

THEORY OF POLITICAL SCIENCE

UNIT I

THE STATE AND ITS ELEMENTS

Definitions :

The state is the most universal and most powerful of all social institutions. The state is a natural institution. Aristotle said man is a social animal and by nature he is a political being. To him, to live in the state and to be a man were identical.

The modern term 'state' is derived from the word 'status'. It was Niccolo Machiavelli (1469 - 1527) who first used the term 'state' in his writings. His important work is titled as 'Prince'.

The state is the highest form of human association. It is necessary because it comes into existence out of the basic needs of life. It continues to remain for the sake of good life.

The aims, desires and aspirations of human beings are translated into action through the state. Though the state is a necessary institution, no two writers agree on its definition.

To Woodrow Wilson, 'State is a people organized for law within a definite territory.'

Aristotle defined the state as a 'union of families and villages having for its end a perfect and self - sufficing life by which it meant a happy and honourable life'.

To Holland, the state is 'a numerous assemblage of human beings generally occupying a certain territory amongst whom the will of the majority or class is made to prevail against any of their number who oppose it.'

Burgess defines the state as 'a particular portion of mankind According to Sidgwick. 'State is a combination or association of persons in the form of government and governed and united together into a politically organized people of a definite territory.'

According to Garner, 'State is a community of people occupying a definite form of territory free of external control and possessing an organized government to which people show habitual obedience.'

Prof. Laski defines 'state as a territorial society divided into government and subjects whose relationships are determined by the exercise of supreme coercive power.'

Elements :

From the above definitions, it is clear that the following are the elements of the state :-

Physical bases of the State

1. Population

2. Territory

Political bases of the State

1. Government

2. Sovereignty

Elements of the State

Population :

It is the people who make the state. Population is essential for the state. Greek thinkers were of the view that the population should neither be too big nor too small. According to Plato the ideal number would be 5040.

According to Aristotle, the number should be neither too large nor too small. It should be large enough to be self-sufficing and small enough to be well governed. Rousseau

determined 10,000 to be an ideal number for a state. Greek thinkers like Plato and Aristotle thinking on the number was based on small city-states like Athens and Sparta. Modern states vary in population. India has a population of 102,70,15,247 people according to 2001 census.

Territory :

There can be no state without a fixed territory. People need territory to live and organize themselves socially and politically. It may be remembered that the territory of the state includes land, water and air - space.

The modern states differ in their sizes. Territory is necessary for citizenship. As in the case of population, no definite size with regard to extent of area of the state can be fixed. There are small and big states.

In the words of Prof. Elliott 'territorial sovereignty or the Superiority of state overall within its boundaries and complete freedom from external control has been a fundamental principle of the modern state life'.

India has an area of 32,87,263 sq. km. Approximately India occupies 2.4% of the global area.

Government :

Government is the third element of the state. There can be no state without government. Government is the working agency of the state. It is the political organization of the state.

Prof. Appadorai defined government as the agency through which the will of the State is formulated, expressed and realized.

According to C.F. Strong, in order to make and enforce laws the state must have supreme authority. This is called the government.

Sovereignty :

The fourth essential element of the state is sovereignty.

The word 'sovereignty' means supreme and final legal authority above and beyond which no legal power exists.

The concept of 'sovereignty' was developed in conjunction with the rise of the modern state. The term Sovereignty is derived from the Latin word *superanus* which means supreme. the father of modern theory of sovereignty was Jean Bodin (1530 - 1597) a French political thinker.

Sovereignty has two aspects :

- 1) Internal sovereignty
- 2) External sovereignty

Internal sovereignty means that the State is supreme over all its citizens, and associations.

External sovereignty means that the state is independent and free from foreign or outside control.

According to Harold J. Laski, 'It is by possession of sovereignty that the state is distinguished from all other

forms of human association.

The diagram given below shows that the society is the outer most and the government is the inner most.

State and Society

The society consists of a large number of individuals, families, group and institutions. The early political thinkers considered both state and society as one. State is a part of society but is not a form of society.

Prof. Earnest Barker in his book entitled 'Principles of Social and Political Theory' clearly brings out the difference between state and society under three headings. They are,

1. Purpose or function
2. Organisation and structure
3. Method

From the point of view of purpose the state is a legal association, which acts for the single purpose of making and

enforcing a permanent system of law and order.

But society comprising of a plurality of associations, acts for a variety of purposes other than legal.

These purposes are

1. Intellectual
2. Moral

3. Religious
4. Economic
5. Aesthetic and
6. Recreational

The membership of the state and society are the same. But they differ as regards purpose. The state exists for one great but single, purpose; society exists for a number of purposes some great and some small, but all in their aggregate deep as well as broad.

From the point of view of organization the state is a single organization - legal, whereas society comprises within itself many organizations.

As regards method as pointed out before the state employs the method of coercion or compulsion, society employs method of voluntary action.

The purposes for which society exists makes the persuasive methods necessary and the multiplicity of its organization give ample opportunity to the members to relinquish one association and join another in case coercion is ever attempted.

State and Nation:

The word 'nation' is derived from the Latin word 'natio' which means birth or race. The terms nation and state are used as synonym.

According to Leacock, a nation is a body of people united by common descent and language.

But the modern writers do not emphasise the racial aspects so much as the psychological and spiritual. It has acquired a political meaning in the recent times.

People who share common ideas and naturally linked to gether by some affinities and united are now called a nation. In the case of state feeling of oneness is not necessary as in the case of the four elements constituting the State.

Since the Second World War (1939-1945) the theory of 'one nation, one state' has become the practical politics with all nations and new nation states have been created after the Second World War. After 1947 India became the nation state.

If a nation with self - government becomes independent, a nation state comes into existence.

State and Government:

Government is often used with the 'state' as synonym.

But both the government and the state are two different entities. There are differences between the state and the government.

State

1. State consists of population, territory, government and sovereignty.
2. State possesses original powers.
3. State is permanent and continues forever.
4. State is abstract and invisible.

Government

1. Government is part of the state.
2. Powers of the government are derived from the state.
3. Government is temporary. It may come and go.
4. Government is concrete and is visible.

Branches of government

Legislature : Make laws

Executive : Veto legislation Recommend legislation

Judiciary : Review legislative acts

Legislature : Confirm executive appointments Override executive veto

Executive : Enforce laws

Judiciary : Review Executive acts Issues injunctions

Legislature : Impeach Create or eliminate courts

Executive : Grand pardons Nominate judges

Judiciary : Interpret laws

Executive:

It is one of the three branches of government as given

above.

State functions through the executive, the namely the government. It is the duty of the executive or enforce the laws passed by the legislature.

The executive who exercise real power is the real executive. The executive who has nominal power is the normal executive.

The President of India is the nominal executive. The union council of ministers led by the Prime Minister of India is the real executive.

Parliamentary executive is chosen from the legislature and is responsible to the legislature. The executive in India is parliamentary in its character.

Powers and functions of executive are :

1. Enforcing law
2. Maintaining peace and order.
3. Repelling aggression.
4. Building friendly relations with other states
5. When necessary to wage war to protect the country.
6. Making appointments to higher posts.
7. Raising money and spending them.
8. Convening the sessions of the legislature and conducting business.
9. Issues ordinances whenever the legislature is to in session.
10. Implement schemes and projects to improve he social and economic conditions of the people.
11. Power to grant pardon, reprieve or remission of punishment.

Legislature :

The legislature is the law making branch. The legislature has an important role in the amendment of the constitution. The legislature is a deliberative body where matters of social, economic and political concerns are discussed, debated and decided.

The British parliament is said to be 'the mother of parliaments'. It is the oldest legislature in the world.

According to Prof. Laski, law-making is not the only function of the legislature but its real function is to watch the process of administration to safeguard the liberties of private citizens. The legislature of the union is called the parliament in India. It consists of two chambers.

The House of the People or the Lok Sabha as the Lower House.

The Council of State or the Rajya Sabha as the Upper House
The functions of legislature are

- a) Enact laws
 - b) Oversee administration
 - c) Pass the budget
 - d) Hear public grievances.
 - e) Discuss subjects like
- 1) Development plans
 - 2) National policies
 - 3) International relations.

Judiciary:

Judiciary is the third important organ of the government machinery. Its main function is to interpret laws and administer justice.

has said that there is no better test of excellence of government than the efficiency of its judicial system. The welfare of citizens depends to a larger extent upon the judiciary.

Judiciary is one of the pillars of democracy. Its interpretation ensures justice, equality and liberty to all its citizens. An independent and impartial judiciary is an essential feature of a democratic setup.

The Supreme Court of India consists of a Chief Justice and other judges. The Supreme Court has its permanent seat in Delhi.

According to Justice Hughes, 'we are under a constitution, but the constitution is what the judges say it is'.

Functions of Judiciary:

1. Administration of justice.
2. To determine what is law and what is the scope and meaning of it.
3. To give advisory opinion on matters referred to it.

Study Material, Lecturing Notes, Assignment, Reference, Wiki description explanation, brief detail
Related Topics

The Two Faces Of Political Science

Political Science : Normative / Empirical Studies

Political Science : Behaviouralist Movement

Post - Behaviouralism

Political Science And Other Social And Human Sciences

Political Science : Elements of the State

Political Science :State and Society
Political Science : State and Nation
Political Science : State and Government
Sovereignty : Concept, Meaning, Nature And Definitions
Kinds of Sovereignty
Austin's Theory Of Sovereignty (Monistic View)

Citizenship

How is Citizenship Defined?

Citizenship signifies the relationship between the individual and the state. Like any other modern state, India has two kinds of people - citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens.

There are two well-known principles for the grant of citizenship:

- a. While 'jus soli' confers citizenship on the basis of place of birth, 'jussanguinis' gives recognition to blood ties.
- b. From the time of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli.
- c. The racial idea of discriminations was also rejected by the Constituent Assembly as it was against the Indian ethos.
- d. Constitutional Provisions
- e. Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament.
- f. The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).
- g. Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted.

Article 5:

It provided for citizenship on commencement of the Constitution. All those domiciled and born in India were given citizenship. Even those who were domiciled but not born in India, but either of whose parent was born in India, were considered citizens. Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship.

Article 6:

It provided rights of citizenship of certain persons who have migrated to India from Pakistan. Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India. But those who entered India after this date needed to register themselves.

Article 7:

Provided Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.

The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

Article 8:

Provided Rights of citizenship of certain persons of Indian origin residing outside India. Any Person of Indian Origin residing outside India who, or either of whose parents or

grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

Article 9:

Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

Article 10:

It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11:

It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Acts and Amendments

- a. The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship.
- b. Acquisition and Determination of Indian Citizenship
- c. There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalization. The provisions are listed under the Citizenship Act, 1955.

By Birth:

Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.

- a. Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- b. Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

By Registration:

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- a. A person of Indian origin who has been a resident of India for 7 years before applying for registration
- b. A person of Indian origin who is a resident of any country outside undivided India
- c. A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration

Minor children of persons who are citizens of India

By Descent:

A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth.

A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.

If a person born outside India or after December 3, 2004 has to acquire citizenship,

his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

By Naturalization:

- a. A person can acquire citizenship by naturalization if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.
- b. The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalization.
- c. The act has been amended four times — in 1986, 2003, 2005, and 2015.
- d. Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- e. Moreover, the Foreigners Act places a heavy burden on the individual to prove that he/she is not a foreigner.
- f. 1986 amendment: Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the principle of jus soli to everyone born in India, the 1986 amendment to Section 3 was less inclusive.
- g. The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- h. Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
- i. 2003 amendment: The amendment made the above condition more stringent, keeping in view infiltration from Bangladesh.
- j. Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other should not be an illegal migrant.
- k. With these restrictive amendments, India has almost moved towards the narrow principle of jus sanguinis or blood relationship.
- l. This lays down that an illegal migrant cannot claim citizenship by naturalization or registration even if he has been a resident of India for seven years.
- m. Citizenship (Amendment) Bill 2019: The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.
- n. It also reduces the requirement for citizenship from 11 years to just 6 years.
- o. Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- p. A large number of organizations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.
- q. The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.
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Fundamental Rights

What are Fundamental Rights?

Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.

There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)

There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)

Nature of Fundamental Rights

- a. Most of the Rights are Negative Obligations on the State (E.g. Article 14), with certain exceptions (E.g. Article 21A). Negative Obligations means that the State cannot do something that hurts or curtails people's rights.
- b. Majority of Rights mentioned in Part III are enjoyed by citizens against the State.
- c. These Rights are Justiciable.
- d. Fundamental Rights are not absolute i.e. certain reasonable restrictions can be imposed upon them.
- e. Fundamental Rights can be suspended during emergency.
- f. Fundamental Rights of people occupying sensitive positions (Armed Forces, Intelligence Agencies etc.) can be restricted or even denied by Parliament by law.
- g. Most of the Right is self-executor i.e. the parliament need not make laws to implement these Rights. There are certain exceptions e.g. For Right to Education under Article 21A, a law was required by the parliament.
- h. Some of these Rights are available to aliens (Foreigners).

Article 12 – Definition of State

Article 13 - Laws inconsistent with or in derogation of the fundamental rights

Classification of Fundamental Rights

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right against Exploitation (Article 23 to 24)
4. Right to Freedom of Religion (Article 25 to 28)

UNIT - III : WRITTEN AND UNWRITTEN CONSTITUTION

Constitution - Written and Unwritten Constitution – Flexible and Rigid Constitution – Federal and Unitary Constitution – Separation of Powers.

Written Constitution

Features

A constitution which has written rules and principles is called a written constitution. It is found in the form a document. The rules of this constitution are called articles. It is enacted by a specially created body for that specific purpose. It is a product of deliberation. Each article of the constitution is framed after careful consideration and elaborate discussion. It is enacted during a specific period of time. The articles are numbered and arranged in order. The constitutions of the U.S.A, the U.S.S.R. Switzerland. France, India and Japan are some of the examples for this kind of constitution.

Merits

A written constitution is clear,. As the articles are arranged in a document it is easy for anyone to read and understand. The people can easily understand the national objectives by reading the constitution. As the articles are clear the three branches of the government would function within their jurisdictions. There is the possibility of drafting a constitution acceptable to the people as the members of the constituent assembly would know the public opinion. A written constitution would protect the rights of the people effectively. Changes could be made in accordance with the prescribed procedure.

Demerits

A written constitution is a product of a particular period.It is an artificial product. All the members of the constituent assembly need not be constitutional experts. The framers may lack foresight to assess In she problem. which may written constitution. Sometimes varied interpretations are clear a single article. A. written constitution is said to come out moded within ten years from the date of its inception.

Un written Constitution

Features

An unwritten constitution is not seen in the form of a written document. It is not a product of a particular period. It is a product of evolution. Conventions, customs and usages play a dominant role in it. The constitution of England is the only example for unwritten constitution. Once the political system in England was absolute monarchy. With the advent of democractic ideas there arose conflicts between the monarchy and the parliament. In every such conflict the parliament won. Thus by different political events the constitution of England grew over a period of centuries. Political events, clashes, battles and revolutions caused these changes.

Merits

An unwritten constitution is traditional. It is a product of history. Hence it commands the respect of the people. The political institutions which are centuries old could easily earn the respect of the people. An unwritten constitution is flexible. There are two kinds of laws as constitutional laws and ordinary laws. Changes are made easily to suit the changing ideas of the people. This is a constitution which rightly reflects the sentiments of the people. There is no possibility of contradictory interpretations.

Demerits

An unwritten constitution depends much on customs and conventions. To operate such a system the people should be politically aware and vigilant. There should not be much social religious and economic disparities among the people. Its flexibility may be misused by the persons in power. It is not suitable for a big nation like India. It is also not suitable for federation. Constitutional conflicts arise even in a written constitution. Such conflicts would be abundant in an unwritten constitution:

Estimate for this classification

Every written constitution has certain unwritten elements. For example there are conventions in the unwritten constitution of the U.S.A and India. The unwritten constitution of England has many written elements. Magna Carta and other agreements made between the people and king were written. The Acts passed by the Parliament are in the written form. The classification as written and unwritten is described unsuitable. There is neither fully nor fully unwritten constitution. Hence some thinkers advise the classification as documentary and non-documentary. There is another classification evolved as enacted. An evolved is one which has evolved in course of time. An enacted constitution is one which has enacted by a special body. The classification as evolved and enacted is more or less similar to the classification as written and unwritten.

Flexible and Rigid constitution.

Rigid constitution

A constitution cannot remain unchanged. Changes may be needed due to various reasons. Each constitution prescribes a position amendment, The constitutional amendments are the formal instruments of changes. A constitution may prescribe an easy procedure to amend itself whereas another constitution may prescribe a difficult procedure. A constitution which does not accommodate changes easily is called a rigid constitution. For example, the constitution of the U.S.A. is rigid. It prescribes a difficult procedure of amendment. Each constitutional amendment bill is to be passed with the support of at least two thirds majority in both the houses of congress and it is to be accepted by at least three fourths of the states. Similarly the Swiss constitution is also rigid.

Merits

A rigid constitution refuses to accept changes easily. This ensures stability. The people in power cannot change the constitution to suit their will and wish. The right of the people

is strongly protected. In a federation the Central government is to be restricted from encroaching on the power of the states. This could be effectively done only by a rigid constitution. .

Demerits

A rigid constitution refuses to bend easily. Refusal to bend may result in the break down. If the ideas of the people are not accommodated revolutions may occur. Rigidly sometimes stands as a hurdle on the way to progress this results in the public aversion of the constitution.

Flexible Constitution

Features

A constitution which accepts changes easily is an a flexible constitution. In the case of an unwritten constitution .there are no difference between parliamentary laws and constitutional. Every law brings changes. There is no need for adoption of special and difficult procedure. Hence the constitution of the England is flexible. The constitution of New eland does not prescribe a difficult procedure for constitution amendments. Hence it is also flexible.

Merits

A flexible constitution accepts changes easily. Hence the people are satisfied with it . The possibility of the revolution is limited. There are no complex and difficult procedures to be followed. Hence the people easily understand it.

Demerits

A flexible constitution may be misused by the person in the power. They could be make changes often to suit their wants. Frequent changes would result in instability. A Flexible constitution is not suitable for a federation. The rights of the people may not be effectively protected.

Estimate of this classification

The classification based on the adaptability of constitution is not absolutely right . Some of the constitutions prescribed a difficult procedure of amendment ..In is done easily For example in socialist countries like the U .S .S .R. the decision of the Communist parties are it may easily carried out .Hence it may not be right to be soviet constitution by looking at the formal procedure of amendment. Even in India constitutional are easily done due to the majority of ruling party in the parliament. In the Switzerland are made by enacted ordinary laws. Hence this classification is also said to be thoroughly correct.

Federal and Unitary Constitution

A government in a state has many powers. The Powers are exercised by the for the welfare of the people For the government is designed in a particular form . For the exercise of the powers the government is designed in a particular form. Based on the form of government, a classification may be made. If all the powers are enjoyed by one government at the national level , it is Unitary government .If all powers are divided into two as national land regional and entrusted to two sets of the governments it is federal. The powers of interests are given to regional units. Even modern state constitutional is either Unitary or Federal.

Unitary

A unitary state is one organized under a single government. All governmental power are exercised from one centre. The Central Legislature, Executive, and judiciary are supreme. They do not share powers with any other agencies. There may provincial bodies as local government. But they are subordinates to the central government. In a unitary state the legislature is supreme .All laws needs to the whole country are enacted by it. Unitary form of government is suitable for small countries like Britain and France.

Merits

Unitary form of government promotes stability and unity. As there is only one government, uniformity of law and administration is maintained. Citizens is loyal to the government. Their loyalty is not divided between governments as in a federal state .Policies are decided from one centre. In case of any need for changes. The central government can make them without difficulty. This ensures flexibility. flexibility enables the people to have the changes desired by them. Moreover, administration from one centre is simple. Decision cannot be quickly and implemented. In a federal the central government may have to consult the states on may matters. Decisions can not be taken quickly. Federal system is complex. Unitary system is simple. An ordinary man can understand unitary system easily. Unitary system is less expensive. Only one government is maintained under unitary system. So the expenses of the governmental machinery are limited. In a federation the expenses are more as two sets of governments are to be maintained. The low cost of administration is also merit of unitary form of government.

Demerits

There are some demerits in the unitary form of government.AS there is only one government, there is the possibility of central despotism If the leaders at the center craze for the power. They may misuse their posits on. I n the unitary form of the people at distant areas may not catch the attention of the government. Regional interest and ideas are represented correctly .The interest of the provinces may be left unattended. There are no provinces for local initiatives. Local talent is not given opportunity. In the case of any internal threat or disturbance. the central

government will be that only target .on such occasions there is danger for the survival of the government .The administration in the whole country are paralyzed by the revolution at the capital .Unitary system is the form of big countries like India .

Federal

The term federation is derived from the Latin word foedus. It means entail features. First of there are two sets of government. There is a national and regional government. There is a written and rigid constitution. The judiciary acts as the guardian of the constitution. The constitution contains the clear division of powers between a federal government and regional governments. Power of the national interest is given to the national government. For example defense, currency, foreign policy of nation at importance. These are normally given to a central government in a federation. Police, health education etc at the regional level is given to the regional governments. In a federation the constitution is supreme. The U.S.A the Switzerland the U.S.S.R, India are some among them.

Merits

A Federation scope for small states to come together and develop. In a federation there is a scope for autonomy of the local units The constitution lay down the jurisdiction of the central and regional governments .The jurisdiction of the unit protected by the constitutions. Hence local interest may be importance by unit. Local leaders have a chance to participate in the administration of the units. Federalism avoid central despotism. power are the decentralized. Federal form of the government is suitable for big countries. Countries which have a biodiversity in race religion and languaral and culture could maintain unit in diversity by federal setup. Federal form of government provides a vast field for political experimentation.

Demerits

A federal form of government is expensive. The structure is complex. The process of decision making is difficult .The presence of two sets of governments give room for dispute and controversies. The loyalty of the people is divided. The administration of the federal government is not efficient as the unitary government When two different political dirties become ruling parties at the center and states, problems would arise. Regionalism and other elements would develop against unity.

Certain constitutions with a federal features are called federal constitutions. The constitution of India is a federal constitution with unitary features. Hence it is called a quasi-federation. Usually the federal system is suitable for big nation with people of different language and religion .However too much diversity may a problem of unity. The suitability of a federal system or unitary system depends upon the nature of the people and their political culture .Even the federal features of one constitution may differ from the other to some extent.

Separation of powers

Meaning

A government may be divided into three branches known as legislative; executive and judiciary. The power of government may also be divided as legislative, executive and judicial. The legislative power of the government to implement the laws. The judicial power help the government to maintain justice and to avoid committed either at the time of legislation or execution. The theory of separation of powers hold that these three functions should be formed by three different bodies. Combination of two or three the power in hand or single or person or body would lead to misrule or tyranny. Maintain liberty the legislative executive judicial should be separate bodies and their powers should also be separate. This idea is the essence of the theory separation of powers. Aristotle Cicero and Polybius were the earlier contribution to this theory.

Montesquieu Theory

Montesquieu made the clear distinction of three sorts of function of the government. He made of the systems of Britain and France. He felt that the people of Britain enjoyed civil liberties use the English judges were independent of executive. The English parliament was supreme in law making. Hence he thought a system would help the people or people who want to prevent civil liberties. According to Montesquieu when the legislative executive powers are united in the states same person or body of the person they can be so liberty. In the same can be no liberty if the judicial powers are not separated from the legislative or executive. If the powers are joined with the and judges would become arbitrary as they could enact or laws. If the three person are combined in one person orb of person would be an end of everything. This is the essence of the idea of Montesquieu.

The theory and the US constitution

The U.S constitution is based on the theory of separation of powers. Article 1 of the U.S constitution vest all legislative powers in the hand of congress. Article 2 constitution vest all executive power in the hand of the president. Article 3 grant of all judicial power of all the supreme court and inferior courts. The constitution power the presidential form of the government. the president in the head of the state. He has a fixed term. He is a neither member of the congress nor the responsible to it. He does not accept the meeting of the congress and does not answer the question of the member. He cannot remove a post is simple no confidence motion passed in the congress. He cannot dissolve the lower house of the congress. Thus the legislative and the executive are the independent of each other. The president is at the liberty within his jurisdiction. It is not controlled by a president. The judiciary is also the independent. But they cannot removed either by him by the congress. They can be removed only by impeachment. Hence the U.S .A, three branches are separated from each other.

UNIT - IV **PARLIAMENT**

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government. Articles 79 to 122 in Part V of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

Composition of the Two Houses

Composition of RajyaSaba

The maximum strength of the RajyaSaba is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the RajyaSaba has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

The Fourth Schedule of the Constitution deals with the allocation of seats in the RajyaSaba to the states and union territories.

1. Representation of States:

The representatives of states in the RajyaSaba are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the RajyaSaba on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members and 2 members elected from each state.

2. Representation of Union Territories:

The representatives of each union territory in the RajyaSaba are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two (Delhi and Pondicherry) have representation in Rajya Saba. The populations of other five union territories are too small to have any representative in the Rajya Saba.

3. Nominated Members:

The President nominates 12 members to the Rajya Saba from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Saba without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Saba

The maximum strength of the Lok Saba is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and members are to be nominated by the president from the Anglo-Indian

community.

At present, the Lok Saba has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

1. Representation of States:

The representatives of states in the Lok Saba are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. Representation of Union Territories:

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Saba. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Saba from the union territories are also chosen by direct election.

Nominated Members:

The President can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Saba. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

System of Elections to Lok Saba

The various aspects related to the system of elections to the Lok Saba are as follows:

1. Territorial Constituencies
2. Readjustment after each Census
3. Reservation of Seats for SCs and STs
4. Proportional Representation not Adopted

Duration of Two Houses

Duration of Rajya Saba

The Rajya Saba (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and denomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Saba and left it to the Parliament. Accordingly, the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Saba shall be six years. The act also empowered the president of India to curtail the term of members chosen in the first Rajya Saba. In the first batch, it was decided by lottery as to who should retire. Further, the act also authorized the President to make provisions to govern the order of retirement of the members of the Rajya Saba.

Duration of Lok Saba

Unlike the Rajya Saba, the Lok Saba is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically

dissolves. However, the President is authorized to dissolve the Lok Saba at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the Lok Saba can be extended during the period of national emergency by a law of Parliament for one year at a time⁷ for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

Membership of Parliament

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorized by the election commission for this purpose. In his oath or affirmation, he swears
 - i. To bear true faith and allegiance to the Constitution of India
 - ii. To uphold the sovereignty and integrity of India
3. He must be not less than 30 years of age in the case of the Rajya Saba and not less than 25 years of age in the case of the Lok Saba.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Saba and the Lok Saba. The requirement that a candidate contesting an election to the Rajya Saba from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications for membership – Article 102

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- a. If he holds any office of profit under the Government of India or the Government of any State, 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 acknowledgment of allegiance or adherence to a foreign State;
- e. If he is so disqualified by or under any law made by Parliament

A Member of Parliament cannot hold office of profit under the Government of India or that of any state as it would lead to conflict of interest. Minister's office is exempted from this. Parliament, by law, determines the offices which are exempted. In accordance, Members of Parliament (Prevention of disqualification) Act 1959 was enacted. This Act was amended in 2006, which added certain offices of profit to list, and was given retrospective effect. There is a Joint Committee on offices of profit in Parliament, which advises the Parliament on the offices which has to be added to the list, as and when new offices are created. Members can also be disqualified under any other laws made by the Parliament. E.g. Representation of People's Act 1951.

Decision on questions as to disqualifications of members – Article 103

103.(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

103.(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

If a Member of Parliament is subject to disqualification under grounds mentioned in Article 102, the decision shall be referred to the President and the President shall act in accordance with the opinion of the Election Commission.

SPEAKER OF LOK SABHA

- a. G. V. Mavalankar was the Lok Saba speaker after independence. Sir Frederick Whyte was the first Lok Saba speaker of British India. Vittalbhai Patel was the first Indian speaker during British India.
- b. According to Article 93, the Lok Saba has to choose two members as the Speaker and the Deputy Speaker respectively.
- c. The Speaker or Deputy Speaker shall vacate his office if he ceases to be the member of the House of the People.
- d. If the Speaker wishes to resign, he sends his resignation letter to Deputy Speaker and vice versa.
- e. A Speaker can be removed from his office by passing a resolution with a majority of the then members of the Parliament. A prior notice of 14 days has to be given before moving the resolution.
- f. Speaker need not resign when the Lok Saba is dissolved. He continues to hold office until the first meeting of next Lok Saba is held and the next speaker is elected.
- g. If the office of the speaker is vacant; the duties shall be performed by the Deputy Speaker. If the office of Deputy Speaker is also vacant, the President shall appoint a person to take over the proceedings of the House (Pro tem Speaker).

Powers of the Lok Saba Speaker

- a. He presides over the meeting of Lok Saba.
- b. He has the final power to maintain order in the House and also to interpret the rules of procedure.
- c. The Speaker decides whether a bill is money bill or not (available only to Lok Saba speaker).
- d. He presides over the joint sitting of both the Houses of the Parliament.
- e. The Speaker cannot vote in the first instance. If there is a tie in the first instance, then the speaker is allowed to vote to break the deadlock. This is called Casting Vote.
- f. The During the removal procedure of the speaker, he is allowed to vote in the first

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- instance.
- g. The Speaker has the power to disqualify any member of the house, if the member is held guilty of any wrong doings.
 - h. The Speaker has the right to nominate members for certain committees of the Parliament.
 - i. It is the speaker who decides who shall hold the floor (speak in the house).
 - j. Speaker decides which points of order are accepted and rejected.
 - k. Position of the Chairperson of Rajya Saba
 - l. Article 63 creates the Position of the Vice President of India.
 - m. Vice President is the official chairperson of Rajya Saba, according to Article 63.
 - n. The tenure of Members of Rajya Saba is 6 years whereas the tenure of the chairperson of Rajya Saba is 5 years.
 - o. If the Vice President is discharging duties of the President; he shall not officiate as the chairperson of Rajya Saba.
 - p. The Deputy Chairperson is elected from amongst the members of Rajya Saba.

Vacancy in the seat of a Member of Parliament in both the Houses

- a. Vacancy can occur on account of death, resignation, the Disqualification.
- b. If the MP is not present in the proceedings of the house for a period of 60 days or more, without the permission of the house, the MP can be disqualified.
- c. Dual Membership – the MP is not allowed to hold membership of more than one house simultaneously. He is also not allowed to hold more than one seat in the same house.

Legislative Procedures in the Parliament

Legislative Procedures are the procedures through which bills become laws.

Types of bills introduced in the Parliament;

- a. Ordinary bills
- b. Money bills
- c. Financial bills – Class I and Class II Financial bills
- d. Constitution Amendment bills
- e. Private Member's bill

If a minister wants to introduce a bill, a notice of not more than 7 days is required to be given.

A longer notice period is required for a Private Member's bill.

Any bill introduced in the Parliament has to go through 3 stages (Reading of the bills)

First Reading - Introduction of the bill

- a. Bill may be referred to a select committee
- b. Bill may be referred to Joint Committee of both the Houses of the Parliament
- c. Bill may be circulated or elicit public opinion
- d. Bill may be taken for consideration

Generally in the first reading, fundamentals of the bills are discussed.

Second Reading ends after the house considers the bill on a clause-by-clause basis (in detail). In the third Reading, the concerned MP will request the house (move a motion) to pass the bill.

After the bill is passed in one house (for e.g. Lok Saba) the other house (Rajya Saba) can

- a. Accept the bill and pass it to the President for assent.
- b. It can completely reject it or pass it with amendments.
- c. It might not do anything for a period of 6 months.
- d. If there is a deadlock; a joint sitting will be called by the President to resolve the

deadlock.

Money Bill

Article 110 and 199 describe what constitutes a money bill of Central and State Legislatures.

- a. On money bills, RajyaSaba does not have much power.
- b. A money bill can be introduced only in LokSaba.
- c. Sanction of the President is required before the introduction of money bill.
- d. RajyaSaba has the power to delay the passage of the money bill by at most 14 days.
- e. RajyaSaba can offer suggestions and advice but it cannot amend the bill.
- f.

Financial Bill

- a. A bill that deals with certain matters, alongside the matters present in Article 110 or 199.
- b. All money bills are financial bills but all financial bills are not money bills.

Special Provisions of Financial Bill Class I

- a. Can be introduced only in Lok Saba
- b. Can be introduced only with the prior consent of the President.
- c. Rajya Saba has equal powers as the Lok Saba on this bill

Special Provisions of Financial Bill Class II

- a. They involve with some expenditure of money
- b. They can be introduced in both the houses.
- c. The President's consent is required before the bill is taken up for consideration.

Budget – Annual Financial Statement

- a. Article 112 and 202 of the Indian Constitution deals with the Annual Financial Statement of the Centre and State respectively. According to Article 112, either the President has to present the budget or ask one of his ministers to present it. By convention, it is the Finance Minister who presents the budget.
- b. No expenditure can be incurred without the approval of the parliament.
- c. Most of the expenditures are voted by the Parliament. There are certain expenditures on which voting does not take place exclusively. Such expenditures are referred to as expenditures charged on the Consolidated Fund of India.
- d. Charged expenditures on the Consolidated Fund of India
- e. The emoluments and allowances of the president and other expenditure relating to his office
- f. Salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People
- g. Debt charges
- h. Salaries, allowances and pensions payable to or in respect of the Judges of Supreme Court
- i. Salary, allowance and pension of CAG
- j. Sums required satisfying any judgment, decree or award of any court or arbitral tribunal
- k. Parliament by law can declare any other expenditure to be charged on Consolidated Fund of India.

Dual Budget

India follows a system of Dual Budget i.e. Railway Budget is presented separately. This

was done on the recommendations of Acworth Committee in 1921. This separation was done as Railway department was one of the most commercial ministries. Most of the other ministries were spending departments.

Railway Budget precedes the General Budget.

Budget in the Parliament has to go through 6 stages

It is first introduced by the Finance Minister on the last working day of February.

After the General discussion on the budget happens (usually after 3 4 days after the budget is introduced. Generally the policies underlying the budget are discussed.

Committee Stage

Department Related Standing Committee (DRSC) was set up in 1993. There are 24 committees at present with each committee having 21 members from Lok Saba and 10 members from Rajya Saba. Demands of the ministries are submitted to the respective DRSC's, which study the budget in detail and prepare a report. DRSC's help the MPs to control the finances of the government in a more effective manner.

Voting on Demands

Here each department's demands would be taken up and discussed in detail. MP s have certain devices available to them to influence the budget known as cut motions.

Economy cut motion The aim of this motion is to make the demands more reasonable.

Token cut motion-The aim of the token cut motion is to register a grievance on the records of parliament.

Policy disapproval cut motion This is used by the Parliament to express disapproval about the underlying policies of the budget. This would virtually amount to no-confidence motion and the government has to resign.

Appropriation Bill Stage Appropriation bill contains all the bills that have been passed along with the charged expenditure. Appropriation bill authorizes to withdraw from the Consolidated Fund of India.

Finance Bill Taxation part of the budget is present in a separate bill called the finance bill.