By launching a tremendous literacy drive the Soviet Union has increased literacy from somewhere near 20 per cent to over 80 per cent. It is expected that very soon there would be hundred per cent literacy in the state. Elementary education (seven-year) has been made universal and compulsory. And facilities for secondary and higher education, including professional education have been provided on a vast scale. In fact, the Soviet Union is at present engaged in the task of instituting universal secondary education (ten-year). In 1948, there were, according to reports, over 33 million students in the elementary and secondary schools. In 1956-57, 50 million students were studying in educational institutions of all kinds. There are also innumerable nursery and kindergarten schools for children below school-going age.

Formerly, education at all stages, from elementary to higher education including University and professional education, was free of charge. The Constitution as originally enacted, laid down that the right to education in the Soviet Union is ensured "by education, including higher education, being free of charge." In 1940, however, tuition fees were introduced in high schools and colleges, and the Constitutional provision just quoted had to be revised. In 1947, when the Constitution was amended, the words "by education, including higher education, being free of charge" were replaced by the following words : "by free education up to and including the seventh grade" (Art. 121).

Although fees were thus reintroduced for higher education in the Soviet Union, the fees were not prohibitive. Since then, however, the Constitution has again been amended and the words just quoted have been replaced by "by free education in all schools, higher as well as secondary." This means that at present, with the exception of only the University stage, education is free in the Soviet Union.

The Soviet State has also made generous provisions for stipends for students in colleges and universities. Formerly, Article 121 of the Constitution spoke of "a system of state stipends for the overwhelming majority of students in the universities and colleges" ; the facilities for stipends, however, were considerably curtailed during the war and in the Constitutional revision of 1947, the words just quoted were replaced by "system of state stipends for students of higher educational establishments who excel in their studies." In spite of this curtailment of the stipend facilities, the students in colleges and universities in the Soviet Union enjoy to-day far greater facilities than are available to the students in this country, and probably in most other countries.

Freedom to form Organisations.

The Stalin Constitution nominally guarantees the right to unite in public organisations. Article 126 of the Constitution says : "In conformity with the interests of the working people, and in order to develop the organisational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are guaranteed the right to unite in public organisations : trade unions, co-operative societies, youth organisations, sport and defence organisations, cultural, technical and scientific societies ; and the most active and politically-conscious citizens in the ranks of the working class, working peasants and working intelligentsia voluntarily unite in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to build Communist society and is the leading core of all organisations of the working people, both public and state."

A careful reading of this Article makes two things clear. In the first place, the Article does not guarantee the freedom

to form political organisations and declares that the Communist Party, the only political Party in the Soviet Union, is the leading core of all organisations of the working people. Now "all organisations of the working people" means all organisations in the state, since 'non-working' people or non-toiling classes are supposed to have been eliminated in the Soviet Union.

Thus the Stalin Constitution which is claimed by the Soviet leaders to be the most democratic Constitution in the world does not give the people the right to form political parties. The Communist Party of the Soviet Union not only enjoys the monopoly of organisational freedom in the political field, it also controls and guides all non-political organisations in the state. It is interesting to compare this dictatorship of the Communist Party in the Soviet Union with the fact that practically in all states outside the Soviet sphere of influence, people enjoy the right to form political organisations. Article 19 of the Constitution of India, for instance, guarantees to the citizens the right to form associations including political organisations. And, actually, in the Indian political field, more than a score of political organisations are functioning in opposition to the party in power. The Communist Party which does not believe in freedom for any other political party is one of these opposition parties in India.

The Soviet leaders, however, do not try either to conceal, or to apologise for, the fact that they do not allow their citizens the right to form political parties and have reserved for themselves the monopoly of power in the State. On the contrary, they try to prove on the basis of Marxian theory that there is ground for only one party in the Soviet Union. Stalin in his report on the Draft Constitution to the Eighth Congress of Soviets said : "A party is part of a class, its most advanced part. Several parties and, accordingly, freedom for parties as well, can exist only in a society where there are antagonistic classes with hostile and irreconcilable interests, where there are, let us say, capitalists and workers, land-owners and peasants, kulaks and the poorest peasantry. In the U.S.S.R., however, there are no longer such classes as capitalists, landowners, kulaks and the like. There are only two classes, workers and peasants, and their interests are not only not hostile, they are

on the contrary, amicable. Accordingly, there is in the U.S.S.R. no ground for the existence of several parties, and so none for freedom for these parties either. In the U.S.S.R., there is ground for one party only—the Communist Party, and in the U.S.S.R. only one party can exist—the Communist Party, boldly defending to the end the interests of workers and peasants".

Stalin in this statement tries to defend the Communist monopoly of power in the Soviet Union by basing his arguments on what may be called the Marxist interpretation of the phenomenon of political parties. But this interpretation fails to explain why in some countries a large number of parties are sometimes seen to grow up side by side on the basis of Marxist ideology. In India at present there are half a dozen parties with Marxism as their professed ideology. The fact is that in human societies, differences of opinion are bound to arise and exist on all important issues, making inevitable the growth of political parties with varying ideology. When, therefore, only one political party exists in a State, it means that no other party is allowed to exist and that the attempts to form such parties are ruthlessly suppressed. And this is exactly the situation in the Soviet Union.

The Communist leaders sometimes point out that the freedom to form political organisations could, in the Soviet context, only mean freedom for fascists and foreign agents. A. Y. Vyshinsky, a former Foreign Minister of the Soviet Union, has said the following in his *Law of the Soviet State* : "The Soviet Union in granting freedoms to citizens, starts from the interests of the toilers and naturally does not include freedom of political parties in the enumeration of these freedoms granted, inasmuch as this freedom, in the conditions prevaling in the U.S.S.R., where the toilers have complete faith in the Communist Party, is necessary only for agents of fascism and foreign reconnaissance, whose purpose is to take all freedoms away from the toilers of the U.S.S.R. and to put the yoke of capitalism upon them once more. The victory of socialism, the liquidation of the exploited classes in the land, has finally removed the ground upon which new parties could emerge independently of the All-Union Communist Party (of Bolsheviks)".

This argument, however, is far from convincing. Much of it could be used by any party in power in any country to justify the suppression of other parties. When people are not allowed the right to judge for themselves who is really a fascist or whether the socialism built by the Communist Party of the Soviet Union is really socialism or not, this sort of argument cannot carry much weight with persons with an open mind. Whatever argument may be advanced by the Soviet leaders to justify the Communist monopoly of power, there can be no doubt that the Communist Party of the Soviet Union has built this monopoly and maintains it by force, that is, by suppressing other parties and by liquidating persons and groups who may be regarded by the Party leaders as going against 'the Party line'. The recent developments in the Soviet Union including official disclosures about the real character of the Stalinist regime throw lurid light on the methods the Party uses in liquidating opposition.

Freedom of Speech and Expression.

Freedom of speech and freedom of organisation go together. It is not possible to conceive of one without the other. Since, as has been already noted, there is no freedom of organisation in the real sense of the term in the Soviet Union, it follows almost as a corollary that there is no freedom of speech and expression in the Soviet Union. Of course the Constitution formally guarantees the right of free speech. Article 125 says that the citizens of the U.S.S.R. are guaranteed by law the freedom of speech and the freedom of the press. These freedoms are, however, guaranteed "in conformity with interests of the working people, and in order to strengthen the socialist system." In the Soviet context, "the interests of the working people" means their interests as interpreted by the Communist Party and "the socialist system" also means the system as built up by the Communist Party. The fact is that there is for all practical purposes, no freedom of speech in the Soviet Union. The Press, radio and cinema are strictly controlled by the Government. These are allowed to reflect only the views of the Party in power. Under the Stalinist regime, criticism of the policies adopted by the Government was forbidden. Even books

were purged to ensure that they do not contain anything unfavourable to the regime or critical of those in power. Even art was made to conform to the political requirements of the regime. Poetry or drama or novels were not allowed to contain anything anti-Communist or anything that might be supposed to undermine loyalty to the Communist regime. Art, under the Stalinist regime, had to conform to and reflect Marxist principles. Otherwise, both the artist and his art had to face liquidation. The Soviet slogans such as "the five-year plan in poetry", "poetic shock troops", "collective creation", "art is a class weapon", "proletarian art" and the like, which used to be frequently heard during the Stalinist regime, convey an idea of the Communist view of art as well as the regimentation that was effected in the sphere of artistic creation.

Not only everything supposed to be antagonistic to Communist principles was eliminated from the Soviet art by the Stalinist regime, it took great care to make art a powerful weapon of propaganda and indoctrination. Education too was made a similar weapon for inculcation of Communist doctrines. These twin weapons were wielded by the Stalinist Government to effect regimentation of thought on a scale, and with a thoroughness, hitherto unknown to mankind. The Stalinist system, therefore, not only denied freedom of thought, it tried to control and regiment thought so that the possibility of thinking differently from the rulers might itself be eliminated.

"In our state", says Vyshinsky in his *Law of the Soviet State*, "naturally, there is and can be no place for freedom of speech, press and so on for the foes of socialism. Every sort of attempt on their part to utilise to the detriment of the State —that is to say, to the detriment of all the toilers—these freedoms granted to the toilers must be classified as counter-revolutionary crime." This amounts to saying that none in the Soviet Union has right to say anything that may be regarded as objectionable by the Communist Party, for it is the Party that is the final judge in the Soviet Union as to what is socialism and what is inimical to the interests of the toiling masses. And since anything objectionable to the Party is "counter-revolutionary crime", persons who may have the boldness to differ

from the 'Party line' will thereby only expose themselves to all the severity of the Soviet law.

It appears that since Stalin's death, the Soviet authorities have been following a little more liberal policy in regard to civil liberties including freedom of speech. Criticism of men in authority is at present being allowed to a limited extent. It remains to be seen how far this process of liberalisation goes. It is difficult to believe that there can be any fundamental change in the situation so long as the character of the Soviet system itself—the one-party system—remains basically unchanged.

Personal Freedom and the Inviolability of Homes.

The Stalin Constitution guarantees, at least formally, the freedom of the person and the inviolability of homes. "Citizens of the U.S.S.R.", says Article 127, "are guaranteed inviolability of the person. No person may be placed under arrest except by decision of a court or with the sanction of a procurator." Similarly, Article 128 declares : "The inviolability of the homes of citizens and privacy of correspondence are protected by law."

Freedom of the person is a very real freedom in the Soviet Union unless a person is suspected of treasonable crimes—crimes against the state. Of course, crime against the state usually means in the Soviet state deviation from the policy of the Communist Party, for the 'Party line' and the state policy in the Soviet Union are really the same thing. A person suspected of disloyalty to the state or of saying or doing anything contrary to the Party line is dealt with in the Soviet Union with all the severity of the law. Sanction for the arrest of such person comes automatically from the court or the procurator, for the courts and procurators under the Soviet Constitution cannot fail to be either members of the Party or supporters of the Party. (See chapter on Soviet justice). And the local procurators are independent of all local organs and are subordinate only to the Procurator-General of the U.S.S.R., a highly powerful functionary who is appointed by the Supreme Soviet of the U.S.S.R., that is, in effect by the Party Presidium. The history of the Soviet Union is characterised

from its inception by utmost severity of treatment for those supposed to be enemies of the regime. Deportation, execution, imprisonment and condemnation to forced labour camps have been their lot. It is believed and on reasonable grounds, that thousands of people have been killed by the Soviet authorities in their effort to purge the state of elements undesirable from their point of view and several millions have been kept confined in forced labour camps. Reference has already been made in the chapter on the Communist Party to recent disclosures made by Nikita Khrushchev about the ruthlessness with which Stalin dealt with persons or groups suspected to be opposed to his policies. These only corroborate the observation, just made, about large-scale murders by the Soviet authorities and concentration camps. Most of these camps are reported to be in Siberia and the Arctic areas. While estimates of the number of inmates of these 'concentration camps' have varied from five to fifteen millions, and it is difficult to ascertain the exact position, there is no doubt at least about the fact that it is a very huge population that has been kept confined in these camps. Most of the inmates of these camps are supposed to be political criminals, though a considerable number of them must be prisoners taken during the last war. The Soviet leaders, who do not deny existence of these camps, maintain that they are penal institutions not different in essence from the penal institutions in other lands. But the jail population in no democratic country has ever been known to be even half as large as the number of inmates of the forced labour camps in the Soviet Union.

Freedom of Religion and Conscience.

Marxism is based on materialism. The Communists, therefore, do not believe in God and regard religion as a bourgeois institution based on false beliefs. In a bourgeois society, Marxists hold, religion has always acted as opium for the people. For religion, according to them, has told people that inequality is divinely ordained and that there is a divine justice in the world which ensures compensation for the sufferings of even the poorest of mortals, if not here, at least hereafter. This has served to keep the masses reconciled to their wretched lot while the fortunate few have ruled over them and exploited them to the utomost.

When the Bolsheviks, therefore, captured state power in 1917, a clash between the church and the state became inevitable. The Soviet Government confiscated church property and disfranchised the clergy. They also encouraged anti-religious propaganda throughout the state. The clergy remained disfranchised till 1936, when the Stalin Constitution introduced a system of adult franchise which autonomatically enfranchised the clergy along with other disfrancised sections of the population. Article 124, *inter alia*, states: "Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens." It will be seen that while this Article guarantees the freedom of anti-religious propaganda, it does not guarantee the right of religious propaganda. It is interesting to note that the Constitution of India guarantees the right of both religious and anti-religious propaganda (Articles 19 and 25), in addition to the right of religious worship. Thus, from the constitutional point of view, the State in India is more neutral in religious affairs than the Soviet State because the Constitution of the Soviet Union, while it guarantees the freedom of anti-religious propaganda does not guarantee that of religious propaganda, thereby openly throwing its weight against religion. It should also be noticed that, in India, neither theistic nor atheistic belief has anything to do with a person's social status or privileges. In the Soviet Union, however, persons who find the door of the Communist Party barred to them because of their religious beliefs are deprived of the social standing and other privileges that membership of the Party confers on a person. Members of the Party always enjoy priority and preferential treatment in matters relating to jobs, promotion, admission to hospitals and rest homes and in various other matters. All key positions in the administrative-economic structure are also almost invariably filled by the members of the Patry. So, faith in God, however satisfying spiritually, is a definite liability in the sphere of material advancement in the Soviet Union.

During the last World War, however, the relations between the church and the state in the Soviet Union entered a new phase—a phase of mutual understanding and increasing toleration. Perhaps it was felt that successful prosecution of the war—a total war—depended upon full co-operation of all sections of the population including the clergy and believers

in God. The League of Militant Atheists which was formed by the Communists in 1925 for propagating atheism was dissolved after the out-break of the war. And strange to relate, in 1943 the Patriarchate was revived. (The Patriarchate is the office of the Patriarch who is the head of the Orthodox church, just as the Pope is the head of the Roman Catholic Church. This office had been vacant since the time of Peter the Great save for a brief period during the Revolution.) The year 1943 also saw the setting up of two Councils under the Council of People's Commissars (the Cabinet) for dealing with religious affairs. One of these is the Council for Orthodox Church Affairs, that is, affairs relating to the Russian National Church, and the other is Council for Religious Cult Affairs which is to deal with other religions. These two bodies supervise the observance of laws regulating the status of various religious organisations and assist these organisations in their relations with the governmental bodies.

Though Article 124 says that "the church in the U.S.S.R. is separated from the state and the school from the church", and the Constitution does not grant the right of religious propaganda, religious instruction is at present allowed in the Soviet Union to some extent and the church enjoys greater freedom than before. Religious organisations are also now permitted to publish prayer books and religious periodicals. Some foreign critics are of opinion that the new relationship between the Church and the state in the Soviet Union implies that Soviet Government are trying to utilise the church as an instrument in their hands to strengthen popular loyalty to the regime.

Racial and National Equality.

The Tsarist Government used to exploit and oppress the national minorities in Russia and systematically to impose on them the Great Russian language, the Russian culture as well as the Orthodox Church beliefs. The policy of the Communist regime towards the national minorities has been, however, from the very beginning based on a recognition of equality of rights for all nationalities and national groups. And the Stalin Constitution clearly reflects this policy. Article 123 of the Stalin Constitution says : "Equality of rights of the citizens of the U.S.S.R., irrespective of their nationality or race, in all

spheres of economic, government, cultural, political and other public activity, is an indefeasible law. Any direct or indirect restriction of the rights of, or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law." And these words of the Constitution are not empty words. It has been already noted how in the second chamber of the federal legislature, the Soviet of Nationalities, even the tiniest of national groups have been given separate representation. It has also been noted how the different nationalities have been granted varying degrees of autonomy within the constitutional framework. But these constitutional provisions do not convey an adequate idea of the tremendous efforts made by the Soviet Union to help the development of the languages and cultures of the different nationalities. The Soviet Government have taken steps to develop the script and languages of various backward nationalities and at present books are published in the Soviet Union in about 110 different languages. Laws are published in the languages of all the Republics which means that they have to be published in fifteen different languages. "Judicial proceedings", says Article 110 of the Stalin Constitution, "are conducted in the language of the Union Republic, Autonomous Republic or Autonomous Region, persons not knowing this language being guaranteed the opportunity of fully acquainting themselves with the material of the case through an interpreter and likewise the right to use their own language in court." Schools in the Soviet Union are conducted in about 70 different languages. It must be admitted, therefore, that the Soviet Union has succeeded in guaranteeing complete equality of rights to all races and nationalities. This is a remarkable achievement considering the past background of racial persecution and national inequality in the Russian empire. Even in the United States, which is supposed to be among the foremost democracies of the world, the situation in respect of racial equality leaves much to be desired. The Negroes in the United States, who constitute ten per cent of the population, still continue to be subjected to various kinds of disabilities and roughly ten million adult Negroes are at present without the right to vote.

The Constitution of India, it may be noted, guarantees equality of rights to all racial minorities like the Stalin Constitution. Article 14 of the Indian Constitution guarantees equality before the law to all sections of the population. Article 15 forbids discrimination, among others, on racial grounds. Article 16 guarantees equality of opportunity to all citizens in respect of public employment. Article 17 abolishes untouchability. Articles 29 and 30 confer on all minorities the right to conserve their language and culture. And Article 350 gives every person the right to submit representation to the Union or State authorities for the redress of any grievance in any language used in the Union or in the State concerned. The Constitution of India, further, authorises the state to make special provisions for all backward sections of the population in matters in which such provisions may be considered necessary. The Constitution of India, however, accords a special position to the Hindi language and declares it to be the official language of the Union. But then it must not be forgotten that whereas there are various nationalities in the Soviet Union, the people of India belong to one nationality and are included, broadly speaking, in one common culture—the Indian culture.

Equality of women with men.

"Women in the U.S.S.R.", says Article 122 of the Stalin Constitution, "are accorded equal rights with men in all spheres of economic, government, cultural, political and other public activity". The Soviet State has taken adequate steps to ensure that women can enjoy equal rights with men in all spheres of activity. Mere guaranteeing of legal equality between men and women cannot, it is obvious, enable women to enjoy equal rights in actual practice with men folk. For women have to bear children and nurse them, which are serious handicaps in the matter of enjoyment of equal rights with men. Though it is not possible for women completely to get over these biological handicaps, the state in the Soviet Union has taken various measures to lessen their impact on the enjoyment of rights by women. The State, for instance, has provided numerous day nurseries for the care of workers' children. It has also introduced the system of maternity leave with full pay. Article 122 of the Constitution which guarantees equality of rights to women with men itself says : "The possibility of

exercising these rights is ensured by women being accorded an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, state aid to mothers of large families and unmarried mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens."

While the Constitution of India, too, guarantees to women equal rights with men and authorises the state to make special provisions for women and children, it does not seem that, within the foreseeable future, the facilities provided by the Soviet Government to translate the legal rights of women into real rights will be available to the Indian women. It redounds, however, to the credit of the Government of India that they have already enacted measures removing many of the social disabilities to which Hindu women have been subjected through the ages. By these laws Hindu women have been granted the right of divorce as well as the right to inherit property on a footing of equality with men.

The Right of Asylum.

Though international law recognises the right of asylum, it is unusual for a constitution to guarantee this right. The Soviet Constitution, however, formally guarantees this right. Article 129 says : "The U.S.S.R. affords the right of asylum to foreign citizens persecuted for defending the interests of the working people or for scientific activities or for struggling for national liberation." It appears, therefore, that persecuted socialists and communists as well as nationalists fighting for freedom from foreign domination will, if they flee to the Russian territory, be given asylum as a matter of constitutional right. It appears also that even if persons of these categories have been guilty of grave crimes committed for political motives in their own countries, Russia would refuse to hand them over to the proper authorities, taking its stand not only on international law but also on the above provision of its own Constitution. How far this provision applies to the Russian embassies in foreign countries which are, from the legal point of view, supposed to be parts of the Russian territory, is not clear. If, for instance, a person professing Communist

ideology commits a political murder in India and thereafter seeks asylum in the Russian embassy in New Delhi, will he get protection from the embassy authorities ? It is difficult to give a categorical reply to this question in spite of the clear provision of the Stalin Constitution regarding the right of asylum. Much will depend in such cases, it appears, on the relations between the Soviet Government and the other Government concerned.

Article 129, quoted above, guarantees the right of asylum not only to persons persecuted for political activities but also to those who are persecuted for "scientific activities". Now-a-days, people are not generally persecuted for scientific activities. It is not impossible, however, that certain branches of research may be closed by law to private workers in a country because of their military importance. Persons violating such laws and thereby exposing themselves to punishment may, perhaps, claim asylum in the Soviet Union. It is not clear whether "scientific activities" also include disclosure of secret scientific information to foreign agents.

Fundamental Duties.

The Stalin Constitution enumerates a few fundamental duties of the Soviet citizens. Among these duties are the duty to abide by the Constitution and the laws (Arts. 130 and 131) and the duty to safeguard and fortify public socialist property. These duties, of course, hardly require enumeration in the Constitution. They are clearly implied as corollaries to the Soviet law and the Constitution. Article 132 declares : "Universal military service is law. Military service in the Armed Forces of the U.S.S.R. is an honourable duty of the citizens of the U.S.S.R." This Article implies that every Soviet citizen must undergo military training and must be prepared to render military service as a matter of legal obligation. "To defend the country" says Article 133," is the sacred duty of every citizen of the U.S.S.R." It is clear from Article 132 that this duty of defending the country can always be legally enforced.

CHAPTER X

SOVIET JUDICIAL SYSTEM

All courts in the Soviet Union are based on the elective principle. The Supreme Court of the U.S.S.R. is elected by the Supreme Soviet of the U.S.S.R. for a term of five years. The Supreme Courts of the Union Republics are similarly elected by the Supreme Soviets of the Union Republics for a term of five years. The Supreme Courts of Autonomous Republics are elected by their Supreme Soviets for a term of five years. And the Soviets of Territories, Regions, Autonomous Regions and Areas similarly elect the courts of these administrative areas for a term of five years. The lowest courts, called People's Courts, are directly elected by the voters of the districts for a term of three years. In addition to these Courts, there are Special Courts which are appointed by the Supreme Soviet of the U.S.S.R.

Though Article 112 says that "the judges are independent and subject only to the law", the elective principle ensures that judges in all cases are either loyal members of the Communist Party or supporters of the regime. Their judgments, therefore, cannot but reflect the will of the Communist Party. As a result, there is in the Soviet Union little distinction between the will of the Executive and the will of the Judiciary. But then it should be remembered that Soviet legal theory rejects the theory of separation of powers, and the doctrine of the dictatorship of the proletariat implies that all state organs, legislative, executive and judicial, must reflect and carry out what is supposed to be the will of the proletariat. To ensure that the decisions of the judges conform to the will of the proletariat which really means the will of the Party, the Constitution further provides for the participation of people's assessors in the trial of cases. In all courts in the Soviet Union, from the highest to the lowest, "cases are tried with the participation of people's assessors." (Art. 103). The Supreme Court of the U.S.S.R. maintains a panel of assessors who are appointed by the Presidium of the Supreme Soviet. In each of

the People's Courts, a single judge who is directly elected by the voters decides cases with the assistance of two assessors who are laymen and each of the assessors is supposed to have an equal voice with the judge in deciding cases.

The Supreme Court of the U.S.S.R. is the highest judicial organ in the Soviet Union. Compared to the Indian Supreme Court which has at present eleven judges, the Supreme Court of the U.S.S.R. is a big body. There were 68 judges in the U.S.S.R. Supreme Court in 1946. The Court has a number of sections, each dealing with a particular type of cases. The court has a plenum at its head consisting, *inter alia*, of a President and a Vice-President, and including among its members the presidents of the Supreme Courts of the Union Republics. The Supreme Court "is charged with the supervision of the judicial activities of all the judicial organs" in the state. It has power to review decisions of the Court of the Union Republics and of other lower Courts. It cannot, however, declare a law to be unconstitutional. The power of interpreting the Union laws has been vested in the Presidium of the Supreme Soviet. It is this body, therefore, which finally decides whether a state law is inconsistent with any Union law. In reality, of course, it is the Party Presidium which controls the decisions of the Presidium in all important matters relating to the interpretation of laws.

In the Soviet system, lawyers have only a very unimportant role to play and the number of lawyers is also very limited. This is because the legal profession as it exists in other countries is regarded by the Communists as essentially a bourgeois institution. At trials, it is the judge who mainly interrogates the witnesses and the accused in order to ascertain the facts. All this makes it clear that Soviet justice is something very different from justice as administered in other countries, particularly countries in which the judicial system is modelled on the Anglo-saxon pattern.

Procurator-General and the Procurators.

The Procurator-General occupies a position of great importance in the judicial system of the Soviet Union. This official is appointed by the Supreme Soviet of the U.S.S.R. for

a term of seven years. "Supreme supervisory power", says the Constitution, "to ensure the strict observance of the law by all Ministries and institutions subordinated to them, as well as by officials and citizens of the U.S.S.R. generally, is vested in the Procurator-General of the U.S.S.R." The Procurator-General appoints the Procurators of the Union Republics, Autonomous Republics, Territories, Regions and Autonomous Regions for a term of five years and the Procurators of the Union Republics appoint the district, area and other local Procurators for a five-year term, subject to the approval of the Procurator-General. Through the Procurators and their offices subordinate to him, the Procurator-General carries on the supervision of the conduct of judges, police officials, administrators and also ordinary citizens. The Procurator-General can take action against officials for non-observance of law and neglect of duty. The Procurator-General's office through its local branches conducts criminal prosecutions and intervenes in civil cases to protect the interests of proletariat. The local Procurators and their offices act independently of local organs and are subordinate only to the Procurator-General. This system ensures a highly centralised supervision and control over the entire judicial administration by persons who are, in the last analysis, chosen by the top-leaders in the Party.

The Security Police (The Cheka, OGPU, NKVD and MVD).

No account of the administration of law and justice in the Soviet Union can be complete without a reference to the secret police and the security agencies in the Soviet Union.

The Soviet Union is widely regarded as a police state characterised by extreme ruthlessness towards the opposition elements by the powers that be. Persons supposed to be opposed to those in power or critical of the regime, it is believed, —and not without reason—are ruthlessly suppressed and very often physically liquidated. The Stalin Government, it has been admitted by the present Soviet leadership, killed thousands of people for their supposed hostility to the regime. It also imprisoned millions of others suspected of being troublesome elements. In fact, Stalin is supposed to have been a far more ruthless dictator than even Hitler or Mussolini. "If the shed blood of innocent men were measured, Stalin's would

be a lake, Hitler's a duck-pond, Mussolini's could be dipped up by the tank-carful"—thus writes a critic. While formerly this might have been regarded as an over-dramatisation of the situation, now no one who has carefully pondered the facts recently brought to light by the Soviet leadership about the brutalities perpetrated by Stalin can fail to conclude that the Soviet regime has dealt with elements opposed to it or supposed to be hostile to it with a cruelty and ruthlessness almost unparalleled anywhere in the world. Of course, it need not be supposed that the Communists are depraved specimens of humanity and are by nature more cruel or brutal than their non-Communist brethren. The drastic methods of the Communists in dealing with Opposition are largely a result of the Communist doctrine. A theory which advocates dictatorship of the proletariat cannot fail to bring about dictatorial methods when put into practice. And Lenin put so much stress on the leading role of the Party in bringing about socialism that dictatorship of the proletariat could not but mean in practice dictatorship of the Party. Moreover, Communist theory gives no importance to the traditional morality or the question of violence or non-violence. According to it, what are ordinarily called bad means could justifiably be resorted to in order to overthrow the rule of the bourgeoisie. For Communism, it is argued, will ultimately bring about a new morality—a morality higher than what is prevalent in bourgeois society. There ought not to be any hesitation in violating the principles of traditional, "bourgeois morality" if that helps the attainment of the goal of Communism with its higher morality. So runs the argument.

In December, 1917, that is, a few weeks after the Revolution, was set up an Extraordinary Commission for Combating Counter Revolution, Speculation and Sabotage—the Cheka. The Cheka was invested with extraordinary powers to put down the enemies of the Revolution and the Communist Party. It had full authority to arrest, try and punish. In many cases it would simply arrest and put to death the suspected enemies of the regime.

Towards the end of 1921, when the Communists had consolidated their power, the decision was taken to reduce the

extraordinary powers of the Cheka and this body was later replaced by the OGPU or the State Political Administration, whose powers were less extensive than those of the Cheka. Still, the OGPU's methods of dealing with those suspected of actual or potential opposition to the regime were no less drastic than those of the Cheka. It is said to have organised such an extensive secret service that its agents were to be found practically everywhere and, it is believed, it simply arrested and destroyed people suspected of political crimes. Throughout the world the name OGPU came to symbolise terror, ruthlessness and the lack of civil liberties in the Soviet Union.

In 1934, the OGPU was abolished as a separate governmental organ and the political police were placed under the People's Commissariat of Internal Affairs or the NKVD. Thereafter, the NKVD came to gain the notoriety of the OGPU in savage methods of operation. After World War II, the name of NKVD was changed to MVD. The powers of the MVD are also very drastic compared to those of the securiey police elsewhere. The MVD can send people to corrective labour camps for terms which may extend to five years without referring their cases to the regular courts. The MVD, it appears, has agents in all cities, villages, offices, factories, mines, schools and universities. It maintains its own armed units which are utilised in guarding the communications, frontier regions and important Government offices and buildings. The MVD also runs some economic enterprises, such as construction of canals, roads etc., with the labour belonging to the forced labour camps. It is a strange commentary on the system of Soviet Secret Police that Genrich Yagoda who was for many years the head of the OGPU and had a large hand in staging the famous Moscow trial of 1936, himself fell a victim to the Moscow Trial of 1938 and was executed. Yagoda's successor was Yezhov who helped stalin to intensify the purge of non-conformists but, later, he too was liquidated by Stalin. Thereafter, Levrenti Beria became the secret police chief and made the secret police a highly efficient instrument of murder and terror. But, in 1953, Beria was executed on a charge of high treason and conspiracy against the Soviet regime in collusion with foreign agents.

CHAPTER XI

ROLE OF THE STATE IN SOVIET ECONOMY

The Soviet Union is the first state in the world to build up a socialist economy. It has destroyed the system of capitalist production in the state and reorganised industry and agriculture on the basis of collective ownership. As a result, the entire economic life of the people has been revolutionised beyond recognition. The pace and the character of the socialist transformation of the Soviet economy can be gauged from the fact that in 1937 nearly 99 per cent of the means of production in the state was under social ownership, nearly 99 per cent of the agricultural output was accounted for by the socialised sector of agriculture and nearly 100 per cent of the industrial output and nearly 100 per cent of the retail trade were socially owned and controlled.

Before entering into the details of the economic picture of the Soviet Union as it is today, it would be well to give a brief glance at the broad stages of the struggle of the Soviet peoples for reconstructing their economy on socialist lines.

War Communism.

The period of civil war and invasion which followed the Revolution was characterised by great privation, suffering, low production and rigorous state control over the entire economic life. This period is popularly known as the period of War Communism. All important industries were nationalised. Land too, was nationalised and distributed among the poor peasantry, landlordism having been abolished by the Land Decree of November 7, 1917. Similarly, banking, and foreign trade had been nationalised and internal trade brought almost entirely under state control. These measures, which could not but have an upsetting effect on production, coupled with dislocation and chaotic conditions caused by internal strife and foreign intervention, pushed down production to a very low level. Industrial production was reduced to a quarter of the pre-war level by the middle of 1919. And in 1920 the total industrial production was

only 13 per cent of the pre-war (1913) level. It has been esti mated that in 1920, the total production of coal was not mor than 25 per cent of 1913 level and the production of the pig iro was less than 3 per cent of what it was in 1913. The output o sugar and cotton yarns was also 6 and 5 per cent respectively o the level of 1913. A policy of requisitioning foodgrains was in troduced early in 1919 and the peasants in many areas expe rienced great hardship in reaching the quota fixed for them Meat, poultry, butter and other foodstuffs also began to b procured by the State through requisitioning. But while pea sants had to part compulsorily with foodstuffs they received onl a thin trickle of industrial goods from the towns, industria production having been lowered to a shocking extent. The pur chasing power of the currency had also fallen to a low level This created discontent in the countryside and also amon some sections of the Party's membership. The growing un easiness and discontent throughout the Soviet Republic, it wa felt by the leaders, called for an immediate change of policy Early in 1921, at the instance of Lenin, a new policy was inaugu rated which is known as the New Economic Policy or the NEP

The New Economic Policy (NEP)

The net effect of the New Economic Policy was a relaxa tion of State control over the economic life of the people anc a partial restoration of capitalist production. Under the NEP several thousand small factories were de-nationalised anc handed over to private individuals and companies as well as tc co-operatives. The bigger factories as well as the commercia enterprises which had been brought under State-ownership however, remained under the ownership and control of the State During the period of War Communism, the State used to supply free meals to millions of people and many of the State services including railway transport were made free. The system of free meals was now abolished and payment was introduced for all State services. On the agricultural front, the system of requi-sitioning foodstuffs was abolished and was replaced by a food-stuffs tax. This tax was so regulated as to leave after its collection a sizable surplus in the hands of the peasants who were free to dispose of it in whatever way they liked. As a result of these measures, things began to improve and production

started increasing. It must not be supposed, however, that the NEP re-introduced capitalism in the old form in the Soviet economy. Over the greater part of the industrial field the State continued to maintain its hold and the sphere left to the hands of the private capitalists was insignificant in comparison with the sphere under state ownership and control. In 1923, it has been estimated, only 4 per cent of the total industrial output came from the private sector. In the early years of the NEP period, however, it is the private businessmen who controlled the greater part of the retail trade in the Soviet Union and it was not until 1927 that the State could establish its supremacy in this sphere.

The years following the introduction of the NEP saw a determined struggle of the Soviet State to industrialise the country in the face of great difficulties. By the end of 1927, the industrial production was raised substantially higher than the pre-war level and the real wages also recorded an increase of 28 per cent above the pre-war level. But in 1927 the agricultural output was still below the pre-war level, being 91 per cent of it. From 1928 a determined drive was launched to organise the industrial peasants into collective farms. The same year saw the inauguration of the first of the great Five-Year Plans which have changed the face of the Soviet Union.

The First Five-Year Plan.

The First Five-Year Plan was put into operation in October, 1928. It was completed at the end of 1932, that is, in four years and a quarter. It was a gigantic programme for building new factories, collectivising agriculture, increasing national output, expanding educational facilities and constructing new dams. And the results achieved were spectacular. Over 1500 new factories were built, national output was more than doubled and the number of industrial workers rose from over 11 millions in 1928 to over 22 millions in 1932. The progress made in collectivising agriculture was also very great. Whereas, only 1·7 per cent of the peasant households had been organised in collective farms in the middle of 1928, at the end of 1932, more than 60 per cent of the peasant households were to be found in these farms. The number of these farms increased to nearly

a quarter of a million. The process of the formation of the collective farms was characterised by extreme ruthlessness towards the Kulaks, the rich peasants. Because of their opposition to collectivisation or of failure to co-operate with the Government in carrying out the scheme, a large number of kulaks are said to have been killed by the Communists. And nearly a million kulaks, it is believed, were arrested and sent to forced labour camps in Siberia and other places. All these measures had, however, an adverse effect on the agricultural production and increased food scarcity. And since in the industrial sector the chief emphasis of the First Five-Year Plan was on the production of producer's goods, the completion of the Plan did not relieve to any great extent the conditions of scarcity in respect of consumer's goods. Yet, it was claimed, real wages rose by 50 p.c. And there cannot be any doubt that the First Five-Year Plan laid a solid foundation for the industrialisation of the Soviet Union. Progress registered in the sphere of education was also very impressive. During the period of the Plan, the number of pupils in the elementary schools were doubled and those in secondary schools increased three-fold.

The Second Five-Year Plan.

Inaugurated in 1933, the Second Five-Year Plan was completed by April 1, 1937. It was thus completed ahead of time. During the period of this Plan, collectivisation of agriculture was nearly completed, 93 per cent of the peasant households having joined the collective farms by the end of 1937. And 99 per cent of the grain crop area in the Soviet Union was accounted for by the collective farms. Real wages of workers doubled. Consumer's goods were in plentiful supply and the economy was in a flourishing condition. In 1938, the gross output of industry was said to be over nine times what it had been in 1913 and nearly 100 per cent of this output came from the socialised mines and factories. Towards the end of the Second Five-Year Plan (and also in 1938) a number of sensational trials were held—the famous Moscow trials—in which a large number of high officials were summarily tried on various charges including sabotaging of the Plan, treason, plotting with the Germans to re-establish capitalism in the country and were executed or banished. Among those who fell victims to these

trials were General Tukhachevsky, the leading military strategist of the Soviet Union, Genrich Yagoda, head of the OGPU, Bukharin, the leading intellectual and for a long time the editor of the Party paper, *Pravda*, Rykov, who was the Premier of the Soviet Union from 1924 to 1930 and Sokolnikov, a leading Bolshevik and a former Finance Commissar.

The Third Five-Year Plan.

The Third Five-Year Plan was put into operation in 1938 but its implementation could not be carried on according to schedule because of the Second World War which broke out in 1939. In fact, production received a set-back in many spheres. The production of steel and defence industries, however, were maintained at a high level.

The Fourth Five-Year Plan.

A Fourth Five-Year Plan was put into operation in 1946. The chief aims of this Plan were rehabilitation of the areas devastated during the war and expansion of the industries, particularly the heavy industries. The Plan was completed in 1950 —in four years and three months. The Plan, it was claimed, produced 17% more than the target. The output of steel in 1950 was 27,000,000 tons compared with a target of 25,400,000 tons and the petroleum output was 37,820,000 tons compared with a target of 35,400,000 tons.

The Fifth Five-Year Plan (1951-55).

The Fifth Five-Year Plan was in operation from 1951 to 1955. The targets fixed for 1955 were : oil almost 70 million tons ; steel 44 million tons ; pig iron 34 million tons ; coal 373 million tons ; electric power over 162,000 million kilo-watt hours. These targets were overfulfilled. During the Plan period, the total industrial production rose 85 p.c. The output of steel in 1955 was 45·3 million tons ; oil 70 million tons ; coal 391·3 million tons ; pig iron 33·3 million tons ; electric power 170,200 million kilowatt hours.

The Sixth Five-Year Plan (1956-60).

The Sixth Five-Year Plan was inaugurated in 1956. The Plan aims at raising industrial production by 65 per cent. The

main industrial targets for 1960 are : steel 68·3 million tons ; coal 593 million tons ; oil 135 million tons ; electric power 320,000 million kilowatt-hours. The main target for agricultural production is a 70 p.c. increase in gross grain harvest so as to reach 180 million tons.

The resolution on the Sixth Plan adopted at the Twentieth Congress of the CPSU stated :

"The Twentieth Congress of the C.P.S.U. considers that the Soviet Union now possesses all the requisites for achieving in an historically short period, through peaceful economic competition, its principal economic aim, namely, to overtake and outstrip the most developed capitalist countries in per capita production".

"The principal aims of the Sixth Five-Year Plan of Economic development of the U.S.S.R. are to assure—by means of priority development of heavy industry, continuous technical progress and higher labour productivity—a further powerful expansion of all branches of the national economy and a steep rise in agricultural production and on this basis, to achieve a substantial advance in the material and cultural standards of the Soviet people."

The Soviet Planning Machinery.

Planning being an essential feature of the Soviet administration, the Soviet Union maintains an elaborate machinery for planning. At the head of the planning machinery is the State Planning Commission (*Gosplan*), a body created in 1921. Each Union Republic maintains a planning commission and there are planning agencies in Autonomous Republics, Autonomous Regions, territories, oblasti and the districts. In addition to these, each Ministry of the U.S.S.R. has a planning sub-division. So have the main departments of the Union Republics and other local governments. The Councils which control the industries, many state farms and even many individual factories maintain planning sections. The plans prepared by these various agencies are finally put together and integrated into the Five-Year Plans by the State Planning Commission (*Gosplan*). It must be understood, however, that the main features of the Plans are

always determined by the leaders of the Party. The chairman of the State Planning Commission is a member of the Central Cabinet—the Council of Ministers of the U.S.S.R.

Property in the Soviet Union.

In the Soviet Union, there are two kinds of property—socialist property and private property, the great bulk of property falling in the first category. Socialist property is of two kinds—(a) state property which belongs to the whole people and (b) co-operative and collective-farm property which belongs to the co-operative societies and collective farms. The following are the state property—land, minerals, waters, mills, factories, mines, rail, water and air transport, banks, communications, state farms, machine and tractor stations, municipal enterprises and the bulk of the dwelling houses in cities and industrial localities. The following are the property of the collective farms and co-operative societies—the enterprises of collective farms and co-operative societies including their livestock, implements, products and common buildings. "The land occupied by the collective farms" says the Constitution, "is secured to them for their use free of charge and for an unlimited time, that is, in perpetuity." Every household in a collective farm is given, in addition to its income from the farm, a small plot of land for personal use and is allowed to have as personal property a dwelling house, livestock, poultry and minor agricultural implements. It should be noted that since land is state property or property belonging to the whole people, it cannot be the property of either the collective farms or of any person. The land occupied by the collective farms is secured to them by the state for use and is held by them in perpetuity. And the small plots of land given to individual households in collective farms are given for *personal use* and not as *personal property.*

The following are recognised by law as the personal property of the citizens—incomes and savings from work, dwelling houses, articles of personal use and domestic economy and subsidiary home enterprises. And contrary to common belief, personal properties can be inherited in the Soviet Union as a matter of constitutional right.

Private Enterprise.

Nearly hundred per cent of the economy of the Soviet Union being socialist economy, that is, economy based on collective ownership and control, private enterprise constitutes an insignificant element in the total economic picture. Nevertheless, as the Constitution says, "the law permits the small private economy of individual peasants and handicraftsmen based on their own labour and precluding the exploitation of the labour of others."

Soviet Agriculture.

Agriculture in the Soviet Union, as has been pointed out, has been almost wholly collectivised. Over 99 per cent of the peasant families are today members of the collective farms.

Collective Farms (Kolkhozy).

At the end of World War II, the number of collective farms in the Soviet Union was over 2,50,000. A programme of consolidation carried out since 1950 has, however, greatly reduced their number. The Report of the Central Committee of the Communist Party of the Soviet Union to the 19th Party Congress held in October, 1952, said : "At the present time we have 97,000 amalgamated collective farms instead of the 254,000 small collective farms in existence on January 1, 1950." In 1956, the collective farms numbered 83,000. In each farm live a number of peasant families whose adult members (of the age of 18 or over) constitute the farm meeting. The farm meeting elects an executive committee and a chairman and other office-bearers to allot work and to maintain supervision. The work of each farm is usually divided among a number of brigades, each brigade taking care of duties of a particular kind. Formerly the produce of the farm used to be equally shared by the members but this has been replaced by a system under which crops are distributed according to the number of days worked and also according to responsibility assumed. Records of the work performed by the farmers as well as their share in the income of the farm are kept in workday units. Improvements in the farm are effected out of the surplus left over after regular distribution of the shares. Each farm has to give an annual tax to the Government.

Originally, the peasants, who had been deprived of personal ownership of land, did not feel much enthusiasm for collective farming and were apathetic towards their duties in the farms. Many of them also killed their domestic animals and ate them up rather than use them in the collective farms. All this had a serious effect on crop production and resulted in a famine in 1931-32. The Government took a serious view of the situation and large-scale arrest and incarceration of the recalcitrant peasants followed. Since 1933, however, the peasants have been given an incentive in the shape of small plots of land (usually an acre or so) for the personal use of each family, the produce of which it can enjoy and dispose of in whatever way it likes. The peasant families have also been allowed to hold and enjoy certain kinds of personal property such as minor farm implements and livestock. The state has also stopped making levies beyond a fixed tax. Increase in production therefore means increase in the shares of the peasant families. These measures have resulted in a considerable improvement in the situation.

State farms (Sovkhozy).

Apart from the collective farms, there are state farms in the Soviet Union which are directly managed and run by the state. The workers in the state farms receive wages like the workers in the factories. The size of an average state farm is much bigger than the size of an average collective farm and the production in the state farms is in most cases more mechanised and efficient. As a rule each state farm specialises in certain kinds of products. The total number of state farms in 1956 was 5,099.

Mechanisation of Agriculture.

Agriculture in the Soviet Union has been highly mechanised. The mechanical equipment of the collective farms has been continually improved during the past two decades. And there are machine and tractor stations, totalling 8,742 in 1956, throughout the Soviet territory. Each station serves usually a number of collective farms, doing the work of ploughing, repairing and threshing etc., which require heavy machinery. The state farms have their own tractors and combines as well as the expert staff necessary to operate them.

Soviet Industry.

Barring an insignificant sector, the entire industrial field in the Soviet Union is monopolised by the State. Formerely, all the heavy industries were under the exclusive control of the Central Government, while most of the light industries were managed and supervised by the Governments of the Union Republics under the general control of the Centre.

The management of the industries used to be highly centralised, each industry being an empire controlled and directed from Moscow. And the industries were mostly organised under trusts, the steel industry being under the steel trust, the oil industry under the oil trust and so on. In recent years, however, there has been a marked trend towards decentralisation and management on the territorial principle. Since the middle of 1957, under the Law "on the Further Organisational Improvement of the Management of Industry and Construction", the Soviet Union has been divided into a number of zones called economic administrative areas. The management of industries in these areas has been placed in the hands of Councils appointed by the Union Republics. Thousands of industrial establishments which were formerly under the jurisdiction of the Union have been placed under these Councils. The aim of the reorganisation is to shift the centre of gravity of industrial management from the Ministerial headquarters to the local areas. The Councils, however, function under the general control and guidance of the Council of Ministers of the U.S.S.R.

Formerly worker's committees used to run the plants in the factories. This system has later been replaced by the system of one-man responsibility so that at present each plant is under a single manager. There are, however, workers' committees, consisting of workers or their representatives, in the factories. The function of these committees is usually to discuss production problems and to offer advice to the managers.

Tsarist Russia was an industrially backward country. Under the present regime, the Soviet Union has not only developed into a highly industrialised country, it is today a predominantly industrial country rather than an agricultural one. In 1950, the year in which the Fourth Five-Year Plan was completed, the gross industrial production in the Soviet Union reached a volume which was more than twenty times the figure

ever reached in Tsarist Russia. In 1956, the industrial production was 30 times that of 1913.

Banking and trade.

In the Soviet Union banking is a state monopoly. The State Bank of the U.S.S.R. (*Gosbank*) is the authority charged with the management of the currency system and the floating of Government loans. It also receives tax payments. It has numerous branches throughout the Soviet territory. There is a State Savings Bank with thousands of branches in which people may deposit their savings. There are also some special banks to provide credit facilities to the state factories, in the rural areas, for foreign trade and the like.

Wholesale trade in the Soviet Union is a state monopoly. And as for retail trade, two-thirds of it are handled by the government and local authorities and roughly one-fifth by consumers' co-operatives. Nearly 15 per cent of the retail trade is carried on by farmers in what are known as farmer's markets. In these markets the farmers bring for sale the surplus of the produce raised by them on the plots of land alloted for their personal use.

The consumers' co-operatives have an elaborate, pyramidal organisation. The local societies elect representatives to the *raion* councils which in their turn send representatives to the higher bodies and so on till the entire system heads up in a body known as the Central Union of Consumer's Co-operative Societies (*Cntrosojus*). It should be understood that the consumers' societies are, like other organisations, controlled by the Party and the Government.

Socialised Wage.

The Soviet Union has made extensive provision for hospital and medical facilities which are available to the people free of charge. The state has also provided extensive housing and educational facilities. The state, moreover, has adopted social insurance programmes the benefits of which are available to old, sick and disabled workers. The benefits of all these schemes may be called "socialised wage" which the workers receive in addition to the wage received by them in cash. The 'socialised wage' constitutes an important element in the standard of living of the Soviet workers.

CHAPTER XII

THE SOVIET UNION AND DEMOCRACY

The question whether the Soviet Union is a democratic country or not has been a subject of vehement controversy over the past three decades and the controversy still continues unabated. While the Communists and their supporters have maintained that the Soviet political system ensures the largest measure of democratic freedom ever known to mankind, others have held that it is the worst dictatorship in history. The passion with which these two opposed views have been urged, however, makes it clear that it is a difference of point of view that is at the root of the controversy. While the Communists look at the question from a certain angle, others look at it from an eitirely different angle and arrive at a conclusion which is diametrically opposed to that of the Communists. In other words, one's answer to the question whether the Soviet system is a democratic one depends on what one understands by the word 'democracy.'

If democracy means participation by masses in public affairs including the governmental processes, certainly Soviet Union is the most democratic country in the world for in no other country such a large percentage of the population participates the administrative processes or in the elections as in the Soviet Union. Large numbers of people in the Soviet Union participate in the work of the Soviets, apart from their regular members. As for voting, in the first general elections under the Stalin Constitution 96.8 per cent of the electorate voted, a percentage unequalled elsewhere. In the economic field also far larger numbers of people take part in the discussion of the problems relating to production in the Soviet Union than in any other country. The Soviet trade unions, consumers' co-operatives and Youth organisations also have a membership which, proportionately speaking, is not paralleled in any other country. If, therefore, democracy means mass participation in public affairs, Soviet Union is the most democratic country in the world.

If, however, democracy means not only *participation* in, but also *control over*, public affairs by the masses, the Soviet Union is not a democratic country but a totalitarian one. For, whereas the Soviet masses participate in public affairs in very large numbers, the control over these affairs does not lie in their hands. It is the Communist Party, the only legal party in the Soviet Union, which controls all organisations and their functions in the Soviet Union. It is the Party which runs the Government and through it controls the entire economic life in the State. And according to the Constitution itself, the Communist Party is "the leading core of all organisations of the working people, both public and state." It is the Party which guides and determines the policies of the trade unions, youth organisations, consumers' co-operatives and other organisations in the Soviet Union.

If, again, 'democracy' means freedom from economic insecurity, there is democracy in the Soviet Union because it has eliminated unemployment and ensured to every citizen work, a reasonable, if not high, standard of living and leisure, as well as cultural opportunities of a highly valued character. If, on the other hand, democracy means freedom of speech and expression and the right to organise political parties to effect a change of Government, there is no democracy in the Soviet Union.

Thus when the Communists assert that the Soviet Union is the most democratic country under the sun, they put stress on "demos" and not on "Kratio" (-cracy)—on participation by masses and not on control by masses—on 'economic freedom' and not on 'political freedom.'

The fact is that there is no democracy in the Soviet Union in the commonly understood sense of the term. Political power is there a monopoly of the Communist Party. There is also no freedom of speech in the Soviet Union and criticism of the top leadership is not allowed. According to Khrushchev's sensational disclosures at the Twentieth Congress of the Party, if a person questioned the wisdom of Stalin's policies, he would face either condemnation to a labour camp or physical liquidation. The possibility of opposition to the regime is also sought to be nipped in the bud by a process of indoctrination and thought

control which can be termed regimentation of the mind. Education which is entirely controlled by the State has been made a powerful instrument of propaganda and indoctrination. The Press, Radio and Cinema also have been put to a similar use. They, so to say, deify the leadership and continually stress the supposed infallibility of Marxism-Leninism in a manner that tends to close the minds of the youths to all other points of view. Even books have been purged in the Soviet Union to bring them into accord with the points of view of the leaders. It is very significant, as a critic of the Soviet Union has pointed out, that, in Stalin's life-time, a large number of places in the Soviet Union were named after him as well as a large number of firms, hotels and places of public entertainment, but not a single child in the Soviet Union was named after him. Even artists in the Soviet Union are not allowed to produce things that might imply criticism of the Party line or of the leadership or of the Party ideology. The Russian Orthodox Church itself, it is believed, has become an instrument in the hands of the State. The relation between an atheistic Party and the Church, it is rightly said, cannot be explained except by the assumption that the latter has allowed itself to be a tool in the hands of the former. The Soviet elections, again, in which only a single candidate is allowed to stand in a constituency, are the very antipodes of all that is meant by democracy.

Dictatorship of the proletariat has meant in practice dictatorship of the Communist Party ; it could not mean anything else in a situation in which no other party has the right to exist. But there are critics who assert, and not without reason, that dictatorship of the Party has an inherent tendency to get transformed into dictatorship of a small clique, or even that of one man, as happened under Stalin.

Since the death of Stalin, it appears, there has been a trend towards liberalisation in the Soviet Union, and the Government's tight grip on civil liberties has been relaxed to a limited extent. There has been, however, no fundamental change in the situation. The present ruling group has been maintaining the same old system which produced Stalin and Stalinism they now denounce —namely, a one-party system based on forcible suppression of the Opposition. There can be no doubt that even now—the post-

Stalin era—a small group of persons, the top leaders of the Party and the bureaucrats under them, are controlling the Soviet administrative machinery—the Leviathan Government that enters into every aspect of life in the state—and it is they who are the real rulers in every sense of the term in the Soviet Union.

The conclusion is thus inescapable that the Soviet system ensures only government of the people and certainly not government by the people. The principle of democratic centralism itself, which is supposed to be the guiding principle both in the party and the state, embodies far more centralism than democracy, far more pull from the top than pressure from below. The Soviet State is thus a pyramid that rests on its apex rather than on its base.

CHAPTER XIII

THE FRENCH CONSTITUTION

The Historical Background : The year 1789 constitutes a landmark in human history. In France, this year is looked upon as marking the beginning of the modern era. That year witnessed the beginning of the French Revolution which ultimately swept away a corrupt monarchical regime, based on privilege and injustice, and laid the foundations of a republican system of Government based on recognition of the right of the people to govern themselves.

The regime which existed in France before the Revolution is known as the *Ancien Regime* or the Old Regime. The *Ancien Regime* was a typically corrupt and unjust system of Government based on absolute monarchy. The King claimed to rule by Divine Right. The poor common people had to bear almost the entire burden of taxation The nobility and the clergy enjoyed great privileges. In short, the rich few exploited the poor many and battened on their life-blood.

Injustice never fails to create discontent. The *Ancien Regime* caused grave discontent among the common people The flames of discontent were fanned by a group of intellectual leaders, the most notable among whom were Voltaire, Montesquieu and Rousseau. Voltaire bitterly attacked the despotism of the church and thereby weakened the foundation of authority, although he did not criticise the institution of monarchy. Montesquieu stressed the need for separation of powers as the best way to safeguard liberty. Rousseau taught the doctrine of popular sovereignty. The influence of these intellectual giants on the forces of Revolution cannot be exaggerated. They provided the intellectual ammunition with which the revolutionaries blew up the *Ancien Regime.*

In 1789, financial difficulties forced Louis XVI to convoke States-General, a representative body, which had gone without

a session for 175 years. The States-General met at Versailles early in May. It consisted of representatives of three estates, namely the nobles, the clergy and the Third Estate, that is, the middle classes. In the middle of June, the representatives of the Third Estate declared themselves to be the sole representative body of France and thereby set in motion the forces of Revolution. This body, which took the name of the "National Assembly", was soon joined by the clergy. The National Assembly adopted in August, 1789, the "Declaration of the Rights of Man and of the Citizen." This famous Declaration stated : Men are born free and remain free and equal in rights ; men have some natural and inalienable rights, namely, liberty, property, security and resistance to oppression and the aim of all political association is the preservation of these rights ; sovereignty resides in the nation ; everybody has a right to participate, personally or through a representative, in the law-making processes.

The Assembly then proceeded to frame a new constitution. This constitution did not abolish the institution of monarchy but limited its powers and vested the legislative power in a single chamber to be chosen by a tax-paying electorate. Events, however, moved fast and the institution of monarchy soon stood completely discredited in the eyes of the people because of betrayal of the national interests by the Royal household. In September, 1792, the Convention, a newly elected body, voted the deposition of the King who was guillotined on January 21, 1793.

The First Republic : The First Republic came into existence in September, 1792 when the institution of monarchy was abolished. The rise of Napolean, however, curtailed to a very great extent its Republican features. The Constitution of 1799, sponsored by Napoleon, vested all executive power in three consuls, of whom the First Consul was given the real power. Napoleon was named the First Consul in the Constitution. The consuls were to be elected every ten years. But, in 1802, Napoleon was made the First Consul for life. In March, 1804, he assumed the title of the Emperor of the French. Thus ended the life of the First Republic.

The Second Republic : Napoleon was defeated by the Allies at Waterloo in 1815 and after his abdication and surrender, the Bourbons were restored to the throne of France. In 1830, the Bourbons were once again overthrown and the Orleanist Louis Philippe was proclaimed the King of the French. The Orleanist monarchy was overthrown in the Revolution of 1848 which ushered in the Second Republic of France. Under a Republican Constitution, Louis Napoleon, nephew of Napoleon Bonaparte, was elected as the President of France. Thus France gave herself a second Republic and a second Bonaparte. And Louis Napolen, following in the footsteps of his great uncle, managed to get himself proclaimed the Emperor of France in 1852. Thus died the Second Republic after a short life of four years.

The Third Republic : Louis Napoleon's imperial regime collapsed in 1870 when, in the Franco-Prussian war, the French Army was defeated and the Emperor became a prisoner in German hands. In the power vacuum caused by the foreign invasion and national defeat, the third Republic of France was born. A few popular leaders in Paris had taken the initiative to proclaim a Republic and to organise a provisional government.

This provisional Government arranged an armistice with the Germans and took steps to hold elections for the constitution of a representative body to take charge of national affairs. This body, known as the National Assembly, was elected in 1871. The National Assembly concluded peace with Germany and administered the country until 1875 when a constitution framed by the Assembly was put into effect. This was a republican constitution. Framed in 1875, this Constitution remained the fundamental law of France for over sixty years.

In March 1939, with the threat of invasion by Hitler looming on the horizon, the constitution was, for all practical purposes, suspended and the cabinet was given power to rule by decree. In December, 1939, with World War II on, this grant of power was extended for the duration of the conflict. In June

1940, the French resistance collapsed in the face of the overwhelming might of Hitler's forces, and France sought an armistice. Under the harsh terms of the armistice, dictated to a defeated nation by a vengeful dictator, the French military forces were disarmed and disbanded, and one-half of the country was kept under German occupation—the occupying forces were, of course, to be maintained at French expense. In the unoccupied half of the country, a Government headed by Marshal Petain, and supported by fascist elements, was set up with German help. It had its headquarters at Vichy. The Vichy regime was a purely dictatorial one and symbolised the death of the Third Republic.

The Fourth Republic : As France lay prostrate in defeat and humiliation, with one-half of her territory under foreign military occupation and the other half under a dictatorial regime, the Allied landing on the Normandy beaches in June, 1944 heralded the dawn of the day of deliverance. In the wake of the advance of the Allied forces, the Provisional Government of the French Republic which had been formed by General De Gaulle in Algiers entered France and established itself in Paris in August, 1944. The Vichy Government soon disappeared. Germany surrendered in May, 1945.

In October 1945, the French voters went to the polls to elect an Assembly and the majority of them expressed the view that the Assembly should be charged with the framing of a new constitution. The constitution framed by the Constituent Assembly was put to a popular vote in May, 1946. It was rejected. The main reason for the rejection of the constitution, it is believed, was that it provided for a unicameral Parliament whereas the majority of the voters favoured a bicameral body.

A second Constituent Assembly was elected in June, 1946. The constitution framed by this body was put to a popular vote in October, 1946 and was approved. This is the Constitution of the Fourth Republic.

The new Lower House, the National Assembly, was elected in November, 1946 and the Upper House, the Council of the Republic, in December. In January, 1947 Vincent Auriol

was elected the first President of the Fourth Republic. Thus came into existence the Government of the Fourth Republic.*

GOVERNMENT OF THE THIRD REPUBLIC

Born in 1875, the Third Republic met with its end in the confusion caused by Hitler's onslaught during World War II. The main features of the Government of the Third Republic were a bicameral Parliament, a nominal executive head called the President, a responsible Ministry, a highly centralised administration and a judicial system characterised by the existence of two distinct categories of courts namely, ordinary courts and administrative courts.

The President : The President was the executive head and the titular head of the state. He was elected for a seven-year term by an absolute majority of the members of the two Houses of Parliament sitting together as a National Assembly. Under the Constitution, a President could be re-elected but, prior to 1939, a convention had been almost established against a second term, no president having been elected for a second term since 1887. In 1939, however, with the war thereatening to break out, President Leburn was elected for a second term.

Although in theory the French President was the supreme embodiment of the executive power, he was in reality a nominal executive head. The Constitution provided that "each of the acts of the President of the Republic must be countersigned by a minister." This meant that the President's power could only be exercised through a minister. The President had to exercise his powers on the advice of ministers. The ministers, being reponsible to Parliament for their policies, could justifiably claim the right to formulate those policies. The President, however, symbolised the unity and majesty of the state. He enjoyed, because of his position, great prestige. The President, therefore, although he lacked real power, could wield considerable influence over administrative affairs. Particularly, in the field of

*The fourth Republic was overtaken by a crisis in the middle of 1958 —see end of this Chapter.

foreign affairs, he could have great influence through personal contacts with the heads of other states.

Parliament : Parliament consisted of two houses, the Chamber of Deputies and the Senate. The two chambers enjoyed co-equal powers in legislation. Any Bill, except a money Bill, could originate in either House. The money Bills had to be introduced in the lower House, that is, the Chamber of Deputies. The money Bills however, could be amended by the Senate. No Bill could become law unless it was passed by both Houses.

The Chamber of Deputies : The Chamber of Deputies, the lower House, was elected directly by the voters, and had a four-year term. The qualifications required of the voters was that they must be of the male sex, must be at least 21 years of age and must be citizens possessing full civil rights. Women were thus excluded from the franchise. Although the President possessed the power to dissolve Parliament, this power was never exercised since 1887. Elections to the Chamber, therefore, used to take place with almost unvarying regularity at four-year intervals. Parliament, however, could extend the life of a given Chamber and sometimes it exercised this power, as it did in 1939. On the eve of World War II, the membership of the Chamber of Deputies stood at 618. Of these members, 599 represented France proper, nine represented Algeria and 10, other overseas colonies.

The Chamber of Deputies maintained a large number of standing committees, each dealing with a particular subject.

The Senate : The Senate was an indirectly elected body. The Senators were elected by electoral colleges in each department, consisting of the departmental Deputies, the members of the departmental councils and the representatives of the municipal councils in the department. It was one of the most powerful second chambers in the world. Its powers were equal to those of the chamber of Deputies except only in one respect, namely, that the latter had the sole power of initiating financial legislation. The Senate could, of course, amend financial Bills. The Senators had a nine-year term, with one-third of the members

of the body retiring every third year. The Senate, observers agreed, was a very able legislative body and Lord Bryce opined that no other legislative body in modern times had shown a higher average standard of knowledge and ability among its members. The Senate, however, was, speaking generally, a conservative body. Although the chamber of Deputies gave its support to the proposal for woman suffrage on as many as nine occasions, the Senate blocked it each time.

The Ministry : The President was given the power to appoint ministers. He would appoint a Prime Minister in his discretion and would appoint other ministers on the latter's advice. Because of the multi-party system, which is almost an unchanging feature of the French political life, the President would sometimes enjoy a real discretion in selecting the Prime Minister, but very often his choice would be circumscribed by the political groupings existing at the time.

The ministers were responsible to Parliament. The constitution of the Third Republic expressly provided : "The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." Thus, the ministers were responsible to both houses of Parliament, which is in sharp contrast to the position in Britain where the Ministry is responsible to the lower House alone. And at least on a few occasions, the Ministry in France was thrown out of office because of lack of confidence of the Senate. But a convention had grown up in the country that normally a Ministry should remain in office as long as it enjoyed confidence of the lower House. But for this convention, it would have been difficult for a parliamentary system of government to function properly in France.

Since the constitution itself made the ministers both collectively and individually responsible to the chambers, collective responsibility as understood in France differed sharply from what the term means in British politics. In France, "it was no uncommon thing for an individual minister, under fire in the chamber or Senate, to be thrown to the wolves by his

colleagues." The fact that the Ministries in France were always coalitions of heterogenous elements partly contributed to this situation.

The Ministries were very short-lived. The French political scene has always been characterised by the existence of a multiplicity of parties. No party ever enjoyed an absolute majority in Parliament. Ministries had, therefore, always to be formed on a coalition basis. Since Coalition Ministries are proverbially unstable, the French political life has always been characterised by instability. In the Third Republic, the average life of the Ministries was less than a year. "Between 1870 and 1934 —a period of 64 years—France had a total of 88 ministries, with an average life of less than nine months."

Ministerial Instability : The main reasons why the Ministries in the Third Republic were so short-lived are the following : (1) Mutiplicity of parties, which made coalition governments inevitable. (2) The habit of most of the French political parties continually to shift their positions so that French politics were always in a state of flux, with the parties continually grouping and regrouping themselves and alliances being formed and dissolved overnight. (3) Lack of internal cohesion in most of the parties which resulted in the splitting of votes on important issues, some members of the same party voting for a proposal and the others voting against. (4) Responsibility of the Ministry to both Houses, a circumstance which resulted in a Ministry enjoying the confidence of the chamber being some times forced out of office because of hostility of the Senate. (5) The difficulty of dissolving the chamber [Under the constitution, the Chamber of Deputies could not be dissolved without the consent of the Senate. The Chamber was dissolved only once during the Third Republic—in 1877. And since in that year the device of dissolution was used in an effort to restore the monarchy, this political weapon has always been looked upon with suspicion in France since.]

The Administration : In the Third Republic, the administration was highly centralised, as it still is. Apart from the fac

that the country's constitution was a unitary one, the national government exercised a very large measure of control over local administration. In fact, many of the important offices in local Government were filled by persons who belonged to the national civil service.

The Judiciary : There were two parallel systems of courts, one dealing with disputes between private individuals, the other dealing with disputes arising out of relations between private individuals and officials. This system of judicial administration which still exists in France will be discussed in connection with description of the judicial system in the Fourth Republic.

GOVERNMENT OF THE FOURTH REPUBLIC

The General Features of the Constitution of the Fourth Republic : The constitution of the Fourth Republic declares that France is a "Republic, indivisible, secular, democratic and social" and the motto of the Republic is "Liberty, Equality, Fraternity."

The constitution confers voting rights on all French citizens and nationals of both sexes, who are majors and enjoy civil and political rights.

The constitution of the Fourth Republic, like that of the Third, is a unitary one and provides for a Parliament, a President and a Council of Ministers. It contains some basic provisions for selection and appointment of judges and judicial administration. It also provides for local administration. It sets up the French Union which, it says, "shall be composed, on the one hand, of the French Republic which comprises Metropolitan France and the overseas departments and territories, and, on the other hand, of the Associated Territories and States."

The preamble to the constitution reaffirms the rights proclaimed by the Declaration of Rights of 1789 and proclaims certain other rights such as the right to education, the right to strike, the right to participate in collective bargaining and the right of the child, the mother and the aged worker to material security rest and leisure. The preamble also declares that the

French Republic "will not undertake wars of conquest and will never use its arms against the freedom of any people."

The rights proclaimed in the preamble, it appears, are not legally enforceable. The preamble is rather a general statement of principles which the state should follow in formulating its policies.

Amendment of the Constitution: The constitution lays down the following procedure for amendment. The proposal for amendment must be adopted by an absolute majority of the members of the National Assembly (the Lower House of Parliament). The proposal must thereafter be referred to the Council of the Republic (the Upper House). Unless the Council of the Republic adopts the proposal by an absolute majority, the National Assembly must give the proposal a second reading not less than three months after it was first adopted by the latter. Thereafter, the National Assembly must draw up a Bill to amend the constitution and the Bill must be adopted by Parliament according to the procedure followed in the case of ordinary Acts of the Legislature. The Bill must then be submitted to a referendum. But the referendum will not be necessary if the Bill has been adopted on second reading by a two-thirds majority in the National Assembly or by a three-fifths majority in both Houses—majority, in this case, means majority of the members present and voting. The Bill must be promulgated by the President as a constitutional law within eight days after its adoption.

It will thus be seen that the Council of the Republic has been given a subordinate position in matters relating to constitutional amendment. The initiative in this matter lies with the National Assembly. And if the National Assembly can adopt the proposal and the Bill by the required majorities, it can have its own way, in spite of the Council's opposition, in amending the constitution. The constitution of the Third Republic required formal declaration by the two Houses separately that an amendment was desirable and adoption, thereafter, of the proposed amendment by an absolute majority of the members of both Houses meeting jointly at Versailles as a National Assembly. This

means that no amendment could be proceeded with without the consent of the Upper House. Thus we see that the Upper House in the Third Republic enjoyed greater powers in matters relating to constitutional amendment than the Upper House in the Fourth Republic.

The constitution of the Fourth Republic imposes certain restrictions on the amending power, which are as follows: (1) No amendment that affects the republican form of government shall be entertained. (2) No procedure for amendment may be undertaken when the country or any part of it is under foreign occupation.

The Constitutional Committee: The courts in France do not possess the power to invalidate a law on the ground that it conflicts with the provisions of the coustitution. The constitution of the Fourth Republic provides for a novel device to test the constitutionality of laws. The constitution sets up a body, known as the Constitutional Committee, consisting of 13 members, namely, the President of the Republic, the President of the National Assembly, the President of the Council of the Republic, seven members chosen by the National Assembly at the beginning of each annual session by proportional representation and outside its own membership and three members elected in a like manner by the Council of the Republic. The President of the Republic presides over this body.

The Council of the Republic has the initiative in the matter of having the constitutionality of laws examined. After a law has been passed by the National Assembly, the Council of the Republic may decide by an absolute majority that the constitutionality of the law ought to be examined. Thereafter the President of the Republic and the President of the Council of the Republic must jointly request the Constitutional Committee that it examine the said law. All these steps must of course, be taken within the period allowed for the promulgation of the law. The Counstitutional Committee, after it has received the request, must try to bring about an agreement between the two Houses of Parliament. If it fails to do so, it must decide on the

constitutionality of the law within five days after it has received the request—two days in case of emergency.

If, in the opinion of the Constitutional Committee, the provisions of the law in question are inconsistent with the provisions of the Constitution, the law will be sent back to the National Assembly. If Parliament adheres to its original vote, the law will not be promulgated until the Constitution has been amended.

Since in the matter of amendment of the Constitution, the National Assembly, provided it can mobilise the support of the required majority, can make its will prevail, it is obvious that in case of conflict between the constitution and Parliamentary law, it is the law which is likely, in most cases, to carry the day. In other words, under the scheme of the constitution, such a conflict is supposed to result in the amendment of the constitution rather than invalidation of the law. It has been rightly remarked that the constitution of the Fourth Republic, instead of setting up an organ for the determination of the constitutionality of laws, has laid down a procedure for the determination of the legality of the constitution itself.

THE LEGISLATURE IN THE FOURTH REPUBLIC

Seeming Bicameralism : The constitution of the Fourth Republic provides for a bicameral Parliament. The Lower House is known as the National Assembly and the Upper House as the Council of the Republic. The Parliament is, however, bicameral in appearance only and not in reality. It represents a disguised form of monocameralism. The powers of the Upper House are so limited that it can hardly be called a legislative chamber. It is, in reality, an advisory body having the power of delaying legislation for some time. It cannot prevent the Lower House, the National Assembly, from having its own way in legislative matters. In the event of disagreement between the two Houses, the National Assembly can completely disregard the views of the Upper House and enact legislation by its own independent action.

To put the primacy of the National Assembly beyond all

doubt, the constitution states : "The National Assembly alone shall adopt the laws. It may not delegate this right."

Under the Third Republic, as we have noted, France had a really bicameral Parliament, both Houses of the Legislature being almost co-equal in powers. The Fourth Republic has instituted a system which cannot be called bicameralism in the true sense of the term. A French leader has called it "crippled bicameralism strongly resembling a qualified monocameralism." The French Parliament, it has been rightly said, is a legislature of one and a half chambers.

The National Assembly : The National Assembly is elected on the basis of "universal, equal, direct and secret suffrage." The constituencies are territorial. It has a term of five years

The constitution does not lay down the method of election but leaves it to be determined by ordinary law. And an organic law has provided for a system of proportional representation for the Assembly. The existing Assembly was elected in January, 1956.

At present the Assembly has a total of 627 seats, of which 544 are for Metropolitan France, 30 for Algeria and 53 for overseas territories. (At the election of January, 1956, the seats for Algeria remained unfilled because of civil war).

The National Assembly is one of the most powerful chambers in the world. Under the constitution, the Assembly "alone" enacts the laws. The constitution says further that the Assembly may not delegate this right, which means that delegation of legislative power by the Assembly would be illegal. The intention of the framers of the constitution in laying down this provision was to prevent the passing of laws authorising the Executive to carry on the administration by decrees, as was done in the Third Republic.

The Assembly has the intiative in financial matters and audits the national accounts. No international treaty can be valid until it has been ratified by a legislative act of the National Assembly. The Ministers are collectively responsible to the National Assembly for the general policy of the Cabinet and

individually responsible for their personal actions. The constitution expressly provides that the Ministers "shall not be responsible to the Council of the Republic." The constitution of the Third Republic, it will be recalled, made the Ministry responsible to both the chambers.

Among other powers of the Assembly are the following : The Assembly, in joint session with the Council of the Republic, elects the President of the Republic. War cannot be declared without a vote of the Assembly and previous statement of view by the Council of the Republic. The Assembly initiates constitutional amendment and, if it can mobilise the support of the required majority, can get an amendment adopted as part of the constitution by its own independent action. The Assembly has power to indict the President of the Republic for high treason. In case of such indictment the President is to be tried by the High Court of Justice. The Assembly itself elects the High Court of Justice at the beginning of each legislative session. In the event of a vacancy in the office of the President of the Republic, the presiding officer of the National Assembly is to act as the President of the Republic until a new President is elected.

Universal Suffrage : Under the Third Republic, the Chamber of Deputies used to be elected on the basis of manhood suffrage. In other words, women did not possess the right to vote under the Third Republic. Woman suffrage was first introduced in France in 1944-45 by the provisional government. The constitution of the Fourth Republic has enfrancised women on equal terms with men. The constitution says : "All French citizens and nationals of both sexes, who are majors and enjoy civil and political rights, may vote under conditions determined by the law." Thus the Fourth Republic has universal suffrage in the true sense of the term.

The Legislative Procedure : Except for budgetary and financial Bills and Bills seeking to ratify treaties which must originate in the National Assembly, a Bill may be introduced in either House. Every Bill must be examined successively in the two Chambers with a view to arriving at an identical text. In case

of an ordinary Bill which has been passed by the National Assembly and transmitted to the Council of the Republic, the latter must state its views within a period of two months following such transmission. If the Council of the Republic fails to state its views on the measure within this period, the law will be promulgated in the form in which it has been adopted by the National Assembly. For financial Bills and Bills in regard to which a declaration of urgency may be made by the National Assembly, the constitution lays down special provisions the effect of which is to allow a shorter period for consideration to the Council of the Republic.

In case of disagreement between the two Chambers, the consideration proceeds in the two Chambers. If no agreement is reached within a period of 100 days from the transmission of the text to the Council for the second time, the National Assembly can finally enact the law in the form in which it was last voted by it.

On introduction, a Bill is immediately referred to a Parliamentary Committee. After the Committee has presented its report to the House on the Bill, it is taken up for discussion. The House, first of all, holds a general discussion on the Bill at the end of which the President of the House puts the question as to whether the House desires to "pass to the articles." If this motion is passed, the House passess to a detailed consideration of the article. Amendments can be moved only at this stage. After all the articles have been adopted, comes the last stage of the vote on the Bill as a whole. At this stage only a limited debate of a general nature takes place. After the Bill has been passed by the House, it is transmitted to the other House where it is given a similar treatment.

After a Bill is finally adopted it is sent to the President of the Republic for promulgation. The President must promulgate the law within ten days after the text has been sent to him. If the National Assembly declares an emergency, the Bill must be promulgated within five days after it is sent to the President. If the President fails to promulgate the law within these time

limits, the President of the National Assembly must promulgate it. Within the time limits fixed for the promulgation of laws, the President may, however, send back the Bill to Parliament asking that it be reconsidered by both Houses. Such reconsideration cannot be refused by Parliament. If, however, the Bill is again passed and sent to the President, he cannot refuse to promulgate it.

The Parliamentary Committees: The Parliamentary Committees play a vitally important role in law-making in France. Each House maintains a number of Standing Committees. The National Assembly has nineteen such Committees, the most important of them being the Committees on Foreign Affairs, Finance, Defence and Interior. Each of them consists of 44 members. The Committees are elected annually on the basis of proportional representation (for the groups). The Committees of the Upper House are similar to those of the Assembly. They, however, consist of 30 members each.

Immediately after introduction, a Bill is assigned to a Committee. The Committee considers the Bill and reports to the Assembly, often suggesting changes in its provisions. Sometimes, the changes suggested by the Committee are very drastic. The debate on a Bill begins only after the Committee has reported on it.

The Bill is steered through the Assembly by the *rapporteur* (see below) appointed by the Committee for it. The *rapporteur* and the leading members of the Committee, who have almost unlimited rights of speaking, dominate the discussion. In other words, the Committee is the master of the debate on the Bill.

The French Committees thus wield far greater powers than their British counterparts. And often this power is exercised to defeat Government-sponsored Bills. For both the *rapporteur* and the leading members of a Committee may be seriously opposed to the Government.

The French Parliamentary Committees are bodies which stand, as it were, between the Government and members of

Parliament and the great independence with which they function contritbutes in no small measure to the weak parliamentary position of the French Cabinet.

The Committees, however, play an indispensable role in law-making in France. The French Cabinets are short-lived ; they do not, speaking generally, stay in power long enough to revise the laws they introduce. The Committees remove the defects of hasty drafting and give coherence and consistency to the laws.

The Committees, it must be added, not only exercise general control over law-making, they also exercise such control over the Executive. They can invite Ministers to answer criticism. They frame resolutions on the basis of which the Assembly demands action. They prepare the ground for interpellations (see below) which often unseat the Government. Sometimes, laws require that decrees that may be issued under them must be submitted to the Committees concerned for approval.

The Rapporteur : In regard to each Bill assigned to a Committee, it appoints one of its members as the *rapporteur* or the reporter. The *rapporteur* plays a remarkable role in the legislative process in France. Although he is just an ordinary member of the Assembly, he plays a guiding role in the deliberations of the Committee on the Bill of which he is in charge. He concludes the work of the Committee by writing a report on the Bill. And it is he who, thereafter, steers the Bill through the Assembly, answering criticisms and defending the measure against attack by opponents. This is something which has no parallel in either the British or the American system of law-making.

In Britain, a Government Bill is invariably piloted by a Minister. In the American Congress, the Chairmen of the Committees steer the Bills. In France, as has been just pointed out, ordinary members—the rapporteurs—steer the Bills, not excepting Government-sponsored Bills. The rapporteurs, however, serve the French Parliament well. Each *rapporteur*, being in charge of only one Bill at a time, can put forth his best

effort in dealing with it. Often, the reports prepared by the *rapporteurs* prove highly useful to Parliament, enabling, as they do, the ordinary members to gain a general familiarity with the background of the subject and the issues involved.

Interpellations : Interpellations are questions which are asked of Ministers and which give rise to a discussion and end in a vote. In the Third Republic, the interpellation was frequently used as a weapon to overthrow Ministries. In fact, this was the normal method of unseating Governments in the Third Republic. Nowadays, however, interpellations have declined in importance. In 1952, interpellations were debated only on three occasions, while in 1953, such debates were held only on nine occasions.

The Bureaus : Each Chamber of Parliament elects its Bureau, that is, the Secretariat, annually at the opening of the session. When the two Chambers meet in a joint session to elect the President of the Republic, the Bureau of the National Assembly functions as the Bureau of the joint body.

The Bureau of the National Assembly consists of twenty-four members, namely, the President, six Vice-Presidents, fourteen secretaries and three *questeurs*. The President of the Bureau presides over the sittings of the National Assembly. In his absence, one of the Vice-Presidents takes the chair. The secretaries supervise the counting of the votes, the reporting of the proceedings, the preparation of the minutes and the like. The *questeurs* look after administrative and financial matters.

The Bureau of the Council of the Republic has also a set up similar to that of the Assembly Bureau.

The President of the National Assembly : The President of the National Assembly is a highly important functionary. Apart from presiding over the sittings of the Assembly, he has to perform certain highly important political functions in certain emergencies. In case of death or resignation of the President of the Republic, the President of the Assembly functions as the acting President of the Republic till a new President is elected.

In case of a dissolution of the Assembly preceded by a vote of censure he takes over the office of the Prime Minister and continues in that office till a new Ministry is formed through a general election.

The Constitution of the Fourth Republic has thus given the office of the President of the National Assembly a political character. Even as a presiding officer he is much less neutral than the Speaker of House of Commons in Britain. On important occasions, he even participates in the discussion and voting in the Assembly.

The Council of the Republic : The Upper House of the French Parliament is known as the Council of the Republic. The Constitution lays down that the Council must be elected by communal and departmental bodies by universal, indirect suffrage. It must also be elected on the basis of territorial constituencies. The Constitution further lays down that the number of members of the Council must not be less than 250 nor more than 320. The Assembly may elect by proportional representation councillors whose number must not exceed one-sixth of its total membership.

A parliamentary Act has provided for the composition of the Council. The Council has at present a total membership of 320, elected by territorial electoral colleges consisting of local Deputies (members of the Assembly) and communal and departmental bodies. A large percentage of the members are elected by local bodies in Algeria and other overseas departments and territories. (In 1948, 14 members were elected by the Algerian local bodies and 51 by those of other, overseas departments and territories.) The members of the Council have a term of six years. One-half of the members of the Council retire every three years.

The Council of the Republic is probably the weakest second chamber in the world. It is certainly weaker than the British House of Lords, limited as the powers of the latter are.

The Council can initiate Bills except budgetary and financial Bills and Bills for ratification of treaties, which must originate

in the Assembly. After a Bill has been passed by either of the two chambers, it must be sent to the other chamber with a view to arriving at an identical text. After a Bill has been adopted by the Assembly and transmitted to the Council, the latter must state its views thereon within a period of two months following such transmission. In case of failure of the Council to state its views within this period, the Bill may be promulgated as law in the form in which it was voted by the Assembly. Constitution also makes provisions to ensure that in case of budgetary and financial Bills and Bills of an urgent character the period of delay is less than two months. It is laid down that, for budgetary and financial Bills, the time taken by the Council may not exceed the time previously taken by the Assembly for consideration and voting. In case of declaration of urgency by the National Assembly, the period allowed for the Council is double the period allowed for the Assembly by its procedural rules.

In case of disagreement between the two Chambers, consideration proceeds in both Chambers. If, in case of an ordinary Bill, no agreement is reached within a period of 100 days counting from the transmission of the text to the Council for its second consideration, the National Assembly can finally enact the Bill in the form in which it has been last voted by it or after incorporating in the text last voted by it one or more of the amendments proposed by the Council. The period of delay is one month in the case of financial Bills and fifteen days in the case of Bills considered to be urgent. In computing these periods, the days during which the Assembly may remain adjourned are not taken into account.

The net effect of these provisions is that the Council enjoys only the power of delaying a legislation. It cannot finally obstruct any legislation, if the Assembly is determined to enact it. In other words, the Assembly can enact any legislation by its own independent action, in complete disregard of the Council's opinion.

It must be remembered, however, that the Council of the

Republic enjoys the initiative in referring a Bill to the Constitutional Committee for having its constitutionality examined. The Council, jointly with the Assembly, elects the President of the Republic.

So far no Prime Minister has been a member of the Council of the Republic.

THE EXECUTIVE IN THE FOURTH REPUBLIC

The President of the Republic : The President of the French Republic is elected at a joint session of the two Houses of Parliament. His term is seven years. He is eligible for re-election only once. In other words, the Constitution imposes a limit of two terms in respect of this office. The Constitution does not lay down any age requirement or any other similar requirement for election to this office. It, however, states that members of families that once reigned over France shall not be eligible for the presidency of the Republic.

As in the Third Republic, in the Fourth Republic also the President is only a nominal executive head. Although the Constitution formally vests in the President a long list of powers, it takes away these powers from his hands by the following provision : "Every act of the President of the Republic must be countersigned by the President of the Council of Ministers (the Premier) and by a Minister." This means that the President cannot act except on the advice, and according to the desire, of his Ministers.

The formal powers vested in the President are the following: The President presides over the Council of Ministers and keeps the minutes of the Cabinet meeting in his possession. He promulgates the laws. The Constitution, however, requires that he must promulgate the laws within ten days after their text, as finally adopted, has been sent to him. In case of Bills in respect of which the National Assembly declares an emergency, the time limit for promulgation is five days. Within these time limits, the President may request the two chambers of Parliament to reconsider any Bill sent to him for promulgation. Parliament in

such a situation cannot refuse reconsideration of the Bill. But if the Bill is passed once again by it, the President cannot delay its promulgation any further. The Constitution provides that if the President does not promulgate a law within the time limits fixed by the Constitution, the President of the National Assembly shall promulgate it.

The President designates the President of the Council of Ministers (Premier) and, after the latter has received a vote of confidence in the Assembly, appoints him and the other Ministers. The President signs and ratifies treaties. He accredits diplomatic envoys to foreign powers and receives such envoys from foreign countries. He presides over the Constitutional Committee (discussed earlier). He presides over the Superior Council of the Judiciary. He exercises the right of pardon in the Superior Council of the Judiciary ; the Council hears appeals and expresses opinions, while the President takes decisions and signs pardon decrees.

The President cannot be tried except for high treason. The National Assembly can indict the President for high treason but the trial is to held before the High Court of Justice, a body elected by the National Assembly at the beginning of each legislative session.

The French President, because of his lack of real power, has always been the butt of jokes of political commentators Of the President of the Third Republic it used to be said that he occupied the most pitiable position among living functionaries. But the position of the President in the Fourth Republic is weaker still. Under the Third Republic, although the President was a nominal head, the formal powers vested in him were much greater than those vested in the President of the Fourth Republic. The President of the Third Republic could initiate legislation. He was charged with the execution of laws. And he had power to issue ordinances. Under the Fourth Republic, the President has no power to initiate legislation ; the power of execution of laws has been vested not in the President but in the Prime

Minister. The ordinance-making power, too, has been vested not in him but in the latter.

Although the French President has no real power, he can, particularly if he is a man of personality, exercise great influence over governmental affairs. He not only symbolises the majesty of the state, he also, as has been indicated above, presides over a number of important bodies. A man of personality can easily utilise this vantage position to influence governmental decisions and policies. He can exert a moderating influence when party passions run high, as they often do in France. Because of his access to diplomatic documents and his position as the head of the state, he can wield considerable influence in the field of France's international relations.

The French President and the American President : See chapter on "The Executive." (Ch. XV).

The French President and the Indian President : See Chapter on "The Executive" (Ch. XV).

The Council of Ministers : The Council of Ministers is the real Executive in France. The Council is headed by the President of the Council, that is, the Prime Minister. The method of appointment of the Council of Ministers, which is laid down by the constitution, is as follows : The President of the Republic first designates the President of the Council. The latter then presents himself before the National Assembly to obtain a vote of confidence on the programme and the policy which he intends to pursue. After he has received such a vote of confidence in the Assembly, the President of the Council and the Ministers chosen by him are formally appointed by the President of the Republic.

Thus the appointment of the President of the Council is made conditional by the Constitution on his obtaining a prior vote of confidence from the Assembly. By this provision the framers of the Constitution wanted to emphasise the dominant position the Assembly occupies in the constitutional set-up in

France. In Britain, it is the Cabinet which dominates the political life of the country and plays a guiding and controlling role in relation to Parliament. In France, it is the Assembly which is the master of the situation and controls the Council of Ministers. The Assembly brings into existence and overthrows Governments at its sweet will.

The Ministers, says the Constitution, shall be collectively responsible to the National Assembly for the general policy of the Cabinet and individually responsible for their personal actions. The Council of Ministers is not responsible to the Council of the Republic.

The President of the Council is the key figure in the Council of Ministers. He has been charged by the Constitution with the execution of laws. He, not the President, is the head of the administrative machinery. The Constitution requires that every act of the President of the Republic must he countersigned by the President of the Council (and by another Minister).

As regards other Ministers of the Council, there is a hierarchy among them. In almost every Ministry, there are two or three persons designated as the Ministers of State. They do not hold any portfolio. They deal with general policies. Usually politicians of the first rank are appointed as Ministers of State. Besides them, there are ordinary Ministers holding portfolios. Secretaries of State and under-secretaries, the last two being the lowest in rank.

The Council of Ministers holds two kinds of meetings :—the *Conseil des Ministres* and the *Conseil de Cabinet*. The *Conseil des Ministres* is presided over by the President of the Republic, while the *Conseil de Cabinet* is presided over by the Prime Minister. When the Ministers sit as the *Conseil des Ministres*, only the President, the Prime Minister and other Ministers attend. The members of the Ministry who occupy lower positions in the hierarchy—the Secretaries and Under-secretaries—do not attend such meetings. When the Ministers sit as the *Conseil de Cabinet*, all members of the Government attend. The *Conseil des*

Ministres considers and transacts official business in a formal atmosphere, while the other body considers policies and programmes, particularly from the party point of view, in a less formal atmosphere.

All Ministers have access to both chambers of Parliament. The constitution does not require that Ministers be members of either of the two chambers. Ordinarily,ho wever, only members of Parliament are appointed as members of the Council of Ministers.

The President of the Council : As has been already pointed out, the President of the Council of Ministers, that is, the Prime Minister is the most important member of the Government. There was no provision for the office of a Prime Minister in the Constitution of the Third Republic. The Constitution of the Fourth Republic not only provides for premiership, it confers on the Prime Minister powers which make him far more powerful than his counterpart in the Third Republic in relation to other Ministers and the President of The Republic.

In the Third Republic, the power of execution of laws was vested in the President of the Republic. The Constitution of the Fourth Republic has taken away that power from the hands of the President and vested it in the Prime Minister. The Prime Minister, not the President, is thus the head of the administrative machinery. The Prime Minister also enjoys the power of appointing all civil and military officials, except the judges (and, of course, the Ministers who are appointed by the President). The Constitution, further, vests in him the power of directing the armed forces and co-ordinating all measures for defence. The Prime Minister can issue ordinances and rules for the enforcement of laws. This power was vested in the President in the Third Republic. Among other powers enjoyed by the Prime Minister are his powers to declare a state of siege and to dissolve communal councils.

The Constitution of the Fourth Republic, in short, makes the Prime Minister the most important and powerful functionary

in the government. His powers are comparable to those of the President of the United States. It should also be clearly noted that as a result of the vesting in him of certain important powers which formerly belonged to the President, the position of the latter has become correspondingly weaker.

Ministerial Instability : French Ministries have been proverbially unstable. Throughout the career of the Third Republic, Ministries fell in quick succession. Between 1870 and 1934, France had 88 Ministries. The Fourth Republic also "has fallen into the old rut of unstable and short-lived Cabinets, weak while they are alive and staggering to an ignominious fall, to be replaced by others as weak and short-lived." Between November, 1945 and April, 1958, France had 24 Ministries, their average span of life being a little over 6 months.

The causes of Ministerial instability are the following :

(1) Multiplicity of political parties makes coalition governments unavoidable in France. And coalition governments, representing as they do a compromise between divergent points of view, can seldom be stable. The phenomenon of multiplicity of parties stems from lack of national consensus in France in regard to matters of fundamental importance. On account of various historical, geographical and economic factors, different sections of the French people hold sharply divergent views even on matters that go to the very roots of political life. In Britain, in sharp contrast to the situation in France, there is a far greater homogeneity of ideals and outlook among the citizens. This homogeniety is reflected in the fact that there have always been two major political parties in Britain and the Governments in Britain, as compared to France, have been far more stable.

(2) The lack of internal cohesion in the parties is another factor that contributes to Ministerial instability in France. The French parties, except one or two, such as the communist Party, are not solid, well-knit organisations. Even on important matters party votes may split, different sections of the same party supporting and opposing a motion.

(3) The difficulty of bringing about a dissolution of the National Assembly is another contributory factor in the situation. (This point has been explained below). As a result of the difficulty of dissolving the Assembly, a defeated Ministry has hardly any option except to resign.

(4) The French mind has always been distrustful of strong executives. The constitution of the Fourth Republic also has been framed so as to ensure that Governments can never be strong in relation to Parliament and the latter can always remain the master of the political situation.

Dissolution : Dissolution is one of the well-known methods of resolving a Ministerial crisis. In Britain, a Ministry, if it loses the confidence of the House of Commons, can bring about dissolution of Parliament and order fresh elections. Dissolution is really a method of arbitration by the people between the Legislature and the Executive.

In France, dissolution as a political device was brought into lasting disrepute by the fact that in 1877, when the Chamber of Deputies was dissolved, the device was used in an effort to restore monarchy. Since then this political weapon had fallen into disuse and it was never used a second time during the life of the Third Republic.

In the Third Republic, it may be mentioned, dissolution of the Chamber could not be brought about without the consent of the Upper House, the Senate. This was a restriction unknown to parliamentary government elsewhere. And it added considerably to the difficulty of bringing about a dissolution of the Chamber.

The Constitution of the Fourth Republic provides for dissolution but, true to the French tradition, makes it subject to a number of conditions. In the first place, no Assembly can be dissolved before the expiration of its first 18 months. Secondly, a dissolution can be brought about only if two Ministerial crises involving no-confidence and censure occur within a period of

18 months. The Constitution further provides that if the dissolution is preceded by the adoption of a motion of censure, the Prime Minister must vacate his office and the President of the Republic must appoint the President of the National Assembly to that office for the interim period. Elections must take place at least twenty and at most thirty days after the dissolution. It will thus be seen that, although dissolution is supposed to contribute to Ministerial stability, one of the first effects of a dissolution preceded by a vote of censure is the removal of the Prime Minister.

It is interesting to note that Prime Minister M. Faure, defying a tradition of long standing, dissolved the National Assembly on December 1, 1955. This was the first dissolution in 78 years.

THE JUDICIARY IN THE FOURTH REPUBLIC

The French Judicial System : The existence of a dual hierarchy of courts is one of the most important features of the French judicial system. Whereas in Britain the courts belong to a single integrated system, in France there are two sets of courts, namely, the ordinary courts and the administrative courts. Among other important features of the system are the following : (1) The judges in France are appointive as in Britain. But whereas in Britain the judges are appointed, for all practical purposes, by the Government of the day (the cabinet), in France they are appointed by the President on the advice of Superior Council of the Magistracy. (Although appointments by the President must bear a Ministerial countersignature, in this case it is purely formal.) The Superior Council of the Magistracy (or the Superior Council of Judiciary, as it is also called), consists of the President of the Republic, the Minister of Justice, six members elected by the National Assembly, four judges representing various categories of judges and two members appointed by the President to represent the legal profession. (2) The Constitution ensures the independence of the judges. The judges cannot be removed except on the recommendation of the

Superior Council of the Magistracy. "The presiding judges," says the Constitution, "shall not be removable." (3) The French courts are organised on the collegial principle. Every French court is composed of two or more judges. This contrasts sharply with the practice in Britain and the United States, where the single-judge system is the rule. (4) In France both civil and criminal cases are handled by the same courts, whereas in Britain and America they are handled by two separate sets of courts.

The British and French Judicial Systems : For a comparative study of the two systems, see chapter on "The Judiciary."

The Ordinary Courts : The ordinary courts deal with the ordinary civil and criminal cases, while the administrative courts handle disputes between officials and private citizens.

At the bottom of the hierarchy of ordinary courts stand justices of the peace who handle petty civil and criminal cases. Above the courts of the justices of the peace are the courts of the first instance. The number of judges in these courts varies from three to fifteen. In many courts the judges are grouped into Sections, each Section handling one particular type of cases, civil or criminal. These courts have both original and appellate jurisdiction. Appeals from these courts in civil cases are carried to Courts of Appeal. The jurisdiction of a Court of Appeal comprises from one to seven departments. The criminal appeals from the courts of first instance are heard by courts of assize. In each department an assize court is set up every three months. It consists of a judge of the Court of Appeal having jurisdiction over the area and two associate judges drawn from the local courts of the first instance. It is only in these courts that trials are held by the jury. The jury determines only the facts and renders its verdict by a simple majority.

The Court of Cassation stands at the top of the hierarchy or ordinary courts. It is the highest court of appeal for both civil and criminal cases. It has three chambers—preliminary, civil and criminal. The court consists of a President General, three sectional presidents and 45 other judges.

The Administrative Courts : The administrative courts deal with disputes arising out of relations between the state and its officials on the one hand and private citizens on the other. An official, for instance, may have, in exercising his powers, violated the prescribed procedure. He may have acted in excess of his powers. He may have misused his powers. Again, an official, while exercising his powers in the prescribed manner may have caused damage to private property. All disputes and claims arising out of such action by officials are adjudicated by the administrative courts. And no ordinary French court can, as in Britain or America or India, quash the orders of the administration. It must be understood, however, that if an official violates a law while acting in his private capacity, the case arising out of such action will be tried by the ordinary courts and not the administrative courts.

In Britain and other English-speaking countries, one of the important principles of common law has been that the King—nowadays, the state—can do no wrong. In those countries, therefore, the state cannot be sued except in so far as it by statute expressly submits itself to such action. If a dispute arises in Britain out of some action taken by an official in his official capacity, the aggrieved person cannot, normally, sue the state ; he has to bring an action personally against the official concerned. And the action has to be brought in an ordinary court. In France, however, the state accepts responsibility for the official action of its agents and the aggrieved person brings the case not against the officials personally but against the state. And if the court awards damages, it is the public treasury which has to pay them.

Administrative courts were first brought into existence in France in 1799. At present these courts are organised in two grades—the regional councils at the bottom and the Council of State at the top. Each regional council consists of a President and four councillors appointed by the Minister of the Interior. The jurisdiction of each regional council includes from two to seven departments.

The Council of State is the highest administrative court. It hears appeals from decisions of the regional councils. Apart from serving as the highest administrative court it performs certain other functions. Among these functions is that of advising Ministers on the drafting of orders, decrees and even of legislation. The court has five sections, four of which are concerned with matters other than administrative justice, while the fifth deals with the latter. This section has not only an appellate jurisdiction ,it is also the court of first instance in regard to certain important matters. It has power, *inter alia*, to declare decrees—even decrees emanating from the Council of Ministers —as *ultra vires*.

People brought up in the Anglo-Saxon legal traditions sometimes criticise the system of administrative courts as repugnant to the spirit of justice. Administrative adjudication, they point out, means that the Administration becomes a judge of its own action. This can never ensure impartial justice, they argue. But almost all experts who have made a dispassionate study of the French system of administrative adjudication are agreed that it effectively safeguards the rights and interests of common citizens. The Council of State which is an august body and among whose membership are always found some of the most eminent jurists of the country, is really a bulwark of freedom.

Administrative Law : See chapter on "Law."

Local Government in the Fourth Republic : See chapter on "Local Government."

CONSULTATIVE BODIES

The Economic Council : The Constitution of the Fourth Republic provides for the creation of an Economic Council as a consultative body. Although bodies of a similar character existed in France in the past, their existence had no constitutional basis. The Economic Council created by the Constitution of the Fourth Republic enjoys, therefore, a higher status than its predecessors.

The Council, which consists of representatives of various interests, was composed at the end of 1955 as follows : labour organisations 45 ; agricultural organisations 35 ; nationalised enterprises 6 ; private enterprises 14 ; commercial enterprises 10 ; artisans 10 ; co-operatives 9 ; French Union 15 ; intellectual workers 8 ; other interests 17—total 169.

The Council examines bills of an economic or social character on which the Government or the Assembly seeks its opinion. The Council, however, is not competent to examine the budget. The Council may be consulted when rules and regulations relating to the national economy are framed by the departments. It must be consulted in regard to rules that may be framed under laws previously submitted for its advice.

The Supreme Council of the Magistracy : The composition and functions of this body have been dealt with in connection with the discussion on the Judiciary.

THE FRENCH UNION

The French Union is composed, on the one hand, of the French Republic which comprises Metropolitan France and the Overseas Departments and Territories and, on the other hand, of the Associated Territories and States. All citizens and nationals of the territores included in the French Union enjoy the status of the citizens of the French Union. This status ensures them the enjoyment of rights and liberties guaranteed by the preamble of the Constitution.

The Overseas Departments And Territories : The Overseas Departments are the three Algerian Departments and Martinique, Guadeloupe, Reunion and Guiana. Among the Overseas Territories are French West Africa, French Equatorial Africa, French-Somaliland and Madagascar and Dependencies. The inhabitants of the Overseas Departments and Territories enjoy the status of French citizens. But this status does not ensure them all the rights enjoyed by the citizens inhabiting Metropolitan France. For instance, only certain categories of inhabitants

of these Departments and Territories enjoy the right to vote, while others do not. These voters have the right to elect members to the Parliament of France.

The legislative system of the Overseas Departments is the same as that of the Metropolitan Departments, with certain exceptions determined by the law.

As for the Overseas Territories, the legislative power with regard to criminal law, civil liberties and the political and administrative set-up of these Territories is vested in Parliament. In other matters, the French law is applicable to these territories only by an express provision to that effect, or if they have been extended to these territories by decree after consultation with the Assembly of the Union.

The President of the Republic has also been given power to legislate by decree for these territories after consultation with the Assembly of the French Union.

In every Overseas Territory there is a deliberative Assembly with limited powers. The administration of the Territory is headed by a representative of the French Government who is responsible to that Government for all his acts.

The Associated States : While the Overseas Departments and Territories are, to a considerable extent, politically integrated with Metropolitan France, the Associated States are tied to France only by international treaties. Morocco and Tunisia which were formerly among the Associated States have now attained independence.

The Organs of the French Union : The French Union has three organs : the President of the French Union, the High Council of the French Union and the Assembly of the French Union.

The President of the French Republic is the President of the French Union. The High Council of the French Union is composed of the President of the French Union, who acts as

the chairman, and of a delegation from the French Government and the representatives each Associated State is permitted to accredit to the President of the French Union. It is a consultative body and has been described as "the embryo of a government for the French Union."

The Assembly of the French Union is composed half of members representing Metropolitan France and half of members representing the Overseas Departments, Territories and the Associated States. The representatives of Metropolitan France are elected two-thirds by the National Assembly and one-third by the Council of States. In 1956, the Assembly had a total membership of 204. The Assembly meets at Versailles. It is a purely consultative body. It may be called the embryo of a federal legislature.

POLITICAL PARTIES IN FRANCE

Multiplicity of Parties : The French political life has always been characterised by the existence of a large number of parties, none of which can command a majority in either House. As in the Third Republic, in the Fourth also there are more than a dozen political parties, six of which are major ones. None of the political parties in the Fourth Republic has proved strong enough to command the support of a majority of voters. This has necessitated, as in the past, the formation of Governments on a coalition basis. And since coalitions of this kind are usually short-lived, the French political life continues to be bedevilled by the problem of unstable Ministries.

Causes of Multiplicity of Parties : One of the most important causes of the multiplicity of parties in France is the Frenchman's devotion to theory in political matters. The average Frenchman is far more closely wedded to theory in political life than the average Englishman, and lacks the latter's capacity for compromise and adjustment. The Frenchman's strong individualism, which tends to make his attachment to theory still stronger, is also a contributory factor in the situation.

Among other causes of the phenomenon are some historical and economic ones. The old controversy as to the relations between the church and the state is still a live issue in France and deeply divides the nation into the clericals (catholics) and the anti-clericals. Economic issues have also created deep cleavages in the nation and certain parties, particularly the Communists, thrive on economic discontent. There are also groups which still believe in revival of monarchy while some others stand for a fascist transformation of the political life of the country.

Contrast with America and Britain : The main points of contrast between the party systems in America and Britain on the one hand, and that in France on the other, are the following : (1) Whereas in both Britain and U.S.A, the political life is dominated by two big parties each strong enough to form Governments independently, in France there are, as has been just pointed out, a large number of parties none of which is strong enough to form a Government entirely by itself. (2) Political parties in Britain and France, speaking generally, are well-disciplined organisations, while French parties are loosely knit organisations. Most parties in France lack internal cohesion, the members often defying the leadership and voting differently from them. This situation arises from the fact that the French deputy attaches much greater importance to his relations with his constituents than to his relations with his party. The strong individualism of the French politician also contributes to the fluidity of the party situation. The difficulty of bringing about a dissolution is also another contributory factor. If dissolution of the Assembly could be brought about easily, the French deputy would think twice before disobeying his party chiefs, for dissolution would expose him to all the uncertainties of a fresh election, apart from putting a fresh burden of heavy expenditure on his shoulder.

Groups and Parties : The parliamentary parties in France are not called parties but groups. Many of the groups in the Assembly Council correspond to political parties outside. But some of them may consist of members elected by different parties.

Between the groups—that is, the party deputies—and the membership of the party outside the Parliament, the relations sometimes become very much strained. Often the groups act in defiance of the views of the members of the party outside the Parliament.

The groups in Parliament are officially recognised. They are of great constitutional importance. None can be a member of a Parliamentary Committee except through membership of a group.

The Major Political Parties : Among the major political parties are the Socialist Party, the Communist Party, the M.R.P., the Radical Party, Independent Republicans and the R.P.F.

The Socialist Party stands for democracy and republicanism, welfare state, planned investment, a more equalised tax structure and expansion of educational opportunities. At present Guy Mollet is the most important figure in the party-leadership.

The Communist Party, which commands quite a large following in the country is modelled on the well-known dictatorial pattern. It does not believe in parliamentary democracy, looks to Moscow for guidance and foments economic discontent and flourishes on it. Its ultimate aim is to wreck the regime which gives it freedom to function, and to build up a one-party regime in its place. Maurice Thorez is the most well-known figure in the party leadership.

The M.R.P.—the Mouvement Republican Populaire—is an organisation of Catholics, which lays stress on upholding Christian ethics in social life. It stands for democracy and promotion of social welfare. It strongly defends the rights of France in her colonial possessions. It is totally opposed to the communist ideology which is based on materialism.

The Radical Party, although called radical, has hardly any definite ideology. It is all things to all men. It is said that the party resembles a radish—red outside and white inside. It is opposed to large-scale schemes for labour welfare. Small farmers

constitute a very large percentage among its supporters. Among its leaders are Edgar Faure, Mendes-France and Rene Mayer.

The Independent Republicans is a conservative party which derives its support mainly from employers, big farmers, civil servants and other richer classes.

The R.P.F. or the Rally of the French People was founded by General De Gaulle. It is violently nationalistic and imperialist-minded. In domestic affairs, it advocates generous policies in regard to housing, health and family allowances. It detests the Communists and is strongly opposed to their ideology.

THE FOURTH REPUBLIC UNDER A CLOUD

General De Gaulle invested with full Powers, Radical changes in the constitutional setup proposed : In May 1958, France was overtaken by a great crisis. The Army had seized power in Algeria where France had been engaged for years in a bloody warfare with the Nationalist forces. (The war is still continuing). The rebels in Algeria and their supporters in Metropolitan France demanded the resignation of the then French Government headed by M. Pflimlin. They further demanded that General De Gaulle be given full powers to govern France. Opinion in the country was so sharply divided on the issue of the Army revolt in Algeria and on the demands of the rebels that it looked as if France would soon be plunged in a civil war. The pressure of opinion on the authorities in favour of giving full powers to General De Gaulle increased at such a pace that soon both the Government and Parliament, after a brief show of resistance, yielded. The Government headed by M. Pflimlin resigned. The President of the Republic designated General De Gaulle as Prime Minister. General De Gaulle appeared before the National Assembly on June 1,1958 and in a brief speech demanded full powers to govern France for six months. He declared that the real cause of the crisis which threatened France with a disastrous civil war was "the impotence of public powers." The situation could be remedied only by effecting some radical changes in the Constitution. He,

therefore, asked Parliament to amend Article 90 of the Constitution—this Article lays down the procedure for amending the Constitution—so that he could submit his proposals for amendment of the Constitution to a referendum to be held in October, 1958.

The Assembly accepted all the demands made by the General. It invested him as Prime Minister within a few hours of his appearance before it. And on the next day, June 2, Parliament gave him full powers to rule without Parliament for six months. On the next day, the Constitution Reform Bill was passed amending Article 90 and thereby clearing the stage for the General to introduce his reforms. Immediately after passing the Bill, the National Assembly and the Council of the Republic adjourned, as was demanded by the General, until the next normal session, which will be held in October, 1958.

In his speech before the Assembly on June1, 1958, General De Gaulle had given some indication of the lines on which he intended to reform the constitutional set-up. The main features of his scheme are : (1) effective separation of the executive and legislative powers so as to give the country a strong executive and (2) reorganisation of the relations between the French Republic and the colonial peoples associated with it. General De Gaulle made it clear that in the constitutional set-up envisaged by him, the Government would be responsible to Parliament. It is not clear how the General would reconcile the separation of the executive and legislative powers with the executive's responsibility to Parliament. It appears, however, that the General would undertake a drastic reform of the electoral law with a view to enabling the country to evolve a more rational party system—a system that would make it possible for France to have strong and stable Governments for reasonably long periods.*

* General De Gaulle's proposals for constitutional reform were submitted to a referendum on September 28, 1958 and approved by a large majority. For the Constitution of the Fifth Republic, see Appendix A.

The question may be asked : What caused the collapse of the Fourth Republic ? The main causes which led to the collapse of the constitutional system of the Fourth Republic in May-June, 1958 were the following :

(1) Lack of a strong executive. (The Constitution of the Fourth Republic had concentrated all effective power in the hands of the National Assembly and had put the Executive at its mercy.)

(2) Extreme individualism of the French citizens and their distrust of strong executives.

(3) Multiplicity of parties and instability of Governments.

(4) Failure of the French citizens to adjust their political outlook to the twentieth century conditions of the world. (Most Frenchmen still believe that colonial peoples, like the people of Algeria, can be kept deprived of their right to independence for all time, provided sufficient force can be used to destroy their struggle for freedom.)

The crisis in which France finds itself today cannot, therefore, be resolved by a mere constitutional reform. On the solution of the Algerian question depends the very fate of democracy in France.

CHAPTER XIV

THE CONSTITUTION OF THE AUSTRALIAN COMMONWEALTH

The Origin of the Constitution : The Constitution of the Australian Commonwealth was enacted in 1900. Before that year, there were in Australia six separate British colonies. Towards the end of the nineteenth century there grew up on the continent a movement for a federal union of the colonies. The factors which gave rise to the movement were mainly, the following. Increased activities of Germany and Japan in the Pacific had created some apprehensions in the minds of the Australian people. While there was no threat of foreign invasion, the colonies wanted the British to adopt a more forward-looking policy for the area. Federal union, they thought, would help the attainment of the objective. Secondly—and this was the most important factor—the tariff barriers created by the diffrerent colonies had resulted in a problem which could be properly tackled only by a central authority. Thirdly, the peoples of the various colonies, being all of a common origin, namely, British, naturally felt a great affinity among themselves and were stirred by the vision of a great commonwealth that would result from their federal union. A Bill was drafted by a representative convention in 1891 for enactment into law by the British Parliament, but one of the colonies, New South Wales, refused to ratify it and the scheme fell through. Another convention met in 1895 and a new Bill was drafted. This time the attempt succeeded. The Bill was ratified by the various states and was incorporated in the Commonwealth of Australia Constitution Act, 1900 passed by the British Parliament.

The General Features of the Constitution : The Australian Constitution, which is set out in See. 9 of the Commonwealth of Australia Constitution Act, 1900, is federal in type. It establishes a federal state consisting of a central authority and six

"States," namely, New South Wales, Victoria, South Australia, Western Australia, Queensland and Tasmania. The Northern Territory and Australian Capital Territory are administered by the Federal Government. The Constitution divides powers between the centre and the States on the American pattern. The Centre which is known as the Commonwealth is given certain specified powers and the rest of the powers are left to the States. The legislative power of the Commonwealth is vested in a Federal Parliament consisting of the Queen, a House of Representatives, and a Senate. The executive power is vested in a Governor-General advised by an Executive Council which is none other than the Cabinet.

The States enjoy responsible Government. Each State has a separate constitution, which it can amend within the federal framework.

The power of amending the federal Constitution has been vested in the Parliament and the people of Australia—(see below).

Amendment of the Constitution : Any proposed law for the alteration of the Constitution must be passed by an absolute majority of each House of Parliament and, thereafter, must be submitted to a referendum. It must be approved by a majority of electors voting in a majority of the States and also by a majority of all the electors voting. In the event of a disagreement between the two Houses on any proposed amendment, the Governor-General may in certain circumstances submit it to a referendum.

No alteration diminishing the proportionate representation of any State in either House of Parliament, or the minimum number of representatives of a State in the House of Representatives, or altering the limits of the State, or affecting the provisions of the Constitution in relation thereto, can become law unless the majority of the electors voting in that State approve the proposed law.

As has been already pointed out, the Australian Constitution

is contained in Section 9 of the Constitution Act. Sections 1 to 8 of the Act—since it is an Act of the British Parliament—can only be amended by that Parliament. These Sections provide for the establishment of the federation. While the Constitution, and even the amending machinery, can be altered by following the procedure laid down by the Constitution, the federal basis of the Constitution cannot be so altered.

From what has been stated above, it is clear that it is not easy to alter the Australian Constitution. The framers of the Constitution wanted that amendment should be "the medicine", not the "daily food" of the Constitution. They, therefore, laid down a difficult procedure for amendment. But they made the procedure more difficult than they realised. The referendum has proved to be a conservative instrument. The voters find many more reasons for saying 'No' than for saying 'Yes'. Quite a number of amending Bills submitted to the voters have been rejected by them.

So far there have been only two significant amendments to the Constitution. One of them was passed in 1929 ; this enabled the Commonwealth to take over the State debts. It also made possible the making of the Financial Agreement whereby the control of future borrowing by the Commonwealth and the States was vested in a Loan Council. The other important amendment was passed in 1946. This gave the Commonwealth control over a wide range of social services, such as maternity allowances, unemployment and sickness benefits and family allowances.

Comparison between the Australian Federalism and the Canadian Federalism : See Ch. XIX. (Part I).

Distribution of Powers : The distribution of powers in the Australian Constitution is of the American type. The Commonwealth has been given some specified powers and the rest of the legislative field has been left to the States. It is provided in the Constitution that unless a power has been exclusively vested in the Commonwealth Parliament or withdrawn from the Legislature

of a State, it will remain with the State or States concerned. The powers exclusively vested in the Commonwealth Parliament are very few—the exclusive powers include the naval and military forces, coinage and legal tender, duties of customs and excise, the seat of federal government and the public services of the Commonwealth. Over a comparatively larger field, the Commonwealth Parliament enjoy concurrent power with the State Legislatures. The Constitution provides that in the event of inconsistency between a Commonwealth law and a State law, the former will prevail and the latter, to the extent of the inconsistency, will be invalid. Among the matters included in the concurrent field are the following : postal, telegraph and telephone services, banking and insurance, marriage and divorce, immigration and emigration, census and statistics and patents and copyrights.

Since the establishment of the Commonwealth in 1900, however, the Commonwealth Parliament has steadily gained in strength at the expense of the States. Judicial interpretation has gradually widened the jurisdiction of the Commonwealth Parliament, particularly in the sphere of finance.

A Bill designed to widen the powers of the Commonwealth to a considerable extent was submitted to a referendum in 1944, but was rejected. Another amendment, which vastly widened the Centre's power over social services, was accepted by the voters in 1946.

The Federal Executive : The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative. The Governor-General is appointed by the Queen on the advice of the Australian Cabinet (and not of the British Cabinet). The Governor-General represents the Crown. It must be clearly understood that the Governor-General is neither the representative nor an agent of the British Government.

There is a Federal Executive Council to advise the Governor-General in the government of the Commonwealth. The

Federal Executive Council is none other than the Ministry itself. The constitutional relation between the Governor-General and the Cabinet is similar to that between the Queen and the Cabinet in Britain. The Governor-General functions strictly as a constitutional head and exercises powers strictly according to the advice of the Cabinet. It is, however, not very clear whether the Governor-General will always be bound to accept the advice of the Cabinet to dissolve the House of Representatives.

The Queen's external prerogatives of declaring war and peace and of accrediting diplomatic representatives cannot be exercised by the Governor-General unless these are specifically delegated to him. Such delegation is, however, always made by the Queen whenever the Australian Cabinet advises her to do so.

The Ministers are responsible to the Lower House of Parliament—the House of Representatives. No Minister can hold office for more than three months unless he is or becomes a Senator or a member of the House of Representatives. The Ministers head the Departments. As in Britain, the Cabinet functions on the basis of collective responsibility. Since 1956, the Ministry has consisted of a comparatively small number of Cabinet Ministers and a group of Ministers who are not in the Cabinet but who are usually invited to attend Cabinet meetings whenever matters affecting their departments are considered.

The Ministers and the Executive Council : As has been already pointed out, the Ministry and the Executive Council are the same body. The functions of the Executive Council, however, are purely formal and official. The meetings of the executive Council are presided over by the Governor-General. The body meets to give legal effect to the decisions of the Cabinet. The policies of the Government, however, are determined at meetings of the Cabinet presided over by the Prime Minister. The Governor-General has no access to such meetings. The decisions of the Cabinet have as such no legal effect.

The Commonwealth Parliament : The Commonwealth

Parliament, that is, the Federal Parliament consists of the Queen and two Houses, namely, the Senate and the House of Representatives.

Both the Houses are directly elected by the voters on the basis of universal adult suffrage. (With some exceptions, there are restrictions on voting by the people of Asian and African origin and the aboriginal natives of Australia and the Pacific Islands.) For elections to the Senate, the voters of each State vote as one electorate by a system of proportional representation. The members of the House of Representatives are elected by a preferential system of voting.

The Senate consists of 60 members, ten members from each State. The Senators are elected for a term of six years, one-half retiring every third year.

The Constitution lays down that the number of members of the House of Representatives shall be, as nearly as practicable, twice the number of Senators. At present there are 124 members in the House of Representatives—46 from New South Wales ; 33 from Victoria ; 18 from Queensland ; 11 from South Australia ; 9 from Western Australia ; 5 from Tasmania ; and one each from the Northern Territory and the Australian Capital Territory. These two members can participate in debates but cannot vote except on a motion for disallowance of an ordinance of the Territory they represent. The Senate chooses a member to be the President of the Senate, while the Lower House elects a member as the Speaker.

In ordinary legislation, the two Houses have co-equal powers. The House of Representatives, however, enjoys greater power in financial matters. Measures for imposition of taxes and appropriation of revenue must be introduced in the House of Representative.

The legislative powers of the Federal Parliament have already been discussed in connection with distribution of powers.

The first Federal Parliament was opened at Melbourne on

May 9,1901, by the Duke of Cornwall and York, later King George V. Parliament continued to sit there till 1927. On May 9,1927, its present home in the Australian Capital, Canberra, was opened by the Duke of York, later King George VI.

Compulsory Voting and Registration : Registration of voters as well as voting by them is compulsory. Fines may be imposed on those who fail to comply with the relevant provisions of the law. This contrasts sharply with the position in India and many other countries, where neither registration nor voting is compulsory.

Legislative Procedure : Bills may originate in either House, except Bills to appropriate money or revenue or to impose taxes, which must originate in the House of Representatives. The Senate cannot amend Bills to appropriate revenue or money or to impose taxation. Also the Senate cannot amend any proposed law so as to increase any proposed charge or burden on the people. The Senate, however, can return a Bill which it cannot amend to the House of Representatives with the request that it omit or amend any item. The House of Representatives may comply with such request or refuse to comply as it thinks fit.

As has been already pointed out, both Houses have co-equal powers in regard to ordinary legislation.

A simple majority is required for the passing of a Bill in either House, except a Bill to amend the constitution which requires an absolute majority. In the Senate, the President can vote as a Senator but has no casting vote. In the House of Representatives, the Speaker cannot vote except in the case of equality of votes when he can exercise a casting vote.

Every Bill must be passed in both Houses before it is presented to the Governor-General for the Queen's assent. The Governor-General may declare that he assents in the Queen's name or that he withholds assent, or that he reserves the law for the Queen's pleasure. These latter provisions, however, have no real significance, for the Governor-General cannot withhold,

assent to a Bill except on the advice of the Cabinet and the Queen does not exercise the veto power which she theoretically enjoys.

Final Disagreement and Double Dissolution : According to the Constitution, the Governor-General can, in case of final disagreement between the two Houses in regard to any proposed law, dissolve both Houses simultaneously. Such dissolution must be followed by general elections. If the disagreement persists even after the elections, the Governor-General may convene a joint sitting of the members of the two Houses, where decision is to be taken by an absolute majority of the total number of members of the two Houses. So far, double dissolution of the Federal Parliament has occured only twice, in 1914 and in 1951.

The Federal Courts : The High Court of Australia is the highest court in the land. It hears and determines appeals from the State Supreme Courts. It has original jurisdiction in respect of suits between the Federal and State Governments, suits between State Governments, between residents of different States, between a State and a resident of another State and matters arising under any treaty.

The Constitution lays down that no appeal shall be permitted to the Privy Council from a decision of the High Court on any question as to the limits *inter se* of the powers of the Federal and State Governments or of the powers of any two or more State Governments, unless the High Court certifies that the question is one which ought to be determined by the Privy Council.

The Justices of the High Court are appointed by the Governor-General in Council. They cannot be removed except by the Governor-General in Council, on an address from both Houses of Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. The remuneration of the Justices cannot be diminished during their continuance in office.

Mention may also be made of two other Federal Courts,

namely, the Commonwealth Conciliation and Arbitration Court and a Federal Bankruptcy Court.

Interpretation of the Constitution : The Constitution has been so interpreted by the Judiciary as to result, speaking generally, in a widening of the Federal jurisdiction vis-a-vis that of the States. At one time the High Court used to apply, in interpreting statutes, the doctrine of immunity of instrumentalities. This doctrine says that neither the Centre nor any State can interfere, by taxation or otherwise, with the agents or instruments of the other Government. This doctrine was rejected in the case of Amalgamated Society of Engineers V. Adelaide Steamship Company Ltd (1920)—usually referred to as the Engineers' case. In this case the High Court held that the power of the Commonwealth as to industrial disputes included the power to bind the States and their agencies.

It is also interesting to note that in war-time the Federal power as to "Naval and Military defence" was so interpreted by the High Court as bring an unexpectedly wide range of subjects within the Federal jurisdiction. The High Court held that any federal law that was reasonably related to the needs of defence is valid. But for such widening of the sphere of federal power through judicial interpretation, the Federal Government would have found it difficult to deal properly with the problems arising out of war. In peace-time, however, the content of defence, power contracts considerably.

Judicial Review : The Judiciary in Australia possesses the power of judicial review. In other words, the Judiciary can invalidate a law on the ground that it is inconsistent with the provisions of the Constitution. In fact, it is this power of the Judiciary which prevents encroachment by the Federal authorities into the sphere of the States or vice versa.

Fundamental Rights : The Australian Constitution does not embody any Bill of Rights. It leaves the protection of liberties to the good sense of Parliament and the people. The only provisions in the Constitution which safeguard certain

important rights of the people are Sections 51, 92 and 116 of the Constitution. Section 51 requires that, if the Federal Government acquires any property, it must pay just terms for that. Section 92 provides that trade, commerce and intercourse between the States shall be absolutely free. Section 116 says : "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

The State Governments : Each State has its own constitution which it can amend within the limitations imposed by the Federal Constitution.

Each State has a bicameral legislature consisting of a Council and an Assembly. The system of responsible government prevails in all States.

The executive power is vested in Governors and is exercised by them with the advice of Councils. The State Governors are appointed by the Crown on the advice of the Government of United Kingdom and not of the State Governments. The former Government, however, always consults the State Government concerned before an appointment of a Governor is made. In sharp contrast to this method of appointment, the Lieutenant-Governors of the Canadian provinces are appointed by the Governor-General on the advice of the Dominion Government. The Governor-General of Australia, it will be remembered, is appointed on the advice of the Commonwealth Government and not on the advice of the Government of the United Kingdom. The Governors of the States also have wider constitutional powers than those of the Governor-General.

Again, whereas the Federal Parliament can amend an Act of British Parliament in so far as it applies to Australia, the State Legislatures cannot amend such Acts.

In relation to disallowance and reservation of legislation also, there are direct relations between the Government of the

United Kingdom and the State Governments. These matters are regulated by Instructions to the Governors.

The States have their own hierarchy of courts. Appeals from the highest courts of the States are heard and determined by the High Court.

Australia and the Commonwealth : Australia is a member of the British Commonwealth, which is now-a-days referred to simply as Commonwealth. Australia owes allegiance to the Queen. But this does not mean that Australia is not an independent State. It is. Australia is a member of the United Nations. It maintains its own embassies and legations abroad. It can also independently enter into treaties with foreign Governments. Australia can also secede from the Commonwealth.

CHAPTER XV

THE CONSTITUTION OF CANADA

The Historical Background : In 1837 local discontent caused a rebellion in Upper and Lower Canada (now Ontario and Quebec). Lord Durham who was sent out by the British Government to investigate the cause of the discontent produced his famous report in 1839. This report which has come to be known as the Durham Report is one of the most important documents in the British constitutional history. It recommended that Upper and Lower Canada be united under one administration and responsible government be granted to the people of the two colonies—that is, an executive chosen from and responsible to the local legislature. It further recommended that the power of the Sovereign's representative be limited in a manner similar to that of the King of England. Certain subjects, however, such as the framing of the Constitution and external affairs were to be under the ultimate control of United Kingdom.

Upper and Lower Canada were united in 1841 and full responsible government was granted in 1847. The racial antagonism between Upper and Lower Canada, however made successful working of the arrangements nearly impossible. Many came to believe that in a federation of the Canadas with the maritime provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland lay the solution of the Canadian problem.

Certain other factors also emphasised the need for a federal union. The American Civil War had given rise to a situation which seemed to threaten foreign invasion. The protectionist policy which the United States began to adopt tended to affect adversely the export of Canadian goods. The problem of communication between the Canadas and Great Britain also pointed to the need for a federal form of administration. The Canadas

wanted that the line of communication should not pass through the United States and that it should be such as would not be closed in winter. Beside the powerful state of United States, the weakness of each individual colony was in sharp contrast and this strengthened the arguments for federation.

The representatives of the United Provinces of Canada, Nova Scotia and New Brunswick met in 1864 at Quebec and passed a number of resolutions—known as the Quebec Resolutions—embodying the details of a federal constitution. These resolutions were later adopted by the legislatures of the United Provinces, Nova Scotia and New Brunswick. Agreement was reached with the Government of the United Kingdom in 1866 on the terms of a Parliamentary legislation containing a federal constitution. Next year the British North America Act, 1867 was passed. The Act established the Dominion of Canada with four provinces, namely, Ontario, Quebec, Nova Scotia and New Brunswick, and provided for the admission of new Provinces. Manitoba acceeded in 1870 ; British Columbia was admitted in 1871 and Prince Edward Island in 1873. Alberta and Saskatchewan were admitted in 1905, and Newfoundland acceeded as lately as 1949.

General Features of the Constitution of Canada : The British North America Act, 1867 which establishes the Dominion of Canada provides for a Central Government and a number of provincial Governments. The number of provinces which was originally four has since increased to ten.

Being a federal constitution, the Act divides powers between the Central Government and the provinces. It gives a list of specified powers to the provinces and leaves the rest of the field to the Centre. The division of powers is thus based on a pattern that is different from that of the United States. In the United States, the Centre is given some specified powers and the residue is left to the States. In America the Centre is weak, in Canada the Centre is very strong. The movement for Canadian federation began at a time when America was passing through the Civil

War. It was believed by many in Canada that the weakness of the Central Government in the United States and too much insistence on state rights were among the most important causes of the Civil War. This is why the Canadian politicians wanted to have a strong Centre. The distribution of powers in the Constitution reflects this desire of the Canadian politicians.

The system of responsible government prevails both at the Centre and in the provinces. The Ministry, in other words, is responsible, in each case, to the Legislature concerned. But in Canada, as in the United Kingdom, the system of responsible government is based entirely on convention. We may, therefore, say that the Canadian Constitution consists of two parts, one written, the other unwritten. The British North America Act, 1867, as amended from time to time, forms the written part of the Constitution, while the body of conventions on which the system of responsible Government is based is the unwritten part of the Constitution. And it may be stressed that the unwritten part of the Constitution is no less important than the written, part.

The Constitution provides for the organisation and functions of the federal executive and legislative organs and lays down certain basic provisions in regard to the provincial Governments. The federal Parliament is also authorised to constitute federal courts including a General Court of Appeal for Canada.

Amendment of the Constitution : The British North America Act, 1867 did not contain any provision for its amendment, although the provinces were given power to amend their constitutions, except as regards the office of the Lieutenant Governor. Being an Act of the British Parliament, it could only be amended by an Act of that Parliament. And from time to time, at the request of Canada, the British Parliament would pass legislations amending the Act of 1867.

The position in regard to the matter, however, has changed greatly since 1949. In that year the British Parliament passed an Act—the British North America (No. 2) Act, 1949—which

gives the Canadian Parliament authority to amend the Constitution, except in regard to the following matters : matters assigned exclusively to the provincial legislatures, the rights and privileges already secured to provincial Governments and legislatures, existing rights and privileges in the field of education, the use of the English and French languages and the requirements that there shall be at least one session each year of the Canadian Parliament and that no House of Commons shall continue for more than five years. (In situations of emergency, however, the duration of the House of commons can be continued beyond the five-year period fixed by the Constitution.)

Thus, it will be seen that although the Canadian Parliament has now power to amend the Constitution, it cannot make any amendment that might abridge the rights of the provinces. Only the British Parliament can amend those provisions of the Constitution which deal with the rights of the provinces.

If the Canadian Parliament were given power to amend all the provisions of the Constitution, then, it should be obvious, the Constitution would have ceased to be a federal one. For, in such a situation, the centre would have been able to take away any of the rights of the provinces and the latter would have been reduced to the status of municipal governments.

The Division of Powers : The British North America Act, speaking broadly, gives a list of specified powers to the provinces and leaves the residue exclusively to the Dominion (the Federal Government). The Act, however, while vesting the residual powers in the Centre, enumerates certain subjects by way of illustration of the Dominion's powers, and this has given rise to considerable difficulties of interpretation. Section 91 of the exclusive legislative powers of the Parliament of Canada (the Federal Parliament), generally vests in that Parliament the power to make laws for "the peace, order and good government of Canada" in relation to all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces. And then, by way of illustration, this Section enumerates certain powers of the Federal Parliament. These enumerated

powers (originally 29 now 31) include : public debt and property; regulation of trade and commerce ; raising of money by any mode of taxation ; postal service ; Census and Statistics ; national defence ; navigation and shipping ; currency and coinage ; banking and issue of paper money ; weights and measures ; patents and copyrights ; naturalisation ; marriage and divorce ; the criminal law, except the constitution of courts of criminal jurisdiction ; but including the procedure in criminal matters ; and amendment of the Act, subject to certain exceptions. (The exceptions have been referred to in the preceding Section)

Section 92 enumerates the exclusive powers of the provincial legislatures. These powers include : amendment of the Constitution of the Province except as regards the office of the Lieutenant Governor ; direct taxation within the province ; the borrowing of money on the credit of the province ; prisons, hospitals and municipal institutions for the province ; local works and undertakings ; incorporation of companies with provincial objects ; property and civil rights in the province ; the administration of justice in the province, including the constitution, maintenance, and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts ; imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province relating to the above-mentioned subjects ; and matters of a merely local or private nature in the province.

The Act, as originally enacted, provided for two concurrent subjects (Section 95), namely, agriculture and immigration. And it also provided that in case of inconsistency between the federal law and the provincial law relating to these two subjects the former would prevail. A third concurrent subject, namely, old age pensions, was provided for by the British North America Act, 1951. But it is laid down by this Act that no federal law relating to this subject "shall affect the operation of any law present future of a provincial legislature in relation to old age pensions". This means that if any conflict arises between the federal law and the provincial law relating to this subject, the latter will prevail.

Judicial Interpretation : Because of the peculiar plan, just described, followed in the Constitution in regard to the distribution of powers, great difficulties of interpretation have arisen. The following points illustrate how difficulties arise in the matter of interpretation as to whether a certain law is within the jurisdiction of the authority concerned. (1) Certain Central and provincial subjects overlap. For instance, property and civil rights are assigned to the province, while banking, patents, copyright and the like are given to the Centre. It is obvious that laws relating to banking, patents and copyright cannot but affect property and civil rights which are included in the provincial list. These powers, therefore, must be interpreted in such a way as to avoid conflict. (2) A law which is apparently within the powers of either the Dominion or a Province may have the effect of tresspassing on the other's legislatve territory. A provincial legislation, for instance, which sought to levy a tax of a particular kind which was perfectly within the powers of the province had the effect of seriously interfering with banking operations which comes within the federal sphere. The Act was held ultra vires by the Privy Council. The courts, therefore, have always to look beyond the surface of an Act into its "pith and substance." (3) Certain aspects of a subject may be within the Dominion's sphere, while certain other aspects of the same subject may be under the control of the provinces.

The courts, particularly the Judicial Committee of the Privy Council, have evolved certain principles of interpretation of the respective powers of the Dominion and the provinces, which may be briefly summarised as follows : (a) In normal times, the powers *enumerated* in Section 91 are to be treated as the main—though not the sole-source of Dominion authority. These powers are paramount, that is, they override the powers granted to the provinces in Section 92. Dominion legislation in pursuance of its general powers under "peace, order and good government" —the other source of Dominion authority—is to be held ultra vires if it, in normal times, interferes with any of the provincial powers enumerated in Section 92. In times of emergency

like war or invasion, the general power of the Dominion to legislate in relation to "peace, order and good government" will override any of the provincial powers that might stand in its way. In the result, it has become very difficult for the Dominion to legislate under its general power in normal times because such legislation is sure to affect to some extent property and civil rights, which are within the provincial sphere. It appears that, at present, some new principles of interpretation are in the process of being slowly evolved, which may one day completely throw overboard the principles mentioned above.

Provinces and Territories : The Dominion of Canada is at present divided into ten provinces : Quebee, Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan and Newfoundland. Apart from these provinces there are two territories : the North-west Territories and the Yukon Territory. These territories are under the legislative control of the federal Parliament. They have, however, local governments headed by Commissioners appointed by the Governor-General in Council.

The seat of the Canadian Federal Government is Ottawa.

The Federal Executive : The executive power is nominally vested in the Queen who is represented by the Governor-General. The Governor-General is appointed by the Queen on the advice of her Canadian Ministers, not the Ministers of the British Government. The Governor-General, it may be stressed, does not represent the British Government. He represents the Queen.

The executive power is exercised by the Governor with the advice of the Privy Council. The Cabinet constitutes the active part of the Privy Council. The Governor-General thus exercises his powers with the advice of the Cabinet. (The distinction between the Privy Council and the Cabinet has been made clear below.)

The Governor-General is nothing but a nominal executive

while the Cabinet is the real executive. The Cabinet is responsible to the Lower House of the Canadian Parliament, the House of Commons. The Cabinet's responsibility to the House of Commons is based purely on convention. The Cabinet members must have seats in either of the two Houses of Parliament, and if a member is without a seat, he must obtain a seat within 'a reasonable time'. ('A reasonable time' has never been defined authoritatively. Once a Cabinet member was without a seat for over nine months and a half.) But it is important to note that this rule requiring membership of Parliament for a Minister is also based on custom and not on any written law.

The Cabinet is the central directive force in the constitutional machinery. It formulates and implements policies. It coordinates the administration of departments headed by individual Ministers. It prepares by far the greater part of the legislative programme and takes necessary steps to get the proposed laws passed. On any definite indication that the Cabinet has lost the confidence of the House of Commons, it must either resign or dissolve the House and appeal to the people, that is, take steps to hold a fresh general election.

The Ministry and the Cabinet : During a large part of the Canadian history, the two bodies, the Ministry and the Cabinet, have been identical. But sometimes the Ministry has included members who are not members of the Cabinet. Particularly since World War II, the number of Ministers who are not Cabinet members has tended to become fairly large. In 1954, the total number of Ministers was 34, while the number of Ministers in the Cabinet was 21.

The Ministers who are not in the Cabinet cannot participate in the formulation of policies, which is a function of the Cabinet. But the retirement of the Cabinet involves the retirement of the other Ministers.

The Privy Council and the Cabinet : The British North-America Act, 1867 states : "There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's

Privy Council for Canada." The members of the Privy Council are appointed by the Governor-General on the recommendation of the Prime Minister. All Cabinet Ministers must be made Privy Councillors. Members of the Privy Council have a life tenure. The Privy Council is thus quite a large body. It includes not only members of the present Cabinet but also the surviving members of past Cabinets. Had the Privy Council been an active body, it would have been impossible for it to function properly because of its heterogenous membership. Fortunately, the Privy Council never meets except on purely formal occasions like the proclamation of the accession of a new Sovereign.

The advisory functions of the Privy Council are performed by the persons who constitute the Cabinet at any given moment. The Governor-General in Council means the Governor-General acting on the formal advice of the Cabinet. The Cabinet, although, it is just a part of the Privy Council, acts in the name of the entire Council.

The decisions of the Cabinet have no legal effect as such. These decisions, when they have to be given legal force, are forwarded to the Governor-General for his approval and signature, and are thereafter issued as Orders or Minutes of Council. The Governor-General, it may be added, is not the President to the Privy Council, nor does he attend any meeting of the Council even for any formal business.

The Federal Parliament : The Federal Parliament or the Parliament of Canada consists of the Queen as represented by the Governor-General and two Houses. The Upper House is known as the Senate and the Lower the House of Commons. The powers of Parliament have been already discussed in connection with division of powers between the Centre and the provinces.

The Senate : The Senate, which is the Upper House of Parliament, is a wholly nominated body. Its members are appointed for life by the Governor-General on the recommendation of the Dominion Government, that is, the Cabinet. At present the Senate consists of 102 members—24 from Ontario ;

24 from Quebec ; 10 each from Nova Scotia and New Brunswick ; 4 from Prince Edward Island ; 6 from Newfoundland and 6 each from the four western provinces, namely, Manitoba, Saskatchewan, Alberta and British Columbia. All Senators must be residents of the province they represent. The Senators represent the provinces, but each Senator from Quebec also represents one of the twenty-four senatorial districts in that province. The Senators must be at least 30 years of age and must own real property worth at least $ 4000.

The Speaker of the Senate is appointed by the Governor-General in Council, which means that he is in reality chosen by the Prime Minister.

The Senate cannot originate Money Bills, that is, Bills to appropriate revenue or impose taxation. It can originate all other kinds of Bills. The Senate, however, does its most usefu work in the field of Private Bills. (The object of a private Bill is "to alter the law relating to some particular locality or to confer rights on, or relieve from liability, some particular person or body of persons.") Divorce Bills, which are a category of Private Bills, originate by tradition in the Senate. Since 1934, the fee charged for originating private Bills in the Senate has been much lower than that charged in the House of Commons. As a result, all private Bills now originate in the Senate, although, under the rules, they can originate in either House.

Whether the Senate can amend Money Bills has been a matter of dispute between the two Houses. The British North America Act, 1867 is silent on the point. In practice, however, the Senate has sometimes amended Money Bills and the House of Commons has acquiesced in such amendment. The Senate, however, does not exercise this power frequently.

The Governor-General can, on the advice of the British Government, appoint eight additional Senators. The object of this provision is to enable the Government, in case of a deadlock between the Houses, to increase the number of Senators and thereby resolve such deadlock. This power has never been exercised.

There has been difference of opinion as to the usefulness of the role that has been played by the Senate in political life of the country. A competent commentator has remarked : "The Senate has been by no means a useless body ; but there are certainly the gravest doubts whether its cost of operation yields anything like a commensurate return unless it is looked upon simply as a pension scheme for retired commoners."

The House of Commons : The Lower House, which is known as the House of Commons, is elected by popular vote on the basis of adult franchise. The members are elected, with very few exceptions, from single member constituencies. Representation in the House is based on population and varies with the growth of the population. At present the House of Commons has 265 members. The allocation of seats is as follows : Ontario, 85 ; Quebec, 75 ; Nova Scotia, 12 ; New Brunswick, 10 ; Manitoba 14 ; British Columbia, 22 ; Prince Edward Island, 4 ; Saskatchewan, 17 ; Alberta, 17 ; Newfoundland 7 ; Yukon Territory 1 ; Northwest Territories 1.

The House continues for five years unless sooner dissolved.

The House elects one of its members to be the speaker. He is in reality the choice of the ruling party. The Speaker of the House of Commons performs his duties with a large measure of impartiality but he is not as neutral a figure as his British counterpart. From the point of view of impartiality, he stands somewhere between the Speaker of the British House of Commons and his American counterpart.

Politically, this House is by far the more important of the two Houses and completely overshadows the Senate. Money Bills can originate only in the House of Commons and the Cabinet is responsible to this House alone. The quorum is 20, the Speaker being reckoned as a member for the purpose. (The quorum of the Senate is 15, including the Speaker.) The Speaker has no vote, except in the case of equality of votes when he can exercise a casting vote.

Legislative Procedure : The legislative procedure of the

Canadian Parliament is based on that of the British Parliament. Bills are classified as Government Bills, Private Members' Bills and Private Bills. Every Bill must receive three readings in both Houses before it is presented to the Governor-General for his formal signature. The Governor-General has power to withhold assent to a Bill or to reserve the Bill for the signification of the Queen's pleasure. The Queen has also power to dissallow an Act which has received the Governor-General's assent. But all these provisions are now without any constitutional significance. Nowadays, the veto power is never exercised.

In case of disagreement between the two Houses, a conference is held between the representatives of the two Houses to discuss the differences and, if possible, to arrive at an agreement. If no agreement is reached, the proposed measure gets dropped.

The House of Commons maintains Standing Committees and often appoints Select Committees to consider particular measures. It also uses the device of the Committee of the Whole House to consider financial matters and certain other matters.

The Senate also maintains a number of Standing Committees. Sometimes it also employs the device of the Committee of the Whole House to consider certain matters.

There are some Joint Committees on which the members of both Houses sit.

The Judiciary : In contrast to the American system in which the State courts and the Federal courts form two separate hierarchies running parallel to each other, the Canadian courts form one single hierarchy with the Supreme Court of Canada forming the apex. While the administration of justice in the provinces including the constitution of courts and civil procedure in these courts is under the control of the provinces, the criminal procedure is under the control of the Centre. And it is the Centre which controls the appointment, emoluments and removal of judges of both the federal and the provincial courts, except the lower provincial courts.

The Supreme Court of Canada consists of a Chief Justice and a number of other judges who are appointed by the Governor-General in Council (that is, on the recommendation of the Cabinet.) The judges hold office during good behaviour. They may be removed by the Governor-General on a joint address by both Houses of Parliament. Retirement has been made compulsory at the age of seventy-five.

The Supreme Court hears and determines appeals from the provincial courts in cases involving substantial sums of money, questions of constitutional interpretation and questions of validity of statutes, federal or provincial. Appeals to the Judicial Committee of the Privy Council having been abolished (see below), the Supreme Court of Canada is today the court of the last resort in that country.

Jurisdiction of the Judicial Committee of the Privy Council abolished : Until 1949, the Judicial Committee of the Privy Council was the court of final appeal for Canada in all except criminal cases. This was hardly compatible with the independent status of Canada. In 1949, the Canadian Parliament passed a law abolishing all appeals to the Judicial Committee in regard to cases arising after that time.

Judicial Review : The Canadian Judiciary possesses the power of judicial review. The Judiciary can set aside a law, federal or provincial, if it conflicts with the fundamental law of the land. This power is indispensable in a federation in which the Centre and the units have defined spheres of jurisdiction and both are expected to confine their activities within their respective spheres.

Fundamental Rights : The British North America Act, 1867 does not contain any Bill of Rights. In other words, the Constitution of Canada does not guarantee any fundamental right, like freedom of speech, press or association. These matters are left by the Constitution to the wisdom of the legislators and the common voters.

The only constitutional guarantees which the Act contains

are designed to protect the cultural rights of certain minorities —the French and Roman Catholic minority in Canada and the English Protestant minority in Quebec where the population is predominantly French-speaking. The Act says (Section 133) that the English and French Languages may be used in the Canadian Parliament and the Quebec Legislature, both these languages must be used in the journals and records of those Legislatures, and any person may use either of these languages in the courts of Quebec and the Canadian courts established under the Act. The Acts of the Canadian Parliament and the Quebec Lagislsture must also be published in both these languages. The Act also provides protection for the rights and privileges of the schools of sectarian minorities existing at the time of the union or authorised later (Section 93).

Because of certain legislations in the past, both provincial and federal, which seriously curtailed or thereatened the liberties of the people, the opinion is gradually gaining ground that certain basic rights of the people should be incorporated in the British North America Act.

Advisory Jurisdiction of the Courts : Under an Act of the Canadian Parliament, questions involving, among other things, interpretation of the British North America Act or the constitutionality of a statute may be submitted by the Government to the Canadian Supreme Court for its opinion. The Court after hearing both sides renders a judgment.

Under similar laws, the Provincial Supreme Courts can also render, judgments on matters submitted to them by the provincial Governments for their consideration and opinion. And from these judgments an appeal lies to the Supreme Court of Canada.

Very often judicial interpretations are in this way obtained by the Governments in advance of legislation or the application of legislation.

Provincial Governments : A province can change its constitution, except the provisions relating to the Lieutenant-Governor.

The executive power in each province is formally vested in a Lieutenant-Governor who exercises this power with the advice of the Ministers. The relation between the Lieutenant-Governor and the Ministers is the same as that between the Governor-General and the federal Cabinet. The Lieutenant-Governor is appointed by the Governor-General in Council. He holds office usually for a five-year term.

The provincial legislatures consist of the Lieutenant-Governor and an elected Legislative Assembly and, in Quebec only, an Upper Chamber known as the Legislative Council. Membership of the Assemblies varies from 20 to 90. The Legislative Council of Quebec consists of 24 members appointed for life by the Lieutenant-Governor in Council. In each province, the Ministers are responsible to the Legislature.

A Bill passed by the Legislative Assembly (in Quebec, both Houses) of a province must be submitted to the Lieutenant-Governor for his approval. The Lieutenent-Governor may assent to the Bill or withhold assent or reserve the Bill for the signification of the Governor-General's pleasure. The Governor-General may disallow a provincial Act within a year of its passage. Sometimes Provincial Acts are disallowed by the Governor-General.

In each province there is a hierarchy of courts with the provincial Supreme Court at the top. Below the Supreme Court are the county courts and minor provincial courts like the surrogate courts, division courts, magistrates' courts and certain other types of courts. The appointment, remuneration and removal of the judges of the Supreme Court and the county courts are under the federal Government's control, while the other courts are entirely under provincial control.

In the Northwest Territories there is a Commissioner at the head of the administration and a Council of 8 members, 5 appointed by the Governor-General in Council and 3 elected from constituencies in the Mackenzie District. The chief executive in the Yukon Territory is the Commissioner. There is also an elective Legislative Council of 5 members in this Territory.

Canada and the Commonwealth : Canada is a member of the Commonwealth and renders allegiance to the Queen. But, at the same time, Canada is a fully independent country. Canada is a member of the U.N.O. Canada can make a treaty with any foreign country without the consent of the United Kingdom Government. Canada is not bound by any treaty to which it has not consented. Nor would Canada be regarded as under any obligation to assist in a war declared without its consent. The Dominion maintains its own embassies and legations abroad.

The Crown possesses certain prerogatives, namely, the prerogatives of declaring war and peace and accrediting diplomatic representatives, which cannot be used by the Governor-General of a Dominion unless they are specifically delegated to him. Letters Patent have been issued by the Crown (1947) authorising the Governor-General of Canada to exercise all the royal prerogatives in respect of Canada on the advice of the Canadian Ministers. Thus, today, the Governor-General of Canada can exercise all these prerogatives, without reference to the Queen, on the advice of the Ministers.

CHAPTER XVI

THE GOVERNMENT OF THE SWISS REPUBLIC

The Evolution of the Swiss Confederation : Before the French Revolution, the land of the Swiss people was only a loosely knit confederation of thirteen cantons, only six of which were democratic while the rest were oligarchies. There were many areas in it held in subjection and exploited by the urban Cantons. Society was dominated by the privileged few and, common people had few rights. The Frrench Revolution released forces which shook the confederation to its foundations and completely changed the face of the land. In 1798 the armies of the French Directory overran the country and established a new regime which came to be known as the Helvetic Republic. The Republic was organised on the principle of popular sovereignty, a common Swiss citizenship was created and the suffrage was widened. Oligarchies were destroyed, privilege was abolished and the subject territories were liberated. The Helvetic Republic was, however, a unitary state divided into 22 departments, each of which had a local legislature. The central government consisted of a bicameral legislature and a collegial executive of five members elected by a joint session of the legislature.

Strong reaction, however, was caused by foreign military control and the confiscatory measures. At a conference called in Paris, under Napoleon's directives, the idea of a unitary state was given up and a new constitution, called the Act of Mediation, was agreed upon. This constitution established a federal state with 19 Cantons, six more Cantons having been added to the original number. It also created a Central authority the Diet, to which the Cantons were to send representatives. Politically, however, Switzerland continued to be a vassal of France.

The Congress of Vienna guaranteed "the perpetual neutrality

of Switzerland" in 1815. Since then the Swiss neutrality has been respected by all the European powers. The year 1815 also witnessed the Federal Pact which, with the approval of the Congress of Vienna, became the new constitution of the Confederation. That year also saw the addition of three more Cantons. Each Canton was given one vote in the Diet under the Pact.

The next thirty-two years were marked by internal dissensions which threatened the country with disruption . The forces of liberalism came into serious conflict with those of conservatism and religious differences became so sharp that the unity of the country was threatened with jeopardy. The Catholics opposed all proposals for reform put forward by protestants and ultimately seven Cantons in which the Catholics were in the majority formed the armed League of *Sonderbund.* In November, 1847, the Diet decided to suppress the League by military action and the country was plunged into a civil war. The federal forces, however, succeeded in defeating the rebels in less than three weeks and thus the forces of progress and liberalism emerged finally victorious in the troubled history of the country.

The next year a Committee of Revision appointed by the Diet to draw up a new Constitution produced a draft providing for a federal set-up with a strong Centre. The Constitution was adopted by the Diet with some minor alterations and submitted to a referendum. It was approved by the voters and promulgated in September, 1848.

The Constitution of 1848 provided for a bicameral legislature, one house representing the people and the other the cantons. It also provided for a seven-member federal executive to be elected by a joint session of the two Houses. It guaranteed a number of fundamental rights. It gave the federal Government far greater powers than the Diet ever possessed.

In 1874, this Constitution was considerably revised. The net result of this general revision was an enormous increase in the powers of the federal government and strengthening of the rights of individuals.

The General Features of the Constitution : The Constitution of Switzerland establishers a federation of 22 cantons or, more accurately speaking, 19 full Cantons and 6 half-Cantons. These half-Cantons came into existence as a result of the religious and economic conflicts which split the three Cantons of Unterwalden, Appenzell and Bashe in the past. The full Cantons are : Zurich, Berne, Lucerne, Uri, Schwyz, Glaris, Zoug, Fribourg, Soleure, Schaffhausen, St. Gall, Grisons, Aargan, Thurgan, Ticino, Vaud, Valais, Neuchatel and Geneva.

The Constitution vests a large number of powers in the federal Government and leaves the residue to the Cantons. It declares : "The Cantons are sovereign so far as their sovereignty is not limited by the Federal constitution ; and, as such, they, exercise all the rights which are not delegated to the Federal Power."

The Constitution sets up a Federal Assembly (Parliament) and provides for a Federal Council (Cabinet) to be elected by a joint session of the Houses of the Federal Assembly. It provides also for a Federal Tribunal (Federal Court).

Among the other principles, apart from federalism, that are embodied in the Constitution are republicanism and secularism.

The Constitution guarantees a number of fundamental rights. It also lays down the procedure for its amendment.

Amendment of the Constitution : Under the Swiss Constitution, no amendment can be valid unless it is adopted in a referendum by a majority of the voters and also by a majority of the Cantons.

An amendment may be general or partial, i.e., it may involve a total rivision of the Constitution or the alteration of a particular provision or addition of a new provision.

Either kind of amendment may be proposed by the Federal Council (Cabinet) or the Federal Parliament or by the people, that is, through the device of the initiative.

If a partial or a general amendment has been proposed by the Federal Council or the Federal Parliament, it must be passed by the two Houses and then the amendment or the revised constitution must be submitted to the voters. If it is approved by a majority of the voters and by a majority of the Cantons, it will come into force. In reckoning the majority of Cantons, the vote of a half-Canton is counted as half a vote and the result of the vote in each Canton is regarded as the vote of the Canton.

The Constitution lays down detailed provisions for amendment through the initiative. Proposals made through this device also have to be, after the necessary conditions have been fulfilled, submitted to a referendum, and become valid only if they are accepted by a majority of the voters and a majority of the Cantons. A few of the amendments adopted by the Swiss people since 1874 had their origin in the initiative. One of these amendments was that of 1918 which introduced proportional representation as the basis of election to the National Council (the Lower House.)

The Division of Powers : It has been already pointed out that the Swiss Constitution gives a number of specified powers to the Federal Government and leaves the rest of the field to the Cantons. The division of power in the Swiss Constitution thus follows the American pattern.

The exclusive powers of the Federal Government include defence and foreign affairs ; posts, telephone and telegraph ; currency and coinage ; railroads ; customs ; weights and measures ; inter-state commerce ; forests ; civil and criminal law ; industrial legislation ; social welfare projects and regulation of production and sale of alcohol.

The Federal Government has concurrent and paramount powers in relation, among others, to the following : education (except higher education which is an exclusively federal subject) ; control of the press ; banking ; immigration and maintenance of the highways.

All powers not granted to the Federal Government are reserved to the Cantons.

It may be mentioned that a very large number of Federal subjects in Switzerland are actually administered by the Cantons. Compared to other Federations, the number of Federal officials in the Swiss Republic is very small. The Swiss practice in regard to the administration of Federal subjects contrasts sharply with that in Indian or America.

Some Striking Features of the Swiss Federalism :

(1) Switzerland presents an example of a strongly centralised federation embracing a people divided into different linguistic and religious groups. 72 percent of people of the Swiss Republic speak German dialects, 21 per cent speak French and 6 per cent Italian. About 1 p.c. speak Romanche. Protestants constitute 57 per cent. of the population, while Roman Catholics constitute 41 percent, the rest being people belonging to other faiths. There are also great differences among the Cantons in respect of economic development and population. That in spite of so many differences the Swiss federal system works very smoothly and on the basis of democratic principles is a tribute to the shrewdness and moderation of the Swiss people as well as to their loyalty to the nation. The Constitution declares three languages, namely, German, French and Italian to be the official languages of Switzerland. The members of the Federal Parliament may speak in any of these languages and actually, in course of almost every debate, speeches are delivered in all three.

(2) No federal constitution, it is believed by many people, can work successfully unless there is a Tribunal which can set aside laws that conflict with the Constitution and thereby keep the Centre and the Units within their respective jurisdictions. But the Federal Tribunal in Switzerland has no power to declare a federal law unconstitutional. It can, however, invalidate a Cantonal law if it is repugnant to the Federal Constitution or to the Cantonal Constitution. Whatever interpretations are put by the Swiss Federal Parliament on the provisions of the Constitution are regarded as authoritative and binding.

(3) While a Federal law cannot be invalidated by the Federal Tribunal, it can be set aside by the people. Any federal law may

be required to be submitted to the people by a petition signed by 30,000 voters or by 8 Cantons. And it can be rejected by a simple majority of the persons actually voting . This is known as referendum. The device of the referendum is thus a safeguard against legislative tyranny of the Federal Parliament.

(4) The procedure for election to the Upper House of the Federal Parliament, which is known as the Council of States, is determined by Cantonal law and not Federal law. While in most Cantons the members of the Council are elected by direct popular vote, in some they are elected by the Cantonal legislatures, and in the rest by Landsgemeinden—Assemblies of all adult male citizens. And the term of the members of the Upper House also varies according to the Cantonal law from one to four years. The members are paid not by the Federal Government but by the respective Cantons.

(5) One of the most striking features of the Swiss federalism is its collegial executive. The executive power of the Federation is vested in a Federal Council of seven members elected by the two Houses of the Federal Parliament in joint session. There is no functionary in the Swiss Republic comparable in powers and status with the British Prime Minister or the American President. Although one of the members of the Federal Council is elected as the President of the body for a term of one year and although he is referred to as the President of the Confederation, his powers are not greater than those of his colleagues. (The only difference is that he presides over the Council and has a casting vote in case of a tie.) Certainly one of the reasons for this unique arrangement is that no Canton was willing to allow the executive power to be vested in a single person. Most students of Swiss politics agree that this peculiar executive of the Swiss nation works remarkably well.

(6) As has been already pointed out, a very large number of federal subjects is administered in Switzerland by the Cantons. This legislative centralisation coupled with administrative decentralisation contrasts sharply with the practice in India and America.

(7) It may also be mentioned that although the Swiss Constitution refers to the country as a Confederation, it is really a federation with clear demarcation of the Federal and local jurisdictions. The constitution itself divides the powers and this division can be altered only by a special procedure.

Comparison between the Swiss Federalism and the American Federalism—See Chapter XIX (Part I).

The Federal Parliament : The Federal Parliament which is known as the Federal Assembly consists of two Houses. The Upper House is known as the Council of States and the Lower House, the National Council. The Upper House is supposed to represent the Cantons. Each full Canton is represented by 2 members in this House, while each half-Canton is represented by one member, the total number of members in the House being thus 44. Representation in the Lower House is based on population. This house is directly elected by the voters and represents the nation as a whole.

The two Houses enjoy equal powers in all matters including financial ones. No person can be a member of both Houses at the same time. And no member can hold any office under the Federation. He can, however, hold any post, not excepting that of a judge, under the Cantonal Government.

The Constitution vests the supreme authority of the Federation, subject to the rights of the people and the Cantons, in the Federal Parliament. And this is not an empty declaration. The Federal Parliament really exercises supreme authority in the Federation, the Federal Executive being only a servant of this body. If any proposal made by the Federal Council (Cabinet) is rejected by Federal Parliament, the former does not resign but carries out the wishes of the Parliament.

And, unlike the British Parliament or the House of the People in India, the Swiss Parliament cannot be dissolved by the Executive. The Parliament, however, can be dissolved by the concurrent resolutions of the two Houses. Dissolution can also be forced upon it by the people demanding a total revision of

the Constitution. The Constitution provides that when either House of Parliament decides in favour of a total revision of the Constitution and the other House does not agree or when 50,000 Swiss voters demand a total revision, the question whether the federal constitution ought to be so revised is, in either case, submitted to the people. If the majority of those who actually vote pronounce in the affirmative, the Councils are dissolved and fresh elections take place so that the new Parliament may undertake the work of revision. (Since 1874 there has been no total revision of the Constitution).

The main functions of the Federal Parliament are to legislate on the Federal subject, to receive reports from the Federal Council, to criticise the administration and to take decisions on constitutional issues.

The Parliament has also certain judicial functions. It supervises the administration of justice in the Federal sphere. It adjudicates upon certain conflicts of jurisdiction between the Federal authorities and hears appeals against the decisions of the Federal Council relating to certain administrative disputes. These judicial functions are, obviously, something out of the ordinary. Few Parliaments, if any, possess such powers.

Federal laws and decrees of general application must be submitted to a referendum if it is demanded by 30,000 voters or by 8 Cantons. If a simple majority of the actual voters vote against the proposed law or decree, it is rejected.

It is thus the people, and not the Executive, who have the veto power in Switzerland. And it is interesting to note that just as the Federal Council (Cabinet) does not resign when any of its proposals are defeated in the Parliament, so also the members of Parliament do not resign if any law passed by them is rejected by the people. In other words, the Federal Council acts as the agent of the Parliament and the latter acts as the agent of the people. In case of disagreement between the agent and the master, it is the master's will that prevails. It has been very rightly remarked that, to the Swiss people, politics are a matter of business.

And the will of the people (or the Legislature) is carried out in Switzerland in a business like manner.

The Council of State : The Upper House of the Federal Assembly (Parliament) is known as the Council of States. The Council of States consists of 44 members, 2 members from each Canton and 1 from each half-Canton.

The members of the Council of States are elected according to the Cantonal laws. The method of election and the term of the members, therefore, vary. In seventeen Cantons, the Senators are elected by the direct vote of the people, in four by *Landsgemeinden* (Assemblies of all adult male citizens) and in the rest by the Cantonal legislatures. The term of the Senators varies from one to four years. Fourteen Cantons have fixed the Senators' term at four years, eight at three years and three at one year.

The Senators are paid by their Cantons, and not by the Federal Government.

The Senators are supposed to represent the Cantons and to safeguard the right of the Cantons. But, rather strangely, they are forbidden to act according to Cantonal instructions.

The Swiss Upper House is unique in the world in that its powers are equal in every respect to those of the Lower House. And in spite of the fact that both Houses have co-equal powers, deadlocks have never arisen. In case of any disagreement, it is resolved through discussion held at a conference between the representatives of the two Houses. The relations between the two Houses are most cordial. Politically, of course, the Lower House has much greater importance than the Council of States. This is why the Council of States does not usually stand out against the will of the Lower House. The Council of States, it must be stressed, is not a conservative body. "No one", says a writer, "even speaks of the Swiss Council of States as a citadel of reaction or a brake upon the wheels of progress." The British House of Lords, it may be recalled, has always been conservative in its outlook and has, often in the past, retarded the progress of the

country by standing out stubbornly against the forces of progress.

The National Council : The National Council is the lower house of the Parliament. At present its total membership is 196.

The members are elected by proportional representation on the basis of adult suffrage. Every Swiss who has reached the age of 20 years, and is not legally disqualified, can vote. No clergyman can become a member of the National Council. (A Protestant clergyman can stand as a candidate after resigning his spiritual office.)

The National Council is elected for four years. It cannot be dissolved by the Executive. It can, however, be dissolved by its own resolution and in certain other circumstances already mentioned.

The National Council elects a President and a Vice-President from among its members. These officers are elected for one year although the Constitution expressly requires election for only one session. The President is not re-eligible for election the next year as the President or the Vice-President. Nor can the Vice-President be re-elected to this office the next year. The President has a casting vote in case of a tie. The members of the National Council, unlike those of the Upper House, are paid from the Federal Treasury.

In the National Council, as in the other House, decisions are taken by an absolute majority of persons voting.

Legislative Procedure : No law can be valid unless it is passed by both Houses.

An interesting feature of the Swiss legislative procedure is that Bills are simultaneously introduced in both Houses, which ensures speedy and independent consideration by both Houses. This sharply differs from the practice in most countries including India where a Bill is introduced in one of the two Chambers and is transmitted to the other House only after it has been passed by the former.

Most Bills are introduced by the members of the Federal Council (the Cabinet Minister). But private members also have the right to introduce a Bill. And a Canton can introduce a Bill by correspondence. A member of either House may introduce a *postulat* or a *motion*. A *postulat* is a recommendation which, if passed by a single house, is submitted to the Federal Council for consideration. A *motion* is a demand addressed to the executive for effective action and, if passed by both Houses, becomes binding on the Federal Council.

A Federal law must be submitted to the people, if a referendum is demanded by not less than 30,000 voters or by 8 Cantons. And the voters can reject the law by a simple majority.

The Constitution, however, does not provide for the initiative for ordinary legislation in the Federal sphere. In other words, while the people have the power to veto a Federal law, they have no power to initiate a Federal law. The people can, however, as has been already indicated, initiate an amendment to the Federal Constitution.

The Federal Council : The executive power of the Federation is vested in the Federal Council. The Federal Council consists of seven members elected for 4 years by the two Houses of the Federal Parliament in joint session. The election of the Council takes place after each general election. The Constitution lays down that not more than one member of the Federal Council can be chosen from the same Canton. This is one more instance of the spirit of democracy that pervades the Swiss constitutional system. Although the Constitution does not bar outsiders from being elected to the Federal Council, as a rule only members of Parliament are elected to this body. After his election, a Federal Councillor must vacate his seat in the Legislature. The Federal Councillors can speak in both Houses but cannot vote.

The chief functions of the Federal Council are to execute the laws and ordinances of the Federation, to submit drafts of laws and ordinances to the Federal Parliament, to report upon proposals submitted to it by the two Houses and the Cantons,

to ensure external and internal security of Switzerland and to administer the finances of the Federation. The Council gives an account of its work to the Parliament in each ordinary session, submits a report to it on the internal conditions and external relations of the country and recommends to it such measures as it thinks fit for the promotion of general welfare.

The Federal Council is a collegial executive in the true sense of the term. No member of the Council is *primus inter pares* like the Prime Minister of Britain.

Under the Constitution, however, the two Houses of the Federal Parliament elect every year, in joint session, one member of the Federal Council to be the President of the body and he is called the President of the Swiss Confederation. But he is a mere titular head of the Federation. Apart from the fact that he presides over the meetings of the Council and can give a casting vote in case of a tie, his powers are almost identical with those of his colleagues. (He, of course, represents the Federation on ceremonial occasions.)

The Swiss executive is unique in the world. There is no other country where the executive is based on the collegial principle in the true sense of the term. Under the Cabinet system of Government, it may be said, the Executive is based on the collegial principle. But a Cabinet is not a collegial executive in the true sense of the term. The Prime Minister wields far greater power than any of his colleagues. He not only selects his team, he can force any of his colleagues to resign. He can even get a colleague removed from the Ministry. He dominates the discussion in Cabinet meetings. He plays a dominant role in the formulation of policy. It is through the dominant role played by him that the Cabinet achieves a unity of purpose in matters of policy.

In the Swiss Federal Council, however, there is no such person with a dominant voice. Yet the Council functions, on the whole, with remarkable success. And this appears all the more striking when one considers the fact that the members of the Council belong, almost invariably, to more than one party.

Though the members of the Federal Council are elected by Parliament, they cannot be dismissed by them. It has been already pointed out that rejection of any proposal of the Council by the Federal Parliament does not involve the resignation of the Council. "The Swiss see no reason why ministers, whose general work is satisfactory, should be turned out of office because they and the chambers are of a different opinion on some single proposition." Under the Cabinet system of government, however, defeat in Parliament of any important proposal made by the Cabinet involves, usually, resignation of the Cabinet or, sometimes, dissolution of the popular chamber. In Switzerland, however, the Federal Council cannot be removed by Parliament, nor can Parliament be dissolved by the Council. This should make it clear that the Swiss executive is not of the Parliamentary type. Nor is the Swiss system of Government a Parliamentary system. Dicey says that the Swiss Federal Council is "not a Ministry or a Cabinet in the English sense of the term." "It may be described", says he, "as a Board of Directors appointed to manage the concerns of the Confederation in accordance with the articles of the constitution and in general deference to the wishes of the Federal Assembly."

The outstanding characteristic of the Swiss Executive is its permanence and stability. Apart from the fact that it cannot be dismissed by Federal Parliament, very often the same persons are re-elected term after term. One may find statesmen who have sat in the Council for over twenty-five years consecutively.

Though the Swiss Executive is neither of the Presidential nor of the Parliamentary type, it combines the merits of both. (On this point see also section on "The Swiss Executive" in Chapter XV. (Part I)

The Federal Council takes its decision by majority vote. The quorum is four. The President can vote on all questions and, as has been indicated, has a casting vote in case of a tie. In spite of the fact that the Federal Councillors do not belong to the same party, usually the proposals emanating from them have their unanimous approval. Referring to this fact a writer has aptly

remarked "Swiss party feeling seems to generate lower temperatures than is the case elsewhere. Of course, this non-partisan unity is not always operative. Sometimes one or several members of the Federal Council may oppose bills favoured by the majority and speak against them in the legislature. The Federal Council is by no means a coalition government in the ordinary sense of the 'phrase, and a member who disagress with a Council decision would rarely consider resigning."

Each member of the Federal Council, it may be added, heads an administrative department. The seven departments are : (1) Finance and Customs, (2) Interior, (3) Political (including foreign affairs), (4) Military Affairs, (5) Finance and Customs, (6) Justice and Police and (7) Public Economy (including agriculture, industry and the like).

The Federal Tribunal : The Federal Tribunal is elected by the two legislative chambers in joint session. It consists of 26 to 28 judges and a number of substitute judges. The judges are elected for a six-year term. But a convention has developed in the country of re-electing the judges so long as they desire to serve. The President and the Vice-President of the Court are, however. not immediately re-eligible.

The Federal Tribunal is the only Federal Court in Switzerland with single exception of the Federal Insurance Tribunal.

The most important fact to be noted about this Court is that it cannot declare an Act of the Federal Parliament as unconstitutional. This fact distinguishes the position of this Federal Court from most other Federal Courts, such as the Supreme Court of the United States or the Supreme Court of India.

The Federal Tribunal, however, can set aside a Cantonal law if it is inconsistent with the Federal Constitution, or a Federal law or the Cantonal Constitution.

The Federal Tribunal has original jurisdiction in cases arising between the Federation and the Cantons or between the Cantons and in respect of certain other matters. It hears and determines

appeals against decisions of the Cantonal Courts. It has also a limited administrative jurisdiction.

The Initiative and the Referendum : The most characteristic of the Swiss institutions are the intiative and the referendum. (These political devices have been explained in Chapter XIII under the heading "Direct Legislation.") Switzerland is "the ancestral home of the initiative and referendum."

In the Federal sphere, the constitutional referendum is compulsory. That is, all propcsals for amendment of the Federal Constitution must be submitted to popular vote. The statutory referendum is, however, optional in this sphere. Federal laws become operative after they have been passed by Parliament, unless 30,000 voters or 8 Cantons demand a referendum.

In the Federal sphere, there is no statutory initiative. In other words, Federal laws cannot be originated through the device of the initiative. Amendment of the Federal Constitution can, however, be originated through this device.

In the Cantonal sphere, the constitutional referendum is compulsory in all the Cantons. This means that in every Canton, proposals for constitutional revision must be submitted to the people. (This required by the Federal Constitution itself—Article 6 (c))

Statutory referendum is optional in a number of Cantons including Geneva, Fribourg and Vaud.

Apart from the constitutional and statutory referendum, there is in the Swiss Cantons what may be called financial referendum. In some Cantons, all important financial proposals are referred to the people. Financial referendum is compulsory in sixteen Cantons in case of expenditure exceeding certain specified limits.

The Cantonal constitutions provide both for constitutional and statutory initiative. [In Geneva, however, there is no constitutional initiative.] This means that people can initiate not only

ordinary legislation but also constitutional amendment, and then adopt it or get it adopted by the Legislature.

In a few Cantons, namely, Glaris, Obwald, the two Appenzells and Nidwald, all laws are considered and adopted by Landsgemeindes, that is, as assemblies of all adult persons. In the Cantons, obviously, there is no need for referenda.

The initiative and the referendum reflect the very soul of Swiss democracy and are the pivot round which the Swiss constitutional system moves. The principle that underlies these institutions is the great principle of popular sovereignty. They are devices through which the people of Switzerland exercise their sovereignty. If these institutions are abolished, the Swiss constitutional system will be changed almost beyond recognition.

Cantonal Governments : In one full Canton and four half-Cantons, namely, Glaris, Nidwald, Obwald and the two Appenzells, the supreme authority is exercised by Landsgemeinde, that is, the Assembly of all adult male citizens. This body meets once a year and enacts laws, decides matters of policy and elects an Administrative Council and the Cantonal judges. Thus the system of direct democracy obtains in these Cantons.

In the other Cantons, the governmental system is based on indirect democracy or representative democracy. Each of these Cantons has a unicameral legislature directly elected by the people. The membership of these bodies as well as the term of office of the members varies greatly. The executive function is vested in an Administrative Council directly elected by the people. The higher judges are elected by the legislatures, while the subordinate ones are directly elected by the people. Judges and efficient administrators are, as a matter of convention, elected for several terms, which ensures efficiency and purity of administration.

It must be stressed that in the Cantons also the executive is based on the collegial principle. Thus we see that nowhere in the Swiss Republic is to found the prototype of the American President or even the President of India. No official in Switzerland enjoys any veto power. The veto power rests with the people,

which is exercised through the machinery of the referendum. There is also, as has been pointed out earlier, the institution of the initiative in the Cantons—both constitutional and statutory. The people can directly initiate legislation and adopt it.

The Swiss Democracy : Swiss democracy is vigorous and full-blooded. It is a standing refutation of the assertion made by enemies of democracy that common people cannot govern themselves much better than the most gifted dictator who has ever wielded the destinies of any people. It also shows that it is under the democratic system that the liberties of the people receive the greatest protection. Lord Bryce said : "Among the modern democracies which are true democracies, the Helvetic Republic has the highest claim to be studied. It contains a greater variety of institutions based on democratic principles than any other country. The most interesting lesson Switzerland teaches is how traditions and institutions, taken together, may develop in the average man, to an extent never reached before, the qualities which make a good citizen—shrewdness, moderation, common sense and a sense of duty to the community. It is because this has come to pass in Switzerland that democracy is there more truly democratic than in any other country in the world."

CHAPTER XVII

THE CONSTITUTION OF SOUTH AFRICA

The Historical Background : The British acquired Cape Colony from the Dutch in 1815. And this Colony became the springboard, so to say, of the British colonial expansion in South Africa. The Boers, the descendants of the original Dutch settlers in Cape Colony, migrated to Natal. The British, however, would not let them alone and annexed Natal in 1843. The Boers thereafter established the Orange River Free State and the Republic of the Transvaal. The Transvaal was annexed in 1877. But, in Transvaal, the Boers struck back and the British, after suffering some crushing defeats at their hands, were forced to recognise the independence of Transvaal subject to the British suzerainty.

The discovery of gold in Transvaal had resulted in a considerable influx of foreigners in that colony. But the Boers had denied all rights of citizenship to these foreigners. The relations between the Boers and the foreigners grew very bitter and the British Government tried to induce the Boers to accord fair treatment to the foreigners. But the Boers resented this British interference in their affairs and, after declaring their independence, the Transvaal and the Orange River Free State invaded Cape Colony and Natal. Thus began the Boer War in 1899. The Boers, after considerable initial successes, were ultimately defeated and peace was concluded in 1902. In 1907 Lord Selborne, the High Commissioner for South Africa, was asked to prepare a report on the position of the colonies in their state of disunion. Lord Selborne's *Review of the Present Mutual Relations of the British South African Colonies* gave a strong impetus to the movement for union which had already begun. People in the colonies had recognised the artificiality of disunion and the economic wastage and inefficiency resulting from it. There were four separate governments, four supreme courts, four railway systems and four different systems of tariffs. And dwarfing every question stood the racial problem

—the most dominant factor in the political life of the colonies. The white people in South Africa constituted a small minority in the total population, and they wanted to rule the overwhelming majority, that, is, the native population of non-whites, by force. Inequality was to be the basis of South African politics, because equality of rights would mean the rule of the majority, the non-whites. The need for sheer self-preservation dictated the formation of a Union under a strong central Government.

A National convention met at Durban on October 12, 1908. The delegates, who represented the four South African colonies and Rhodesia, numbered thirty-three. These people, former enemies, recognised the compelling importance of the racial problem, buried their quarrels and agreed upon a unitary type of constitution. A federal system, they recognised, would be a weak form of Government. A unitary system alone could meet the requirements of the situation.

The question of franchise caused the stormiest of discussions in the convention. In the Cape, the franchise was based on wage and property qualifications which enabled several thousand Native and Coloured Persons to vote. In Natal, the number of non-European voters was so small as to be negligible. In the Transvaal and Orange River Colony, no non-European had the right to vote. After heated discussions a compromise solution was worked out. It was agreed that the Constitution would include a clause entrenching (that is, specially safeguarding) the franchise rights of the non-Europeans in the Cape. [This has been done by sections 35 and 152 of the Union of South Africa Act, 1909].

The Convention completed the drafting of the Constitution early in February, 1909. The draft Constitution was then submitted to the four Parliaments. The Convention reassembled in May to consider amendments suggested by the Parliaments and made a number of changes in the draft. This draft, with some further amendments made at the suggestion of the British Government, was incorporated in the Union of South Africa Act, 1909, passed by the British Parliament. A proclamation was issued

under the Act fixing May 31,1910 as the date of the commencement of the Union.

The General Features of the South African Constitution : The Union of South Africa Act, 1909 provides for the establishment of a Union comprising four provinces, namely, Cape of Good Hope, Natal, Transvaal and Orange Free State. The former Colonies which merged themselves in the Union have become the provinces.

The South African constitution, in spite of its superficial resemblance to a federal constitution, is a unitary one. As has been pointed out, the framers of the Constitution preferred a unitary to a federal constitution. They represented a small white minority determined to rule by force an overwhelming majority of the population who were non-whites. They did not require much argument to become convinced that in union lay strength, and that federalism would mean a weak central government.

But the framers had to deal with strong local sentiment also, and they provided for provincial councils with powers to legislate in regard to local subjects. True to the unitary principle, however, Parliament (the Central Legislature) was given legislative sovereignty over the entire legislative field. Parliament has, therefore, power to legislate on any subject and can repeal or amend any ordinance of a Provincial Council. And a Provincial legislation that conflicts with a Parliamentary Act becomes void to that extent. Every Provincial ordinance, moreover, requires the assent of the Governor-General in Council. Thus the Provincial Councils are legislative bodies of a peculiar character. They enjoy power by devolution.

The Constitution of South Africa is based on inequality. With certain exceptions to be presently noted, it denies to the great majority of the population, that is, the non-whites, the right to vote. It provides that only a person of European descent can become a member of either House of Parliament. As for the Provincial councils, the non-whites in only two provinces, the Cape and Natal, theoretically possess the right to be elected to

the Councils, such right being denied in practice. In the other two Provinces, they have neither the right to vote nor the right to be elected to the Provincial Councils.

Amendment of the Constitution : Parliament can by an ordianary law amend any Section of the Constitution, except three, namely Sections 35,137 and 152. Section 35 forbids Parliament to disqualify Native or Coloured voters in the Province of the Cape of Good Hope. Section 137 declares that both the English and Dutch Languages shall be official languages of the Union and shall be treated on a footing of equality. And Section 152 lays down the procedure for amending the Constitution.

These provisions which are known as the "entrenched" provisions of the Constitution can only be amended by a special procedure. It is laid down by the Constitution (Sec. 152) that these Sections can be amended only by a law that has been passed by both the Houses of Parliament sitting together and has been agreed to at the third reading by not less than two-thirds of the total number of members of both Houses.

In 1951 and 1952, the Union Government enacted, by the ordinary procedure, two legislations the effect of which would have been to amend Sec. 35 indirectly. The highest court in South Africa declared null and void both these legislations. The Court held that since the legislations, in effect, amended Section 35, they ought to have been passed at a joint session of Parliament and by a two-thirds majority. Failure to do so rendered the Acts void. The contents of these two Acts, which were known as the Separate Representation of Voters Act, No 46 of 1951 and the High Court of Parliament Act, No 35 of 1952, have been briefly referred to below.

Franchise and the Right to be elected : At present, the position relating to franchise in the Union of South Africa is as follows :

Every adult white South African citizen of either six has the right to be registered as a voter. Non-Europeans have no right to vote in the Provinces of Transvaal and Orange Free State. In

Natal, Coloured persons who fulfil some property qualification have the right to be registered as voters. In the Cape Province, both Coloured persons and Natives who satisfy some property and educational requirements are entitled to be voters. (A coloured person has been defined by law as a person who is not a white person and not a Native. The Coloureds are persons of mixed origin.) At present persons of Indian origin have no vote in South Africa. (Before 1948, a few Indians had the right to vote).

In 1948, there were 1,315,299 white voters in the whole of the Union, while the number of Coloured voters in the Cape was 47,329 and in Natal approximately 1000. And the number of native voters in that year was only a few thousands, all of them being in the Cape Province.

No non-European has the right to be elected to the Union Parliament. Even persons who represent the Natives in the two Houses are Europeans.

Only in two Provinces, Natal and the Cape, the non-Europeans have the right to be elected to the Provincial Council. But in practice they are not elected.

The Union Executive : The Executive Government of the Union is vested in the Queen acting on the advice of the South African Ministers and may be administered by her Majesty in person or by a Governor-General as her representative. What happens in practice is that the Governor-General exercises the executive power on the advice of the Ministers.

The Governor-General is appointed by the Queen on the advice of the Ministers of the South African Government. The Commission appointing the Governor-General is countersigned by the Prime Minister of South Africa. The Governor-General represents the Queen and not the Government of the United Kingdom.

Normally, the Governor-General must exercise his powers according to the advice of his Ministers. He cannot reject the

advice of his Ministers in regard to any official matter. He cannot exercise his personal discretion in any such matter. His position in relation to his Cabinet is like that of the Queen in Britain. He is a purely constitutional head.

Formerly, for documents requiring signature of the Sovereign, the Great Seal of the United Kingdom would be used. Since 1935, however, the Union has its Royal Great Seal, which is used for such documents. This Great Seal has been provided for by the Royal Executive Functions and Seals Act, No 70 of 1934. This Act confers on the Governor-General the power to exercise any royal function in respect of both internal and external affairs without royal approval.

Some constitutional experts are of opinion that there is one situation in which the Governor-General may refuse to accept the advice of the Ministry. If a dissolution of the Union Parliament is advised by the Ministry, and if the Governor-General is of opinion that the dissolution is not in the interest of the country he may refuse to accept the advice of the Ministry.

The Executive Council and the Cabinet : Under the Constitution, a large number of powers are to be exercised by the Governor-General in Council. This means that these powers are to be exercised by the Governor-General acting with the advice of the Executive Council.

According to the Constitution, all heads of departments automatically become members of the Executive Council and Ministers. The Executive Council consists of the Ministers of the exising and past Cabinets. In practice, however, only the members of the Existing Cabinet are called upon to advise the Governor-General.

The Executive Council meets to transact purely formal business. It gives legal effect to the decisions of the Cabinet. It does not deliberate on matters of policy. The quorum of the Executive Council is the Governor-General and three members (of the existing Cabinet).

Matters of policy are discussed and policies formulated at meetings of the Cabinet, which are presided over by the Prime Minister. The Cabinet is responsible to the House of Assembly.

The Governor-General in Council thus means in reality the Governor-General acting on the advice of the Cabinet responsible to the Lower House of Parliament.

As in Australia, the system of responsible government in South Africa is based almost entirely on conventions. Although the Union of South Africa Act mentions Ministers, it does not expressly state that the Ministers shall be responsible to the Lower House of the Legislature.

The Union Parliament : The Union Parliament consists of the Queen, who is represented by the Governor-General, and two Houses, namely, the Senate and the House of Assembly.

The Senate is the Upper House of Parliament. Formerly, the total membership of the Senate was 48—8 elected by each of the four Provinces, 8 nominated by the Governor-General for the Union, 4 elected by the Natives, 2 elected by South-West Africa 2 nominated for South-West Africa. The Senate Act, 1955 has, however, increased the total membership of the Senate to 89—the Cape, 22 ; Natal, 8 ; the Transvaal, 27 ; the Orange Free State, 8 ; Nominated, 16 (for the Provinces) ; South-West Africa, 4 (including 2 nominated) ; Native representatives, 4. The events which led to the increase in the total number of members of the Senate are of great constitutional interest. Because of the racial problems underlying them, they are also of international importance. These events have been briefly referred to below.

The Senators representing the Provinces are elected, in the case of each Province, jointly by the members of the House of Assembly representing that Province and the Provincial Councillors. Of the 16 members nominated by the Governor-General in Council, 8 must be persons having thorough acquaintance with the reasonable wants and wishes of the coloured races in South Africa. The members representing the Natives are elected by special electoral colleges consisting of trial chiefs, certain

tribal authorities and certain other local bodies. Two of the four members representing South-West Africa are nominated by the Governor-General in Council and the other two are elected jointly by the members of the Legislative Assembly of the Territory and the members of the House of Assembly representing the Territory.

The Senators hold office for five years. The Governor-General has power to dissolve the Senate. On dissolution of the Senate, both the nominated and elected Senators vacate their seats, except the four Senator elected by the Natives who are elected for a fixed term of five years. Only persons of European descent can be members of the Senate. This means that even those who represent the Natives must be white men.

At present, the Lower House, which is known as the House of Assembly, consists of 159 members. Of these 150 are directly elected from as many single-member constituencies into which the country is divided, three members are elected by the Natives and six members are elected from as many constituencies in South-West Africa. The allocation of seats for the Provinces is as follows : Cape, 54 ; the Transvaal, 68 ; Natal, 15 ; and Orange Free State, 13.

The House of Assembly is elected for 5 years but may be dissolved before the expiration of this period. As has been already indicated, no person other than a person of European descent can become a member of the House of Assembly. The franchise is also very much restricted. (This point has been separately dealt with above.).

Every Bill must be passed by both Houses of Parliament and thereafter presented to the Governor-General for assent. The Governor-General may assent to the Bill or he may withhold assent or he may return the Bill to Parliament for reconsideration. The power of withholding assent, however, is not exercised. For this power can only be exercised with the advice of the Cabinet.

Bills appropriating revenue or money or imposing taxation can only originate in the Lower House. The Senate has no

power to amend such Bills. In case of final disagreement between the two Houses, the Governor-General can call a joint session of the Houses and decisions are to be taken at such joint session by a majority of the members of the two Houses present. And the Governor-General, under the Constitution, has to call such a joint session if the Senate fails to pass a Money Bill or rejects such a Bill.

The Parliament, it should be stressed, enjoys supreme power over the entire legislative field. It can repeal or amend *any Provincial ordinance.*

The Struggle for circumventing the Entrenched clauses and the Expansion of the Senate : In 1951, in pursuance of its policies of racial discrimination, the Government of the South African Union, headed by Dr. Malan (Nationalist Party), introduced a Bill in the House of Assembly to remove the Coloured voters in the Cape Province from the common roll of voters. And this Bill was passed, by following the ordinary procedure, into an Act under the title of the Separate Representation of Voters Act, No. 46 of 1951.

The South African Constitution, however, by Section 35, safeguards the franchise rights of non-European voters in the Cape Province. And this Section, as has been already pointed out, is an entrenched provision In other words, this provision can be amended by Parliament only by a two-thirds majority at a joint session. The above-mentioned Act had the effect of amending Section 35, but this Section could not be amended except by the special procedure laid down in the Constitution. It was obvious that the Government which could not hope to get a two-thirds majority at a joint session, was trying to circumvent the limitations imposed by the Constitution in an indirect way. Clearly, the Act was *ultra vires* the Constitution. The Act was challenged before the Courts by four Coloured voters in the Cape and it was declared null and void by the Appelate Division of the Supreme Court, the highest court of appeal in the country.

Foiled in its attempt to circumvent the entrenched clauses

in this way, the Government devised an extraordinary plan to take away the power of the Appellate Division of the Supreme Court to invalidate an Act of Parliament with final effect. The Government, again by following the ordinary procedure, got an Act passed by Parliament, which came to be known as the High Court of Parliament Act, 1952. This Act empowered the High Court of Parliament to review judgments of the Appellate Division invalidating any Act of Parliament, and to confirm, vary or set aside such judgments. The High Court of Parliament was to consist of every member of Parliament Thus in short this Act sought to make Parliament the final court of law in regard to cases in which the highest court of the land declared *ultra vires* any Parliamentary legislation. The High Court of Parliament Act was, obviously, a new device designed to circumvent the entrenched clauses. This extraordinary piece of legislation, however, was itself declared null and void by the Appellate Division of the Supreme Court. The passing of the High Court of Parliament Act had roused such a storm of protest all over the country that, when it was invalidated by the Judiciary, the Government quietly bowed its head to the judgment.

In 1955, the Government got enacted another statute known as the Appellate Division Quorum Bill which provided that the quorum of the Appellate Division should be eleven judges in cases in which the validity of an Act of Parliament was at issue. Since the Appellate Division consisted only of six judges at that time, the Governor-General appointed five more judges to the court to bring the number to eleven. As anybody having the least common sense can see, this was a device to pack the Court with judges favourable to the Government's racial policies.

In order to get a two-thirds majority in Parliament, the Government also brought forward a new Bill in 1955. This Bill was passed into Act in 1955 under the name the Senate Act, 1955. This Act increased the total membership of the Senate from 48 to 89, and this increase was effected in such a way as to ensure for the Nationalist Party a large majority in the Senate, so that it could command the support of a two-thirds majority at a joint

session of the two Houses. The Act also abolished equal representation for the Provinces in the Senate.

Under the Act, the Senate was reconstituted in 1955 and the Nationalist Party obtained in it the majority desired by it. The Nationalist Party won 77 seats and the United Party 8. (The remaining four seats were those of Native representatives).

The Judicial System : The Appellate Division of the Supreme Court is the highest court of appeal in the Union. Formerly, the Appellate Division consisted of 6 judges. After the passing of Appellate Division Quorum Act in 1955 (this Act has been referred to in the preceding section), this Court was expanded by the addition of 5 more judges. At present, therefore, this Court consists of 11 judges. The judges are appointed by the Governor-General. The seat of the Court is Bloemfontein.

Below the Appellate Division are the four Provincial Divisions of the Supreme Court, one in each of the four provinces. Below the Provincial Divisions are the Local Divisions of the Supreme Court from which appeals lie in certain categories of cases to the Provincial Divisions and in certain others to the Appellate Divisions.

The magistrates' courts are the lowest courts in the hierarchy. They have both civil and criminal jurisdiction.

Although the Natives are subject to the jurisdiction of the ordinary courts of the country, certain special courts have been established for hearing purely Native cases. The procedure followed by these Courts are simpler and less expensive than that of ordinary courts. There are also some Native Chiefs' and Headmen's Courts to deal with cases involving Native laws and customs. Appeals from such courts lie to the Native Commissioners' courts.

Provincial Government : Although each of the South African Provinces has a Government and a Legislature of its own, the Provinces are not autonomous in the sense in which an American or an Australian State is autonomous. Even an Indian State enjoys far greater autonomy than a South African Province. This

is because the South African Government, although it looks like a federal system, is actually a unitary one. Parliament's power is supreme over the whole field of legislation and it can repeal or amend any Provincial ordinance, directly or indirectly. All ordinances passed by provincial council have to be presented to the Governor-General in Council for his assent and no such ordinance can come into force until it has received his assent.

The provincial administration is headed by an officer known as the Administrator. The Administrator is appointed by the Governor-General in Council for a period of five years and may be removed by the same authority for reasons communicated to both Houses of Parliament.

The Administrator is the pivot of the Provincial administration. He is the chairman of the Executive Committee which consists of himself and four members elected by the Provincial Council by means of the single transferable vote system of proportional representation. He has both a deliberative and a casting vote in the Executive Committee . He is, however, responsible neither to the Provincial Council nor to the Executive Committee. He is responsible only to the Union Government.

The Administrator summons and prorogues the Provincial Council. He sits in the Council and usually pilots all important official measures in it. He cannot, however, vote in Council. He promulgates the provincial ordinances. All official acts of the province are done in his name. In short, he is at once the prime minister and governor of the province.

The Executive Committee, as has been stated above, consists of the Administrator and four members elected by the Provincial Council on the basis of proportional representation. These members of the Executive Council are elected for a fixed period of five years and cannot be removed either by the Provincial Council or by Administrator or by the Central Government. They are, therefore, responsible to nobody.

Provincial Councils are unicameral bodies. The Constitution says that each Provincial Council shall consist of the same

number of members as are elected in the province for the House of the Assembly, subject to a minimum of 25 members. At present the membership in the Provincial Council is as follows : Cape, 54 ; Natal, 25 ; Transvaal, 68 ; Orange free State, 25.

The Provincial Councils are something more than municipal bodies and something less than local legislatures in a federation.

A Provincial Council can make ordinances on direct taxation within the province ; primary and secondary education ; agriculture ; hospitals and charitable institutions ; municipal institutions; roads and bridges ; markets and pounds ; local undertakings ; any subject delegated to it by Parliament.

The Provincial Councils enjoy power by devolution. The Union Parliament possesses paramount power over the entire legislative field. A provincial ordinance may be, directly or by implication, repealed or amended by Parliament. If, for instance, Parliament passes an Act containing provisions that are inconsistent with the provisions of a Provincial ordinance, the latter is to that extent repealed. Neither the Administrator nor the Executive Committee is responsible to the Provincial Council. A private member of the Council can introduce measures other than financial. All appropriations require recommendation by the Administrator. But the Council can refuse to consent to appropriations recommended by him.

From what has been said above, it should be clear that the provincial government in the Union of South Africa represents a sort of compromise between federal and unitary systems.

Racial Policy and Apartheid : The governmental system in South Africa is frankly based on inequality. The theory of superiority of the white races is an article of faith with almost all white men in South Africa. And the leaders of the white people in that country make no bones about the fact that they intend to dominate the coloured races in that country for all time to come. The white people constitute roughly 20 p.c. of the total population in South Africa. In 1951, of the total population of 12.6 million in the country, roughly 2.6 million were white or

European, 8.5 million Native or Bantu, 3.6 lakhs Asiatics and 1.1 million coloured. Thus what we see in South Africa is a phenomenon of one-fifth of the population dominating the rest by sheer force.

The present Prime Minister, Mr. J. G. Strijdom, in course of a speech in the 3 House of Assembly in April, 1955 bluntly summed up the basic fact of the South African racial problem thus : "There is only one way that the white man can maintain his leadership of the non-European in this country and that is by domination. Call it paramountcy, baasskap (mastery) or what you will, it is still domination, I am being as blunt as I can. I am making no excuses. Either the white man dominates or the black man takes over.

"I say that the non-European will not accept leadership [if he has a choice.] The only way the Europeans can maintain supremacy is by domination. And the only way they can maintain domination is by withholding the vote from the non-European. If it were not for that we would not be here in Parliamentoday.....To suggest that the white man can maintain leadert ship purely on the grounds of his greater competency is unrealistic. The greater competency of the white man can never weigh against numbers if Natives and Europeans enjoy equal voting rights."

For a long time there has been segregation in the social life in the South Africa. The railways provide separate accommodation for Europeans and non-Europeans. In railway stations there are separate waiting rooms and entrances for the whites and non-whites. In buses there are separate seats and in post-offices there are separate counters. There are two classes of tax —first class and second class. The former is meant exclusively for the whites ; the latter alone can be used by the non-whites. Restaurants and hotels have the right to refuse admission to non-whites. Even in parks, seats may be reserved for Europeans only or non-Europeans only. The Appellate Division of the Supreme Court held in some cases [R V. Abjurahman, 1950 and R V. Lusu, 1953] that when separate amenities are provided for

different racial groups, it should not be done in such a way as to result in unequal treatment to a substantial degree. In other words, the Court stood for separate but equal amenities for the races. But the effect of these judgements has been nullified by the passing of an Act known as the Reservation of Separate Amenities Act, 1953. This Act declares that it is not necessary to provide for equal or substantially equal amenities for the different racial groups.

In their zeal to ensure that the white races can dominate the non-whites for all time to come without much friction or difficulty, the present Government (Nationalist Party) have adopted a policy of total apartheid. The word apartheid means segregation or separation of the races.

The aim of this policy is gradually to remove the Natives from European *areas into the* reserves where they can live their own life and develop in their own way. But the reserves are always to be under white control and supervision. The policy also aims at segregation of all non-whites other than the Natives, namely, the Coloured persons (persons of mixed blood) and the Asiatic races in separate areas assigned to each such race. Since prevention of further inter-mixure of races is a corollary to the policy of apartheid, steps to prevent such inter-mixture are integral to the Government's racial policy.

A number of Acts have been passed in pursuance of this policy of apartheid. Among the more important of these Acts are the Population Registration Act, 1950 and the Group Areas Act, 1950. The population Registration Act, provides for the compilation of a register for the entire population of the Uhion, white, coloured and Native and for the issue of identity cards to persons whose names are included in the register . The Group Areas Act, 1950 provides for the creation of separate areas for the different racial groups of the Union so that "the penetrated areas", that is, areas in which there is commercial and residential intermingling of the races may be completely eliminated.

Both these Acts are being vigorously enforced. It should

be clearly understood that apartheid does not mean absolute separation of the races in South Africa. The policy provides for innumerable points of contact between the whites and the non-whites —which will remain even after total apartheid has been effected —in order to ensure that the white domination is maintained over the entire non-white population and there is a continuous flow of non-white labour to the factories of white men

It may be added that the United Party, the leading Opposition party in the Union, though it believes in white superiority and wishes to safeguard white domination like the party in power (the Nationalist Party), rejects total apartheid. It aims at attaining its objective through methods less shocking to civilised conscience.

South-West Africa : The Territory of South West Africa was originally part of the German overseas empire. After World War I, under the treaty of Versailles, this Territory was placed under the Mandate System. The Mandate was conferred on the British Sovereign and was to be exercised on his behalf by the Union of South Africa. Since then South-West Africa is being administered by South Africa as an integral part of its territory. After World War II, a new world organisation, called the United Nations organisation, was created to fill the vacuum caused by the dissolution of the League of Nations. A new system, called the Trusteeship System, was brought into existence to correspond to the old Mandate System. South Africa, however, refused to place the Territory under the Trusteeship Council of the United Nations. In 1953, a Committee on South-West Africa appointed by the General Assembly of the United Nations called upon the Union Government to submit an annual report to the UN on the administration of the Territory. But South-Africa refused to do that.

South-West Africa has thus become, for all practical purposes, a Province of the South African Union. The administrative set-up of the Territory is as follows : An Administrator appointed by the Governor-General is the head of the administration. There is an Executive Committee consisting of the

Administrator and four other members chosen by the Legislative Assembly of the Territory. The Legislative Assembly consists of 18 members elected by the voters of the Territory. Its legislative power is subject to certain statutory restrictions. The Governor-General has power to legislate for the Territory on subjects falling outside the legislative jurisdiction of the Assembly. The Territory is represented by four members in the Senate, the Upper House of the Union Parliament, and six members in the House of Assembly, the Lower House.

Non-Europeans in the territory, however, have no right to vote. True to the South-African policy of white domination, it is the white population of the Territory that controls and dominates the political and economic life of the Territory.

CHAPTER XVIII

*THE CONSTITUTION OF PAKISTAN

The Origin of the Constitution : The circumstances leading to the partition of India as a result of which Pakistan came into existence as a separate state have been already dealt with in connection with the study of the Indian Constitution.

The Dominion of Pakistan was constituted on August 14, 1947 under the Indian Independence Act, 1947. The Dominion comprises the following areas of undivided India—East Bengal including almost the whole of Sylhet (a former district of Assam), Baluchistan, North West Frontier Province, West Punjab and Sind and certain states which acceeded to Pakistan.

Under the Provisions of the Indian Independence Act, 1947, the Constituent Assembly of Pakistan was set up by the Governor-General of India, Lord Mountbatten, by announcements made on July 22 and August 10, 1947. The work of the Constituent Assembly dragged on for years mainly because of the fact that the claims of the eastern and the western wings of the state proved irreconciliable for a long time. As a result of the defeat of the Muslim League in the elections for the East Bengal Legislative Assembly in 1954, the process of constitution-making was greatly accelerated and the draft of a constitution was ready for report to the Constituent Assembly towards the end of October. But before the draft could be placed before the Assembly, the Governor-General, on October 24, issued a proclamation stating "that the constitutional machinery has broken down." He proclaimed a state of emergency and declared "that the Constituent Assembly

* The following pages deal mainly with the constitution of the Islamic Republic of Pakistan which was brought into force on the 23rd March, 1956. This constitution was abrogated by President Iskander Mirza on October 8, 1958. Pakistan is at present under Martial Law. For the present set-up in Pakistan, see end of this Chapter.

as at present constituted has lost the confidence of the people and can no longer function."

The Constituent Assembly was thus dissolved. The President of the Constituent Assembly, claiming that the Governor-General had no power to dissolve the Constituent Assembly, took legal action against his proclamation. Later, the Federal Court in a Special Reference made to it held that the Governor-General, in the special circumstances then existing, had power to dissolve the Constituent Assembly and to summon another Constituent Assembly. Necessary orders were issued for the constitution of a new Constituent Assembly, and the new Constituent Assembly began to function with effect from July 7,1955. On February 29, 1956, the Constituent Assembly completed its work and adopted a Constitution. This Constitution, known as the Constitution of the Islamic Republic of Pakistan, was brought into force on March 23, 1956.

As from that date, under the transitional provisions of the Constitution, the Constituent Assembly became the National Assembly, the Federal Court became the Supreme Court, the existing Provincial Assemblies became vested with the powers conferred by the new Constitution on the Provincial Assemblies. Major-General Iskander Mirza, former Governor-General, who was elected President by the Constituent Assembly under the transitional provisions of the Constitution, entered on his office on March 23, 1956.

It remains to be mentioned that, under the Establishment of West Pakistan Act, 1955, the former provinces of Baluchistan, North West Frontier Province, Punjab and Sind were merged into a single province known as West Pakistan on October 14, 1955. The new Constitution has also provided for only two provinces, namely, East Pakistan and West Pakistan.

MAIN FEATURES OF THE CONSTITUTION OF PAKISTAN

A Federal Constitution : The Constitution of Pakistan is federal in type. The Constitution divides the legislative and

administrative powers between a Central Government and two autonomous Provincial Governments. The two Provinces are known as East Pakistan and West Pakistan. The Constitution embodies three legislative lists—(a) the Federal List, (b) the Concurrent List and (c) the Provincial List. In the concurrent field, the Centre's powers are paramount. The residuary powers of legislation have been vested in the Provinces.

The Constitution, however, provides for a mechanism whereby the federal government can be turned into a unitary one in times of grave emergency, such as an emergency arising out of war or internal disturbance. The President has been empowered to issue, in such a situation, a Proclamation of Emergency. While a Proclamation of Emergency is in operation, Parliament can legislate on any Provincial subject and the executive authority of a Province has to be exercised according to directions issued by the Federal Government.

Under the Constitution, the territories of Pakistan comprise, apart from the territories of the two Provinces, the territories of States which are in accession with Pakistan and territories under federal administration . The Constitution vests the administration of the Federal Capital in the President.

An Islamic Republic : "Pakistan", says the Constitution, "shall be a Federal Republic to be known as the Islamic Republic of Pakistan." (Art.1)

Pakistan came into existence as the result of the demand for self-determination by a section of the Muslims of the Indian subcontinent who claimed that the Indian Muslims constituted a separate nation and must have a state of their own in which they could order their lives according to Islamic principles. The Constitution of Pakistan, therefore, rejects the ideal of secular democracy and embodies a number of provisions which stress the fact that the state of Pakistan is an Islamic State. Article I which declares Pakistan to be an Islamic Republic has been referred to above. Among other provisions which stress the Islamic character of the state are the following :

The Preamble to the Constitution declares that the Muslims of Pakistan should be enabled to order their lives in accordance with the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah. A similar declaration is made by Part III of the Constitution which deals with "Directive Principles of State Policy." This Part also lays down that the State shall endeavour to make the teaching of the Holy Quran compulsory for Muslims and to provide them with other facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah. Part III further provides that the State "shall endeavour to strengthen the bonds of unity among Muslim countries."

Article 32 of the Constitution lays down that "a person shall not be qualified for election as President unless he is a Muslim."

Article 197 of the Constitution provides for the setting up of an organisation for Islamic research and instruction in advanced studies "to assist in the reconstruction of Muslim society on a truly Islamic basis." Parliament has been authorised to impose a special tax on Muslims for defraying the expenses of such an organisation.

The State is forbidden to enact any law which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah and all existing laws are required to be brought into conformity with such Injunctions. (Art. 198) A Commission has been set up under the Constitution to recommend measures for bringing existing laws into conformity with the Injunctions of Islam. The Constitution, however, states that such measures shall not "affect the personal laws of non-Muslim Citizens, or their status as citizens, or any provision of the Constitution." It is also made clear that in the application of the measures referred to above to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.

East-West Parity : While the Islamic provisions of the Constitution reflect the historical circumstances which led to the

creation of Pakistan, certain other important provisions reflect its peculiar geography. The Provinces of East and West Pakistan are separated by a distance of, roughly, 1500 miles. There are also marked cultural and linguistic differences between the people of East Pakistan and those of West Pakistan. The fear of domination of one wing of the state by the other bedevilled for a long time the deliberations of the Constituent Assembly. Ultimately a solution was worked out on the basis of the principle of parity in matters relating to representation in the Central Legislature, the Federal administration and in certain other matters.

The Constitution thus lays down that the Central Legislature, which consists of only one chamber known as the National Assembly, shall consist of 300 members, one half of whom shall be elected from East Pakistan and the other half from West Pakistan. In addition to these seats, for a period of ten years from the commencement of the Constitution, five seats shall be reserved for women members representing East Pakistan and five seats for women members from West Pakistan. The Constitution directs further that at least one session of the National Assembly in each year shall be held at Dacca, the capital of East Pakistan. (Karachi, the seat of the Federal Government, is in West Pakistan.)

Similarly, it is provided that the Supreme Court must sit in Dacca at least twice in every year.

The Constitution provides that the state languages of Pakistan shall be Urdu and Bengali. (Bengali is the mother tongue of the people of East Pakistan, while Urdu is spoken by a large percentage of people in the West.)

Part III of the Constitution declares that people from all parts of Pakistan must be enabled to participate in the Defence services of the country and that steps shall be taken to achieve parity in representation of East Pakistan and West Pakistan in all other spheres of Federal administration.

It is also significant that the Constitution lays down that each Provincial Assembly shall consist of 300 members,

apart from 10 women members elected to seats reserved for women in each Assembly, and that, although Parliament may alter the number of seats in the Provincial Assembly, the number of members in the two Assemblies must remain equal. The significance of these provisions becomes clear when one considers Article 32 which states that the President of Pakistan shall be elected by an electoral college consisting of the members of the National Assembly and the Provincial Assemblies. The above provision is designed to ensure parity of representation of the two wings of the state in the electoral college for Presidential election.

Amendment of the Constitution : The Constitution of Pakistan is neither too rigid nor too flexible. The Constitution can be amended by an Act of Parliament if the amending Bill is passed by a majority of the total membership of the National Assembly and by not less than two-thirds majority of the members present and voting, and is assented to by the President. If, however, the Bill seeks to amend any of the provisions relating to the division of powers or parity of legislative or administrative representation between the two Provinces, it must not be presented to the President for assent unless it has been approved by a resolution of each Provincial Assembly or the Assembly concerned.

Division of Powers : It has been already pointed out that the Constitution of Pakistan embodies three Legislative Lists—the Federal List, the Concurrent List and the Provincial List. Parliament enjoys exclusive power to legislate on matters enumerated in the Federal List. The Provincial Assemblies enjoy exclusive power to legislate on matters enumerated in the Provincial List. Both Parliament and a Provincial Legislature can make laws in respect of any matter enumerated in the Concurrent List. In case of inconsistency between a Federal law and a provincial law in the Concurrent field, the Federal law prevails. The power to make law with respect to any matter not enumerated in any of the three Lists—that is, the residuary power of legislation—has been vested in the Provincial Legislatures.

Parliament can, in certain situations, legislate on any matter

enumerated in the Provincial List or any matter not enumerated in any of the Lists. If the Provincial Assemblies pass resolutions stating that it is desirable that any such matter should be regulated by an Act of Parliament, the latter may pass a legislation regulating that matter. Such an Act, however, may be amended or repealed by an Act of a Provincial Legislature. Parliament may make laws for the whole or any part of Pakistan for implementing any international treaty or agreement, notwithstanding that it deals with a matter included in the Provincial List or a matter not enumerated in any of the Lists.

The subjects enumerated in the Federal List include : Defence and Armed Forces ; manufacture of arms and ammunition ; foreign affairs ; war and peace ; citizenship and naturalisation ; currency and coinage ; stock exchanges ; copyright ; standards of weights and measures ; major ports ; posts and all forms of telecommunications ; census ; the Federal Services ; customs duties ; income-tax ; corporation tax ; estate duty on property other than agricultural land and taxes on sales and purchases.

The subjects enumerated in the Concurrent List include : Civil and criminal law ; scientific and industrial research ; newspapers and books ; printing presses ; industrial relations ; anti-corruption measures ; price control ; economic and social planning ; monopolies and trusts, and iron, steel, coal and mineral products, except mineral oil and gas.

Among the subjects included in the Provincial List are : Public order ; administration of justice ; police ; preventive detention for reasons connected with maintenance of public order ; prisons and reformatories ; land tenure ; land revenue ; water supply and irrigation, education including University education ; museums and libraries ; theatres, Cinemas, and sports ; entertainments and amusements ; public health and sanitation ; railways ; agriculture ; industries ; forests ; fisheries ; professions ; treasure trove ; manufacture and distribution of salt, and waqfs and mosques.

Fundamental Rights : The Constitution of Pakistan, like

the Indian Constitution, guarantees to its citizens a large number of fundamental rights. Some of these rights are conferred on non-citizens also.

The Constitution guarantees equality before the law to all citizens and personal liberty to all persons. It prohibits the passing of *ex post facto* laws. It provides for important safeguards against arbitrary detention, such as the right to be produced before a magistrate within a period of 24 hours of arrest. It provides for preventive detention subject to certain safeguards including review of cases by impartial Advisory Boards.

Subject to reasonable restrictions, freedom of speech, assembly, association, and movement is guaranteed to every citizen. Freedom of trade and profession is guaranteed to all persons possessing the requisite qualifications. The Constitution declares that no religious community can be prevented from providing religious instruction for pupils of that community in institutions maintained wholly by that community. No person attending an educational institution can, however, be required to receive religious instruction or take part in any religious ceremony if such instruction or ceremony relates to a religion other than his own.

The Constitution prohibits unreasonable discrimination in matters relating to appointment in public services and in respect of access to public places. "No property," it declares, "shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor." The Constitution declares the abolition of untouchability, slavery and all forms of forced labour. "No person", it says, "shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own." The Constitution guarantees the right to move the Supreme Court for the enforcement of fundamental rights .

Directive Principles of State Policy : Part III of the Constitution deals with "Directive Principles of State Policy." The Constitution declares that the State shall be guided by the Directive

Principles in the formulation of policies. It is, however, made clear that these Principles "shall not be enforceable in any court."

The State is directed to take steps—(a) to enable the Muslims of Pakistan to order their lives in accordance with the Holy Quran and Sunnah,—(b) to make the teaching of the Holy Quran compulsory for Muslims, (c) to discourage provincialism and racialism, (d) to safeguard the legitimate rights of the minorities, (e) to promote the interests of the backward classes and the Scheduled Castes,(f)to provide free and compulsory primary education within the minimum possible period, (g) to make provision for just and humane conditions of work, (h) to prevent prostitution, gambling and the taking of injurious drugs, (i) to prevent the consumption of alcoholic liquor except for medicinal and religious purposes, (j) to raise the living standards of the common man, (k) to provide for all citizens, within the available resources, facilities for work and livelihood with reasonable rest and leisure, (l) to provide basic necessities of life to infirm, sick and unemployed persons, (m) to provide for social insurance for both Government servants and employees in private concerns, (n) to reduce disparity, to a reasonable limit, in the emoluments of persons in the various classes of service of Pakistan, (p) to separate the Judiciary from the Executive, (q) to enable people from all parts of the country to participate in the Defence Services and to achieve parity in the representation of East Pakistan and West Pakistan in all other spheres of Federal administration, and (r) to strengthen the bonds of unity among Muslim countries and to promote international peace, security and goodwill.

The Constitutions of India and Pakistan Compared : The Constitutions of both India and Pakistan are federal in type and both of them provide for republican and parliamentary systems of government. They thus bear a family resemblance to each other. But this resemblance is superficial and one should not allow oneself to be carried away by this external similarity. The two Constitutions differ in respect of certain matters of fundamental importance—matters which go to the very roots of freedom and democracy. The forms are similar but the substance differs,

The points of similarity and contrast between the two Constitutions are briefly discussed below.

(1) India is a secular democracy. Pakistan is a non-secular state. In other words, whereas the state in India is avowedly neutral in matters of religion, the state in Pakistan is wedded to one particular religious outlook and has special interest in promoting one particular religion, namely, Islam.

Whereas the Indian Constitution declares India to be a Democratic Republic, the Constitution of Pakistan declares that country to be an Islamic Republic. This declaration labels Pakistan as a state wedded to a particular religion. It also proclaims to the world the fact that, in Pakistan, Islam will enjoy a position of privilege and the people belonging to this religion will enjoy a higher status than the rest of the population. And by laying down that only a Muslim can be the President of Pakistan, the Constitution virtually makes the entire non-Muslim population of the state second class citizens. The Constitution also enjoins upon the State to give facilities to Muslims so that they can understand the meaning of life according to the Holy Quran and Sunnah and order their lives in accordance with these Scriptures. It also directs that the State must endeavour to make the teaching of the Holy Quran compulsory for Muslims. The laws of Pakistan, it is further directed, must be brought into conformity with the Injunctions of Islam (without affecting the personal laws of non-Muslims). The expenditure for all these facilities and measures is, of course, to be met from the common fund of the State to which both Muslims and non-Muslims are required to contribute.

All these provisions lead to the inescapable conclusion that, whereas the Constitution of India is a fully democratic one, guaranteeing as it does equal rights to all sections of the population,the Constitution of Pakistan is not a fully democratic one, giving as it does a higher status and greater rights to people professing one particular religion.

There is no escape from the conclusion that, under the present Constitution, a spirit of discrimination—discrimination in favour

of Muslims and against non-Muslims—is sure to pervade the entire administrative machinery of Pakistan.

(2) The Constitution of Pakistan, like the Indian Constitution, provides for a parliamentary system of government. It expressly lays down that the Cabinet both at the Centre and in either Province, "shall be collectively responsible" to the Legislature. But it confers on the head of the state, the President, far greater discretionary powers than can be regarded as compatible with the theory of parliamentary system of government. (The discretionary powers of the President will be discussed later.)

(3) The Constitutions of both countries guarantee fundamental rights to their citizens. And, speaking broadly, the same rights are guaranteed by either. There is, however, a fundamental difference, arising out of the difference in the character of the two states. Whereas the Constitution of India lays down that "no religious instruction shall be provided in any educational institution wholly maintained out of State funds", there is, for obvious reasons, no such provision in the Constitution of Pakistan. In fact, the "Directive Principles" enjoin on the state of Pakistan to take steps to make the teaching of the Holy Quran compulsory for Muslims. This means that the teaching of the Holy Quran may be made compulsory for Muslims in state-maintained institutions. But the Constitution is silent on the point whether, in such institutions, there will be corresponding arrangements for proper religious instruction for non-Muslims.

Secondly, the Indian Constitution guarantees, along with religious freedom, the freedom of conscience. The Constitution of Pakistan, while it guarantees religious freedom to its citizens, does not guarantee freedom of conscience. In fact, to provide for the compulsory teaching of the Quran to Muslims is to rule out freedom of conscience for them.

Although, the Constitution of Pakistan guarantees freedom of religion to its citizens, the content of this freedom is not the same for all its citizens. For the State in Pakistan is wedded to one particular religion, namely, Islam, and people professing other

religions will always be at a disadvantage in public affairs as compared with Muslims. To belong to a religion other than Islam in Pakistan means to be a second Class citizen. This handicap imposed on non-Muslims by the fact of their belonging to a religion other than Islam takes aways to a considerable extent from their religious freedom. "No citizen", says Laski, "enjoys genuine freedom of religious conviction until the state is indifferent to every form of religious outlook from Atheism to Zorastriamism." Since, in Pakistan, the state is bound up with one particular religious outlook, religious freedom in the genuine sense of the term does not exist in that country.

(4) The Constitutions of both India and Pakistan are federal in type. Both Constitutions divide the legislative and executive powers between a Central authority and autonomous local authorities. Both Constitutions embody three legislative lists—the federal list, the state or provincial list and the concurrent list. But there is an important difference between the Indian federalism and the federalism of Pakistan. Whereas the Indian Constitution vests the residuary powers in the Centre, the Constitution of Pakistan vests these powers in the Provinces. And as regards enumerated powers, the Provinces of Pakistan enjoy, in regard to certain subjects, greater power than the Indian States. For instance, in Pakistan the subject of 'Railways' is a provincial subject, whereas in India it is a federal one. In respect of the subjects of education and industry again, the Provinces of Pakistan enjoy greater powers than do the Indian States. These differences are explained by the peculiar geography of Pakistan.

(5) Although both Constitutions are federal in type, both provide for machinery whereby the federal government may be turned into a unitary one in times of emergency. Both Constitutions vest in the federal authority certain drastic emergency powers which are designed to enable it to function as the supreme authority in every sphere of national life in grave emergencies like those arising out of war or invasion.

(6) The Indian Parliament is bicameral. The Parliament of Pakistan is unicameral.

(7) Both Constitutions provide for adult franchise as the basis of parliamentary elections. But whereas the representation in the Lower House of the Indian Parliament is based strictly on population, it is not so in Pakistan. Both East Pakistan and West Pakistan have been allocated the same number of seats in Pakistan Parliament, although the population of East Pakistan is roughly 42 million while that of West Pakistan is 34 million approximately. This is a sharp deviation from the democratic theory and practice. In other words, the principle of parity of representation of the two Provinces in Parliament sacrifices democracy to provincialism.

(8) The Constitution of India provides for reservation of seats for ten years for the Scheduled Castes and Tribes in the Lower House of Parliament and in the Legislative Assemblies of the States. The Constitution of Pakistan provides for reservation of seats for women for ten years in the Parliament and the Provincial Assemblies.

(9) The President of India is a mere nominal executive head. The President of Pakistan is a powerful functionary. He enjoys wide discretionary powers which include the power to appoint and remove the Prime Minister. (This point will be discussed more fully in connection with the study of the powers of the President.)

(10) The judicial set-up provided for Pakistan by the Constitution is similar in essentials to that of India.

A point of difference that deserves mention relates to the method of removing High Court Judges. In India, the High Court judges can be removed only on joint address by the two Houses of Parliament. In Pakistan no such parliamentary address is necessary for the removal of a High Court Judge. The President of Pakistan can remove a High Court Judge if the Supreme Court, on a reference being made to it, reports that the Judge should be removed.

(11) Like the Constitution of India, the Constitution of Pakistan envisages three kinds of emergencies and vests in the

Central authority drastic powers to deal with such emergencies. (See section, "The President's Powers.")

THE CENTRAL GOVERNMENT

The President of Pakistan : The executive authority of the Federation is vested in the President.

The President, says the Constitution, shall be elected by an electoral college consisting of the members of the National Assembly and the Provincial Assemblies. To be qualified for election as President, a person (1) must be a Muslim, (2) must be not less than forty years of age, (3) must be qualified for election as a member of the National Assembly, and (4) must not have been removed from the office of President by impeachment.

The President's term of office is five years. The Constitution lays down that no person "shall hold office as President for more than two terms."

If a vacancy occurs in the office of the President by the death, resignation or removal of the President or the expiration of his term of office, it must be filled as soon as possible. In case of such vacancy or the President's absence or inability to discharge his duties owing to illness or any other cause, the Speaker of the National Assembly is required to exercise the functions of the President until a President is elected or until the President resumes the duties of his office. This means that a non-Muslim, if he is elected as the Speaker of the National Assembly, may be the acting President of Pakistan for a very short period. This does not, however, alter the constitutional significance of the fact that no non-Muslim can stand for election to the Presidential office or hold the office on a regular basis. In fact, it appears that, because of the political importance of the office of the Speaker of the National Assembly, no non-Muslim will be elected to that office, except, may be, on rare occasions.

The President's Powers : The powers of the President of Pakistan may be conveniently grouped under two heads : (1) the executive powers and (2) the legislative powers. Some of the

executive powers can be exercised only in situations of emergency. These powers may be termed emergency powers. Again, some of the executive powers can be exercised by the President in his discretion, while others have to be excercised on the advice of his Cabinet or the appropriate Minister or Minister of State.

The Executive Powers : The Constitution declares that the executive authority of the Federation shall be vested in the President and shall be exercised by him either directly or through subordinate officers. All executive actions of the Federal Government must be expressed to be taken in the name of the President.

The Constitution vests in the President the Supreme Command of the Armed Forces of Pakistan. It confers on the President the power to appoint and remove the Prime Minister of Pakistan as well as other Ministers. The President also enjoys the power to summon, prorogue or dissolve the National Assembly. Among other powers conferred on the President are : (1) the power to appoint the members of the Federal Public Service Commission, the Judges of the Supreme Court, the Judges of the High Courts, the Election Commissioners including the Chief Election Commissioner, the members of the Delimitation Commission, the Attorney General of Pakistan, and the Comptroller and Auditor-General of Pakistan ; (2) the power to constitute a National Economic Council whose function will be to formulate plans in respect of economic policies ; (3) the power to set up an organisation for Islamic research and instruction in advanced studies ; (4) the power to appoint a Commission to investigate the conditions of Scheduled Castes and backward classes in Pakistan and to recommend steps for improving their conditions ; (5) to lay before the National Assembly the annual Budget and (6) to recommend demands for grants.

The President of Pakistan enjoys wide discretionary powers, that is, powers in regard to which his Ministers have no right to advise him. For instance, he can appoint and remove the Prime Minister in his discretion. The Constitution, of course, lays down that the President shall not remove the Prime Minister from his office "unless he is satisfied that the Prime Minister does

not command the confidence of the majority of the members of the National Assembly." But this provision refers merely to the President's subjective satisfaction and does not lay down any objective standard of judgment. This means that the President will enjoy very wide discretion in rgard to this matter of vital political importance.

The President has also been empowered to act in his discretion in making certain other key appointments. The Constitution provides that the President shall act in his discretion in exercising his power to appoint (1) the members of the Federal Public Service Commission including its Chairman, (2) the members of the Delimitation Commission including its Chairman and (3) the Election Commissioners including the Chief Election Commissioner

The Constitution envisages three kinds of emergencies, namely, (1) emergency arising out of war, agression or grave internal disturbances, (2) emergency arising out of the failure of the constitutional machinery and (3) financial emergencies. Drastic powers have been vested in the President to deal with these emergencies. These powers are, of course, to be normally exercised on the advice of the Cabinet.

If at any time the President is satisfied that a grave emergency exists whereby the security or economic life of Pakistan or any part thereof is threatened by war or external aggression or internal disturbance beyond the power of a Provincial Government to control, he may issue a Proclamation of Emergency. The Constitution provides that while a Proclamation of Emergency is in operation—(a) Parliament shall have power to make laws for a Province with respect to any matter not enumerated in the Federal or Concurrent List, (b) the executive authority of the Federation shall extend to the giving of directions to a Province as to the manner in which the executive authority of the Province is to be exercised and (c) the President may by order assume to himself, or direct the Governor of a Province to assume on his behalf, all or any of the functions of the Government of the Province and all or any of the powers vested in any body or authority

in the Province other than the Provincial Legislature. If there is any inconsistency between a State law and a Federal law which Parliament has power to make during the operation of the Proclamation, the latter shall prevail.

In other words, the Federal Government will enjoy during an emergency of this kind supreme authority over the entire legislative and executive spheres and the governmental machinery in Pakistan will be, for all practical purposes, turned into a unitary one. The Constitution provides that a Proclamation must be laid before the National Assembly as soon as conditions make it practicable for the President to summon the Assembly. If approved by the Assembly, the Proclamation will remain in force until it is revoked, and if disapproved, will cease to operate from the date of the disapproval.

If the President on receipt of a report from the Governor of a Province, is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation—(a) assume to himself, or direct the Governor of the Province to assume on behalf of the President, all or any of the functions of the Province, and all or any of the powers vested in, or exercisable by, any body or authority in the Province, other than the Provincial Legislature and the High Court ; (b) declare that the powers of the Provincial Legislature shall be exercisable by, or under the authority of, Parliament. When by a Proclamation of this kind it has been declared that the powers of the Provincial Legislature shall be exercisable by or under the authority of Parliament, the latter shall have power to confer on the President the power of the Provincial Legislature to make laws.

A Proclamation of this kind must be laid before the National Assembly and will cease to operate at the expiration of two months unless before the expiration of that period it has been approved by a resolution of the National Assembly, and may by a like resolution be extended for a further period not exceeding four months. No such proclamation, however, shall in any case remain in force for more than six months.

Thirdly, if the President is satisfied that a situation has arisen whereby the financial stability or credit of Pakistan, or any part thereof, is threatened, he may after consultation with the Governors of the Provinces or with the Governor of the Province concerned, by Proclamation make a declaration to that effect. While such a Proclamation is in operation, the executive authority of the Federation shall extend to the giving of directions to any Province to observe such principles of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary for the financial stability or credit of Pakistan or any part thereof. Any such directions may include a provision requiring reduction of the salary and allowances of all or any class of persons serving in connection with the affairs of a Province. Similar directions may be issued by the President, while the Proclamation is in operation, for the reduction of salaries and allowances of all or any class of persons serving inconnection with the affairs of the Federation including the Judges of the Supreme Court and the High Courts.

Such a Proclamation must be laid before the National Assembly and it will cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by a resolution of the National Assembly. By a like resolution the Proclamation may be extended for a further period not exceeding four months. No such Proclamation, however, shall in any case remain in force for more than six months.

Apart from the executive powers, certain legislative powers also have been conferred on the President by the Constitution. When the National Assembly is not in session, the President may promulgate Ordinances having the force of Acts of Parliament. Such Ordinances must be laid before the National Assembly and will cease to operate at the expiration of six weeks from the next meeting of the Assembly, or if a resolution disapproving it is passed by the Assembly, upon the passing of that resolution.

From what has been stated above, it is clear that the President of Pakistan is a powerful functionary, enjoying as he does wide

discretionary powers in respect of certain vitally important matters. The President of India, in sharp contrast, is a mere nominal head. He cannot act in his discretion, except probably in certain emergency situations.

The Parliament of Pakistan : The Constitution provides that there shall be a Parliament of Pakistan consisting of the President and one House, to be known as the National Assembly.

The National Assembly, according to the Constitution, shall consist of three hundred members, one half of whom shall be elected by constituencies in East Pakistan and the other half by constituencies in West Pakistan. In addition to these seats, there shall be, for a period of ten years from the commencement of the Constitution, ten seats reserved for women members only, of whom five shall be elected from East Pakistan and five from West Pakistan.*

Among other provisions of the Constitution relating to Parliament are the following : Unless sooner dissolved, the National Assembly shall stand dissolved on the expiration of five years from the date of its first meeting. There shall be at least two sessions of the National Assembly in every year, and six months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session.

The members of Parliament shall be elected on the basis of adult franchise. And a person shall be qualified to be elected to the National Assembly if he is not less than twenty-five years of age, is qualified to be an elector for any constituency for the National Assembly and is not disqualified from being a member by the Constitution or an Act of Parliament.

The quorum for a meeting of the Assembly shall be 40 and a decision shall be taken by a majority of members present and voting.

When a Bill has been passed by the National Assembly

* The Constitution of Pakistan was abrogated before a Parliament constitued according to these provisions could be brought into existence.

it shall be presented to the President. The President may assent to the Bill or veto it. If a Bill vetoed by the President is again passed by the Assembly by a two-thirds majority, it shall be again presented to the President and the President shall assent thereto.

The Supreme Court : The highest court in Pakistan is known as the Supreme Court. The Supreme Court consists of a Chief Justice and six other Judges. Parliament may by law increase the number of the Judges. The Chief Justice is appointed by the President and other Judges are appointed by him after consultation with the President.

The Constitution lays down that a Judge of the Supreme Court shall not be removed from his office except by an order of the President on an address by the National Assembly.

The Supreme Court has three kinds of jurisdiction—original, appellate and advisory. The Supreme Court has original jurisdiction in any dispute between—(1) the Federal Government and the Government of one or both Provinces ; or (2) the Federal Government and the Government of a Province on one side, and the Government of the other Province on the other ; or (3) the Governments of the Provinces.

Subject to certain conditions, the Supreme Court has appellate jurisdiction in civil and criminal matters, as well as in matters involving interpretation of the Constitution.

The Supreme Court has also power to grant special leave to appeal from any judgment, decree or order of any court or tribunal in Pakistan, other than any court or tribunal constituted by or under any law relating to the Armed Forces.

The Supreme Court has also an advisory jurisdiction. The President has power to refer to the Supreme Court for its opinion any question of law on which, according to him, it is expedient to obtain its opinion. When such a question has been referred to it, the Court is required to report its opinion to the President.

The law declared by the Supreme Court is binding on all courts in Pakistan. The Supreme Court has power to review its own judgments.

THE PROVINCIAL GOVERNMENT

The Governor and the Cabinet : The executive authority of a Province is vested in a Governor who is appointed by the President. The Governor holds office during the pleasure of the President.

The Governor is aided and advised by a Cabinet in the exercise of his functions. The Governor appoints in his discretion a Chief Minister from amongst the members of the Provincial Assembly. Other Ministers, Deputy Ministers and Parliamentary Secretaries are appointed and removed by the Governor on the advice of the Chief Minister. The Governor can remove the Chief Minister in his discretion. The Constitution, however, lays down that the Governor must not exercise this power unless he is satisfied that the Chief Minister does not command the confidence of the majority of the Members of the Provincial Assembly.

The Cabinet is collectively responsible to the Provincial Assembly.

No person can be appointed a Deputy Minister or Parliamentary Secretary unless he is a member of the Provincial Assembly. And a Minister who for any period of six consecutive months is not a member of the Provincial Assembly ceases to be a Minister at the expiration of that period. And he cannot be, before the dissolution of the Assembly, again appointed a Minister, unless he is elected a member of that Assembly.

The Provincial Legislature : The Provincial Legislature, says the Constitution, shall consist of "the Governor and one House, to be known as the Provincial Assembly," As regards the composition of the Provincial Assembly, the Constitution lays down the following provisions : Each Provincial Assembly shall consist of three hundred members. In addition to these

seats, ten seats shall be reserved for women in each Provincial Assembly for a period of ten years from the commencement of the Constitution.*

The Constitution empowers Parliament to alter the number of members of the Provincial Assemblies but lays down an important proviso, namely, that "the number of members of the two Assemblies shall remain equal."

Elections to the Provincial Assemblies are to be held on the basis of adult franchise.

The Governor may summon, prorogue or dissolve the Provincial Assembly. Unless sooner dissolved, a Provincial Assembly "shall stand dissolved on the expiration of five years from the date of its first meeting."

When a Bill has been passed by a Provincial Assembly, it must be presented to the Governor. The Governor must, within ninety days, assent to the Bill, or reserve the Bill for the consideration of the President, or declare that he withholds assent from the Bill, or return the Bill, if it is not a Money Bill, for reconsideration by the Assembly.

In case of withholding of assent to a Bill, if it is again passed by the Assembly by a two-thirds majority and presented to the Governor, he must assent thereto. And if a Bill, which has been returned by the Governor for reconsideration, is once again passed by an absolute majority by the Assembly and presented to the Governor, he must assent thereto.

The Judicial Organisation in the Province : The High Court stands at the apex of the judicial hierarchy in each Province. The Judges of the High Court are appointed by the President. A High Court Judge can be removed by the President if the Supreme Court, on reference being made to it by the President, reports that the Judge ought to be removed on the ground of misbehaviour or infirmity of mind or body.

* The constitution was abrogated before the existing Provincial Assemblies in Pakistan could be reconstituted according to these provisions.

The High Court has appellate jurisdiction in both civil and criminal matters. It has also orginal jurisdiction in certain matters. It can issue appropriate writs for the enforcement of the fundamental rights and for any other purpose.

The subordinate judiciary in Pakistan is similar in essentials to that in India.

Abrogation of the Constitution and imposition of Martial Law in Pakistan : On October 8, 1958, President Iskander Mirza of Pakistan took one of the most drastic steps ever taken in peace time in a democracy. In the early hours of the morning of that day, followng a cabinet crisis, the President proclaimed Martial Law, abrogated the Constitution, dismissed the Central and Provincial Governments, dissolved all Legislatures, and abolished all political parties. He also appointed the Commander-in-Chief of the Pakistan Army, General Mohammed Ayub Khan, as the Chief Martial Law Administrator.

In his proclamation the President said : "For the last two years I have been watching with the deepest anxiety the ruthless struggle for power, corruption, the shameful exploitation of our simple, honest, patriotic and industrious masses, the lack of decorum and the prostitution of Islam for political ends. There have been a few honourable exceptions. But being in a minority they have not been able to assert their influence in the affairs of the country.

"The mentality of the political parties has sunk so low that I am unable any longer to believe that elections will improve the present chaotic internal situation and enable us to form a strong and stable Government capable of dealing with the innumerable and complex problems facing us today. We cannot get men from the moon. The same group of people who have brought Pakistan on the verge of ruination will rig the elections for their own ends. They will come back more revengeful because, I am sure, the elections will be contested mainly on personal, regional and sectarian basis. When they return they will use the same methods which have made a tragic farce of

democracy and are the main cause of the present widespread frustrations in the country.

"However much the administration may try, I am convinced, judging by shifting loyalties and the ceaseless and unscrupulous scramble for office, that the elections will neither be fair nor free. They will not solve our difficulties. On the contrary, they are likely to create greater unhappiness and disappointments leading ultimately to a really bloody revolution.

"My appraisal of the internal situation has led me to believe that a vast majority of the people no longer have any confidence in the present system of Government and are getting more and more disillusioned and are becoming dangerously resentful of the manner in which they are exploited.

"The Constitution which was brought into being on March 23, 1956, after so many tribulations is unworkable. It is so full of dangerous compromises that Pakistan will soon disintegrate internally if the inherent malaise is not removed.

"To rectify them the country must first be taken to sanity by a peaceful revolution."

....."I have therefore decided that :

1. The Constitution of the 23rd March, 1956 will be abrogated.

2. The Central and Provincial Governments will be dismissed with immediate effect.

3. The National Parliament and Provincial Assemblies will be dissolved.

4. All political parties will be abolished.

5. Until alternative arrangements are made, Pakistan will come under Martial Law."

It was not clear under what authority the President abrogated the Constitution framed by the representatives of the people. It was, however, soon made clear by General Ayub Khan, the Chief Martial Law Administrator, that the

President was forced by the Army to take the abovementioned steps and that, in the new regime, the real power rested in his hands and not in the hands of President Mirza. Soon the pretence of the President wielding the real authority was given up. President Mirza formally handed over all power to General Ayub Khan on October 27, 1958 and relinquished his office. General Ayub Khan who had been earlier appointed the Prime Minister now became the President. The General thus combines the two offices of the Chief Martial Law Administrator and the President of Pakistan.

President Ayub Khan has promulgated an order prescribing the Presidential type of Cabinet for Pakistan. There will be no Prime Minister. The President has appointed his first Presidential Cabinet to aid and advise him in the exercise of his functions. He is carrying on the administration of Pakistan through Deputy Chief Martial Law Administrators. Among others, the Commanders-in-Chief of the Army, Navy and Air Force have been appointed Deputy Chief Martial Law Administrators. The courts and other civil authorities are functioning under orders issued from time to time by the Martial Law Authorities. There is a Martial Law Administrator for each of the two Provinces, East Pakistan and West Pakistan. The new regime has already taken some drastic steps to root out corruption in the administration and to eradicate the evils of hoarding and profiteering.

The present Government in Paksitan is a good example of *de facto* sovereignty. With the Constitution abrogated, the Government cannot claim any legal right to rule. It has, however, already demonstrated that it can make its authority prevail. And the majority of the people seem to have welcomed the present regime. It should be clear, however, to the student of constitutional law that the present regime in Pakistan, in spite of some superficial resemblance to the Presidential type of Government, is nothing but a miiltary dictatorship.

CHAPTER XIX

THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA

The Origin of the Constitution : China, one of the largest countries in the world, had been under monarchical rule from times immemorial up to 1912, in which year, as a result of a revolution led by Dr. Sun Yat-sen, she became a Republic. Dr. Sun Yat-sen who became the first President of the Republic, wanted to build up China into a modern democracy modelled on the western democracies. But before he could do anything to give a practical shape to his ideal, he was overwhelmed by reactionary forces and had to resign in February, 1912. The Government came under the control of warlords headed by Yuan Shih-Kai who became the next President.

Dr. Sun Yat-sen died in 1925, after which Chiang Kai-shek, one of the leading personalities in the Kuomintang—the Chinese "People's National Party," which was founded by Dr. Sun Yat-sen in 1912—emerged as the most important person in China. In 1927, Chiang Kai-Shek organised a government at Nanking, broke with the left wing of the Kuomintang and adopted a policy of suppression of the Communists. The period from 1927 to 1949 was one of turmoil and bloodshed. It witnessed two civil wars and a war of resistance to the Japanese agression. Chiang Kai-shek waged an unremitting war against the Communists who established bases of operation in different parts of the country. A fierce attack was launched by Chiang Kai-shek in October, 1933 against the Communist forces in Kiangsi, the main base of operation of the Communists. In 1934, the Communist army's main forces left Kiangsi and organised the famous Long March to the north. Thereafter, Yenan in northern Shensi became the main base of operation of the Communists.

Chiang Kai-shek was persuaded to call off the civil war in

1936 in the interest of united national resistance to Japanese aggression which had begun in 1931. The war of Japanese resistance ended in 1945 with the military collapse and surrender of Japan to the Allied forces. In 1946, however, began another bloody civil war between the forces of Chang Kai-shek, who had become a tool in the hands of warlords, and the Communist forces.

After an initial set-back, the Communists struck back with vigour and began to achieve spectacular successes against Chiang Kai-shek's forces. In 1948, a very large area in north China came under the control of the Communists. In 1949, the Communists obtained full control over the entire Chinese mainland. (At present the Kuomintang regime under Chaing Kai-shek is confined to Taiwan (Formosa) and a few small island groups.)

In September, 1949, the Communist Party, with the co-operation of certain other small parties who had made common cause with it during the civil war, held in Peking what came to be known as the Chinese People's Political Consultative Conference.

The Chinese People's Political Consultative Conference took the decision to invest itself with all constituent powers till the election of a National People's Congress. It adopted a Common Programme of 60 articles, which was a sort of provisional constitution for the country. It also passed an Organic Law. The Conference elected, according, to the provisions of the Organic Law, a Central People's Government Council—the chief legislative body—under the chairmanship of Mao Tse-tung. Under the same Law, an Administrative Council was also set up. The Council, headed by Chou En-lai, was the Central Government. On October 1, 1949, the founding of the People's Republic of China was formally proclaimed by Mao Tse- tung.

On the basis of the Common Programme and the Organic Law a Constitution was drawn up in 1954. This Constitution was adopted at the first session of the first National People's

Congress in September, 1954. This is the Constitution of the People's Republic of China. Fundamentally, this Constitution embodies the programme and the objectives of the Communist Party of China in whose hands is concentrated all real power in that country.

It may be mentioned here that the Chinese People's Political Consultative Conference which acted as the provisional National People's Congress since September, 1949 relinquished its functions in September, 1954 when the first session of the First National People's Congress was convened. The CPPCC continues to exist but has no governmental authority. It is a consultative body composed of representatives of political parties and other organisations, who discuss public affairs and make suggestions.

The Main Features of the Constitution : The Constitution of the People's Republic of China establishes a unitary type of Government. It sets up a Central Government consisting of the following : (1) a legislature known as the National People's Congress, which is the sole legislative authority in the country, (2) a body known as the Standing Committee of the National People's Congress which is a permanently acting body of the National People's Congress, (3) the State Council, that is, the Central People's Government which is the highest administrative organ of the state and (4) a Chairman who is the titular head of the state. Below the Central authority stand a hierarchy of local administrative organs consisting, broadly speaking, of local people's congresses and local people's councils which are executive organs of the local people's congresses. Except the local people's congresses at the lowest level, all such bodies are indirectly elected—they are elected by the local people's congresses at the next lower level. The National People's Congress, which is the higest organ of state power and is the only legislative body in the country is also indirectly elected.

All these organs of state power function according to the principle of democratic centralism, which means, *inter alia*, that all decisions of higher bodies are absolutely binding on

lower bodies and that the higher bodies can revise or annul inappropriate decisions or orders issued by lower bodies.

An important feature of the Constitution is a number of "general principles" laid down by it. These principles declare that the People's Republic of China "is a people's democratic state led by the working class and based on the alliance between workers and peasants." They lay down that the goal of the state is the building of a socialist society through the gradual abolition of exploitation. They indicate the economic rights, including peasants' right to own land and capitalists' right to own means of production, which will be protected by the state in the transitional stage that is, until the goal of socialist transformation of economic life has been achieved. In other words, the "general principles" set out the existing economic relationships in the state, indicate the goal that is to be attained and the methods whereby the attainment of the goal is to be effected.

The Constitution confers a number of fundamental rights and imposes a number of duties on the citizens. These have been dealt with below.

The Constitution is a flexible one. It can be amended by the National People's Congress by a two-thirds majority vote of the total number of deputies.

The National People's Congress : The National People's Congress is the highest organ of state authority in the People's Republic of China and is the only legislature in the country. The National People's Congress is composed of deputies who are indirectly elected by provinces, autonomous regions, municipalities directly under the central authority, the armed forces and Chinese resident abroad. So far as the administrative areas are concerned, the dupties are elected by the local people's congresses and the corresponding bodies of the autonomous regions. The deputies can be recalled at any time by a simple majority vote of all the deputies of the unit which elect them.

The National People's Congress is elected for a four-year

term and meets once a year, convened by its Standing Committee. It may, however, be convened whenever its Standing Committee deems it necessary or one-fifth of the deputies so propose. The National People's Congress is a legislative body of rather unwieldy size. The First National People's Congress, elected in 1954, consisted of 1226 deputies.

The National People's Congress enacts the laws, amends the Constitution and supervises the enforcement of the Constitution. It formulates the national economic plans, examines and approves the state budget and decides on questions of war and peace. It also ratifies the status and boundaries of administrative areas directly under the central authority, namely, provinces, autonomous regions and certain municipalities.

Apart from these powers and functions, the National People's Congress enjoys the power of electing a number of important functionaries, executive and judicial. It elects the Chairman and the Vice-Chairman of the People's Republic of China, the President of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuratorate. The National People's Congress also decides on the choice of the Premier of the State Council (the Central Government) on the recommendation of the Chairman of the People's Republic of China and of the component members of the State Council upon recommendation by the Premier. Also, it decides on the choice of the Vice-Chairmen and other members of the Council of National Defence upon recommendation by the Chairman of the People's Republic of China (who is himself the Chairman of the Council of National Defence). It must be understood that the National People's Congress has also power to remove all the officers just mentioned.

After enumerating the powers and functions which have been summed up above, the Constitution lays down that the National People's Congress shall exercise such other powers and functions as it considers necessary. This means that this body enjoys practically unlimited powers.

The National People's Congress maintains a number of Committees including the Nationalities Committee and the Bills Committee. The most important of the Committees maintained by it is the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress : The Standing Committee of the National People's Congress is a permanently acting body of the National People's Congress and consists of the following members elected by the National People's Congress : the Chairman, the Vice-Chairman, the Secretary-General and other members. The Standing Committee is responsible to the National People's Congress which has the power to recall its members.

The Standing Committee of the National People's Congress is a body analogous to the Presidium of the Supreme Soviet of the Soviet Union. Like the latter, it is also acts as (a) a legislative body, (b) an administrative organ and also as (c) a judicial committee.

(a) The Standing Committee adopts decrees which have the force of laws but are not laws strictly so called, because the National People's Congress is the sole legislative organ of the state. But the decrees issued by the Standing Committee cover many things which would normally require legislation in most other countries. This is explained by the fact that the National People's Congress, the only legislature in the country, meets for only a few days in the year and cannot possibly cover by its laws the requirements of the six hundred million people of the vast sub-continent.

(b) The Standing Committee also acts as an administrative body having vast authority, at least formal, concentrated in its hands. It conducts the election of deputies to the National People's Congress. It convenes the National People's Congress. It supervises the work of the State Council, that is, the Central Government. It also takes decisions on a large number of important matters. (1) It decides on the

enforcement of martial law. (2) It decides, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack or in the fulfilment of treaty obligations. (3) It decides on the appointment or removal of any Vice-Premier, Minister, Head of Commission or the Secretary General of the State Council. (4) It decides on the appointment or recall of plenipotentiary representatives to foreign states. (5) It decides on the ratification or abrogation of treaties concluded with foreign states. (6) It decides on the granting of pardons. Although the Standing Committee takes decision on all these important matters, it does not itself enforce the decisions formally. The formal enforcement of these decisions is made by the Chairman of the People's Republic of China (see below).

The Standing Committee appoints and removes the Vice-Presidents, judges and other members of the Judicial Committee of the Supreme People's Court. It also appoints and removes the Deputy Chief Procurators, procurators and other members of the Procuratorial Committee of the Supreme People's Procuratorate.

The Standing Committee also enjoys the power to revise or annul inappropriate decisions issued by the government authorities of provinces, autonomous regions and municipalities directly under the central authority.

(c) The Standing Committee also performs certain functions essentially judicial in character. It interprets the laws. It enjoys the power to annul decisions and orders of the State Council which contravene the Constitution, laws or decrees. It also supervises the work of the Supreme People's Court and the Supreme People's Procuratorate.

The power of interpreting laws and the power of invalidating governmental decisions which are repugnant to laws and the Constitution are usually vested in the Judiciary. But, as has been just pointed out, these powers have been vested in China in a body which is essentially an administrative organ

elected by the legislature. This is due to the fact that the present leaders of the Chinese people, like the Soviet leadership, reject the theory of separation of powers and hold that laws must be framed and interpreted by the elected representatives of the people. To vest the power of interpreting laws in the Judiciary, they argue, might result in laws being interpreted in a manner which does not accord with the will of the people. The existing Standing Committee consists of the Chairman, 13 Vice-Chairmen, the Secretary-General and sixty-six members. The Chairman is Liu Shao-Chi. Among the 13 Vice-Chairmen are Soong Ching-ling (Mme Sun Yat-sen) and Dalai Lama.

The Chairman of the People's Republic of China : The Chairman of the People's Republic of China is the titular head of the state. He is elected by the National People's Congress. To be eligible for the office of the Chairman, a person must be a citizen of the People's Republic of China, must have the right to vote and must have reached the age of thirty-five. The term of office of the Chairman is four years.

The Chairman of the People's Republic of China, in pursuance of the decisions of the National People's Congress or its Standing Committee, promulgates laws and decrees ; appoints or removes the Premier, Vice-Premiers and other members of the State Council (the Central Government) ; appoints or removes the Vice-Chairman and other members of the Council of National Defence (he himself being the Chairman of this body) ; confers state orders, medals and titles of honour ; proclaims general amnesties and grants pardons ; proclaims martial law ; proclaims a state of war ; orders mobilisation ; appoints or recalls plenipotentiary representatives to foreign states and ratifies treaties concluded with foreign states.

The Chairman of the People's Republic of China represents the state in its relations with foreign states. He commands the armed forces of the state and is the Chairman of the Council of National Defence.

The Chairman of the People's Republic of China can,

whenever necessary, convene a Supreme State Conference and, acting as its chairman, submit the views of the conference on important affairs of the state to the National People's Congress, its Standing Committee, the State Council or other bodies concerned for their consideration and decision. The Vice-Chairman of the Republic, the Chairman of the Standing Committee, the Premier of the State Council and other persons concerned take part in the Supreme State Conference.

The Vice-Chairman of the People's Republic of China assists the Chairman of the Republic in his work. If a vacancy occurs in the office of the Chairman, the Vice-Chairman succeeds to the office. In case of physical incapacity of the Chairman, the Vice-Chairman exercises his powers and functions. The Vice-Chairman is elected by the National People's Congress.

The Chairman of the People's Republic of China, it is obvious, does not have much discretionary power. His function is mainly to carry out the decisions of the Standing Committee of the National People's Congress, as well as those of the National People's Congress. His position thus differs greatly from that of the President of the United States or the Prime Minister of Britain. In fact, the leaders of the People's Republic of China claim that they have a collective head of state.

In his Report on the Draft Constitution, delivered at the first National People's Congress in September, 1954, Liu Shao-Chi said, "The functions and powers of the head of state in our country are jointly exercised by the Standing Committee of the National People's Congress and the Chairman of the People's Republic of China elected by the National People's Congress..... Ours is a collective head of state. Neither the Standing Committee nor the Chairman of the People's Republic of China has powers exceeding those of the National People's Congress".

At present, Mao Tse-tung is the Chairman of the People's Republic of China and Chu Teh is the Vice-Chairman.

The State Council of the People's Republic of China : The Central Government is known as the State Council of the People's

Republic of China. The State Council is composed of the following members—the Premier, the Vice-Premiers, the Ministers, the Heads of Commissions and the Secretary-General. The National People's Congress decides on the choice of the Premier on the recommendation of the Chairman of the People's Republic of China and of the other members of the State Council on the recommendation of the Premier. And the Chairman of the People's Republic of China appoints the members of the State Council including the Premier in accordance with the decisions of the National People's Congress. The National People's Congress has power to remove from office any member of the State Council including the Premier. And the Standing Committee of the National People's Congress has power to decide on the removal (or appointment) of any member of the State Council except the Premier when the National People's Congress is not in session. Normally, actual appointment or removal is made by the Chairman of the Republic according to the decision of the National People's Congress or its Standing Committee.

The State Council is a comparatively large body. The first State Council formed after the commencement of the Constitution consisted of thirty Ministries and five Commissions. The Ministries included the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Food, the Ministry of Finance, the Ministry of Commerce and a large member of Ministries dealing with industries. There was a Ministry for each of the following industries : heavy industry, light industry, textile industry and local industry. There were two Ministries for Machine Building to which a third was added later, and a Ministry for Fuel Industry which was later split up into the Ministry of Coal Industry and the Ministry of Petroleum Industry. The five Commissions which, formed part of the State Council were : the State Planning Commission, the National Construction Commission, the Physical Culture and Sports Commission, the Nationalities Affairs Commission and the Overseas Chinese Affairs Commission. The very names of these Ministries indicate the dominating role the state plays in the economic and cultural life of the country.

The meetings of the State Council are of two kinds, plenary and executive. The plenary meetings are attended by all the members of the State Council. They are ordinarily held once every month but may be called by the Premier at any time. The executive meetings are attended only by the Premier, the Vice-Premiers and the Secretary-General. A resolution adopted at an executive meeting can be issued as a resolution of the State Council even if it has not been submitted to a plenary meeting. It appears that the more important policy decisions of the State Council are taken at executive meetings where the inner circle of the Council, consisting of the most important members of the body, deliberates on affairs of the state.

Among the powers and functions of the State Council are the following ; to cordinate the work of Ministries and Commissions ; to formulate administrative measures, issue orders and verify their execution in accordance with the Constitution, laws and decrees ; to put into effect the national economic plans and the provisions of the budget ; to submit Bills to the National People's Congress and its Standing Committee ; to direct cultural, educational and public health work ; to appoint or remove administrative personnel according to the provisions of law ; to guide the building up of the defence forces and to direct the conduct of external affairs.

True to the principle of democratic centralism, the Constitution empowers the State Council to revise or annul inappropriate orders and directives issued by Ministers or by Heads of Commissions, as well as inappropriate decisions and orders issued by local administrative organs of state.

At present, Chou En-lai holds the office of the Premier of the State Council.

Administrative Divisions : As has been already pointed out, although China is a vast sub-continent, the Constitution does not establish a federal type of government. The National People's Congress is the only legislature in the country. The country is, therefore, divided into administrative areas having local

administrative organs which administer local affairs according to laws, decrees and orders issued by higher administrative organs. The administrative areas, however, include some areas which have been carved out on the basis of nationality and enjoy a limited measure of autonomy. The autonomy enjoyed by these areas, generally known as national autonomous areas, is so limited that it does not take away from the unitary character of the state.

The country is divided into provinces, autonomous regions and municipalities directly under the central authority. The provinces and autonomous regions, again, are divided into autonomous *chou*, counties, autonomous counties and municipalities. Counties and autonomous counties are divided into *hsiang* (townships), nationality *hsiang* and towns.

Municipalities directly under the central authority and other large municipalities are divided into districts. And autonomous *chou* are divided into counties, autonomous counties and municipalities.

Autonomous regions, autonomous *chou* and autonomous counties are national autonomous areas, that is, areas carved out on the basis of nationality and enjoying a limited measure of autonomy. Although nationality *hsiang* also have been carved out on the basis of nationality they are too small areas for the granting of autonomy. The People's Republic of China is at present divided into 22 provinces, three autonomous regions and three municipalities directly under the central authority. The autonomous regions are : Inner Mongolia, Sinkiang and Tibet. The three municipalities directly under the central authority are : Peking (the capital), Shanghai and Tientsin.

Local People's Congresses and Local People's Council : Local People's Congresses are organs of government in their respective areas. Each province has its people's congress. And all administrative areas excluding autonomous areas, at the level of the provinces and below, namely, municipalities directly under the central authority, counties, municipalities, municipal districts, hsiang, nationality hsing and towns have their people's congresses

Except at the lowest level, deputies to the people's congresses at all levels are elected by the people's congresses of the next lower level. Deputies to the people's congresses at the lowest level, that is, in municipalities not divided into districts, municipal districts, hsiang, nationality hsiang and towns are directly elected by the voters. Citizens who have reached the age of eighteen, and are not otherwise disqualified have the right to vote and stand for election. The electoral units and electorates which elect the deputies to the local people's congresses have power to recall their deputies at any time according to the prescribed procedure.

The term of office of the provincial people's congresses is four years. The term of office of the people's congresses at all other levels is two years.

The local people's congresses ensure the observance and execution of laws and decrees in their respective areas ; draw up plans for local economic and cultural development ; examine and approve local budgets ; protect public property and maintain public order ; and safeguard the rights of citizens including the rights of minorities.

The people's congresses at the county level and above have power to revise and annul inappropriate decisions issued by people's congresses at the next lower level as well as inappropriate decisions and orders of their own people's councils and of people's councils at the next lower level.

Local people's councils are executive organs of local people's congresses at corresponding levels. Each people's congress elects its own people's council and has also power to recall members of the council. The term of office of a local people's council is the same as that of the people's congress at the corresponding level. A provincial people's council consists of a provincial governor, deputy provincial governor and members of the Council; a municipal people's council consists of a mayor, deputy mayors and members of the council, and so on.

The people's councils at county level and above direct the

work of all their subordinate departments and of people's councils at lower levels. They can also revise and annul inappropriate orders and decisions issued by any of these bodies. They can suspend—not annul—inappropriate decisions of people's congresses at the next lower level.

The Constitution says : "The local people's councils throughout the country are administrative organs of state, and are subordinate to and under the co-ordinating direction of the State Council".

The Organs of Self-Government of National Autonomous Areas : The People's Republic of China, says the Constitution, is a multi-national state. The Constitution further says, "Regional autonomy applies in areas where people of national minorities live in compact communities."

The Constitution provides for the establishment of organs of self-government in national antonomous areas, that is, in autonomous regions, autonomous *chou* and autonomous counties. And the form of each organ of self-government, it is laid down, must be determined in accordance with the wishes of the majority of the people in a given antonomous area.

The organs of self-government of the national autonomous areas are of the same general pattern as the organs of state in provinces, counties and other administrative areas. These organs of self-government enjoy the power to draw up statutes governing the exercise of antonomy or separate regulations suited to the political, economic and cultural characteristics of the nationality or nationalities in a given area. But all such statutes and regulations are subject to endorsement by the Standing Committee of the National People's Congress.

The organs of self-government of the national autonomous areas are, it should be clear, not comparable to State Governments in, say, India or Australia, which enjoy real autonomy. They are bodies more or less similar to the District

Councils in the autonomous districts in Assam, and enjoya very limited measure of antonomy.

The Electoral System : The Constitution says that citizens who have reached the age of eighteen have the right to vote and stand for election, except insane persons and persons deprived by law of the right to vote and stand for election. Thus while this provision prescribes a low qualifying age for voting as well as for candidature, it clearly indicates that certain classes of persons have been excluded from the franchise. In fact, the first chapter of the Constitution, which embodies the "General Principles," lays down : "The state deprives feudal landlords and bureaucrat-capitalists of political rights for a specific period". These then are the classes of people who have been deprived by the state of the right to vote and to stand for election. The franchise, therefore, is not universal but limited—at least to some extent.

Again, as has been already indicated, the Constitution provides for indirect election at all levels except the lowest. The system of elections is thus mainly indirect.

Elections at the lowest level, thirdly, is conducted by the show-of-hands method.

Fourthly, under the present electoral system in China, the urban population enjoys proportionately greater representation in governmental bodies than the rural population.

To conclude, the present electoral system in China is based on limited, unequal and indirect suffrage, and open voting at the lowest levels. This system is, to say the least, a highly undemocratic one. The Chinese leaders, however, have declared that the electoral system in the country will be gradually improved and, when the conditions are ripe, the country will adopt the system of completely universal, equal, direct and secret ballot.

Fundamental Rights and Duties : Among the fundamental rights guaranteed by the Constitution are freedom of speech,

freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration. The Constitution also guarantees freedom of the person and inviolability of homes, as well as protection for privacy of correspondence. No person may be arrested, it is laid down, except by decision of a people's court or with the sanction of a people's procuratorate. The right to education is guaranteed to citizens and working people are guaranteed the right to work and leisure, as well as material assistance in old age, and in case of illness or disability. The Constitution also declares that citizens have the right to bring complaints against officials for transgression of law or neglect of duty, and persons suffering loss as a result of infringement of their rights by officials have a right to compensation.

In spite of formal declaration of these rights in the Constitution, there is reason to believe that many of these rights are not available to persons who are opposed to, or critical of, the basic policies of the regime. Freedom of speech, for instance, is hardly real for those who question the wisdom of the basic policies of the state or are critical of the character and conduct of the top leaders. Such criticism is ruthlessly suppressed and people who may have the boldness to voice such criticism are, it is said, likely to be dealt with very severely and, even, to face physical torture and liquidation. Freedom of association ,again, is not available to those who are opposed to the regime in regard to the fundamental issues and policies of the state. Although there are at present eight other parties in China, besides the Communist party which really controls the government, these parties are allowed to exist because they subscribe to the basic policies of the Communist Party in regard to all fundamental issues. It is significant that, since the establishment of the present regime, no new political party has come into existence in China.

The Constitution imposes a number of fundamental duties on the citizens, namely, the duty to abide by the Constitution and the law, the duty to protect public property, the duty to

pay taxes as well as the duty to defend the homeland and perform military service according to law.

The Judicial System : Justice is administered in China by a system of people's courts, which has replaced the old judicial system. The Supreme People's Court is the highest court in the land. The President of the Supreme People's court is elected by the National People's Congress. The Court is responsible to the National People's Congress and reports to it or, when it is not in session, to its Standing Committee. The Supreme People's Court supervises the work of all local people's courts and special people's courts. People's courts at higher levels supervise the judicial work of people's courts at lower levels. The term of office of the President of the Supreme People's Court and presidents of all local people's courts is four years.

The presidents of local people's courts are elected by people's congresses at corresponding levels. The Constitution provides for a system of people's assessors elected by the people who take part in judicial proceedings. The people's assessors, while performing their duties in the courts, are members of the courts and enjoy the same rights as the judges.

The presidents of people's courts can be removed from office by the people's congresses at corresponding levels.

All people's courts, including the Supreme People's Court, are responsible to the people's congresses at corresponding levels and report to them. The Judiciary in China is, therefore, not an independent organ of government. But then, it should be remembered, the Chinese leaders reject the theory of separation of powers.

The Judiciary in China does not, also, enjoy the power of judicial review. This power has been vested in the Standing Committee of the National People's Congress which also supervises the work of the Supreme People's Court.

People's Procuratorates : The Constitution provides for

a Supreme People's Procuratorate and local people's procuratorates to ensure observance of law on the part of officials and citizens. The Supreme People's Procuratorate exercises procuratorial authority over the State Council, all local organs of state, persons working in organs of state and ordinary citizens. Local people's procuratorates exercise procuratorial authority within limits prescribed by law.

The Chief Procurator of the Supreme People's Procuratorate is elected by the National People's Congress which has also the power to remove him. The power to appoint and remove other members of the Procuratorial Committee of the Supreme People's Procuratorate is vested in the Standing Committee of the National People's Congress which is also charged with the responsibility of supervising the work of the Supreme People's Procuratorate.

Local people's procuratorates work under the direction of the people's procuratorates at higher levels. And all of them work under the co-ordinating direction of the Supreme People's Procuratorate.

Local people's procuratorates function independently of the local organs of State and are not subject to interference by them. The Supreme People's Procuratorate, functioning through the local people's procuratorates, maintain close watch on the conduct of judges, officials including police officials and ordinary citizens. This system is designed to maintain a close and centralised supervision of the entire administrative machinery through people chosen by the top leaders of the party. Among the functions of the people's procuratorates is also the important one of intervening in, or instituting, cases affecting the interests of the state.

The Communist Party of China: The Communist Party of China was founded on July 1, 1921. It started with a membership of 57 only but the membership increased from year to year till in 1956, when the Eighth National Congress was held, it rose to over ten million.

The ideology of the Party is based on Marxism-Leninism. It appears, however, that the Party is less dogmatic in ideological matters than its counterparts in certain other countries. In 1956, the Eighth National Congress of the Chinese Communist Party adopted a new constitution of the party which declared that "Marxism-Leninism is not a dogma but a guide to action."

The highest policy-making body is known as the Politbureau. The present Politbureau, which was elected in 1956 by the Eighth National Congress, consists of 17 full members and six alternate members. The Politbureau has a Standing Committee consisting of six members. The Standing Committee consists at present of the following : Mao Tse-tung, Liu Shao-Chi, Chou En-lai, Chu Teh, Chen Yun and Teng Hsiao-ping.

The Central Committee of the Party is its chief deliberative organ. The existing Central Committee, elected by the Eighth National Congress in 1956, consists of 97 full members and 73 alternate members.

Other Political Parties : Besides the Communist Party, there are eight other political parties in the People's Republic of China. These are all comparatively small organisations, the largest three of them being the Revolutionary Committee of the Kuomintang. the China Democratic League and the China Democratic National Construction Association.

All these parties are represented on the National People's Congress and the Chinese People's Political Consultative Conference. All of them accept the basic programme of the Communist Party of China which alone wields real authority in the country. It is obvious that, had these parties refused to toe the Communist line, they would not have been allowed to exist.

The State and the Chinese Economy : The present economy of China represents a transitional stage between capitalism and socialism The Constitution declares that the state aims at gradual transformation of the existing economic structure

of the country into a socialist one. "The People's Republic of China", says the Constitution, "by relying on the organs of state and the social forces, and by means of socialist industrialisation and socialist transformation, ensures the gradual abolition of systems of exploitation and the building of a socialist society."

Since the economy is at present in a transitional stage, the state recognises and protects certain property rights which are essentially capitalist in character. At present, says the Constitution, there are four basic forms of ownership in the People's Republic of China, namely, (1) state ownership, that is, ownership by the whole people, (2) co-operative ownership, that is, collective ownership by the working masses, (3) ownership by individual working people and (4) capitalist ownership. Article 10 of the Constitution says : "The state protects the right of capitalists to own means of production and other capital according to law." It is, however, made clear that capitalists will be allowed to function only on a restricted basis and the ultimate goal is the transformation of capitalist production into socialist production. "The policy of the state towards capitalist industry and commerce is to use, restrict and transform them", the Constitution declares.

The state protects the right of peasants to own land and other means of production according to law, as well as the right of handicraftsmen and other working people to own means of production.

The state also protects the right of citizens to lawfully earned incomes, savings, houses and other means of life, as well as their right to inherit private property according to law.

In the field of agriculture, it is claimed, by November, 1956, over 96 percent of the peasant households in China were organised into agricultural producers' co-operatives numbering 764,000. Of these more than 488,000 were co-operatives of the advanced type or collecive farms, and they account for 83 per cent of the peasant households.

It is further claimed that by June, 1956, over 99 per cent of the private industrial enterprises were incorporated into joint state-private industry. These will be gradually nationalised.

The People's Government launched the First Five-Year Plan in 1953. The Second Five-Year Plan is to be launched in 1958. The main objective of these plans is to lay the foundation for socialist industrialisation and the socialist transformation of the economy.

The People's Republic of China and Democracy : So far as the question of democracy is concerned, the situation in China is essentially similar to that in the Soviet Union. The governmental machinery and all aspects of the life of the Chinese people are under the control of the Chinese Communist Party. In fact, it is in the hands of the top leadership of the Party that all effective power is concentrated. Only those parties have been allowed to exist which accept the basic programme of the Communist Party. The system of election introduced by the constitution is an undemocratic one and ensures complete control by the Communist Party over them. Criticism of the basic programme of the Communist Party is not tolerated. Criticism is allowed only in matters of minor importance. In fact, there is reason to believe that persons who had the boldness to voice criticism of the Communist leadership or their basic policies had to meet with a grim fate—like the critics of Stalin under his regime in the Soviet Union. The Constitution declares that the People's Republic of China is "a people's democratic dectatorship." There is more dictatorship in China than democracy. All observers agree, however, that the present regime in China has succeeded, by its economic programme, to release mass enthusiasm on a scale unprecedented in Chinese history.

CHAPTER XIX

THE CONSTITUTION OF CEYLON

The Constitution of Ceylon and Dominion Status : The island of Ceylon which had been a British colony since the beginning of the nineteenth century, passing through various stages of self-government, attained fully self-governing status on February' 4,1948. The Constitution of Ceylon is embodied in the Ceylon Independence Act, 1947 and certain Orders in Council collectively known as the Ceylon (Constitution and Independence) orders in Council, 1947.

These constitutional documents confer on Ceylon fully self-governing status within the British Commonwealth of Nations. In other words, they confer on Ceylon what is known as Dominion status.

The Constitution establishes a parliamentary system of Government for Ceylon modelled on the British pattern.

A Bill to amend the Constitution must be passed by a two-thirds majority of the total membership of the House of Representatives. When such a Bill, on receipt of the Royal Assent, becomes an Act, the Constitution stands amended in accordance with its provisions.

The Queen and the Governor-General : The executive power is vested in the Queen and is exercised in most matters on behalf of Her Majesty, by the Governor-General. All executive powers, however, whether exercised by the Queen personally or by the Governor-General, are exercised on the advice of the Ministers of the Ceylon Government.

The Governor-General is appointed by the Queen on the advice of the Prime Minister of Ceylon. The Government of the United Kingdom have no say in this matter.

The Cabinet : The Constitution provides for a Cabinet headed by a Prime Minister. The Prime Minister is appointed by the Governor-General, while other Ministers are appointed by the Governor-General on the advice of the Prime Minister. The Constitution lays down that not less than two Ministers, one of whom shall be the Minister of Justice, must come from the Senate.

The Ministers are collectively responsible to Parliament.

A Minister who for any period of four consecutive months is not a member of either Chamber must, at the expiration of that period, cease to be a Minister.

The Cabinet occupies a central position in the administrative set-up. It directs and controls the entire governmental machinery and plays a guiding role in legislation.

The Parliament : The Parliament consists of the Queen and two Chambers known as the Senate and the House of Representatives.

The Senate consists of 30 members, of whom 15 are elected by the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote, and 15 are nominated by the Governor-General. The Senate is a permanent body not subject to dissolution. The term of office of Senators is six years. One-third of the Senators retire every second year. No Senator can be elected or appointed as a member of the House of Representatives.

The House of Representatives consists of members elected on the basis of adult franchise from electoral districts and members, if any, nominated by the Governor-General. The Constitution provides that, if after any general election the Governor-Genera- is satisfied that any important interest in the island is not repre sented, he may nominate up to six persons to be members of the House of Representatives. In the House which came into existence after the general elections held in 1952, there were 95 elected members and 6 nominated members. The existing House, elected in 1956, has also the same membership.

Unless sooner dissolved, every House of Representatives continues for five years from the date appointed for its first meeting.

A Bill, other than a Money Bill, may be introduced in either House. Money Bills can be introduced only in the House of Representatives. A Money Bill is defined as a Bill which contains only provisions dealing with taxation, public expenditure or Government loans.

If a Money Bill, having been passed by the House of Representatives and sent to the Senate at least one month before the end of the session, is not passed by the Senate within one month after it is so sent, the Bill may be presented to the Governor-General with or without any amendments which have been made by the Senate and agreed to by the House of Representatives and shall take effect as an Act of Parliament on the Royal Assent being signified thereto. This means, in substance, that the Senate can only delay the passing of a Money Bill by a month. And the enactment of Bills other than Money Bills can be delayed by the Senate by one session. Thus the Lower House, if is determined to pass a Bill, can have its own way, in spite of opposition by the Senate. In short, the Senate plays a subordinate role in law-making.

Parliament has power to make laws for the peace, order and good government of the island. The Constitution imposes certain restrictions on the legislative power of Parliament. It has no power to make laws to : (1) prohibit or restrict the free exercise of any religion ; or (2) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable ; or (3) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or (4) alter the constitution of any religious body except with the consent of the governing authority of that body.

The Judicial System : The Supreme Court is the highest court in the island. It consists of a Chief Justice and a number of puisne Judges, all of whom are appointed by the Governor-General. The

Judges cannot be removed except on an address by the Governor-General.

The Court has appellate and revisional jurisdiction in civil matters. As a general rule it exercises no original jurisdiction in civil cases. It has original jurisdiction in respect of certain kinds of serious crimes. The District Courts have unlimited civil jurisdiction and criminal jurisdiction in respect of all offences which are not within the execlusive jurisdiction of the Supreme Court. Below the District Courts are the Majistrates' Courts. In the exercise of their criminal jurisdiction, the District Courts try only cases committed to them by the Magistrates' Courts.

Administration of Districts : For administrative purposes, the island is divided into 20 districts. At the head of the district administration is a government agent, who is assisted by assistant and subordinate headmen.

CHAPTER XX

THE CONSTITUTION OF BURMA

The Historical Background : Burma was annexed by the British in 1886. Since then she was under the British rule till she regained her independence in 1948. Burma was administered as part of British India until 1937, when she was given a separate Constitution.

During World War II, Burma was occupied by the Japanese (1942). The British re-occupied Burma in 1945. The movement for independence which had grown up in that country during the British rule was psychologically strengthened by the withdrawal of the British forces in 1942 and when the British returned in 1945 they no longer enjoyed the prestige of the earlier days. They agreed to grant independence to the country. Arrangements were made for the election of a Constituent Assembly. A Constitution was drawn up by this Constituent Assembly and on January 4, 1948 when this Constitution came into force, Burma became a sovereign independent country outside the British Commonwealth.

The Main Features of the Constitution of Burma : The Constitution of Burma is federal in type. It establishes a federal state consisting of a number of constituent units, apart from a large area kept under federal control. The following are the constituent units : (1) the Shan State, (2) the Karen State, (3) the Kachin State, (4) the Kaya State and (5) the Special Division of the Chins.

The Constitution embodies two legislative Lists : (1) the Union Legislative List and (2) the State Legislative List. There is no concurrent List. The Union Parliament is given exclusive power to legislate on matters included in the Union Legislative List, while the State Councils are given exclusive power

to legislate on matters enumerated in the State Legislative List. The Constitution vests the residuary powers in the federal Legislature, that is, Parliament.

The Constitution provides that, in times of grave emergencies, the President may issue a Proclamation of Emergency and when such a Proclamation is in operation, Parliament shall have power to legislate on any matter included in the State List. It is laid down that in case of inconsistency between such legislation by Parliament and any State law, the former will prevail.

The procedure laid down for amendment of the Constitution is as follows :

A Bill to amend the Constitution may be initiated in either Chamber of Parliament and after it has been separately passed by each Chamber, it must be considered by both Chambers in joint sitting. The Bill will be deemed to have been passed at the joint sitting if not less than two-thirds of the then members of both Chambers have voted in its favour. After a Bill has been passed according to this procedure, it must be presented to the President who must forthwith sign and promulgate the Act. A Bill which seeks to amend the State Legislative List or the State Revenue List (included in the Fourth Schedule to the Constitution) and certain other matters shall not be deemed to have been passed at the joint sitting of the Chambers unless a majority of members present and voting, representing the State or each of the States concerned, have voted in its favour.

The Constitution grants the States the right to secede, subject to the following conditions : (1) The right of secession shall not be exercised within ten years from the date on which the Constitution comes into operation. (2) Any State wishing to exercise the right of secession must have a resolution to that effect passed by its state Council by not less than a two-thirds majority of the total number of members of the Council. The President must thereupon order a plebiscite to be taken to ascertain the will of the people.

So far no State has seceded from the Union of Burma.

Fundamental Rights and Directive Principles of State Policy : The Constitution guarantees quite a number of fundamental rights to its citizens. These include freedom of speech and expression, the right to assemble peacefully, the right to form associations, the right to equality, the right to private property, certain remedial rights as well as cultural and educational rights for the minorities. Although the State recognises, according to the Constitution, "the special position of Buddhism as the faith professed by the great majority of the citizens of the Union", the Constitution declares : "The State shall not impose any disabilities or make any discrimination on the ground of religious faith or belief." In fact, the State also recognises Islam, Christianity, Hinduism and Animism as some of the religions existing in the Union.

The Directive Principles of State Policy embodied in the Constitution are "not enforceable in any court of law." These principles aim at the establishment of social and economic justice. The State, it is laid down, must direct its policy towards securing to each citizen the right to work, the right to rest and leisure, the right to education and the right to maintenance in old age and during sickness. The State is also directed to protect the interests of nursing mothers and infants, promote the improvement of public health, promote and give support to arts and sciences, particularly the study of Pali and Sanskrit, and to plan the economic life of the people with a view to raising the living standards and the cultural level of the people.

The President and the Federal Cabinet : The executive authority of the Union, that is, the federal Government, is vested in a President. The President is elected by the two Chambers of Parliament in joint session by secret ballot. His term of office is five years. No person can serve as President for more than two terms in all. The President can be impeached by Parliament for high treason, violation of the Constitution or gross misconduct.

The President exercises his powers on the advice of the

Union Government, that is, the Cabinet, except in matters in regard to which he is empowered to act in his discretion.

The President appoints a Prime Minister on the nomination of the Chamber of Deputies. And, on the nomination of the Prime Minister, other Ministers are appointed by the President.

The President summons, prorogues or dissolves the Chamber of Deputies on the advice of the Prime Minister. If, however, the Prime Minister ceases to retain the support of a majority in the Chamber, the President may refuse to prorogue or dissolve the Chamber on his advice. In such a situation, the President must forthwith call upon the Chamber to nominate a new Prime Minister. If the Chamber fails to nominate a new Prime Minister within fifteen days, it must be dissolved.

Parliament : The legislative power of the Union is vested in the Parliament which consists of the President and two Chambers, namely, the Chamber of Deputies and the Chamber of Nationalities. The number of members of the Chamber of Deputies, the Constitution says, shall be, as nearly as practicable, twice the number of members of the Chamber of Nationalities.

Elections to both Chambers are held on the basis of adult franchise. Every citizen, who has completed the age of eighteen years and is not disqualified by law, has the right to vote at any election to the Parliament. And every citizen, who has completed the age of twenty-one years and is not disqualified by law, is eligible for membership of Parliament.

The Chamber of Deputies consists of 250 members, while the Chamber of Nationalities consists of 125 members. Allocation of seats in the Chamber of Nationalities is as follows : the Shan State ,25 ; the Kachin State, 12 ; Special Division of the Chins, 8 ; the Kaya State, 3 ; the Karen State, 15 ; the remaining territories, 62. The Chamber of Deputies Continues for four years, unless sooner dissolved. Dissolution

of the Chamber of Deputies operates also as a dissolution of the Chamber of Nationalities. The general election for the Chamber of Nationalities must be completed not latter than the fifteenth day from the first meeting of the Chamber of Deputies held after a dissolution.

A Bill, other than a Money Bill, may be initiated in either Chamber. Money Bills can originate only in the Chamber of Deputies. A money Bill passed by the Chamber of Deputies and sent to the Chamber of Nationalities for its recommendations must be returned within 21 days to the Chamber of Deputies which may accept or reject any of the recommendations. If a Money Bill is not returned to the Chamber of Deputies within twenty-one days, or is returned within the period with recommendations which the Chamber of Deputies does not accept, it will be deemed to have been passed by both Chambers at the expiration of twenty-one days.

So far as ordinary Bills are concerned, in case of disagreement between the Chambers, the President convenes a joint sitting where decision is taken by a majority of the members of both Chambers present and voting.

When a Bill has been passed by both Chambers it is presented to the President who is required by the Constitution to sign every such Bill, with some minor exceptions, not later than seven days after the date of presentation. (As has been already pointed out, a Bill to amend the Constitution must be signed by the President immediately on presentation.) If any Bill is not signed by the President within seven days after the date of presentation, the same will become an Act as if the President had signed it on the last of the said seven days.

An interesting provision is made by the Constitution in regard to Money Bills. It is provided that the Speaker of the Chamber of Deputies shall certify any Bill which in his opinion is a Money Bill to be a "Money Bill." The Chamber of Nationalities may, however, request the President by a resolution to refer the question whether the Bill is or is not a Money Bill to a Committee of Privileges. If the President, in his discretion, decides to accede to the

request, he shall appoint a Committee of Privileges consisting of an equal number of members of both Chambers and a Chairman who must be a judge of the Supreme Court. The decision taken by the President, in his discretion, on the report of the Committee shall be final. The Constitution lays down that no international agreement requiring legislation in order to give effect thereto shall be ratified except with the approval of Parliament. And, it is further laid down, no international agreement involving a charge upon the revenues of the Union shall be ratified unless the terms of the agreement have been approved by the Chamber of Deputies.

The Government of the States : For each State the President appoints a Union Minister on the nomination of the Prime Minister acting in consultation with the State Council. The Minister is known as the Minister for the State concerned. For instance, the Minister appointed for the Shan State is known as the Minister for the Shan State. This Minister is also the Head of that State. The executive authority of the State is vested in the Head of the State who is aided in the exercise of his functions by a Cabinet of State Ministers elected by the State Council.

The members of Parliament representing each State constitute the State Council which is the legislative authority for that State. When a Bill has been passed by the State Council it is presented to the President for his signature and promulgation. The President is required to sign the Bill within one month from the date of presentation unless he, in his discretion, refers the Bill to the Supreme Court to decide the question whether the Bill or any specified provision thereof is repugnant to the Constitution. If the Supreme Court decides that any provision of the Bill is repugnant to the Constitution, the President must return the Bill to the State Council for reconsideration and must not sign it unless necessary amendments have been made thereto. In any other case, the President must sign and promulgate the Bill as soon as may be after the decision of the Supreme Court is pronounced.

For the Special Division of the Chins, there is a Chin Affairs

Council consisting of the members of Parliament representing the Chins. The general administration of the area is vested in a Union Minister for Chin Affairs appointed by the President on the nomination of the Prime Minister acting in consultation with the Chin Affairs Council. The Minister for Chin Affairs is aided in the discharge of his duties by the Chin Affairs Council.

The Judicial Organisation : The judicial organisation in Burma has a pyramidal structure at the apex of which stands the Supreme Court, the final court of appeal.

Below the Supreme Court is a High Court having both appellate and original jurisdiction, and below the High Court are subordinate courts which are courts of first instance.

The Judges of the Supreme Court and the High Court are all appointed by the President with the approval of both Chambers of the Parliament in joint sitting. A Judge of the Supreme Court or of the High Court cannot be removed except on the ground of proved misbehaviour or incapacity. The charge against a Judge must be preferred by either Chamber, whereupon a Special Tribunal is to be appointed to investigate it. If the charge relates to a Supreme Court Judge, the Special Tribunal is to consist of the President or a person appointed by him in his discretion and the Speakers of the two Chambers of Parliament. If the charge relates to a High Court Judge, the Tribunal is to consist of the Chief Justice of the Supreme Court and the Speakers of the two Chambers of Parliament. The Tribunal is required to submit its report to the Chamber by which the charge was preferred. It is laid down that, if the Tribunal has found unanimously that the charge has not been proved, such finding will be final. In all other cases the report of the Tribunal must be considered by both Chambers of Parliament in joint sitting. If a majority of the members present and voting at the joint sitting are of the opinion that the charge has been proved, the President must forthwith remove the Judge in question from office.

The High Court has exclusive original jurisdiction (a) in all matters arising under any treaty made by the Union, (b) in all

disputes between the Union and a Unit or between one Unit and another and (c) in certain other matters determined by law.

The Supreme Court hears, *inter alia*, appeals from decisions of the High Court. The law declared by the Supreme Court is binding on all other courts. The Supreme Court, like its Indian counterpart, has also an advisory jurisdiction.

International Relations : The Constitution declares : "The Union of Burma renounces war as an instrument of national policy, and accepts the generally recognised principles of international law as its rule of conduct in its relations with foreign States." It further says : "The Union of Burma affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality."

It is but fitting and proper that Burma, the land of Buddhism, should incorporate in the fundamental law of the land a declaration renouncing war as an instrument of national policy.

CHAPTER XXI

WORLD ORGANISATION

Dream of a World Organisation : Philosophers have often dreamt of a world state and poets have been stirred by the vision of an organisation embracing the entire mankind. The phrases 'Parliament of Man' and 'Federation of the World' which are sometimes used by political writers reflect a dream and a hope cherished through the ages.

The ideal of a world state could not, however, be given a practical shape, even partially, in the past ages when there were no quick means of communication. It is only with the birth of the modern era in which scientific inventions have annihilated time and space that it has been possible to view the ideal of a world state as a realisable one.

The League of Nations represents man's first tottering step towards the goal of a world organisation and the United Nations represents the second. Between the first and the second step lies a story of failure. But the fact that the second step was teken in spite of the failure of the first step reflects inflexible determination on the part of man to reach what he deeply believes to be the goal of his troubled political evolution.

The League of Nations : The ideal of the League of Nations was foreshadowed in the famous Fourteen Points of President Wilson of the United States.

A special Commission of the Peace Conference of Paris, presided over by President Wilson, drew up the Covenant of the League in 1919. The Covenant was incorporated in the Versailles Peace Treaty and other Treaties of Peace concluded in 1919.

The League of Nations came into existence on January 10, 1920, on which date the Treaty of Versailles came into force.

The signatories to the Versailles Peace Treaties were the original members of the League. The membership increased later to 53. The United States, however, never joined the League and Russia was admitted only in 1934. Germany was admitted to the League after Locarno in 1926 and was made a permanent member of the Council. The League dissolved itself formally in 1946.

The League of Nations had the following organs : (1) the Assembly, (2) the Council, (3) the Permanent Secretariat, (4) the Permanent Court of International Justice and (5) the International Labour Organisation.

The Assembly consisted of the representatives of the members of the League. At meetings of the Assembly each member had one vote and could have not more than three representatives.

The Council, which was the executive body, consisted of some permanent members and some non-permanent members selected by the Assembly in its discretion from time to time. There was provision for the increase of both permanent and non-permanent members.

Except in procedural and certain other matters, decisions at meetings of the Assembly or of the Council required unanimous consent of all the members of the League represented at the meeting. Matters of procedure could be decided by a majority vote.

By Article 12 of the Covenant, the Members of the League agreed to submit to arbitaration or judicial settlement or enquiry by the Council any matter likely to lead to a rupture. They further agreed that they would in no case resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

Thus it would be seen that the League did not outlaw war as an instrument of national policy. Under the League Covenant, a nation could, after certain conditions have been fulfilled, lawfully go to war.

Article 16 of the League dealt with sanctions, that is, measures for the enforcement of obligations imposed by the Covenant. It laid down that, should any Member of the League resort to war in disregard of its covenants, it would be deemed to have committed an act of war against all other Members of the League. These Members could, under this Article, subject the offending Member to the severance of all trade or financial relations, and could also take military action against it in order to protect the covenants of the League.

The permanent Secretariat of the League was established at Geneva.

The Permanent Court of International Justice was the principal judicial organ of the League. Its function was to adjudicate disputes between Members of the League according to its Statute. The seat of the Court was Hague.

The International Labour Organisation had the function of collecting facts and statistics about labour and industrial conditions and of formulating minimum international standards about conditions of employment.

Both the Court and the ILO functioned independently of the Assembly and the Council. As has been pointed out, the United States did not join the League. This had made the League a rather weak organisation from its very inception. The failure of the League to stop the Japanese aggression against China and the Italian aggression against Abyssinia in the thirties considerably undermined its prestige and authority. During World War II, the League remained in a moribund condition and, as has been stated, it was dissolved in 1946.

The United Nations

Origin of the United Nations Charter : The term, "the United Nations" was first suggested by President F.D. Roosevelt of the United States.

And on January 1, 1942, in the famous Declaration by the United Nations, this term was first used. This was a declaration

by the representatives of 26 nations that were fighting at that time against the Axis aggressors, pledging themselves to employ their full resources against the aggressors and not to make separate peace with them. This declaration may be regarded as the first landmark in the evolution of the United Nations.

The Declaration of Four Nations on General Security, issued in Moscow on October 30,1943, envisaged the establishment at the earliest practicable date of a general international organisation for the maintenance of international peace and security. This Declaration was signed by the Foreign Ministers of the United States, the United Kingdom and the U.S.S.R and the Chinese Ambassador to Moscow.

The first draft of the Charter of the proposed international organisation was drawn up by Britain, U.S.A, U.S.S.R and China at Dumbarton Oaks, near Washington, in 1944. No agreement, however, on the voting procedure in the Security Council could be reached at Dumbarton Oaks. Agreement on this question was reached at Yalta in the Crimea where President Roosevelt, Prime Minister Churchill and Marshal Stalin met in 1945 to discuss, *inter alia*, the structure of the proposed international organisation.

Representatives of fifty nations met in San Francisco from April to June, 1945, when the war was still on, to adopt a charter for the proposed world organisation. Discussion was based mainly on the Dumbarton Oaks plan and the Yalta Agreement on the voting procedure. The Charter of the United Nations was adopted on June 26, 1945. The name "United Nations" was adopted as a tribute to President Roosevelt, who had passed away on April 12, 1945.

The States which were present at the San Francisco Conference or had signed the Declaration by the United Nations became the original members of the United Nations. They numbered 51. The membership of the United Nations has gradually increased, the present membership being 82. Among the more important states which are not yet Members of the UN are Switzerland and the People's Republic of China.

The objectives of the United Nations : The preamble to the Charter of the United Nations and Article 1 set out the objectives of the organisation.

The preamble is as follows :

"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

"AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

"HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

"Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations."

An analysis of the preamble shows that the chief aims of the United Nations can be grouped under four heads—peace and security, welfare, justice and human rights. Article 1 of Charter defines the objectives in clear terms. It says that the purposes of the United nations are : (1) to maintain international peace and security and, to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace ; (2) to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ; (3) to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ; and (4) to be a centre for harmonising the actions of nations in the attainment of these common ends.

The objectives of peace and security, justice, welfare and the promotion of respects for human rights are all interrelated. Welfare is essential to peace, and there can be no peace in a world in which some nations suffer from a sense of injustice. Also, the greater the respect for human rights and the dignity of the human individual, the stronger the forces that make for peace.

Obligations Imposed by the Charter : Article 2 of the Charter imposes the following obligations on member states : (1) to settle their international disputes by peaceful means, (2) to refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations, (3) to give the United Nations every assistance in any action it takes in accordance with the Charter, (4) to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action, and (5) to fulfil in good faith all other obligations assumed by them under the Charter.

The United Nations not to interfere in domestice matters : Clause 7 of Article 2 says : "Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." This is the well-known domestic jurisdiction clause. Sometimes States take shelter behind this clause in order to avoid international scrutiny or intervention even in regard to matters which have an undoubted impact on international affairs. South Africa, for instance, has consistently objected to discussion by the UN of its racial policies on the ground that they are matters essentially within its domestic jurisdiction.

It should be noted that the Charter clearly states that the domestic jurisdiction clause shall not affect the application of measures to deal with threats to the peace, breach of the peace or acts of aggression.

Principal Organs of the United Nations : The following are the principal organs of the United Nations : (1) a General Assembly, (2) a Security Council, (3) an Economic and Social Council, (4) a Trusteeship Council, (5) an International Court of Justice and (6) a Secretariat.

The General Assembly : The General Assembly consists of all the Members of the United Nations. Each Member has one vote but may have more than one representative, subject to a maximum of five. The General Assembly meets once a year and elects a President for each session. It may, however, hold special sessions, if such sessions are considered necessary.

The General Assembly is essentially a deliberative, overseeing and reviewing organ. The Assembly can discuss any matter within the scope of the Charter and can make recommendations to the Members of the UN or to the Security Council. In particular, it has power to consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and to make recommendations with regard

to such principles to Members or to the Security Council. It has also power to discuss any question relating to the maintenance of international peace and security brought before it by any Member or the Security Council or any state which is not a Member of the UN, and to make recommendations to the Security Council, or the states concerned. It cannot, however, take any action in regard to any such question. If action is necessary in regard to any such question, the Assembly must refer it to the Security Council either before or after discussion. The Charter lays down further that the General Assembly shall not make any recommendation in regard to any dispute or situation which is under consideration by the Security Council.

Decisions of the General Assembly on all important questions must be made by a two-thirds majority of members present and voting. On other questions, including procedural matters, the Assembly can take decisions by a majority of the members present and voting.

The General Assembly elects the non-permanent members of the Security Council. It supervises the work of the Trusteeship Council. It considers and approves the budget of the UN. The Assembly, on recommendation by the Security Council, can expel from the UN any Member which has persistently violated the Charter.

The General Assembly, which consists at present of 82 Members, has been characterised as the "town-meeting of the world." It is said to represent "the open conscience of humanity."

The Security Council : While the General Assembly is the deliberative organ of the U.N., the Security Council is the executive organ. The Security Council consists of eleven members, of whom five are permanent members and six non-permanent members. The United Kingdom, the U.S.A., the Soviet Union, France and China are permanent members of the Security Council. (The Kuomintang Government headed by Chiang Kai-shek still represents China on the Security Council. The

People's Republic of China has not yet been admitted to the United Nations.) The non-permanent members are elected for a two-year term by the General Assembly. In electing the non-permanent members, the Secutity Council is required to pay due regard to the contribution of the Members of the UN to the maintenance of international peace and security and other purposes of the organisation, and also to equitable geographical distribution.

The Security Council sits continuously. The Security Council is the principal organ of the UN for maintaining peace and security. The main functions of the Security Council may be grouped under two heads, namely, (1) promotion of peaceful settlement of disputes and (2) taking preventive or enforcement action against aggression.

The U.N. Members have undertaken to seek solution of disputes which are likely to endanger international peace, first of all, by negotiation, enquiry, mediation, arbitration or other peaceful means. The Security Council, when it deems necessary, can call upon the parties to a dispute to settle it by such peaceful means. The Security Council may investigate any dispute, or any situation which might give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger international peace and security. A Member of the UN—and even a non-Member—may bring to the attention of the Security Council any dispute or situation that is likely to endanger international peace. And the Security Council may, at any stage of such a dispute, recommend appropriate procedures or methods of adjustment.

The Security Council is to determine the existence of any threat to the peace, breach of the peace or act of aggression and is to make recommendations or decide to take enforcement measures in order to maintain or restore international peace and security. There are two kinds of enforcement action which the Security Council may take—(1) "measures not involving the use of armed force" such as complete or partial interruption of economic relations, and of rail, sea, air, postal, telegraphic and other means

of communication, and the severance of diplomatic relations ; and (2) "action by air, sea or land forces," such as blockade, bombardment and other types of military action.

All Members of the UN have undertaken, under the Charter, to make available to the Security Council, on its call, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. It is under these provisions that the Security Council took action in Korea to stop the aggression of North Korea against South Korea.

The voting procedure in the Security Council is as follows : Each member of the Security Council has one vote. Decisions on procedural matters must be made by an affirmative vote of seven members. Dicisions on all other matters require "an affirmative vote of seven members including the concurring votes of the permanent members." A party to a dispute, however, must abstain from voting in decisions regarding peaceful settlement of that dispute.

The Veto : As has been just pointed out, decisions of the Security Council on all important matters require "an affirmative vote of seven members including the concurring votes of the permanent members." This means that if any one of the permanent members says 'No' to a proposal, it is negatived. This is what is called the veto. It is, therefore, clear that even in grave international situations calling for the use of force on the part of the UN, it will not be possible for the Security Council to use force if one of the permanent members is a party to the dispute.

In order to overcome the difficulty created by the veto, the General Assembly has set up a committee, consisting of one representative of each Member state, to remain in permanent session. This Committee, which is officially called the Interim Committee is also known as the Little Assembly. This Committee is intended to take prompt action in a grave situation in which the Security Council may have been paralysed by the veto and the General Assembly also may not be in session.

It has been argued by some politicians that, in case of aggression, UN Members can bypass on unreasonable use of the veto by taking action under Article 51 which provides for the right of self-defence. (See below)

Right of Self-Defence : Since no country subjected to an armed attack can wait for the Security Council to intervence without taking necessary measures for self-defence, the Charter recognises the right of self-defence. Article 51 of the Charter says that nothing in the Charter shall impair the right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.

The Economic and Social Council : The Economic and Social Council is the principal organ of the UN for promoting international economic and social co-operation. The Council consists of eighteen members of the United Nations elected by the General Assembly. The members are elected for a term of three years, one-third of the members retiring every year. A retiring member is eligible for immediate re-election.

The Economic and Social Council performs a function essential to the maintenance of peace. There can be no lasting peace without welfare.

The UN has pledged itself to promote : (a) higher standards of living, full employment and conditions of economic and social progress and development, (b) solutions of international economicl social, health and related problems ; and international cultural and educational co-operation ; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion.

There are in existence various inter-governmental specialised agencies for the attainment of these economic and social purposes. The Economic and Social Council, under the Charter, co-ordinates the activities of these specialised agencies (see below). It has also the function of bringing such agencies into relationship with the United Nations, subject to the approval of the General Assembly.

The Economic and Social Council may make or initiate studies and reports with respect to international economic, social and cultural problems and may make recommendations to the General Assembly, to any Member of the UN and to the specialised agencies concerned. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

The Council has established a number of important commissions and bodies which may be broadly grouped into three categories : (1) Regional Economic Commissions, such as the Economic Commission for Europe (ECE) and the Economic Commission for Asia and the Far East (ECAFE) (2) Functional Commissions, such as the Commission on Human Rights and the Commission on the status of women and (3) Special bodies, such as the UN children's Fund (UNICEF).

The Economic and Social Council, with its Commissions and the Specialised Agencies whose activities it coordinates, makes the UN a broader and more balanced organisation than the League of Nations.

The Trusteeship Council : One of the basic objectives of the UN is to promote the political, economic, social and educational advancement of non-self-governing peoples. Under the Covenant of the League of Nations, a Mandate System was established for the administration of certain non-self-governing territories which were formerly part of the German empire or under the control of other enemy nations. The Mandate System came to an end on the dissolution of the League in 1946. The UN Charter has provided for the establishment of an International Trusteeship System to take the place of the Mandate System. The International Trusteeship System applies to such territories in the following categories as may be placed thereunder by means of trusteeship agreements : (a) territories which were being

held under mandate after the end of World War II, (b) territories which may be detached from enemy states as a result of World War II, and (c) territories voluntarily placed under the system by states responsible for their administration.

Under the system, every trust territory is administered by an administering authority under a trusteeship agreement. Trusteeship agreements are subject to approval by the General Assembly. Supervision of the Trusteeship system is carried on by the General Assembly and the Trusteeship Council, operating under the authority of the Assembly, assists it in carrying out its functions relating to trusteeship agreements. (UN functions relating to strategic areas in trust territories are exercised by the Security Council.) The Trusteeship Council consists of the following Members of the UN : (1) Members administering trust territories ; (2) such permanent members of the Security Council as are not administering trust territories ; and (3) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer Trust territories and those which do not.

The principal functions of the Trusteeship Council, under the authority of the General Assembly, are : (1) to consider reports submitted by the administering authority ; (2) to accept petitions and examine them in consultation with the administering authority ; (3) to provide for periodic visits to the respective trust territories at times agreed upon with the administering authority ; and (4) to take these and other actions in conformity with the terms of the trusteeship agreements.

The General Assembly has so far approved ten trusteeship agreements.

The International Court of Justice : The International Court of Justice is the principal judicial organ of the United Nations. The Court functions according to a Statute which is an integral part of the Charter of the United Nations. The

Court is very similar to the Permanent Court of International Justice set up by the League of Nations. And its seat is the same as that of its predecessor, namely, Hague.

The International Court of Justice consists of fifteen judges elected by the General Assembly and the Security Council, voting independently of each other. The candidates who obtain an absolute majority of votes in the Assembly and the Council are considered elected. No two judges may be nationals of the same state.

The term of office of the judges is nine years, one-third retiring every third year. They can be re-elected.

The Court elects a President and a Vice-President for three years. They are eligible for re-election.

All questions are to be decided by a majority of the judges present.

The official languages of the Court are English and French.

The Members of the United Nations are *ipso facto* parties to the Statute of International Court of Justice.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. The parties to the Statute of the Court may at any time declare that they recognise as compulsory, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning : (a) the interpretation of a treaty ; (b) any question of international law ; (c) the existence of any fact which, if established, would constitute a breach of an international obligation and (d) the nature and extent of the reparation to be made for the breach of an international obligation.

The Court also enjoys an advisory jurisdiction. The Security Council or the General Assembly may request the Court to give an advisory opinion on any legal question.

Among the disputes so far submitted to the Court are the Fisheries Case (U.K. *vs.* Norway), the Channel Islets case (U.K. *vs.* France) and the Anglo-Iranian Oil Company Case (U.K. *vs.* Iran).

The Secretariat : The Secretariat is composed of the Secretary-General and an international staff appointed by him. The permanent headquarters of the Secretariat are at New York, where its office is housed in an elegant thirty-nine-storied building. The Secretary-General's term of office is five years. The present Secretary-General is Mr. Dag Hammarskjold.

The Specialised Agencies : The Specialised Agencies of the United Nations are organisations established by intergovernmental agreements and brought into relationship with the UN under the Charter. Article 57 of the Charter provides that the various specialised agencies, established by intergovernmental agreements and having wide international responsibilities in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations. The Economic and Social council negotiates agreements with the Agencies, defining their relationship with the UN. These agreements are subject to approval by the UN General Assembly.

So far the following specialised agencies have been brought into relationship with the UN : (1) The International Labour Organisation, (2) The United Nations Educational, Scientific and Cultural Organisation, (3) The Food and Agriculture Organisation of the United Nations, (4) The World Health Organisation, (5) The International Monetary Fund, (6) The International Bank for Reconstruction and Development, (7) The International Civil Aviation Organisation, (8) The Universal Postal Union, (9) The International Telecommunication Union, (10) The World Meteorological Organisation.

The International Labour Organisation : The International Labour Organisation was set up by the peace treaties of 1919

as an autonomous institution associated with the League of Nations. The ILO was recognised as a specialised agency by the UN in 1946.

The ILO seeks through international action to improve labour conditions, raise living standards and promote economic and social stability. It differs from most other international organisations in that it is not a purely governmental organisation. It is a tripartite organisation in which governments, employers and workers are directly represented.

The ILO consists of the International Labour Conference, the Governing Body and the International Labour Office.

The Conference, which meets annually, is composed of delegations of four representatives from each of the member states. Of these four representatives, two represent the government, one the most representative employers' organisation and the fourth the most representative workers' organisation.

The Conference is an international forum for the discussion of economic and social problems. And one of the most important functions of the Conference is to adopt international instruments known as Conventions which lay down the minimum standards for labour and social policy in regard to particular subjects. The drafts for these Conventions are prepared by the International Labour Office. A draft is considered adopted if approved by a two-thirds majority in the Conference. If a state ratifies a convention, it is required to report annually to the ILO on the measures taken to give effect to it. Apart from Conventions, the Conference also adopts Recommendations which do not require ratification by member states but which they are obliged to consider with a view to giving effect to their provisions.

The Governing Body consists of forty members, twenty representing Governments, ten employers and ten workers. The Governing Body fixes agenda for the Conference, supervises the work of the International Labour Office and controls finance.

The International Labour Office is the Secretarit of the

International Labour Organisation. The Office has its headquarters at Geneva and has branches in most capitals. It undertakes research on various industrial and social questions. It makes available information and technical assistance to governments and workers' and employers' organisations. It prepares necessary documents for various meetings and conferences.

The ILO represents one of the most successful endeavours in the field of international co-operation. It carries on activities on a world-wide scale. A large number of Conventions have been adopted by it. These relate to hours of work, employment of women and children, safety and welfare, holidays with pay, colonial labour and various other matters. Many of the Conventions have been ratified by a large number of memoer states. The ILO has also adopted a number of model codes relating to various aspects of industrial organisation. It is at present carrying out an operational programme in the realms of employment service organisation and training of workers.

The UNESCO :—The United Nations Educational Scientific and cultural Organisation came into existence in 1946. The UNESCO aims at contributing to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world by the Charter of the United Nations. War always begins in the minds of men. The purpose of UNESCO is, in short, to root out the chief cause of war by raising the level of mental culture all over the world. The UNESCO has been carrying on world-wide activities to wipe out illiteracy and to raise educational standards.

The organs of the UNESCO are a General conference, an Executive Board and a Secretariat. It has its headquarters in Paris.

The FAO : The purpose of the Food and Agriculture

Organisation of the United Nations (FAO) is to promote national and international action in order to attain (a) improvement in the production and distribution of the products of agriculture, forestry and fisheries, (b) higher levels of nutrition and living, (c) the conservation of natural resources and (d) improvement of the systems of land tenure and provision of credit for agriculture. The headquarters of the FAO are at Rome. The main organs of the FAO are a Conference and a Council. The secretariat of the FAO functions under the Director-General.

The WHO : The objective of the World Health Organisation is 'the attainment by all peoples of the highest possible level of health'. Health is defined by the Constitution of WHO as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".

The WHO acts as the directing and co-ordinating authority on international health work. It stimulates and advances work to eradicate epidemic, endemic and other diseases. It promotes the improvement of housing, sanitation and other aspects of environmental hygiene. It also promotes study and research in the field of health.

The WHO consists of a World Health Assembly, an Executive Board and a Secretariat. Its headquarters are in Geneva. It has regional offices at a number of capitals including Washington, New Delhi and Manila.

The Achievements of the U.N. : How far has the UN progressed so far towards the goals it has set before itself ? Do the activities of the UN justify the high hopes it roused when it was brought into existence after the blood-bath of World War II ? These are questions on which opinion is widely divergent. Different people and different states have different answers for these questions. The fact, however, that the UN membership has greatly increased since it came into being in 1945, and that none of the member nations has been seriously considering severance of connection with it shows that all the

members of the UN are agreed at least about one thing, namely, that this world organisation, with all its defects, has been leading a useful existence. All seem to be agreed that it is worth-while to keep organisation alive.

Among the concrete achievements of the UN are the following : UN mediation in the Middle East ended armed conflict between Israel and the Arab States. The state of Israel itself was carved out in 1948 in accordance with the decisions of the General Assembly. The creation of Israel fulfilled one of the long-cherished hopes of the Jearish people. UN mediation in Kashmir brought to an end the armed conflict between India and Pakistan over that territory. It is as a result of negotiations carried on through UN agencies that the Berlin blocade (1948) was lifted by the Soviet Union. The UN took police action against North Korea in 1950 when it invaded South Korea. This has been the only occasion so far when such action was taken by the UN against an offending state. Although the Soviet bloc of nations questioned the wisdom of the UN intervention in Korea, this intervention showed what it is possible for a world organisation to do to suppress aggression. The UN played a highly important role in bringing to an end the aggression against Egypt by England, France and Israel in 1956. The UN efforts were an important contributory factor in the attainment of independence by Indonesia.

Throughout the world the UN specialised agencies have been doing excellent work in the fields of education, health, food production, finance and technical assistance for industrial development. The Agencies, by tackling problems on an international scale, have been helping the nations to come closer together and are demonstrating the practicability of setting up a unified organisation for governing the whole world.

Thus, both in dealing with the problems of aggression and breach of international peace and in promoting international co-operation in social and economic fields, the UN has achieved considerable success. The UN, however, has so

far failed to find a radical solution to the problem of war. It has not succeeded in evolving a scheme of disarmament under international supervision which would be acceptable to both the Eastern and Western Blocs. It has not yet been able to prohibit the manufacture and testing of atomic weapons. However, undismayed by repeated failures, the UN has been continuing its efforts to evolve an effective plan for international control of armaments and prohibition of the atomic weapons.

When one takes a broad view of the present-day world situation as a whole, one cannot fail to come to the conclusion that the very fact that the UN continues to exist in a world torn by ideological conflict and mutual suspicion —a world which from time to time comes perilously close to the brink of a major world catastrophe—is one of the greatest achievements of the UN. The very existence of the UN exercises a steadying influence on the world situation. In case of an aggression or breach of the peace, the matter is immediately brought before the UN where it comes under international scrutiny, and where the pressure of international opinion is brought to bear on the offending parties. It is a forum which brings together the nations and thereby helps them in understanding each other's point of view and thus paves the way to peaceful settlement of the disputes. It is also a forum where debates act as safety-valve for leting out the pent-up gas of feelings and thereby help in reducing tension. The weaker nations now know where to turn to in the event of an aggression on their territory, and the stronger nations know that the UN is there to take action against aggressors. All this exercises a steadying and stabilsing influence on the international situation.

The UN represents today the organised conscience of mankind and, with all its defects, is a symbol of hope for the future of the human race.

One World or None : Man lives today in an interdependent world. Progress of Science and the growing complexity of life have made the nations interdependent. And this interdependence

is gradually increasing. How interdependent the international society has become will be obvious if one considers the following facts. (a) Civil wars today produce international repercussions, as did the Spanish Civil War. (b) International wars today spark national resolutions. For instance, World War I produced a revolution in Russia and World War II caused an upheaval in India leading to her independence. (c) Minority problems in a state today may cause international tension and strife. The history of the two World Wars fully illustrates this fact. The problem of the people of Indian origin in South Africa also shows how a minority problem in a state may become a world issue. (d) A national government, by taking arbitrary economic measures, may ruin thousands of foreign investors and thereby cause serious international tension. (e) A tariff wall raised by a government in exercise of its soverignty may pauperise foreign exporters and seriously affect foreign producers.

All these facts point to the need for international control of various aspects of the social, political and economic life of mankind. The greatest problem of modern times, the problem of war, cannot, again, be solved except through organised international action. No nation, nor any group of nations, can today tackle the problem of war by its own independent action. The fact is being recognised more and more by mankind that peace is indivisible.

And prosperity also, like peace, is indivisible. Poverty, hunger and starvation in any part of the world are sure to affect international well-being. And the nations are becoming more and more conscious of the fact that it is only through organised international action that the problems of hunger, ill-health and unemployment can be solved most quickly and effectively. It is this consciousness that has brought into existence the specialised U.N agencies that are promoting international co-operation in fighting these problems.

Thus, in the modern world, international co-operation and control are an unavoidable necessity not only in dealing with the problems of war but also in tackling the problems

of peace. Although sovereignty of the state is legally unlimited, the nations are today showing an increasingly greater willingness to accept internationally imposed limitations on their sovereignty. Membership of the UN and its specialised agencies is nothing if it is not a tacit acceptance of certain limitations on national sovereignty.

The idea of a world federation or a world state is, therefore, no longer to be regarded as a mere fanciful idea or a utopian ideal. The very existence and survival of mankind depend on the ability of mankind to adjust itself mentally to the realities of the present-day world and to build up a federation embracing the entire mankind. In fact, the unleashing of the atomic energy dictates that man should set about, without delay, the task of building political institutions on a world scale. For an atomic war will mean not only the destruction of the great edifice of civilisation but, probably, the extinction of mankind. The choice before mankind today is : international peace maintained by an international organisation or total destruction. In short, the choice is : one world or none.

APPENDIX A

THE CONSTITUTION OF THE FIFTH REPUBLIC

General Features of the Constitution : The Constitution of the Fifth Republic, which was adopted at a referendum held on September 28, 1958, declares that France shall be a Republic, indivisible, secular, democratic and social.

The Preamble to the Constitution declares : "The French people hereby solemnly proclaim their attachment to the Rights of Man and to the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble of the Constitution of 1946."

"The motto of the Republic," says the Constitution, "shall be Liberty, Equality and Fraternity.' "

"Its principle shall be government of the people, by the people and for the people."

The Constitution guarantees equal rights of franchise to citizens of both sexes. It also guarantees to political parties the right to carry on their political activities. They must, however,—it says—respect the principles of national sovereignty and democracy.

The Constitution provides for a bicameral Parliament, a Council of Ministers headed by a Premier and a President to be elected indirectly. Unlike the Constitutions of the Third and the Fourth Republics, the new constitution makes the President a powerful functionary.

The Constitution does not introduce any change in the sphere of local government ; nor does it alter, except in one or two matters, the judicial system in France with its characteristic feature of administrative courts. The Constitution provides for a Constitutional Council and vests it with the

power to declare laws, which are inconsistent with the Constitution, as unconstitutional and void.

The Balance of Power in the Fifth Republic : Although, looked at superficially, the Fifth Republic may appear as merely a continuation of the Fourth Republic, and similar in essentials to the Third, actually the balance of power in the new Republic is vastly different from what it was in the preceding ones. In both the Third and the Fourth Republics, the Executive was very weak as compared with the Legislature and was really at the mercy of the latter. The Legislature could unseat governments at any time it liked, while it was extremely difficult for a Government to dissolve the lower Chamber of the Legislature.

The Constitution of the Fifth Republic provides for a much stronger executive than its predecessors, makes dissolution of the lower Chamber easier than before and the unseating of governments more difficult. It also, unlike its predecessors, vests in the President of the Republic a considerable volume of real authority. The President now becomes a Key figure, a figure of real importance, in the governmental set-up.

The Constitution of the Fourth Republic, it is hoped, will rid France of its chronic malady of unstable governments. How far this hope is justified can be shown only by the working of the new Constitution.

Amendment of the Constitution : The President of the Republic, on the advice of the Premier, or any member of Parliament may initiate a Bill to amend the Constitution. The amending Bill must be passed by the two Houses of Parliament in identical terms and shall become effective after approval at a referendum. The Bill, however, need not be submitted to a referendum if the President of the Republic decides to submit it to a joint session of Parliament (to be known as Congress). In such a case, the proposed amendment shall be considered adopted if it is accepted by three-fifths majority of the votes cast.

No amendment procedure, it is laid down, may be undertaken if it is prejudicial to the integrity of the territory.

It is further laid down that the Republican form of government shall not be the object of an amendment.

(The amending procedure described above does not apply to certain provisions of the Constitution, which deal with the functioning of the institutions of the Community, that is, the French commonwealth of nations, set up by the Constitution provisions can be amended only by identical laws passed by the Parliament of the Republic and the Senate of the Community).

The President of the Republic : "The President of the Republic," says the Constitution, "shall be elected for seven years by an electoral college comprising the members of Parliament, of the General Councils and of the Assemblies of the Overseas Territories, as well as the elected representatives of the municipal councils." The electoral college is quite a large body. The first electoral college constituted under this provision, which elected General De Gaulle the first President of the Fifth Republic, consisted of over 81,000 electors.

The President appoints the Premier, and on his recommendation, the other Ministers. The President promulgates the laws. He presides over the Council of Ministers. He signs decrees and ordinances decided upon by the Council of Ministers. He makes appointments to the civil and military posts of the State. He is the commander of the armed forces and presides over the higher councils and committees of national defence. He accredits ambassadors and envoys extraordinary to foreign Powers. Foreign ambassadors and envoys extraordinary must be accredited to him. The President can, after consultation with the Premier and the Presidents of the two Chambers, dissolve the National Assembly. He can communicate with the two Chambers of Parliament by means of messages which he must cause to be read. He can, before a law is promulgated, ask Parliament for its reconsideration, and Parliament must not refuse such reconsideration. The President may convene special sessions of Parliament to consider his messages.

The President can take exceptional measures in situations

of emergency. The Constitution lays down that if any e gency arises whereby the independence of the nation, institutions of the Republic, the integrity of its territo the fulfilment of its international commitments are threat in a grave and immediate manner and the regular functic of the constitutional public powers is interrupted, the I dent shall take necessary measures to deal with the situa after official consultation with the Premier and the Presi of the two Chambers of Parliament, as well as with the C titutional Council. He must inform the nation of these sures in a message. These measures must be prompted b desire to ensure to the constitutional authorities, in the sh possible time, the means of performing their functions. National Assembly must not be dissolved during the exe of these exceptional powers, and Parliament shall con to meet by right.

The Constitution of the Fifth Republic, as has been al indicated, has vested in the President a considerable me of real power. The French President of today is no lc his old counterpart who was a mere nominal executive I a figure-head and a 'rubber-stamp' and about whom p used to joke that he neither reigned, nor governed. U the Fifth Republic, the President is a powerful functio his position being more or less similar to that of Louis N leon who was elected President in the Second Republic in 184

The Constitution of the Third Republic said : "Ea the acts of the President of the Republic must be cou signed by a Minister." The Constitution of the Fourth public also laid down : "Every act of the President of Republic must be countersigned by the President of the Co of Ministers and by a Minister." These provisions n that the President could not exercise any power except on advice of his Ministers. In other words, these provi made the President a mere figurehead. In the Constitu of the Fifth Republic, the corresponding provision rel to the excercise of presidential powers has been worde

such a manner as to leave to the President a wide field of discretionary authority. Article 19 of the Constitution of the Fifth Republic says : "The acts of the President of the Republic, other than those provided for under Articles 8 (first paragraph), 11, 12, 16, 18, 54, and 61, shall be countersigned by the Premier, and should circumstances so require, by the appropriate ministers." This means that the President can act independently of the advice of Ministers in regard to a number of matters. The following are the powers the President can exercise in his discretion : (1) the power to appoint the Premier and to terminate his functions when he presents the resignation of his government ; (2) the power to dissolve the National Assembly ; (Before the dissolution of the Assembly the National Assembly ; (Before the dissolution of the Assembly is declared, the President must consult the Premier and the Presidents of the two Chambers, but he can act independently of their advice.) (3) the power to submit to referenda, in certain circumstances. Bills dealing with the organisation of public powers or providing for authorisation to ratify a treaty ; (4) the power to take exceptional measures in grave emergencies ; (5) the power to send messages to the two Chambers of Parliament and convene special sessions of Parliament for this purpose; (6) the power to refer to the Constitutional Council any treaty for its opinion as to whether the treaty contains anything contrary to the Constitution ; (7) the power to appoint three members to the Constitutional Council ; (8) the power to refer any law to the Constitutional Council to get its constitutionality examined.

Among other powers and functions of the President are the following : The President enjoys the power to negotiate and ratify treaties. Peace treaties, however, and commercial treaties, treaties relating to international organisation, treaties that commit the finances of the state and certain other kinds of treaties can be ratified only by a law. The President enjoys the right of pardon only in consultation with the High Council of the Judiciary. The President presides over the High Council of the Judiciary which, *inter alia*, acts as a disciplinary body

for judges. The President presides over the Community, that is, the French commonwealth of nations.

Parliament : Parliament consists of two Chambers, the National Assembly and the Senate. The deputies to the National Assembly are to be elected by direct suffrage, while the Senate is to be elected by indirect suffrage. An organic law is to determine the term for which each Chamber is to be elected, the number of its members, their emoluments and the like.

The more important provisions of the Constitution relating to Parliament are as follows : Parliament shall convene by right in two ordinary sessions a year. The first session shall begin on the first Tuesday of October and shall end on the third Friday of December. The second session shall open on the last Tuesday of April ; it may not last longer than three months. Parliament shall convene in extraordinary session at the request of the Premier, or of the majority of the members of the National Assembly, to consider a specific agenda.

Parliament shall enact laws on subjects enumerated in the Constitution. If it appears in course of the legislative process that a Parliamentary Bill or an amendment is beyond the powers of Parliament, the Government may declare its inadmissibility. In case of disagreement between the Government and the President of the Chamber concerned, the matter may be referred to the Constitutional Council by one or the other, and the Constitutional Council must rule within eight days.

The Premier and the members of Parliament have the right to initiate legislation. Finance Bills must be submitted first to the National Assembly. Every Government or Parliamentary Bill shall be examined successively by the two Chambers of Parliament with a view to the adoption of an identical text. In case of final disagreement between the two Chambers, the Premier may arrange a meeting of a joint committee composed of an equal number of members from both Chambers for proposing

an agreed text on the matters in question. The text prepared by the Joint Committee may be submitted by the Government for approval to the two Chambers. No amendment shall be admissible at this stage except by agreement with the Government. If the joint committee does not succeed in adopting an agreed text, or if this text is not adopted in the manner just mentioned, the Government may, after a new reading by the National Assembly and the Senate, ask the National Assembly to decide the matter finally, acting by itself. In other words, in case of final disagreement between the two Chambers in regard to any matter, it is the lower Chamber. the National Assembly which will have the last word.

The President of the Republic shall promulgate the laws within fifteen days following the transmission to the Government of the finally adopted law. He may, before the expiration of this time limit. ask Parliament for reconsideration of the law or any of its provisions. Such reconsideration must not be refused. Organic laws can be promulgated only after a declaration by the Constitutional Council on their constitutionality. (The Constitution itself characterises certain kinds of laws—laws having constitutional importance—as organic laws, such as a law determining the term and the membership of the two Chambers of Parliament or a law authorising delegation by the President of his power of making appointments to Offices.)

The Constitution further lays down that declaration of war can be authorised only by Parliament, and although martial law can be decreed by the Council of Ministers, its continuance beyond twelve days can be authorised only by Parliament.

The Government, in order to carry out its programme, may ask Parliament to authorise it to issue ordinances, for limited periods, on matters that are normally within the domain of law. Such ordinances shall come into force upon their publication but shall become void if the Bill for their

ratification is not submitted to Parliament before the date set by the enabling act.

The office of a member of the Government is incompatible with the exercise of parliamentary mandate. This means that if a member of Parliament is appointed to the office of a Minister, his seat will become vacant and will have to be filled by a fresh election. The members of the government shall have access to both Chambers.

Ministerial Responsibility and the Problem of Ministerial Instability : The Council of Ministers is responsible to the National Assembly. This does not mean, however, that the Government will have to go out office if it is defeated on any issue whatsoever by the National Assembly. The Constitution makes it clear that only when the National Assembly adopts a motion of censure or when it disapproves the programme or a declaration of general policy of the Government, the Premier is to hand in the resignation of the Government to the President of the Republic. And a motion of censure will be considered adopted only if the majority of the total membership of the Assembly vote in its favour.

These provisions are obviously designed to ensure ministerial stability in a country where the absence of such stability is the most conspicuous political phenomenon. How far these provisions will help the country in attaining this objective remains to be seen. It should be remembered that, in the past, French Ministries often broke up internally—that is, they broke up without any formal action by Parliament. And, sometimes, Ministries continued to stay in office ignoring defeat of their proposals in Parliament. (No government defeated on a vote of confidence, however, stayed in office.)

The Constitutional Council : The Constitution provides for the setting up of an important body known as the Constitutional Council, and charges it with a number of highly important functions including that of examining the constitutionality of laws.

The Constitutional Council is to consist of nine members whose term of office is to be nine years. One-third of the membership of the Council is to be renewed every three years. Three of the members are to be appointed by the President of the Republic, three by the President of the National Assembly and the remaining three by the President of the Senate. In addition to these nine members, former Presidents of the Republic are to be ex-officeo members of the Council.

The President of the Council is to be appointed by the President of the Republic. The President is to have a casting vote in case of a tie.

The office of a member of the Council shall be incompatible with that of a minister or member of Parliament.

The functions of the Council are as follows : (1) The Council shall ensure the regularity of the election of the President of the Republic. It shall examine complaints and announce the results of the vote. (2) The Council shall give a ruling, in case of dispute, on the validity of the election of deputies and senators. (3) the Council shall ensure the regularity of the referendum procedure and announce the results thereof. (4) Organic laws, before their promulgation, and regulations of the Parliamentary Chambers, before they come into application, must be submitted to the Constitutional Council, which shall give a ruling on their constitutionality. Ordinary laws, before their promulgation, may also be submitted to the Council by the President of the Republic, the Premier or the President of either Chamber of Parliament in order to get their constitutionality examined. A provision declared unconstitutional by the Council shall be void, that is, it cannot be promulgated or implemented.

The decisions of the Constitutional Council are not subject to appeal to any authority and are binding on all administrative and judicial authorities.

As has been already indicated, treaties also can be

referred to the Council by the President of the Republic, the Premier or by the President of either Chamber of Parliament in order to get their constitutionality examined. If the Council declares that an international commitment contains a clause contrary to the Constitution, the authorisation to ratify or approve this commitment may be given only after amendment of the Constitution.

The Community : Article 1 of the Constitution says : "The Republic and the peoples of the overseas territories who, by an act of free determination, adopt the present Constitution thereby institute a Community." The Constitution further declares that the member States of the Community shall enjoy autonomy and they shall, democratically and freely manage their own affairs.

There is to be only one citizenship in the Community and the citizens are to be equal before the law, irrespective of origin, race or religion.

The Community shall have jurisdiction over foreign policy, defence, the monetary system, common economic and financial policy, as well as the policy on strategic raw materials. In addition to these, unless excluded by special agreement, control of justice, higher education, the general organisation of external and common transport and telecommunications shall be within its jurisdiction.

The P esident of the Republic is to be the President of the Community. The Community is to have three organs : an Executive Council, a Senate and a Court of Arbitration.

The Executive Council, which is to be presided over by the President of the Community, is to consist of the Premier of the Republic, the heads of Government of each of the member States of the Community and of the Ministers responsible for the common affairs of the Community. The Executive Council is to organise the co-operation of members of the Community at Government and administrative levels.

The Senate is to consist of delegates whom the Parliament

of the Republic and the legislative assemblies of other member of the Republic and the legislative assemblies of other member States shall choose from among their own membership. The Senate is to be an advisory body except in matters in regard to which it has received delegation of power from the legislative assemblies of the members of the Community.

The Court of Arbitration is to rule on litigations occurring among members of the Community. Its composition and competence are to be determined by an organic law.

The Constitution lays down that a change of status of a member State of the Community may be requested either by the Republic or by a resolution of the legislative assembly of the State concerned confirmed by a local referendum, the organisation and supervision of which shall be ensured by the institutions of the Community. Through this procedure a member State may even become independent and go out of the Community.

It may be mentioned in this connection that, at the referendum held for the ratification of the Constitution on September 28, 1958, Guinea, a former French colony, voted in favour of going out of the French commonwealth of nations and thereby became independent.

APPENDIX B

Allocation of Seats in the Legislative Councils in Indian States : The Legislative Councils Act, 1957, which came into force on September 18, 1957, has raised the strength of the Legislative Councils and has provided for the creation of a Legislative Council for the State of Andhra Pradesh. The allocation of seats in the Councils, as revised by this Act, is shown in the following table.

ALLOCATION OF SEATS IN THE LEGISLATIVE COUNCILS.

Name of the State	Tot l number of seats	Seats for Local Authorities	Seats for Graduates	Seats for Teacheers	Seats for Leigslative Assembly	Seats for nominated members
1	2	3	4	5	6	7
1. Andhra Pradesh	90	31	8	8	31	12
2. Bihar	96	34	8	8	34	12
3. Bombay	108	36	9	9	42	12
4. Madhya Pradesh	90	31	8	8	31	12
5. Madras	63	21	6	6	21	9
6. Mysore	63	21	6	6	21	9
7. Punjab	51	17	4	4	18	8
8. Uttar Pradesh	108	39	9	9	39	12
9. West Bengal	75	27	6	6	27	9

II

A Note on Indian Political Parties : The activities of Indian political parties, more than anything else, reflect the vitality of Indian democracy and prove the contention of the Indian political leaders that the democratic rights guaranteed by the Indian Constitution are not mere paper rights but are real ones. At

present, more than two dozen political parties are active in the Indian political field. Their ideologies range from democracy to dictatorship and from secularism to religious revivalism. They carry on their propaganda incessantly through the Press and the platform and some of them often indulge in criticism of the Government's policies in a language that can hardly be called responsible, and resort to methods of political action that can hardly be called sensible. All this is an indirect tribute to the democratic outlook of the party in power and proves to the hilt its claim that it is maintaining a highly democratic political system in the country.

Although, as has been just stated, there are at present a large number of political parties in the Indian political field, most of these parties are small, some having a small following thinly spread all over the country, others wielding influence only in some particular areas in the country. Dominating the scene are four political parties that have been recognised by the Election Commission as all-India parties or national parties, namely, the Indian National Congress, the Praja Socialist Party, the Communist Party of India and the Bharatiya Jan Sangh. The criterion adopted by the Election Commission for recognising a political party as an all-India or national party is that the party must have polled at least three per cent of the valid votes cast at the preceding general elections for the lower House of the Indian Parliament. The four parties mentioned above secured the requisite number of votes at both the General Elections held under the present Constitution. The Commission also recognises parties as State parties if they have succeeded in polling at least three per cent of the valid votes cast in the preceding general elections for the State Assemblies concerned. A number of parties, such as the Hindu Mahasabha, the Scheduled Castes Federation and the Socialist Party, have been recognised by the Commission as State parties in a number of States. The Election Commission has assigned to the national parties certain symbols to be exclusively used by them all over the country for election purposes. Similarly, the Commission assigns symbols to State parties for their exclusive use in the States concerned.

The Indian National Congress, founded in 1885, is the biggest political party in India. Since independence the Congress has been continuously in power at the Centre and almost in all States. At present it is in power in all States except Kerala where the Communist Party formed a Government after the General Elections in 1957. The main objective of the party is the building up of a socialistic pattern of society in India. The party stands for democratic approach to all political and economic problems and a judicious admixture of public ownership and regulated private enterprise in the economic sphere. In foreign affairs, it stands for non-alignment with Power Blocs and a policy of peaceful co-existence among nations.

The Praja Socialist Party's ideology is based on democratic socialism. According to the leaders of the Party, capitalism is on the retreat all over the world and communism has been exposed as a doctrine that leads to destruction of freedom. The PSP stands for immediate nationalisation of banks, mines and mineral oils and taking over by the state of all big plantations and trade, wholesale and foreign, in selected commodities. It also adovocates complete overhaul of the administration and enlargement of the powers and resources of local bodies. The Party is committed to the realisation of unilingual States wherever they have been denied.

The ideology of the Communist Party of India is based on Marxism. The Party aims at "the establishment of a people's democratic state led by the working class, for the realisation of the dictatorship of the proletariat, and the building up of socialism according to the teachings of Marxism and Leninism." The Party looks to Russia for guidance in most matters. The Communist Party is probably the most well-organised political party in India. Formerly, true to the principles of Marxism, the Party used to believe in violence as a legitimate method of bringing about social changes, and actually resorted to violent methods in certain parts of the country. Some time back, however, the Party declared that it would resort only to peaceful methods in bringing about socialist transformation of society. After

the General Elections in 1957, the Communist Party came to power in the State of Kerala.

The Bharatiya Jan Sangh stands for Akhand Bharat, gives top priority to national defence and calls for immediate establishment of defence industries. It has declared that, if it comes to power, it would introduce compulsory military training for youths. It stresses the need for observing in all Government offices in the country and in foreign embassies of India the ideals of Bharatiya culture, including thrift and simplicity. It stands for decentralisation of power and the establishment of an economic democracy that will be free from the evils of capitalism, both private and state.

The Jan Sangh advocates the adoption of drastic measures, including police action, for the liberation of the Protuguese possessions in India.

APPENDIX C

INCREASE IN THE MEMBERSHIP OF THE COMMONWEALTH

With the attainment of independence by Ghana and the Federation of Malaya in 1957, the membership of the Commonwealth has increased to ten. At present, the following countries are members of the Commonwealth : Britain, Canada, South Africa, Ghana, India, Pakistan, Ceylon, Federation of Malaya, New Zeland and Australia.

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