Centre for Distance and Online Education
Punjabi University, Patiala

B.A. PART-III (SEMESTER V) POLITICAL SCIENCE
COMPARATIVE POLITICAL SYSTEMS
(U.K. AND U.S.A.)

Unit II

LESSON NO. :

EVOLUTION OF AMERICAN POLITICAL SYSTEM, WAR OF INDEPENDENCE AND FRAMING OF THE CONSTITUTION

STRUCTURE

2.1.0 INTRODUCTION

The present political system of U.S.A. is the result of historical developments which took place in the country since American war of Independence. The American Political System will be soon 200 years old, a respectable age which would seem to give the United States a just claim to government maturity. The political institutions evolved through the wisdom of the founding fathers and the experiences of older nations have plain by withstood the test of crime. It holds a singular interest because upon it have played most of those historical factors and forces which have molded the history of world such as imperialism, nationalism, industrialism and democracy. It is here that the concept of union without unity of Federation was for the first time mooted and proved practicable. Most of the countries of the world, which choose a federal form of Government, have drawn inspiration from the Constitution of USA.

It is not at all due to America's being the most advanced nation of the

democratic world, nor should its reason be traced in her being the most powerful country of the globe. Rather, the source of all pertinent reasons should be discovered in several momentous developments like the beginning of documentary constitutionalism, political and national integration, irresistible growth towards democratization, freedom of the press existence of an independent judiciary and a host of several other phenomenon that constitute the model of a liberal democratic order. More than all the American constitutional system, like its English counterpart, has adapted itself to changing conditions. It is as a result of this that a "heterogeneous restless people have developed a continent, built a nation, achieved a standard of living the highest the world has ever known given the masses greater opportunities educationally and economically than any other people, preserved the great freedoms, renounced imperialism successfully, fought two world wars and has today assumed international leadership and international obligations unparalleled in history

2.1.1 OBJECTIVES OF THE LESSON

The unchallenged position of the United States as the world's most powerful nation and leader of the forces supporing democratic governments and free market economies will certainly continue in the early twenty-first century. In this context, it gains significance to talk about the Political System of America. The main objective of this lesson is to give you an idea about the operation of politics in the United States that affects our lives. Thus, viewing American politics with a special focus on how it resembles and differs from politics in other nations. It may even give us some insight into how the distinctive ways of American politics are likely to affect our country's ability to meet the enormous challenges it will face in the years ahead.

2.1.2 LAND AND PEOPLE : GEOGRAPHICAL AND ECOLOGICAL CONTEXTS

From the above, it follows that a detailed study of the American political system is necessitated by certain pertinent reasons which have their source in the factors of geography, sociology, economics, psychology and politics.

The social context of the American politics has a significant place in its geographical make up, largely insular position and the density and distribution of its population. Today the United States of America being the foremost nation of the Western hemisphere in population and resources is composed of 50 states joined in a federation.

2.1.3 HISTORICAL DEVELOPMENT : FROM EARLY COLONISATION TO DECLARATION OF INDEPENDENCE

The history of the United States begins with the establishment of 13 colonies

along the Atlantic seaboard and based upon written charters issued by the British Crown. Then, there were 3 proprietary colonies Maryland, Delaware and Pennsylvania. Here the charters authorized the proprietors to appoint governors and their officers, establish legislatures, create courts and appoint judges, set up local governments, and exercise the prerogatives that in royal colonies belonged to the Crown. While in the colonies of Maryland and Delaware the legislatures were bicameral (the upper house called the council had members appointed by the proprietor and a lower house called assembly having representatives elected by the freemen) the legislature of pennsylvania was unicameral. Legislation was subject to the veto of the crown and appeals could be taken from the highest colonial court to the King in Council.

The early phase of colonial system had smooth running. The people appreciated theirs being under the rule of the British as there was a common tradition, culture, language and citizenship. They enjoyed the fruits of common law in the form of freedom of speech, expression, assembly, religion property, residence and equality before law.

The high spirited subjects took to the course of revolt, For this they set up committees of correspondence in major towns to undermine the alien administration and gradually wrest power from it. By the end of 1773, a complete network of committees was organised that had its most volatile form in the colony of Massachusetts. It was decided that each colony send its delegates to a conference to consider relation with England. Thus, the First Continental Congress was held at Philadlphia on September 5, 1774 in which delegates selected by the committee (except that of Georgia) took part. It adopted an impressive Declaration of Rights calling for the repeal of all obnoxious measures stoppage of the importation and exportation of British goods and establishment of a continental association to enforce the boycott. Since the British government declined to redress the grievances of the subjects expressed at the First Continental Congress and instead took to the course of dealing firmly with the recalcitrance, the Second Continental Congress was held on May 10, 1775 in the same city (with the participation of Georgia) to chalk out the course of effective action.

The course of struggle changed. Though a section of the delegates detested the proposal of taking up the arms to win independence, they were confronted with no other workable option. George Washington was appointed as the commander-in-chief of the colonial forces in July, 1775. A committee of five under the chairmanship of Thomas Jefferson was set up to draft the declaration of independence. Thus, the text of the historic Declaration was prepared that asserted the strong belief of the people in the natural law and inalienable

rights of man, right to revolt when no alternative to absolute despotism, a long list of grievances and a pronouncement of the legal grounds for the transfer of sovereignty.

Further, the document declared that the colonies of the United States "are ... absolved from all allegiance to the British Crown and that all political connections between them and the State of Great Britain is and ought to be totally dissolved..." The declaration was adopted by the second Continental Congress on July 4, 1776 and was halide by the subject people as the birth certificate of the American nation. Naturally, the war ensued. The British government repudiated the move of the rebels. Matters came to an end in 1783 when the British finally decided to quit under the force of adverse circumstances and the *de facto* sovereignty of the 13 colonies of the United States became *de jure* also. Though foreign writers hold the view that the American became a sovereign nation in 1783 as the Declaration of independence adopted in 1776 could not be recognized as making the real transfer of power, the nationalist Americans hold a different view. As represented by Justice Joseph Story, the declaration of independence has always been treated as an act of paramount and sovereign authority, complete and perfect *per se, ipso facto* working an entire dissolution of all political connection with, and allegiance to, Great Britain.

2.1.4 POLITICAL CULTURE : COMPETITIVENESS FOR INDIVIDUAL AND MATERIAL SUCCESS AS THE HALLMARK OF AMERICAN NATIONAL CHARACTER

As already pointed out, the political culture of a nation refers to the basic attitudes and orientations of its people towards their political system. The subject of political culture has a significance of its own in the study of a political system for the simple reason that it conditions and shapes all the three of the inputs flowing from the society into the political system supports, expectations and demands. A study of the American political culture shows that the people have their unflinching faith in the principles and norms of democracy not only as a form of political administration but also as a way of life. They give full support to the present political system as a result of which nothing is heard about attempts to change it by means of a coup. It is also evident from the fact that there "is relatively very little criticism of the present political structures and process.

A case study of some important issues of the American politics over the last few years shows that while the Americans have their disagreements over matters like the imposition of a negative income tax, the need for additional gun control, open housing system and the prosecution of war (as in Vietnam), following are the matters on which there is virtually no disagreement as

provision of a social security retirement plan, regulation of labour-management relations, non-nationalization of rail-roads and non-pursuance of a strictly isolationist foreign policy, It may also be found that the conflict and consensus may change their places from time to time. That is, there may be a consensus on an issue on which there was all conflict on the past, or there may arise a conflict on an issue on which there has been full consensus in the present. it shows elasticity in the nature of the American people. However, the "key point to remember is that the consensus is greater than the conflict.

Let us now look at the national character of the Americans that shapes the stuff of their political culture. The Americans are neither thrifty like the Scots nor quicktempered like the Italians nor emotional like the Latin-Americans, nor conservative like the English, nor even radical like the French. It, however, does not mean that they have no culturally conditioned predispositions and habits of mind and character that make them different from other people of the world.

The national character of the American should, therefore, be understood in the light of the important traits discussed above. While describing the corporate picture emerging from these salient qualities of the American national character, Monsma adds : "They available evidence indicates that the American believes in hard work to expand his material possessions as well as in religious-moral values, is suspicious of authority" trusts his own commonsense and what he knows, is eternally optimistic as long as these principles are followed, views society through a racial bias and has a strong, even rigid and parochial pride in things he considers American.

In fine, competitiveness for individual and material success constitutes the hallmark of the American national character. Today, the American seem to concentrate more on working than on the praying, on keeping their powder dry than on trusting God, yet both strains are still observable in American society.

2.1.5 POLITICAL PUBLIC : ELECTIONS AND MASS MEDIA

The resolution of significant issues of public policy in a democratic political system is influenced is one way or another by the opinions of the members of the political communities involved therein. The process by which public opinion is translated into official policy follows no dominant pattern, it varies from time to time and from issue to issue.

The people of a country relate themselves to their political system in a variety of ways and voting pattern is one of the aspects of, what we call, political behaviour. There is universal adult suffrage in the United States and since the promulgation of the 26th Constitutional Amendment in 1971, minimum age of a voter has been fixed at the age of 18 years.

It may be pointed out that here the American have followed the British pattern.

however, as the American have a federal system with governments at the national and state levels and as they have a presidential form of government, their method of elections is much different from what we find in the United Kingdom. Elections to the office of the president (and vice-president) take place every fourth year no matter the holder dies or leaves his office before the completion of his term. The elections of 1/3 of the senators take place every second year and since the promulgation of the 17th constitutional Amendment of 1913, indirect method has been replaced by the direct one. Election of the Representatives take place every second year. It means that every alternate year is a year of election in the United States, though every fourth year has a special significance due to presidential election what the American call 'election year'.

The working of conducting elections is with the states, though they can not violate the general or particular directions laid down by the national government, Concerning Congressional elections, federal law specifies the seats and requires that the members of the House of Representatives be elected by electorial district since the elections take place every second years.

Instances may be multiplied to show how the pattern of American democracy has developed over a period of the last 190 years. According to Sigler and Getz, it may be inferred that five major principles have emerged from the experience of American democracy.

1. **Popular Sovereignty :** The idea that the government, in some sense, belongs to the people and not to any privileged few or to any single person. All who are the members of the community are, in some sense, entitled to participate in the selection of leaders who, in turn, make laws for the good of all the people. The power of the people is not nominal, it is supposed to be genuine and actual.
2. **Political Equality :** American democracy does not rest on an assumption of economic or social equality. But equal access to the polls and equal representative voting power have become major expectations. The voting power of the rich is equal to that of the poor though the capacity of the former to influence the political process is much greater.
3. **Effective Choice :** The people have alternatives to choose from. there is a competitive party system and the people are free to give their verdict in favour of either in the presidential and congressional elections. Moreover, with the coming of the direct primary system, they have been able to express their choice in the matter of nominations of the official candidates.
4. **Consolation and Accountability :** American people have come to expect

periodic explanations of the policies adopted by the government. Though most of the people are so busy that they have no time to take part in the political activity, they do expect that their chosen rulers keep them informed about the major issues so that they may express their in the light of which national policies should be framed and implemented. They reiterate their firm faith in the principle that ultimately a government that does not explain its action to the people, seek their support, or respond to their strong desires to reject a current policy can not be treated as democratic.

2.1.6 SELF CHECK EXERCISE

1. What do you mean by Political Culture?

   _____

2. What is Popular Sovereignty?

   _____

3. What do you know about the Second Continental Congress?

   _____

Majority Rule vis-à-vis minority Rights : Americans have taken it for granted that although majority has a right to rule. It can not suppress the rights of the minorities, if a minority feels offended, it may protect its interests by making use of the alternative channels like moving the courts. It is due to this that the Negroes of the United States enjoy a far better life than their counterparts living in the white ruled states of Africa.

Despite the fact that democracy has had its irresistible development in the United States, two important points can not be lost sight of that in a way, hit at the democratic system of this most powerful and advanced country of the world. First money dominates all walks of life so much so that common-worship may be described as the religion of the American people. As a result of this, American democracy has been destitute of those high spiritual and ethical values that have their place in other civilized countries of the world.

The real significance of the study of American Political System lays embedded in its involved evolution towards more and more democracy coupled with the brilliant fact of the great political achievements made by it through the use of democratic processes. Today the working of the American Political System has become a matter of great interest to the people of other countries of the world. Presidential as well as congressional elections showing the victory of one party and the defeat of another, announcements from the White House, proceedings of the investigation committees of the Congress decisions of the courts, coverages of the press etc. all engage attention of the people living in countries far away from the United States. The latest trend of studying

the actual operation of constitutional system in the context of inputs and outputs has lent its own weight to the government and administration of the western colossus. Though one may agree or not, nevertheless it may be added that the political system of the United States has been successful in witnessing the operation of inputs and outputs leading to its maintenance as well as adaptation in response to the new requirements of the age. In a wore, it shall be worthwhile to suggest that the American, like their English counterparts, have been able to bring about a happy synthesis between liberty and authority that is the hallmark of modern constitutionalism what we shall study in the next chapter. The American rulers have been able to grasp the implication of this judicious statement of an eminent man of law and justice: "The achievement of liberty is mans indispensable condition of living; and yet, liberty can not exist unless it is restrained and restricted."

2.1.7 SUMMARY

America is appropriately called an achievement-oriented social system. From humble beginnings as a small agricultural and trading community two hundred years ago, USA has come to occupy the position of a most affluent, most powerful, and technologically the most advanced nation of the world. If the capability of any political system is to be judged by the material attainments, the American political system has already proved its worth. America is immigrant's paradise, a place where every freedom loving person would like to settle and work and very few people like to leave America once they have settled there. Despite differences in material resources of its population, racial stock, ideas and geographical conditions, America has achieved a remarkable degree of national unity and similarity in the set of values. What has made America what it is today? What are the special characteristics of the American people and their institutions which account for the unique success achieved in nation building and providing material abundance?

The United States is a democracy along with other democracies. It is based on the principle of constitutionalism. The United States is a presidential democracy rather than a parlimentary democracy, based on the separation of powers rather than on their fusion. The head of government is elected rather than hereditary. Furthermore, the roles of chief of state and head of government are performed by the same official. The United States is also unusual because it is a federal system rather than a unitary system. The legislative system also displays differences to other systems. The presiding officers of its legislative chambers are partisan rahter than neutral. Its legislative committees play a critical role in the legislative process. And American legislators are largely free of party discipline and control their own votes.

The U.S. legal system is based on the English Common Law rather than on the continental European Civil Law. Its highest court has the power to declare acts of other government officials and agencies unconsitutional and thereby render them null and void. U.S. elections use the single-member, plurality system rather than proportional representation. Its elections are held on fixed dates, and there is no power of dissolution. The practice is well established by law and custom that members of the natinal legislature must live in the states and districts they represent. Particularly in some states and localities, though not at the national level, there is extensive use of popular initiatives and referendums. The United States has a great variety of ethnic groups, and ethnicity plays a major role in political conflict. Until recently it has followed a melting pot rather than a partchwork quilt policy toward the assimilation of immigrants. The U.S. is closer to having its electoral politics dominated by two and only two political parties than almost any other country. Not only can different parties control different branches of government at the same time, but they often do. Its systems for registering voters also are largely decentralized and put most of the burden on the voters. By some measures, its voting trunout is among the lowest in the world. The court system is also unusual. A higher proportion of political issues are settled in the court than in any other democracy. Consequently, lawyers play a more important role in the American political system than in any other.

It seems fitting to end this chapter comparing the American political system to the world's other systems with a quotation from one of its greatest foreign observers, the English scholar and statesman, Lord Bryce : All governments are faulty; and an equally minute analysis of the constitutions of England, or France, or Germany would disclose mischiefs as serious as those we have noted in the American system. To any one familiar with the practical working of free governments it is a standing wonder that they work at all. What keeps a free government going is the good sense and patriotism of the people and the United States, more than any other country, are governed by public opinion, that is to say, by the general sentiment of the mass of the nation, which all the organs of the national government and of the State governments look to and obey.

2.1.8 KEY WORDS

American exceptionalism
Bill of Rights
Checks and balanaces
Congressional parties
divided party control

Electroal College
federlism

2.1.9 LONG ANSWER TYPE QUESTIONS

1. Discuss the evolution of the present American Constitution.
2. Discuss the establishment of American Federalism.

2.1.9 SHORT ANSWER TYPE QUESTIONS

1. Write a short note on the Presidential Democracy in the United States.
2. What is the principle of Constitutionalism?
3. What do you know about 13 Colonies.

2.1.9 SUGGESTED READINGS

Gabriel A. almond, Comparative Politics Today, 8th ed. Pearson Education, south Asia, 2007.

J.C. Johari, New comparative Government, Lotus Prints, New Delhi, Revised Edition, 2011.

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SOURCES AND FEATURES OF THE U.S. CONSTITUTION

STRUCTURE

2.2.0 INTRODUCTION

Origin of the Constitution :

The United States of America existed until, 1776 as thirteen separate colonies subject to the British rule. All the colonies exercised a considerable measure of autonomy in internal matters, but in vital matters real authority lay with the British Government. The colonies resented this British authority and the end of this resentment came in the shape of Declaration of Independence. Efforts were

made to bring all the colonies together on the issue of adopting a common policy against the British Government. The colonies struck for independence under the leadership of George Washington and the Declaration of Independence was adopted on July 4, 1776 and thus the American nation was born.

In 1777, article declaring an establishment of a confederation were adopted and subsequently ratified by the thirteen colonies. These Articles were the first written Constitution of the United States of America. This union was not at all strong one. Later on, opinion in favour of a stronger union gained strength. Hamilton opined that "a nation without a national government is an aweful spectacle." So on 25th May, 1787, a convention was held at Philadelphia to revise the Article of Confederation so as to render them, "adequate to the exigencies of the Government and the preservation of the Union." It consisted of great personalities like Washington, Madison, Wilson, Hamilton and Franklin. The Constitution document prepared by this convention signed by thirty nine delegates. The convention had been called for revising the Article of Confederation and not for drawing up an entirely new Constitution. It was therefore, decided to construct a truly national government rather than to revise the Article of Confederation. The first Constitutional scheme which was prepared under the leadership of Madison and was presented by Governor of Virginia, was based on the assumption that mere revision of the existing constitution would not suffice. So the Virginia Plan proposed a drastic reconstruction of the existing government. The proposed national government was to have vastly increased powers. This plan was strongly opposed by the delegates sensitive about the "rights of the states" as they considered the Virginia plan to tend too much towards centralisation. Opponents of this plan put forth a counter-plan based on the "purely federal" principle, the New Jersey Plan. It contemplated a less radical departure from the Articles of Confederation. Thus the convention was split up into two groups, one representing the larger states and the other representing the small ones. The convention overwhelmingly accepted the general principle that a strong national government was needed.

The delegation from Connecticut put forward a compromise formula which is generally believed to have been the creation of Franklin. This compromise resolved the dead-lock between the large and small states by laying down that all states should have equal representation in the upper house of the federal legislature.

After discussion was finally adopted on 15th September, 1787 under the signature of the thirty nine delegates representing twelve states. It had been decided in the very beginning that the Constitution would be enforced only when ratified by at least nine of the thirteen states. Ratification of the new Constitution was a difficult task of the Philadelphia Convention had gone far from original instructions of the participating states and had, instead of revising, Articles of confederation, produced an entirely new Constitution. By June 21, 1788, nine states ratified the Constitution

and so it was decided to enforce it.

2.2.1 OBJECTIVES OF THE LESSON

After reading this lesson you will be able to know the history of the making of American Constitution as well as main principles of American Constitution. You will also have a fair idea of the sources of American Constitution.

The basic structure of the American system of government is set forth in a written constitution- the Constitution of the United States, a document drawn up in 1787, ratified in 1788, and inaugurated in 1789. It is world's oldest written constitution still in force. Of course, the Constitution of the 2000s differs from that of 1789 in a number of important ways. It has been formally amended twenty-seven times, the most recent being the 1992 amendment, which provided that no law changing the compensation for members of Congress shall take effect until an election of members of the House has been held. Among the most important amendments are the following. The first ten, known collectively as the Bill of Rights, list the rights of individuals that the national government is forbidden to abridge. Yet the words in the Constitution do not tell all there is to be told about the basic structure of the American constitutional system. A number of custome, usages, and judicial decisions have significantly altered our way of governing without changing a word in the Constitution. The provisions of the written Constitution of the United States and their associated customs and usages add up to a constitutional system that has three distinctive features: federalism, separation of powers, and judicial review. In this lesson we will study the nature, sources of U.S. constitutional system, general characteristics, political system, and the procedure for the amendment of the U.S. Constitution both formal and informal. The new Constitution came into force on 4th March, 1789. Having examined a brief history of the American Constitution, we will study now its salient features, Nature and Sources which are as follows :

2.2.2 SOURCES AND FEATURES OF THE U.S. CONSTITUTION

2.2.2.1 A Written Constitution :

The American Constitution adopted at Philadelphia Convention is the oldest written 'Constitution of the World'. As compared to the British Constitution which is primarily based on conventions, the American Constitution is a written one. Although the American Constitution is the World's classic example of a written Constitution, yet there are several unwritten features also. Some of the apparent constitutional foundations but have been added over the years by interpretation, custom and usage.

Judicial Interpretations : Written in general concise forms several interpretations of the articles and sections can be possible. The U.S. Supreme Court as the final

interpreter, therefore, has a special role to perform this respect. It is because of this that the constitution of the United States has grown and developed with the passage of time. Thus the whole of the concept of 'Implied Powers' is a finding of the Supreme Court which has strengthened the position of the centre against the states. It is again through judicial interpretation that Congress has been granted powers to create corporations such as banks, to carry out its delegated powers. While giving its interpretation, the court is generally led by the principle of the earlier decision, but many a time it has also a reversed its earlier decisions or modified them. It is in the light of this immense importance that it is held that the U.S. Constitution is amended every Monday when the Supreme Court gives its judgment.

Secondly, Constitutional elaboration have also taken place through Congressional status. Simple general phases may be elaborated by status to give them unexpected meaning. Where this occur the effect is often as significant as if amendments were formally enacted. The principal basis for Congressional elaboration has been the implied power that authorize the enactment of all laws that are necessary and proper to carry delegated powers into effect. Thus the executive have been created without any direct authority being given to the Congress by the Constitution.

Role of President :- The rights construct the Constitution does not belong only to the judiciary and Congress. Many a times the Presidents also made use of this function and their views have frequently prevailed. Thus President Jefferson acquire Louisiana without prior authorisation by Congress. Similarly President Wilson and F. Roosevelt contended that Congress could not restrict the removal of executive employees. Cleveland asserted the right to use Federal troops within a state to enforce federal law or protect Federal property. U.S. President now exercises the right to send American troops any where in the world without Congressional approval, a function which has a significant place in U.S. role in the world politics.

Customs and usage :- Last but not least has been the role played by customs and usage by which the U S. Constitution has been changed and modified. Political parties are not mentioned in the Constitution but have become an indispensable part of the political system. The election of the President originally designed to be indirect has come out to be direct by custom. The President's cabinet is almost entirely the product of the custom. Legislative committees, not envisaged in the Constitution have become as permanent as legislature itself.

2.2.2.2 Constitution is the Supreme Law of the Land :

Apart from being written and rigid the American Constitution is the supreme law of the land. In England, sovereignty resides in the Parliament. In America, however, governmental power have been enumerated in the Constitution which is supreme over all the organs of local, state and national government. Its provisions are binding on all, whether it is the chief executive of the state or an ordinary citizen. If any person or any

institution, governmental or non-governmental violates the provisions of the Constitution, the Supreme Court declares their acts as ultra vires or unconstitutional.

Other Features of U.S. Constitution

2.2.2.3 Federal form of Government :

The new constitution establishes a federal system of government in U.S.A. The powers between the centres and the states are divided by the Constitution and none can encroach upon the sphere of the other. Although there were some fears expressed about the practicability of the federal union at the time of the adoption of the Constitution but they proved to be ill founded. The American federal union through several years stained by the Civil war, has stood the test of almost two centuries. It is today the oldest federal union in existence. Though this is the witnessed the rise of some tendencies towards centralization, yet there seems to be no danger to the existence of federalism in U.S.A. (More detailed discussion of this feature will be taken up in the next lesson.)

2.2.2.4 Belief In Popular Sovereignty :

The Constitution is based on the sovereignty of the people. The preamble of the American Constitution says, "We, the people of the United States do ordain and establish this constitution for the United States of America." This clearly implies that the government in America is based on the consent of the people and that the Constitution restores all governmental power directly or indirectly in the hands of the people. The very fact that the American Constitution was not framed by any dictator or a particular group of people shows that it is based on the concept of popular sovereignty. It was drafted and adopted by the delegates from the various states of America. These delegates represented the people at large. So the belief in popular sovereignty in the spirit of the American Constitution.

2.2.2.5 Representative System of Government :

Though the framers of the Constitution believed in popular sovereignty, yet they were not in favour of assigning unlimited powers to the people. They intended to establish an indirect democracy. The people were not given any power of direct legislation. The utmost concession that could be made to democracy was the power was given to the people to elect suitable person to the legislature. The question of franchise was left to the states. It is interesting to note that originally the Senators were to be elected by the state legislatures and by the people of the states directly. The President was to be elected indirectly by the electoral college. It Is, therefore, cleat that the 'Founding Fathers' of the Constitution was adopted. Today, the elected representatives are considered to be the mouth piece of the electors to disregard wishes would amount to a betrayal of the trust and the denial of the democracy.

2.2.2.6 Limited Government and Individual Rights :

The framers of the Constitution believed in the principle of Jone Locke's philosophy

who taught that government was a conditional moral trust and not an absolute power and the people born with 'natural' and inalienable's rights, had every right to overthrow a government which betrayed its trust and failed to safeguard the fundamental liberties of the individuals. They held that the power of the government must be 'limited" so that it could be not encroach upon the fundamental freedom of the citizens. They sought to ensure 'limited' government by (a) defining the powers of federal as well state governments ; (b) by separating the three branches of the governments; (c) by instituting an independent judicial authority to keep the federal governments as also the governments of the states within the spheres demarcated for them by the Constitution ; and (d) by incorporating a bill or rights in the Constitution so that no governments could abridge or crush these rights. The American Bill of Rights is the corner-stone of the American Constitutional System and the most effective expression of the doctrine of limited government. They are often couched in such words as "No state shall ....,..." "Congress may pass no law...,,". The Constitution of America, thus, "establishes limited government by imposing positive restraints on all public authorities in the name of personal liberty." In the U.S.A. individual rights have a legal basis and are protected by the Supreme Court which can declare federal and state laws as unconstitutional if they infringe upon the rights guaranteed by the Constitution. Finally, the individual rights guaranteed by the United States Constitution are essentially negative in character. 'They restrain the government from doing certain things but do not compel that affirmative action be take to ensure the blessings of liberty to all within the country that is how Furgusen and McHenry have remarked about the individual rights in their book 'American Federal Government'.

2.2.2.7 Presidential Form of Government :

The United State Constitution provides for the Presidential form of government. In such a form of government the executive and legislative branches of the government remain separated from each other. The executive cannot dissolve the legislature and the legislature cannot remove the executive easily. The President and his Cabinet are not responsible to the Congress. The term is fixed for four years. This is in sharp contrast to the practice prevailing the U.K. where there is close harmony between the executive is responsible to the legislature and is also subject to removal by it through a vote of no-confidence even before the expiry of its normal tenure.

2.2.2.8 Republican Form of Government :

Hence, again we can compare both the American and the British Constitutions. Whereas in England, there prevails a limited monarchy, in the U.S.A. republican form of Government has been adopted. The head of the state in Britain in heredity, whereas in the U.S.A. it is an elected one. The Republic form of the government has been followed not only in the centre but also in states. The Constitution says that it is the responsibility of the federal government to provide for republican government in the

states.

2.2.2.9 Dual Citizenship :

Unlike the federations prevailing in Canada and India, the American Constitution provides dual citizenship. Every individual in the U.S.A. is a citizen of U.S.A. as well as of the state where he resides. There was a difference of opinion among people regarding dual citizenship before the Civil War, it was, however, decided in 1857 in 'Dred Scott' case that every American enjoyed double citizenship. In the U.S.A. both the principles 'Jus Soli' of the acquisition of the citizenship are followed. According to the principle of 'Jus Sanguinis' children of American Citizens of America. Citizenship acquired according to the above principles is known as natural citizenship. Such citizenship will, however, be known as naturilised citizenship. There is hardly any distinction made between these two kinds of citizens except for the fact that only natural born citizens can contest presidential election.

2.2.2.10 Separation of Powers :

This theory implies that three main powers of the government–legislative, executive and judicial should be exercised by different persons or bodies or persons. The idea of some separation of powers is as also as Aristotle. The idea was elaborated more than one type of governmental powers in the hands of the individual or one group of individuals leads to despotic abuse of authority and endangers the liberty of the citizens.

That the United States adopted the Presidential form of government and not the Parliamentary type is the direct consequences of the deliberated adoption of the theory of separation of the powers. The 'Founding Fathers' of the Constitution were convinced that popular government could be as dangerous to the life, liberty and happiness of individuals as monarchy or any other form of the government. They had learnt from history that the power, when unchecked could be cruel, tyrannical and unjust. It was out of this conviction that they adopted the theory of Separation of Powers which was widely upheld in England and France during the 18th century. That the framers of the constitution were convinced of its soundness as a safeguard of liberty and democracy is clear from the fact that the principle of the separation of powers had been incorporated and proclaimed in the constitutions of the some of the states.

The Constitution of U.S.A. does not categorically mention the doctrine of separation of powers. But that the doctrine is the guiding principle of the new constitution, is clear from the first three Articles. Article I vests in Congress "all legislative powers here in granted." Article II provides that 'the executive power shall be vested in a President." Article III lays down that "the judicial powers shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." The Unites States Supreme Court has interpreted these

articles to mean that 'the powers allocated to the different branches may not be combined in anyone branch of the government."

As applied in the U.S.A., the theory means much more than the separation of the main functions of the government. In great Britain and France its theory does not involve any such consequences as have developed in the United States. In U.S.A. it was interpreted to mean the organs of government should be largely independent of one another. Thus, the President has a fixed term and cannot be removed by the legislature except through extremely difficult process of impeachment. Nor can the President dissolve the Congress which is convened prorogues and dissolved at the appointed time. The judiciary is similarly independent of the legislature and the executive. No judge can be removed from office by either the legislature or the executive except by the process of impeachment.

If we examine the working of the British and Indian Constitutional Systems, we find that there is no such independence enjoyed by any branch of the government. In both the countries, the legislature is convened by the executive and can also be dissolved by it. The executive have no fixed tenure; it remains in office only so long as it enjoys the confidence of the legislature. So the most glaring contrast between the American and British constitutional systems lies in "the executive and the judiciary being independent of one another."

2.2.2.11 Checks and Balances :

The framers of the Constitution, however, knew very well that the principle of separation of powers, if adopted totally, would make the constitutional system unworkable and the government divided into three water-tight compartments could not work with unity and balance. They also knew that a department, if it left unworked, might become tyrannical. They therefore, supplemented the theory of Separation of Powers by a system of checks and balances to provide against a water-tight compartmentalization and to ensure that no branch of government should exercise its powers autocratically. This principle enable each department to exercise partial control on the other. It was expected to bring about and over all equilibrium in the Government. Thus the President has been given the power to veto the acts of Congress, the Congress has got the power to impeach and expel the President. The Senate shares important powers of the executive the appointment making power and power to conclude treaties. The Supreme Court determines the constitutionality of congressional laws and reviews the administrative acts of the executive. The Supreme Court checks both the executive and the legislature. Thus, this principle runs through the political system of U.S.A. from top to bottom. Out of all features U. S. Constitution that we have discussed so far, the theory of Separation of Powers, supplemented as it is by the Principle of Checks and Balance is of primary significance in the American Constitutional System. The twin principle of Separation of Powers and Checks and Balance are negative in character, since they prevent or

impede political action by the government. Both are tailored to fit the American political philosophy of 1800, which conceived of the chief threat to citizens' liberty as governmental tyranny. Crisis in modem politics, however, whether of economic or, international political character, requires positive government action. As the experiences shows, during critical periods such as those of two world wars of the 20th century and economic depression of 1930's the three branches of government functioned with a spirit of co-operation. Devoid of that, the governmental system would have suffered from a serious set back and perhaps by now Constitution would have been modified.

Yet, it cannot be denied that Separation of Powers and Cheeks and Balances have been responsible for some of the historic examples of deadlocks between the government. Thus senatorial refusal to ratify Treaty of Versailles, Supreme Court's invalidation of the new Deal Laws adopted by the Congress at the initiative of President Roosevelt are cases which cannot be ignored by any student of comparative government.

Yet, many factors have appeared in America to neutralize the defects of Separation of Powers–for instance, the role of Political parties in bridging the gulf between the President and Congress, President's power to initiate legislation through his message and backdoor methods. Having reviewed the working of the Theory of Separation of Powers in the U.S.A. Now let us discuss some of the remaining features of the American Constitution.

2.2.2.12 Very Rigid Constitution :

The Constitution of America is the most rigid Constitution in the world. It presents a direct contrast to the British Constitution in the light of the fact that the American federation was formed by the previously sovereign states which gave up a part of their powers to secure the advantages of a union, but which were determined to maintain their political entity. They were anxious to make it difficult for later generations to interface with the Constitution without strong reasons. Besides, the Constitution framers wanted that the lines of separation should not be crossed through easy amendment of the Constitution. So they laid down a procedure of the amendment which, in their opinion, was not difficult. But the process which they had considered be quite simple turned out to be the most difficult in the world on account of the appearance of two factors which they could not foresee the increase in the size of the Congress and in number of states forming the union.

2.2.2.13 Self Check Exercise

1. Is American Constitution Rigid?

   _____

2. What do you know about Checks and Balances?

   _____

The Amending Process in the American Constitution: The formal process of amending the Constitution is laid down in Article 5 read as follows:
"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 the either case, shall be valid to all intents and purposes, as part of this constitution when ratified by the legislatures of three-fourth of the several states, or by conventions in three-fourth thereof, as the one of the other method of ratification may be proposed by the Congress." If we closely analyse this article, we find that there are two stages in the process of amendment the Constitution–the proposal of ratification. The proposal can be made either by a two-third votes of both houses of Congress or by a constitutional convention to be called by Congress on the application of at least two-thirds of the states. After a proposal for amendment has been duly made, it is submitted to the states for ratification and comes into force when it is ratified either by the legislature of three-fourths (37) of the states or by conventions in three-fourth of them. While submitting a proposal for amendment to the states, Congress can indicate which of the two methods they are to employ for ratification. In case Congress does not indicated its preference the states can choose either of the two methods laid down in the Constitution. Though the Constitution lays down two alternative methods for initiating a proposal for amendment, in practice only one of them, viz., joint resolution of the two houses of Congress, has been successfully adopted. All amendments adopted till now have been proposed through this procedure. The alternative method of initiating amendment by a national convention has not been employed so far. So far as ratification is concerned, action by state legislatures has been preferred to that by convention in the states. All the amendments except one (the 21st amendment) have been ratified by the action of the legislatures.

Time necessary for completing Ratification: The Constitution says nothing about the time within which a state must ratify or reject a proposed amendment. Theoretically it may remain silent about it as long as it likes. So long as the requisite number of states do not ratify and it does not become a part of the constitution, a proposed amendment submitted to the states for ratification in 1924 is still officially alive for consideration, by the state though it is for Congress to fix a time limit for ratification if, it likes so. Congress placed a time-limit of 7 year's for 18th, 20th, 21st and 22nd amendments. But, if the Congress does not specify any time limit, a proposal may be kept pending indefinitely.

An analysis of the amendment process : Some observations may be made concerning the process of amendment as discussed above. Firstly, the amending process left many difficult questions unanswered. For example, the Constitution does clarify whether the two-thirds majority in both houses of Congress required for proposing an amendment means two thirds of all the numbers or of those

present. Besides, it does not state whether a Congressional action in proposing an amendment can be vetoed by the President or not.

Secondly, the Constitution has created an anomaly by laying down that two of its provisions are unamendable–the provision that no state can be deprived of its equal representation in the Senate without its own consent and the provision that no state can be divided, nor can two states be combined without the approval of the state legislatures concerned. Munro truly remarks than an unamendable constitution is a contradiction in terms.

Thirdly, the process of amendment is extremely difficult and lengthy. It is very difficult to obtain two-third majority of both the houses of Congress in order to initiate a proposal for amendment and then to get it ratified by at least 3/4th of the states, especially when we remember that no fixed time limit is set for the completion of ratification. On the occasion, Ohio ratified amendment submitted to it 80 years earlier. The result of this difficult amending process is that only 25 amendments have been made in a period of more than two hundred years. This presents a contrast to the Indian Constitution which has been amended as many as 83 times in a period of 51 years. The last amendment adopted in 1967 enabled a Vice-President to become acting President if the President should become disabled and it gave the President authority to fill the Vice-Presidency with Congressional assent, should that office fall vacant.

Fourthly, the process of amendment has also been criticised on the ground that it is not sufficiently democratic. The critics say that there is no provision for direct popular proposal for amendment or for referendum whereby a proposed amendment could be finally accepted or rejected by popular vote. Thus, the people of the country have no shares as citizens either in proposing or in ratifying amendments.

Finally, it is pointed out by the critics that the existing amending process actually put the decision in the hands of a minority. An amendment is required to be ratified 37 states (3/4th of States). If 36 States favour an amendment and 14 states oppose it, the amendment can't be passed. It is possible that these 14 states have only a small fraction of the country's population. Thus the states, and not the people, are the powerful element in ratification. Despite this criticism, there is no prospect of the existing amending process being replaced by one less difficult and more 'democratic'. In fact, there is no strong sentiment in favour of such a change, the reason being that if normal amendment is difficult and lengthy process, other ways have been found to enable the Constitution to grow and adopt itself to changing conditions. The chief among them are judicial interpretation, executive action, statues, customs and usage. Some commentators have, therefore, remarked that the 'American Constitution has been amended without amendments'.

2.2.2.14 Supremacy of the Judiciary :

Another important principle of American System is supreme position that the Federal

judiciary has come to occupy by virtue of its power of judicial review. The Constitution does not specifically grant the power of judicial review to the Supreme Court. The Supreme Court has, in fact, assumed it in the course of time. The power was first enunciated in 1803 by Justin Marshall in the case of Marburty Vs. Madison. He declared that if a Congressional law conflicted with the Constitution, the Supreme Court was bound to uphold the Constitution the supreme law of the land. Since Marshall's historic declaration of 1803, the Supreme Court has been exercising judicial review of legislative and executive orders as matter of right. The unique power provoked occasional protests. Some people in America have gone to the extent of proposing that the Constitution be so amended as to deprive the Supreme Court of its power of judicial review, or, alternatively, to empower Congress to override a negative verdict of the Supreme court by passing an invalidated law a second time by the two-third majority. The proposal, however, has never gone very far because the general feeling in the United States is, that the exercise of judicial review has been, on the whole beneficial. It is because of the power that the Supreme Court has acted as a balance wheel of governmental system, as James Beck puts it. Charles Beard also regards it as the crowning feature of the federal system. In no European country except Poland, the judicial-tribunal has been given the position of supremacy as in U.S.A. Without supremacy of judiciary the Constitution would not have worked so well, and rights and liberties of the people would not have been protected adequately. It has been, in Finer's words, the cement which has fixed firm the whole federal structure. In Laski's words the power of judicial review has made the Supreme Court "a third chamber in the United States."

2.2.2.15 Civil Supremacy over the Military :

It was clear to those founded the American Republic that large military establishments and tyranny went hand in hand. This view had been strengthened in the writings of the leading political theorists of the period like Locke, Rousseau, Coker and Blackstone, and the Behaviour of British troops in the colonies confirmed their impressions. So the Constitution framers were in favour of civil supremacy over the military. At the Constitutional Convention of 1787, broad military powers were given to the President and Congress. The Constitution provides that the President is the Supreme commander of the armed forces in the country. Only Congress can declare war. No money can be spent except as appropriate by Congress and no money can be appropriated for more than two years.

International politics since 1898 has increased American military commitments, the defense establishments has enormously increased and military personnel has integrated itself with all phases of economic, social and political life. In consequence,

many voices are raised in alarm lest the principle of civilians supremacy be lost. That the principle still has vigour, however, was indicated by Presidents Truman's dismissal of five-star General Mac Arthur in 1951 from his command in Japan and Korea.

There are many notable omissions in the Constitution. The Constitution is silent about many fundamental matters relating to immigration, banks, corporations, educations, civil services, political parties, agriculture, control over labour and industry etc. As compared to other constitutions of the world the American Constitution has described the economic and social matters very briefly. Many a political matters have also been omitted. For example, the Constitution mentions nothing about the powers of the Speaker of the House of Representative, method of resolving the deadlocks between the two houses and about the Secretary of the State.

V.B. Munro says that we should overlook the omissions of the American Constitution because it was difficult for the Founding Fathers to predict as to what social and economic problems would confront the coming generations. So they omitted these facts so that the Constitution be changed in accordance with the need of times and changing circumstances.

2.2.3 SUPREME COURT AS THE THIRD CHAMBER OF THE LEGISLATURE

In Laski's words, the power of judical review has made the Supreme Court "a third chamber in the United States." It is believed that although, primarily the Supreme Court is ajudidal body yet the functions and role performed by the Supreme Court is that of a political agency such as a legislative chamber. While exercising its power of judicial review the judges consider, not only the words of the Constitution, but what they believe at any given time, to be fair and just. And their conception of what is just and fair is unevitably effected by the political climate of their age. The view is supporfed by the fact that several times the Supreme Court has changed it previous decisions. This shows that the concept of just and fair' changes with the time. It is, therefore, a function like that of a legislative chamber. In theory, the court examines federal and state laws and executive decisions to determine their consistency with the Constitution. In fact, however, it does something more. While examining the provisions of a bill, it fIxes the meaning of a law by giving a new meaning to it. The Supreme Court by its judgement may help in the emergence of an altogether new law. But this legislative function of the Court unlike that of the Congress is of a negative character. It has no positive initiative in proposing the legislature measure. .

In this lesson we have studied the federal judiciary U.S.A. An important' feature of the U.S. Judiciary is that it has two sets of courts one for the states and another

for the federal government. The federal structure consists of District Courts, Circuit Courts of appeal and Supreme Court apart from the courts, the Congress has also established some special courts. The Supreme Court stands at the top of the judicial system. It consists of nine judges. The Supreme Court enjoys both original and appellate jurisdiction but does not exercise advisory powers. The Supreme Court acts only when a law has been passed and there is a defInite dispute on the issue. The Supreme Court of Amercia has played an important role in the development of the U.S. Constitution. It has assumed the position of the fInal interpreter of the Constitution. The Supreme Court has the power to examine whether a particular act is in violation of any part of the Constitution and it, can declare such law ultra vires. The Supreme Court of America is also called the Third Chamber of the Legislature. It is believed that while interpreting the Constitution, it gives a new meaning which may help in the emergence' of an altogether new law. Moreover, the legislative function is so closely related' to the function of policy formulation.

2.2.4 AMERICANS' CONSTITUTIONAL POSITION IN WORLD POLITICS

In this lesson, we have discussed the development, sources and main features of the American Constitution. It is almost two centuries old written and rigid constitution. This Constitution establishes Republican form of Government with Presidential set up. America has federal form of government with a Supreme Court to safeguard the Constitution as well as the interest of the Centre and the Constituting units. Its governmental system works on the Principle of Separation of Powers with Checks and Balances and limitations on the three branches of the government to have a proper balance. Apart from these features U.S. Constitution provides dual citizenship, universal adult franchise. This rigid Constitution is amended through a particular process in which the Congress as well as the legislature take equal part.

While dealing with the characteristics of the U.S. constitution, it was said that the form of government in U.S.A. is presidential. There is no other political institution in the world to match the American Presidency which has been entrusted with such vast constitutional powers and responsibilities. It is respected not only in its own country but in all the countries of the world. Since United States is presently the only super power in the world, the President of U.S.A. is bound to play a roll which has its significance for the entire world. He is the symbol of unity of the nation. In the more recent times there has been a great increase in his powers and influence. He is not only the head of the state but also of government and nation whereas the Queen of U.K. and the President of India are only the heads of their respective states.

2.2.5 SUMMARY

We have read about the upper chamber of U.S. Congress, known as Senate in this lesson. It is a permanent house, whose members are elected for a period of six years and after every two years one third of them retire and new members are elected in their place. Senate enjoys legislative, executive judicial, inquisitional, electoral and amending powers. It is called the most powerful second chamber in the world. Because the members of Senate are elected directly by the people it enjoys equal legislative, executive and judicial powers with House of Representatives. The standard of discussions and debate in Senate is very higl1 because it has more experienced members an membership is very limited., It puts a check on the lower house from takin hasty decision. Because of the very important powers, it is called the most powerful second chamber.

In this lesson we have discussed the U.S. Legislature which is called the Congress. It consists of two houses Senate and House of Representatives. Composition organization and position of House or Representatives and the powers and function of the Congress were taken up in detail. The Congress enjoys legislative, executive, judicial, amending, electoral and inquisitional powers. The Congress differs from British Parliament in respect of its powers and its lower house, the House of Representatives consists as the British Parliaments is its lower house, the House of Representatives consists of 435 members elected for the term of two years. The office of the speaker in the U.S.A. is not ofthat great authority and magnitude as compared to his counterpart in Britain. The American Speaker remains partisan whereas in Britain the Speaker remains neutral.

We have studied in this lesson, about tbe method by which a bill becomes as act in the U.S. Congress. Except money bills, all the other bills can be introduced in the either House of the Congress. In the first reading, the bill is given a serial number and copies are distributed among the members. After the first reading the bill is sent to concerned Committees which after a thorough scrubbing sends the report back to the House. The bill then is placed on one of the four lists known as Calender. The Bill then goes through a critical stage known as second reading, thorough discussion is done in the House and votes are taken. After the third reading which is just a formality the bill is sent to the Senate. The bill goes through the same stages in the Senate and after going through them successfully it is sent to the President for assent and after President's assent it becomes an act. If both houses do not agree on a bill, the deadlock is resolved through a Conference Committee. It even this Committee fails to bring about a compromise, the bill fails. We have also read about Ametdan Committee system and compared it with the of

U.K. and have found the American Committee are much mpre powerful than Committees of the British Parliament.

2.2.6 KEY WORDS

American exceptionalism
Bill of Rights
Checks and balanaces
Congressional parties
divided party control
Electroal College
federlism

2.2.7 LONG ANSWER TYPE QUESTIONS

1. What are the sailent features of the Constitution of U.S.A?
2. Write a note on the origin of the American Constitution.

2..2.8 SHORT ANSWER TYPE QUESTIONS

1. What is Dual Citizenship?
2. What is Separation of Powers?
3. What are the two characteristics of the Presidential Government in U.S.A.?
4. When did the present constitution of the USA was enacted.

2.2.9 SUGGESTED READINGS

A.C. Kapoor : Selected Constitutions
C.O. Johnson : Government in the United States

U.S. Bill of Rights

Structure

2.3.0 INTRODUCTION

In the first years of the new millennium, the United Staes continues to be the world's most powerful nation, but a new international order is emerging. Whatever its final shape may be, the United States will contiune to play a leading role, though that role is bound to be different from what it was during the cold war. The framers of the American Constitution assured American people that first ten Amendements were made in the Constitution and Bill of Rights was incroporated in the constitution and thus America became the first country to include the rights of citizen in writing in the Constitution. Before this, the rights of citizens were not included in the American Constitution framed in 1787 and for this reason some states and particularly the Carolina State refused to ratify the Constitution. Of course, the Constitution of the 2000s differs from that of 1789 in a number of important ways. It has been formally amended twenty-seven times, the most recent being the 1992 amendment, which provided that no law changing the compensation for members of Congress shall take effect until an election of members of the House has been held. Among the most important amendments are the following. The first ten, known collectively as the Bill of Rights, list the rights of individuals that the national government is forbidden to abridge.

2.3.1 OBJECTIVES OF THE LESSON

After reading this lesson you will understand:

— The importance of the Bill of Rights.

— Nature of Rights included in American Constitution.

2.3.2 SIGNIFICANCE : BILL OF RIGHTS

Bill of rights are restricitions on government rathar than on individuals or private groups. History teaches that unchecked governmental powers can lead to the decay of freedom. A bill of rights provides the legal mechanism through which the individual can challenge the oppressive acts of governmental officials in courts of law. Without guarantees for individual freedom, democracy would become meaningless and unworkable. Some state bills of rights antedate the federal Bill of Rights. The federal Bill of Rights was added to the Constitution as a condition for its ratification, on the insistence of people who feared a strong central government. Although these rights were intended to restrain only the national government, since 1925 the Supreme Court has gradually extended them as restraints upon state action through the due process clause of the Fourteenth Amendment. At the time of Declaration of Independence in 1776, It was said that, "All men are born equal and nature has bestowed on them certain rights which cannot be snached from them in any situation." The founding fathers of the American Constitution, Jafferson, Hamilton, Madison etc. were deeply influenced by the views of John Locke and Montesquieu. Locke was of the opinion that 'Rights to life, liberty and property' are natural rights and state has come into existence to protect them. However, the rights of citizens were not included in the American Constitution framed in 1787 and for this reason some states and particularly the Carolina State refused to ratify the Constitution. In this situation, the framers of the Constitution assured different states that soon after the enforcement of Constitution through amendments. To fulfill this promise, soon after the enforcement of the Constitution, First 10 amendments were made in constitution and thus America became the first century to include the rights of citizens in writing in the Constitution.

The rights contained in the **Bill of Rights,** Chief Justice Marshall opined in 1833, bind the national government and not the states. Why were states kept out of their purview? Perhaps because at that time people were confident that they could effectively control the states officials themselves. Their fear was only against the national government. Later, however, this mistake was realized. Today, the rights, which the first ten amendments protect against the national government are frequently claimable against state autorities as well. Thus, in 1925, the Supreme Court ruled in Gitlow v. New York that the **"due process"** clause of the Fourteenth Amendment binds the states to observe the guarantee of freedom of speech contained in the first Amendement.

By 1940, all liberties contained in this amendment were also made applicable to the states under the protection of the Fourteenth. Still then, a number of rights contained in the first ten amendments have not been made a part of the Fourteenth.

2.3.3 NATURE OF RIGHTS INCLUDED IN AMERICAN CONSTITUTION

1. **Limited the powers of Government :** Rights included in the Constitution limit the powers of federal and state government and prohibit the governments from doing certain things. For instance, the Articles concerned with rights begin with these words "Congress shall make no law" that is why some scholars consider these rights to be of negative nature."
2. **Rights are not Absolute :** The Rights included in the American Constitution are not absolute, rather they can be limited keeping in view special circumstances . According to charles **A.Beard**, " Freedom is relative , not absolute."
3. **Rights are Justicable :** Rights are justicable and the citizens can go to the courts for their protection and the courts protect them.
4. **Rights do not discriminate on the basis of Sex :** In America men and women enjoy rights equally. By the 19th amendment to Constitution, it has been provided that the government can not deprive any one of the right to veto on the basis of sex.
5. **Rights based on the principle of Natural Rights :** It has been clarified in the 9th amendment to Constitution of the United States of America that incorporating certain rights in the Constitution does not mean that people enjoy only those rights which have been mentioned in the Constitution. It is clear from this that people can enjoy other rights also, besides those which have been included in the Constitution and which they consider necessary for their development.
6. **Absence of Economic Rights :** American Constitution gives the 'Rights to Property' to the citizen but makes no provision in the Constitution for other economic rights such as the right to work, right to social security etc. That is why many scholars hold that American Constitution protects the interests of capitalists only and in America "Popular sovereignty is property sovereignty."

3.3.4 SELF CHECK EXERCISE

1. Who were the founding fathers of American Constitution?

   _____

2. What are Natural Rights?

   _____

3. Write a short note on the Bill of Rights.

2.3.5 RIGHTS OF AMERICAN CITIZENS

The rights of American citizens can be divided into following headings -

1. **Right to Freedom :** Under First amendment to constitution, citizens enjoy the following freedoms :
   - **(i) Religious Freedom :** According to the Constitution, every American citizen has the freedom to adopt and worship any religion and to set up religious places.
   - **(ii) Freedom of Press and Speech :** Citizens have been given the freedom of expression and thought through newspapers, magazines and speeches. However, keeping in view public security and the interests of the state, the state can limit this freedom.
   - **(iii) Freedom to Assemble Peacefully :** Citizens have the freedom to assemble peacefully and hold meetings.
   - **(iv) Freedom to Petition :** Every American citizen enjoys the freedom to petition to the government.
2. **Right to Keep Arms :** Under the 2nd amendment to the Constitution, citizens have been given the right to keep arms.
3. **Not to post soldiers in the House :** According to the 3rd amendment to the constitution, it has been provided that during peace-time, government would not post soldiers in the houses of the citizens with out their consent.
4. **Prohibition on Unreasonable Search and Seizure :** Under 4th amendment to Constitution, it has been provided that government would not conduct searches of the houses of citizens in an illegal manner and their property would not be seized. Thus, reasonable restrictions have been imposed on the government for protecting the freedom of the individual. Government officials can search the house of a person after obtaining search warrant.
5. **Rights of Alleged Criminals :** Under 6th, 7th 8th amendments to the Constitution, the alleged criminals have following rights :

   Government can not try a person for a big offence without the acceptance of the charges by the jury; (ii) No one can be punished twice for the same offence; (iii) No one can be compelled to depose against himself; (iv) No one can be deprived of his life, liberty or property without the process of law; (v) The concerned criminal in a criminal case can demand open trial by an impartial jury in the district in which the offence was committed; (vi) The concerned criminal can arrange his defence through a competent counsel and can cross examine the prosecution witnesses; (vii) lt would be obligatory

to inform the criminal of the charges levelled against him; (viii) No criminal would be given excessive punishment or made to pay fine more than what is required nor will he be made to furnish big bail bond; and (ix) The cases involving disputed amount exceeding 20 dollars would be tried by the jury.

6. **Right to Property :** 5th amendment to the charter grants rights to property to citizens. Under this it has been provided that no one would be deprived of his right to property without paying compensation. After paying compensation, government can acquire the personal property of a person according to due process of law.

7. **Some other Rights :** It has been provided in the 9th amendment that besides the rights incorporated in the constitution, a citizen can enjoy such other rights as he may consider necessary for his development. Moreover, the following amendments to Constitutions made from time to time grant the following rights to the citizens :

   (i) **13th Amendment :** Under 13th amendment made in 1865, dowry system has been declared illegal.

   (ii) **14th Amendment :** Under 14th amendment made in 1868, every one has been provided equal protection before law.

   (iii) **15th Amendment :** Under 15th amendment of 1870, depriving a person of his right to vote on the basis of race, colour or creed has been prohibited.

   (iv) **19th Amendment :** Women were granted right to vote by 19th amendment done in 1920.

   (v) **26th Amendment :** By 26th amendment of 1970, every American Citizen on attaining the age of 18 years has been given the right to vote without any discrimination.

2.3.6 BILL OF RIGHTS : A SUMMARY

The first ten amendments of the United States Constitution. Bills of rights, sometimes called declarations of rights, are also found in all state constitutions. They contain a listing of the rights a person enjoys that cannot be infringed upon by the government. Many important rights, such as trial by jury and the guarantee of habeas corpus, are stated in other parts of the United States Constitution. All bills of rights contain provisions designed to protect the freedom of expression, the rights of property, and the rights of persons accused of crime. No rights are absolute, however, and all are subject to reasonable regulation through law.

2.3.7 THE U.S. COMPARED WITH OTHER NATIONS : A SUMMARY

Characteristic	How the U.S. is like other nations	How the U.S. Resembels a Few Nations but Differs from Many
Society	Society composed of many different groups with different interests	
Political System	It has a government, which makes and enforces laws	It is a democracy
Executive Branch	It has a chief executive	Presidential system rather than parliamentary system Chief of state and head of gov ernement roles performed by same person President is directly elected through an electoral college
Legislative Branch	It has a national legislature	Both houses of the legislature are directly elected
Judicial Branch	Courts settle civil and criminal disputes	All National judges appointed some state and local judges elected Most courts have power of judicial review
Parties and Elections	It has regular elections	Elections use single member districts and plurality decisions

2.3.8 SUMMARY

So we can conclude that the U.S. Bill of Rights: Freedom of religion, speech, press, Rights to bear arms, Freedom from quartering soldiers without owner's consent, No unreasonable searches and seizures, Trial of civilians only after indictment by a grand jury; no double jeopardy; prohibition against compelled self-incriminationl no deprivation of life, liberty, or property without due process of law; no taking of private property for public use without just compensation, In criminal prosecutions, right to speedy and public trial by an impartial jury; defendant must be informed of the nature and cause of accusations; defendant has power to compel testimony by witnesses in his or her favor; right to assiatance of counsel, Guarantee of trial by jury where the amount in controversy is over twenty dollars, No excessive bail, no excessive fines, no cruel and unusual punishments, Enumeration of certain rights in the Constitution shall not be construed to deny or diminish others retained by the people, Powers not delegated to the national government nor prohibited to the states are reserved to the states or to the people.

The above mentioned rights which have been included in the Constitution make America a democratic country and act as a guide to other countries of the world . After getting inspiration from the American Constitution, various countries of the world have included rights in their Constitutions. Some critics are of the view that although racial discriminations have been abolished in America according to Constitution, yet in actual life, these discrimination still persist and Negroes living in America are even today the victims of discriminations. Besides, the Constitution considers right to property to be superior and thus provides for a Capitalist State where wide economic disparities are found.

2.3.9 KEY WORDS

Natural Rights
American Bill of Rights
Structure
Administrative Efficiency
Legal Mechanism

2.3.10 LONG ANSWER TYPE QUESTIONS

1. Write down main rights included into the Constitution of America.
2. Write down the Nature of the Rights included in American Constitution.

2.3.11 SHORT ANSWER TYPE QUESTIONS

1. What is the status of Economic Rights in America?
2. Write a short note on the Right to Freedom.

2.3.12 SUGGESTED READINGS

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U.S. PRESIDENT

STRUCTURE

2.4.0 OBJECTIVES OF THE LESSON

The main objective of this lesson is to give you an idea about the functioning of USA President. The President of the United States is the most powerful executive a democracy could produce without sacrificing democratic values. In this lesson, the powers, Rights and Duties related to the President of USA will also be discussed.

2.4.1 INTRODUCTION

The office of President has been shaped by the experiences of the various presidents who have held the office during American history. Much has depended upon the presonalities of the individual presidents, their political, economics and social pholosophies, and their conceptions of the office itself. Often, the man and the office have been shaped by temper of his time, quiet and peaceful or hectic and crisis-filled. Some presidents, such as William H. Taft and Calvin Coolidge, have viewed the presidency largely in terms of administration and law enforcement. Others, like Abraham Lincoln, Woodrow Wilson, and the two Roosevelts,

have regarded the presidency as a position that allows and demands strong ledership and the exercise of broad, undefined powers, whenever thay are necessary for the security and well-being of the country. The former group has been labeled as "weak", the latter as "strong" presidents. All indications are that the nation is moving in the direction of stronger executive leadership, toward what has often been called "presidential government."

The President is the creation of the 1789 Constitution. The most powerful and spectacular office in the American constitutional system is occupied by the 'Chief Executive' called the President. A close look at the potentialities of his great office confirms the view that he exercises 'largest amount of authority ever wielded by man in a democracy'. A substantial change has undergone this great, rather the greatest, office over the course of more than a hundred years high-lighting which Hayman has observed that Presidential powers have so much increased that now he is the focus of federal authority and the symbol of national unity.

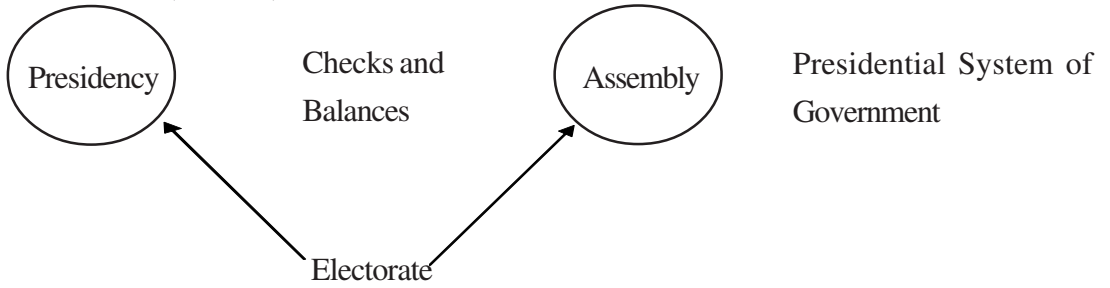
2.4.2 DEFINING THE PRESIDENT

The making of the President is one of the world's most mysterious and complicated transaction in power. No troops mass on election days, no bands play, no clandestine conspiracies gather to strike violence at the political jugular. It is an adventure for which men have planned, plotted and calculated years before the country wakes to their ambitions. It is a pageant re-enacted every four years, in which the most selfless characters in American life play a role. It is a game in which many men can play, but only on can win.

2.4.3 PRESIDENTIAL GOVERNMENT:

A Presidential System of Government is characterized by a constitutional and political separation of powers between the legislative and executive branches of government. Executive powers is thus vested in an independently elected president who is not directly accountable to or removable by the Assembly.

- The Executive and the legislature are separately elected and each is invested with arrange of independent constitutional powers.
- The roles of head of state and head of government are combined in the office of Presidency.
- Executive authority is concentrated in the hands of the president, the cabinet and the Ministers being merely advisors responsible to the president.
- There is a formal separation of the personnel of the legislative and the executive branches. Electoral terms are fixed. The president can neither dissolve, the legislature nor be dismissed by it.



2.4.4 THE PRESIDENT OF THE UNITED STATES IS THE MOST POWERFUL EXECUTIVE HEAD

The executive power is vested in a president, who holds office for four years, and is elected, together with a vice-president chosen for the same term, by electors from each state, equal to the whole number of senators and representatives to which the state may be entitled in the Congress. The President must be a natural-born citizen, resident in the country for 14 years, and at least 35 years old. The presidential election is held every fourth (leap) year on the Tuesday after the first Monday in Nov.

2.4.5 EMOLUMENTS OF THE PRESIDENT

The President salary is $400,000 per year (taxable), with an additional $50,000 to assist in defraying expenses resulting from official duties. Also he may spend up to $100,00 non-taxable for travel and $19,000 for official entertainment. In 1999 the presidential salary was increased for the president taking office in Jan. 2001, having remained at $200,000 a year since 1969.

2.4.6 SELF CHECK EXERCISE

1. What are the financial Powers of the President?

   _____

2. What is the tensure of American President?

   _____

2.4.7 FUNCTIONS AND POWERS

The American Presidency represents a curious mixture of the powers and position enjoyed by an executive potent enough to maintain order and ensure faithful execution of the laws but not so strong as to assume the character of dictatorship. His strong executive authority is circumscribed by the arrangement of checks and balances. His determining voice in the sphere of administration is integrally linked with the checks of legislative and judicial organs of the federal government.The functions and powers of the American President may be discussed under five heads-executive, legislative, financial,

judicial and emergency. These are; In the first place, we refer to the most important powers of the President relating to administration of the country. The Constitution vests in him executive authority. As head of the national administration, he assumes high technical responsibilities in the sphere of enforcement of the fundamental law of the land, laws made by the Congress and decisions given by the courts. He can employ military force to suppress a recalcitrant mob or as State of the American union. However, he has some discretion in determining the degree of vigour or leniency with which a particular law or judicial decision is to be enforced. The Constitution gives him the power to appoint (with the consent of the Senate) ministers, ambassadors, federal judges and many other officers of the United States. The convention of senatorial courtesy has given a lot of free hand to the President in this regard.The Constitution empowers the President to appoint principal officers of the various departments (ministers) with the approval of the Senate and require their opinion in writing upon any subject relating to the duties of their respective offices. Now we turn to legislative powers of the President. Here he plays a quite important part which becomes clear with the view of Potter that the Constitution puts him 'at the beginning and end of the legislative process'. The President is not merely the chief administrator and chief foreign policy-makers and its executor, he is also the chief legislator though in a different way. The most effective weapon in the hands of the President is his veto power. The Constitution requires that all bills passed by the Congress (except constitutional amendment proposals) must be sent to the President for his assent. If the appends his signatures, the bill becomes law and is placed on the statute book. While referring to the judicial powers of the President, we find that he can grant reprieves and pardons for offences against the United States except in cases of impeachment. His authority in this regard does not apply in cases of violations. The financial power of the President covers the area of budget making. Lastly, we refer to the powers of the President during wars and national emergencies. The Constitution makes him the chief of the armed forces called into the service of the United States. He, thus, appoints officers of the armed services (with the ratification of the Senate) but can remove them at his will particularly during war times. The power to declare war lies with the Congress, but he can make a situation in which adoption of a resolution by the Congress becomes inevitable. Presidents like McKinley, Wilson and Roosevelt did so.

He exercises executive powers in the following ways :

1. As Chief Administrator
2. As Commander-in-chief of the Armed forces.

3. As Exponent of Foreign Relations

Lkie all, other, chief executives heads, the President of the United States enjoys the power to grant pardon, reprieve or amnest to all offenders. Convicted for the breach of federal laws except those impeached under state laws. The President appoints the judges of the Supreme Court with the consent of the Senate.

2.4.8 PRESIDENT'S RIGHTS AND DUTIES

He shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them of such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the Unites States.

Keeping all such points in view, Laski has correctly emphasized that the range of President's functions is enormous. He is the ceremonial head of the State. He is a vital source of legislative suggestion. He is the final source of all executive decisions. He is the authoritative exponent of nation's foreign policy.

2.4.9 SUMMARY

The chief executive of the United States and the key offical in the American system of government. The Constitution in Article II vests the complete executive power in the President. The President is elected every four year through the Electoral College machinery, and is eligible under the Twenty-second Amendment for one additional term. His chief official advisers are found in the Executive Office of the President and in the Cabinet. Much of his help in reaching decisions comes from an unofficial and informal "Kitchen Cabinet" of close freiends and advisers. The President exercises a broad array of powers, some provided by the Constitution, some based on custom and tradition, some delegated to him by Congress, and others that are simply inherent in the nature of his office. Foremost are those broad and largely underfined powers that he exercises in his role as chief of foreign policy. These include the leadership of the armed forces, the recognition of foreign states and governments, the conduct of diplomacy, the making of international agreements and treaties with the Senate's approval, the intiation of new foreign programs, and the providing of leadership for the United States and the free world. In his role of chief administrator, the President exercises broad appointing and removal powers, directs and supervises the operations

of the executive branch, directs the formulation of the annual budget, and sees that the laws are faithfully executed. As chief legislator, the President initiaties comprehensive legislative programs, delivers regular and special messages of Congress, summons Congress into special sessions, wields a broad veto power, and influences the course of much legislation in his relations with legislative leaders and by arousing public opinion to support his programs. As chief of his party, the President dispenses patronage, influences the direction and nature of party policies, provides leadership to his party's delegation in both houses of Congress, and generally influences and determines party actions and policies. In his role as chief of state, the President maintains relations with other nation and performs numerous ceremonial functions in the United States, The Prestige of his office contributes much to the effectiveness of the President in his many roles. His easy access to the mass media of communication aids him in molding public opinion. His many sources of information keep him well-informed on the complex problems facing the nation.

In fact, the constitution of USA is presidential in character. This means that the powers which are given to the president are real. There is no difference between theory and practice of his powers. There is no post of prime minister. The executive is not responsible to the legislature as in the case of India or Britain. The USA president and his ministers do not set in the congress. The president is elected for a fixed period and he goes by the calendar and he remains in office for the full term of four years. Similarly, the president does not enjoy the powers of dissolution. He cannot dissolve the congress. The great advantage of the presidential system is that it gives stability to the executive, but the drawback is hat it is not responsible to the legislature.

2.4.10 KEY WORDS

Plural Executive
Singular Executive
High Crime
Veto
Impeachment Motion
Electoral College
Direct Election
Senatorial Courtesy

2.4.11 LONG ANSWER TYPE QUESTIONS

1. The American President is elected for a term of four years and that one person cannot enjoy more than two terms? Give Arguments.
2. True that the American President is far more powerful than the British Monarch, the former is less powerful than the latter in certain other respects?
3. The British Prime Minister is more powerful than the American President in the legislative sphere?

2.4.12 SHORT ANSWER TYPE QUESTIONS

1. What do you mean by Veto Powr?
2. What is the position of American Cabinet?
3. What is Pocket Veto?

2.4.13 SUGGESTED READINGS

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U.S. CONGRESS

STRUCTURE

2.5.0 OBJECTIVES OF THE LESSON

The main objective of the lesson is to give you an idea about the operation of congress in USA. You will also know how the Congress is not a sovereign law-making body like the British Parliament and the Congress works on the principle of separation of powers and checks and balance. In spite, of this its functions and powers, Senate, House of Representatives will also be discussed in this

lesson.

2.5.1 INTRODUCTION

Congress: The legislative power is vested by the Constitution in a Congress, Cosisting of a Senate and House of Respresentative. The legislative organ of the American federal government is known by the name of the Congress. Originally a body of 26 Senators and 65 Representatives, it now consists of 100 and 435 members in the upper and lower chambers respectively. Under the Legislative Reorganization Act of 1946, Congress adjourns no later than the last day of July, under Congress specifically provides otherwise. Under the Constitution, if the two houses of Congress cannot agree on an adjournment day, the President can determine it. This has never occurred.

2.5.2 CONGRESS IN USA

The legislative power is vested by the Constitution in a Congress, Cosisting of a Senate and House of Respresentative. The legislative organ of the American federal government is known by the name of the Congress. Originally a body of 26 Senators and 65 Representatives, it now consists of 100 and 435 members in the upper and lower chambers respectively. In addition to this enlargement of size, a great deal of difference has occurred in other directions as well. The way its two chambers are organized, and, more particularly the manner in which they are influenced by local and regional considerations through the instrumentality of interest groups, has made its proper study a very complex affair. As Woodrow Wilson suggestively adds: “Like a vast picture thronged with figures of equal prominence and crowded with elaborate and obtrusive details, Congress is hard to see satisfactorily; and appreciatively at a single standpoint. Its complicated form and diversified structure confuse the vision and conceal the system which underlies its composition. It is too complex to be understood without an effort, without a careful and systematic process of analysis, consequently very few people do understand it, and its doors are practically shut against the comprehension of the public at large.”

2.5.3 THE AMERICAN SYSTEM OF GOVERNMENT

Including national, state, and local levels- no expenditure of public money can be made unless authorized by law. Thus, Congress, the state legislatures, and local conuncils, commissions, and boards exercise "control over the purse strings"- one of the most important powers of legislative bodies. Because money is needed to implement most new laws, the appropriations committees wield great power in the House and Senate of the Congress, and in the state legislatures. Supplemental appropriations are useful in correcting miscalculations in the budget process, in meeting new problems, and in reacting to changes in public opinion. Deficiency bills typically are enacted later in the budget year to provide funds for ongoing

projects that are threatened by the lack of finacial resources to keep them going. Because federal budgets have become major instruments of fiscal policy for maintaining a healthy economy, supplementary and deficiency appropriations may also be called fro when the economy needs some stimulative action. Continuing appropriations resolutions, on the other hand, must be adopted when the legislative process is stalemated to forestall as imminent breakdown in governmental operations for lack of money.

2.5.4 FEATURES

The organization, working and functions and powers of the Congress reveal following salient features:

1. It is a bi-cameral body having Senate and House of Representatives as the upper and lower chambers respectively. The Senate is organized on the federal principle of equal representation to all units of the Union regardless of their geographical or demographic compositions. Each State sends two members whether it is big like New York or small like Nevada. But the lower house is organized on the principle of territorial representation-on demographic basis with the provision of at least one member from each State. Thus the quota of every State is fixed and the work of allocation of electoral districts is with the States .subject to the over-riding jurisdiction of the Congress and the Supreme Court.
2. Originally the method of the election of the Senator was indirect. But the 17th constitutional amendment of 1913 made a change in this regard to combat the menacing tendency of electoral corruption. As a result, the Senators are now directly elected by the same body of voters in each State as the people choose their Representatives.
3. Each house of the Congress is the judge of the eligibility of its members and may even go to the length of disregarding a constitutional point while allowing or refusing a person to take his seat in either chamber. For instance, in 1806 the Senate admitted Henry Clay of Connecticut when he was below 30 years of age. In 1926 it refused to let Frank L. Smith of Illinois and William S. Yare of Pennsylvania take their seats in the house on the plea that they had spent too much money in their elections. Likewise, the House of Representatives in 1900 excluded Bringham Robert of Utah to take his seat on the charge that he was a polygamist.
4. There is a big gap in the duration of the life of a Senator and a Representative. While the former is elected for a term of six years, the latter for two years. It is true that there is no bar on the times a person may be elected, yet it is clear that the life of a Representative is far too short a period which discourages eminent politicians to have their place in the popular

chamber of the national legislature.

5. While the Founding Fathers wanted the House to act as the barometer of national opinion and the Senate as a body to protect the interests of the component units of the union, the .situation has changed to the extent that the Senate alone has taken upon itself the onus of protecting the interests of the States as well as of the nation as a whole. Obviously, the position of the lower house has been overshadowed to a very large extent.
6. One more direction where the Senate has belied the hopes of the framers of the Constitution lies in the development of a custom called 'Senatorial courtesy'. The Constitution-makers wanted a salutary check on the authority of the President, but over the period of last 200 years or so, the check has developed into a system of organized political blackmail. Everything is determined by the yardstick of political friendship.
7. The two houses of the Congress work without strong party discipline. There are floor leaders belonging to both the parties, but they are no match to the whips of the English Parliament. The members act freely and the passage of a measure requires the support of each other on the basis of temporary alliances or adjustments. This is called log-rolling.
8. The character of the bills moved in the Congress shows that the members (particularly of the lower house) are much guided by local and regional interests for the sake of obliging their constituents with rewards and thereby keeping their electoral prospects high. Due to the usage of locality rule, the members of the popular chamber fight for petty gains (like the opening of some federal office in their constituency) and a legislative benefit secured for their sake goes by the name of 'pork-barrel'.
9. Owing to the absence of strict party discipline, the American Congress works under the influence of pressure groups fighting for their respective interests. While the candidate for Presidentship fights elections on the basis of national and international issues, Senators and Representatives solicit votes on the basis of local and regional matters. Besides, the legislators exist and thrive on the support of organized catalytic groups and they can not frustrate the expectations of their 'masters' in the interest of their own electoral prospects.
10. The Congress is not' a sovereign law-making body like the British Parliament. Its powers of law-making are limited by the terms of the Constitution. Moreover, a bill passed by the Congress is subject to the veto of the President which may be over-ridden when it readopts the same bill by 2/3 majority. However, what can not be overridden is the veto of federal judiciary with Supreme Court at the top. The judges by virtue of their power of judicial

review may declare any law passed by the Congress as *ultra vires* if it is found to be violative of the constitutional provisions or due process of law.

11. The Congress works on the principle of separation of powers and checks and balances. The Constitution has vested legislative authority in it. It has also put it under the control of the President on one side and of the courts on the other. Because of the system of separation of powers, the Congress and the President cannot combine and if there is any such tendency, the Supreme Court is there to undo it.
12. Lobbying is a peculiar American institution. The members of the Congress succumb to the techniques of the professional lobbyists who influence them with threat, inducement and promise to do or not to do a particular thing inside the legislative chamber. It is found that even Congressmen resort to the practice of lobbying for the protection and maintenance of some specific interests.

2.5.5 FUNCTIONS AND POWERS

The Congress has the power to make laws on the following important subjects:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.
2. To borrow money on the credit of the United States; and regulate commerce with foreign nations and among several states.
3. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies.
4. To coin money, regulate the value thereof, and of foreign coin, fix the standards of weights and measures; and to provide for the punishment of counterfeiting the securities and currency coin of the United States.
5. To establish post office and post roads; and to promote the progress of science and useful arts.
6. To constitute tribunals inferior to Supreme Court; and to define and punish piracies and felonies committed on the high seas and offence against the law of nations.
7. To declare war, grant letters of marque and reprisal and make rules concerning captures on land and water; to raise and support armies but no appropriation of money to that use shall be for a longer term than two years; and to provide and maintain a navy.
8. To make rules for government and regulation of the land and naval forces.
9. To provide for calling forth the militia to expedite the laws of the union, suppress insurrections and repel invasions.

10. To provide for organizing, arming and disciplining the militia.

However, this is not at all what comes under the authority of the Congress.

Over a period of more than 200 years, it has gained other powers called 'implied powers' or those powers which can be reasonably inferred or deduced from the powers specifically mentioned in the Constitution, or powers which are necessary and proper for the execution of the delegated powers. Thus, for example, the power to establish federal banks, to create naval and military academies and to construct highways and bridges etc, have come within the scope of Congressional authority by virtue of the doctrine of implied powers laid down by the Supreme Court. It may, however, be kept in mind that implied powers "do not give the federal government a blank cheque to do anything it wishes. If that were true, the system would be unitary rather than federal. Implications be made only from some specifically delegated powers."

However, the Congress has got other powers as well-electoral, constituent, executive, directing, supervisory and judicial and financial.

1. Among its constituent powers, we find that a bill of constitutional amendment must be passed by both the chambers by 2/3 majority of the members present and voting. On a petition submitted by 2/3 States, it shall summon a constitutional convention and lay down rules of its business. The Congress has also developed some powers in this regard whereby it may lay down time-limit within which the States are required to ratify or reject a bill of constitutional amendment.
2. The electoral powers of the Congress are also important. The Constitution lays down that a candidate for Presidency or Vice- Presidency must secure absolute majority of the electoral college, otherwise the mater shall be decided by the Congress. The House of Representatives shall choose one out of the three securing highest number of votes for the Presidency and the Senate' shall choose one out of the two having largest number of votes for Vice-Presidency. But the voting pattern shall be on the basis of 'one State one vote'. Besides, the House elects its own Speaker and the Senate elects its President *pro tempore.*
3. 'The executive powers of the Congress include continuation of all appointments and foreign treaties (made by the President) by the Senate and approval of the proposal of making war and peace by a resolution of both the houses. Both the chambers appoint their own officers and committees. Then, the power-of direction supervision and are directly related. It is resolved by the Congress whether a new department, bureau or commission is to be set up. It may expand agencies, consolidate them or abolish them altogether. In addition, it defines their powers, sanctions

appropriation of funds, authorises the employment of personnel and reviews their work periodically. For example, the Legislative Re-organization Act of 1946, requires Congressional standing committees to exercise continuous vigilance over the execution of laws falling within their respective spheres.

4. The inquisitorial powers of the Congress include appointment of committees to investigate some matters of alleged misappropriation or scandal.
5. We may refer to the judicial powers of the Congress. Both chambers are master of the eligibility' of their members. Even a duly elected member may be disallowed to take his sat in the house on some ground of corruption after a resolution is passed by simple majority. Each house can expel a member if its 2/3 majority so desires. Besides, each house can also make some relaxation the qualifications of candidate for its membership. However, the most important task is the process of impeachment whereby the House of Representatives has power of initiating the charge against the President, Vice-President and other high public officers and the Senate, after hearing both the parties, gives its verdict by its 2/3 majority.
6. In regard to financial matters, the Congress controls the purse of the nation. The Constitution ordains the financial supremacy of the Congress by specifying that no money shall be drawn from the treasury but in consequence of appropriation made by a law. The money bill originates in the House of Representatives and becomes law after it is passed by the Senate: The budget is prepared by a bureau but the President submits it to the Congress and its provisions are implemented after it is passed by the Congress.

2.5.6 CRITICAL APPRECIATION

The fact of decline of the Congress can not be rebutted even by the American writers in view of the salient fact that the leadership of the executive has usurped the inherent powers of the legislature in ever political system whether parliamentary or presidential. So far as the American political system is concerned, the Congress has lost much of its power curiously by playing a co-operative as well as competitive role in relation to the authority of the President. The problem is that it loses itself when it acts in a co-operative spirit and thereby becomes the object of criticism on the ground of being a second fiddle to the operation of the Presidency; likewise, it loses when it takes scuffle with the President as he perforce makes use of some shrewd ways to immunize himself from the control of the federal legislature and that causes the enhancement of the authority of the former at the expense of the powers of the latter. It is too much to talk of the power of impeachment whereby

the Congress may remove a President in as much as the process is too tedious and the Americans may hardly appreciate such an action of the Congress.The American Congress is certainly a weaker organ of the federal government. It is weaker than the President on one side and the Supreme Court on the other. The Senate has developed the convention of courtesy' and thereby given a long rope to the Chief Executive; the Supreme Court has taken advantage of the weapon of judicial review and thereby circumscribed the inherent powers of the representatives of the people. Certain 'notorious' practices (like those of gerrymandering, log-rolling, pork barrel, lobbying etc.) have contributed to the decline of the position of the federal legislature. Emphasis on local and regional interests and discreet role of pressure agencies have' robbed the Congress of its real authority and significance. But despite all these things, the Bicameral plan for Congress is so successful that little consideration is given today to seek departure from it.

2.5.7 SELF CHECK EXERCISE

1. Write any two powers of the Congress.

   _____

2. What are Implied Powers?

   _____

3. How Senator's are Elected?

   _____

2.5.8 THE SENATE

Originally a body of 26 members (when there were 13 States) and now of 100 (as there are 50 States), the Senate is not only the upper house of the American Congress, but in order of importance it comes next to the President. The fact that the Founding Fathers made it coordinate with the House of Representatives (with a minor difference financial matters) and vested in it some more important powers relating to the imposition of check on the executive authority of the President shows that they never desired to keep this body as a mere ornamental chamber. Moreover, the actual exercise of authority by the Senate over a period of last century or so has confined the view of Munro that it is a 'terminological inexactitude' to call it a second chamber. So important a position is now held by the members of this body that a leading political figure prefers to join it instead of acting as the mate of the President or a representative of the lower chamber. That is why, it is believed that the Senators "are somewhat of a different breed of political animal from the average representatives."

2.5.9 ELECTION OF THE SENATE

The senate upper house of the United States Congress is elected by the fifty state

legislatures. Representation in the United States Senate is based on the principle of state equality, and the Constitution specifies that no state may be deprived of its equal representation in the Senate without is consent. The Senate is comprised of one hundred Senators from fifty states. Most state senates have fewer than fifty members. The Vice President is the presiding officer of the Senate; and, in the state legislatures, the lieutenant governor normally presides. In the absence of a presideing officer, a president pro tempore elected from the membership assumes that role.

2.5.10 COMPOSITION

As the Senate acts like the backbone of the American federal system, its composition gives equal representation to each State of the American union. Two members from each State are elected to this body if they have three qualifications- citizenship of the United States with at least 9 years' standing, above 30 years of age, and residence in the State from which they are elected. Besides,-the Senate is the judge of its elections and other qualifications of its members and, as such, it can negative the electoral victory of a candidate in case he has committed grave irregularities or any such lapse amounting to electoral corruption. For instance, it refused to allow F.L. Smith of Illinois and W.S. Yare of Pennsylvania to take their seats in 1926 on the charge that they had spent huge amounts of money in their elections. A resolution passed by the majority of votes is needed for this purpose.

According to the terms of the Constitution, two members are elected from each State regardless of its size and population for a period of six years, 1/3 retiring every second year. The original plan had provided for their indirect election. But the 17thconstitutional amendment of 1913 made a change in order to eradicate electoral corruption. As a result, now Senators are elected by the body of voters in each State in the like manner as they elect their Representatives. In some States, it has become a matter of usage to elect two Senators from two different regions. But as there is no limitation on the number often is a Senator may enjoy, it is easy to understand that a reputed person may have chances more than one and thereby serve even for a period of more than two decades. As required by the 20thconstitutional amendment of 1933, the session of the Senate opens on 3rdJanuary and runs till the end of June or July unless otherwise provided by a resolution passed by the Congress.

2.5.11 U.S. SENATE : AN ASSESSMENT

Many observers regard the Senate as more responsive to national interests than the House because it tends to respond more to the needs of the nation than to local interests. Aside from lawmaking and representational functions,

the Senate is also vested with special powers, including the power to try impeachements and to give advice and consent to treaties and appointments. If no candidate for the vice presidency receives a majority of the electoral vote, the Senate then elects the Vice President from the two candidates with the highest elctoral votes. State senates, too, exercise special powers, such as confirmation of appoinments and trial of impeached officials.

2.5.12 FILIBUSTERING

One thing that makes discussions and deliberations in the Senate as the most striking phenomenon is the use of filibustering or a device of free speaking for any length of time and without any care for the relevancy of expression. It is a device of obstruction exercised by some members of the Senate to prevent the adoption of a measure under consideration, or to obtain certain concessions as the price or reward for allowing its passage. The employment of this technique has become a very profitable business in the hands of professional speakers who squander the time of the house by making irrelevant speeches for no other reason than to caity their opposition to the point of a veto. This happens due to the fact that voting can not be done until speakers are silent. Hence, the group of professional filibusters relays on the basis of prior agreement and the time of the house is wasted by the reading of excerpts from some novel, drama or private correspondence just to create unnecessary humour.

Since filibustering is "a means of preventing the passage of a bill by using long speeches and other parliamentary man oeuvres to prevent it from corning to a vote," one may ask as to what devices are available to the members of the Senate to put a check on this insidious practice. The answer is that they have three options. First, they can simply give in and agree either to drop the bill completely or to strike a compromise with filibustering by accepting certain changes in the bill in return for the end of a filibuster. Second, the supporters of a bill can fight the filibuster and hope to wear out and outlast other. It include~ keeping a quorum of Senators in hand in order to force those filibustering into nearly round the- clock sessions. This tactic, however, works when there are few filibusters, or they are not very serious.

However the most effective way to stop filibustering is to apply closure motion. In 1917, it was decided by the Senate to apply this check if a move initiated by at least 1/6 members was adopted by the house with 2/3 majority of the members present and voting. This agreement was, however, revised in 1949 to mean that 2/3 majority would mean 2/3 of the whole house. It is clear that the revised arrangement made the application of closure motion more difficult, even impossible. The return to the old position in 1959, i.e., 2/3 majority of the members, present

and voting, has softened the position. One thing is, however, clear that the Senators do not want to deprive themselves oftl1e 'great privilege' which is the best safeguard for their political and economic interests. Brogan is of the view that "if the House of Representatives is the most shackled deliberative body ,in the world, the Senate is the freest."

2.5.13 SENATORIAL COURTESY

According to a well-established constitutional convention, Senate is known for showing its courtesy. Senatorial courtesy "is a practice under which an appointment by the President will be confirmed only if approved by the Senator or Senators of his own party from the State concerned." The Constitution requires that an appointment made by the President must by ratified by the Senate. That is, the appointing power of the President is shared by the Senate that may, and also may not, approve the nomination of one whose name is referred to it by the chief executive. However, a convention has developed which requires that before filling a federal post in a particular State, the President should consult the Senator or Senators of the State and obtain his or their consent in this regard. If the President shows' courtesy to the Senator, the appointment is perhaps sure to be approved, otherwise a major opposition launched by the Senator concerned may lead to the rejection of the nomination. The result is that the President "has only half appointing power, the Senate has the rest."

The Vice-President is the presiding officer of the Senate. The Senate elects its President *pro tempore* to act as the presiding officer when the Vice-President is not available for some reason. The office of the President *pro tempore* goes to the man whose name is chosen by the caucus of the majority party in the house. He is a member of the Senate and therefore exercises his right to vote, whereas the Vice-President (not being a member of this body) can do so only to break the tie. However, the chairman of this house has no effective power to control the debate because of the use of filibustering; he can not recognize a member as he has to give him first chance who stands up first. The Senate expects no leadership from its presiding officer and an attempt by a headstrong chairman (like Vice- President Dawes) is sure to be defeated by the resenting house.

2.5.14 FUNCTIONS AND POWERS OF THE SENATE

However, what has made the Senate more than a co-ordinate branch of the American Congress and assigned to it the name of being the most powerful upper chamber in the world is its strong position. A look at its functions and powers shows that the scope of its effective authority pervades every branch of the American government. For the sake of convenience, it is better to classify the effective functions and powers of the Senate under five heads—

executive, legislative, judicial, financial and investigative.

The Founding Fathers vested executive authority of the Union in the President but they empowered the 'Senate to act as a powerful check upon his discretionary authority."[47] Hence, it has been laid down in the Constitution that all appointments and foreign treaties made by the President shall be ratified by the Senate. As a result, a foreign treaty signed by the President cannot be implemented unless it is approved by the Senate by its 2/3 majority. It is true that the Senate normally approves a treaty signed by the President, but a situation may arise in which a treaty negotiated by the chief executive may be rejected as has happened, for example, in the cases of the Treaty of Versailles of 1919 and the Comprehensive Test Ban Treaty of 1996. Likewise, it is needed that all appointments made by the President must be approved by the Senate by simple majority. As a matter of usage, the Senate normally approves appointments made by the President behind which lies the fact of political friendship. Secret adjustments are often in operation and the position of gentlemanly compromise makes the machinery run smoothly. The convention of Senatorial courtesy requires that the President before making a 'minor' appointment of federal officers in a State must have the prior consultation and consent of the Senators from that State and this process of mutual consultation works to the advantage of both the parties. When the Constitution gives first half power to the President and second half to the Senate, naturally both are expected to work in a way that the other does not feel offended.

It is clear that the executive powers of the Senate are not shared by the House of Representatives and thereby these enhance the authority of the former alone. Then, in the legislative sphere as well, the authority of the Senate is no less obviou as compared to' the powers of the lower house of the American Congress. No bill can be deemed to have been passed by the Congress unless it is passed by the Senate after it is adopted by the Representatives. The concurrence of both the Houses is required. In Britain the House of Lords may defeat the passage of a non-money bill once and in case the same bill is passed by the House of Commons after an interval of one year, it over-rides the authority of the House of Lords. That is, the Lords can not defeat the will of the Commons and can do nothing more than a delay of one year if there is a sharp disagreement between the two chambers of the English Parliament. In the United States, the Senate is not a weak chamber like-the House of Lords. An adamant Senate can kill any non-money bill any number of times it likes. In the event of disagreement between the two Houses, the matter has to be settled by a joint conference committee

having equal number of members of the two houses. It is clear, that even in this compromise committee the Senate has no chance of losing at all, rather it has every prospect of having better of the bargain as it is represented by men of greater political skill and superior bargaining capacity.

The House of Lords of Britain is a weak chamber as regards financial business, for it can not defeat a money bill or a budget passed by the lower house. The only power with it is to delay the passage for a period of one month in Britain and 14 days in India. It is surprising to see that the Senate is no less powerful than the House of Representatives even in this direction. The only point of difference lies in the fact that a money bill can not be introduced in the Senate. This restriction is not very effective as there is no limit of time within which the Senate is required to pass. that money bill or budget. Moreover the Senate has power of making necessary amendments in that bill and the financial business can not be taken as passed by the Congress until it has concurrence of both the houses.

Then, the Senate has some judicial powers. It can refuse a duly elected member to sit in the house if a resolution is passed by simple majority to denounce his corrupt practices in the election. It is also a court of impeachment - a legislative trial of public officials. The Constitution lays down that the President, Vice-President and all civil officers of the United States may be removed from office by the process of impeachment on the charges of treason, bribery, or other high crime of misdemeanor. It is provided that the charge shall be initiated by the House of Representatives if a resolution is passed by its majority vote and the decision shall be taken by the Senate by its 2/3 majority. When the Senate acts as the court of impeachment, it is considered the highest court presided over by the Chief Justice of the supreme Court unless the charge is against him and the matter is decided by vote after both parties have their hearings. The only punishment which the Senate can give is immediate removal and future disqualification from holding civil offices under the national government.

In addition to these important functions and powers, the Senate has enhanced its authority by one more significant channel which invests it with the power of making investigations. That is, the Senate is not only a deliberative body exercising executive and judicial powers, it is also an investigating body. However, the exercise of this function has created an instrument of terror in its hand. If a resolution is passed by the Senate calling for investigation into an alleged scandal, the members of the nominated committee are given power of visiting the offices concerned, meeting their staff, checking papers and documents, interviewing witnesses and doing many other things to establish guilt upon the wrongdoers.

SPECIAL POWERS OF THE SENATE

The American Senate is the most powerful second chamber in the world. The framers of the American Constitution gave it not only co-ordinate authority in the legislature, executive and financial matters but conferred upon it certain special powers which are not enjoyed by any second chamber of the world. On account of its special powers the Senate has become "the mot remarkable invention on modern politics." The special powers are as follows.

1. Confirmation of appointments
2. To appoint investigation committees
3. The power to try impeachements
4. The approval of the treaties

An appraisal of legislature, financial, executive and judicial powers of the senate reflects that it is a very powerful upper chamber, in fact the most powerful upper chamber in the world.

2.5.15 CRITICAL APPRECIATION

It demonstrates that the American Senate has got a very important place in the constitutional system which is next to the Chief Executive alone so far as the area of wielding effective authority is concerned. However certain points of criticism may be noted as under:

1. The Senate apart from being the upper chamber of the Congress is a "millionaires' club". It has members drawing support from wealthy magnates who work for the advantage of their masters by posing as the servants of their constituents. Even the arrangement of direct election of the Senators has not served the desired purpose and it is found that with the passage of time and inflationary conditions of the country, it has now become a club of the multi-millionaires.
2. The investigating powers of the Senate developed over a period of years after the first World War have not only created an instrument of terror in the hands of a few powerful leaders of this house, it has in a way undermined the system of separation of powers and checks and balances so masterly devised by the Founding Fathers and so jealously safeguarded by the Supreme Court.
3. The device of filibustering is the most undesirable feature of the process of deliberations in the Senate. As already suggested, it is a mischievous trick in the hands of professional demagogues to coerce the house to bend in response to their intents. It affords nothing but spectacular legislative exploits. It is true that the closure rule is there to check any possible misuse of this old privilege, it is equally true that the revised position of 1949 has made its applicability almost rare, if not wholly impossible.

4. The political role of the Senators smacks both of conservatism and political chicanery. If the Senate has done to disappoint the whishes of the Founding Fathers (as for instance in the sphere of making investigations), it has done something to fullfil their expectations by maintaining a strong defence of constitutional methods and powerful opposition to violent and high-handed opinions and actions.
5. Last, it may be remarked that the American Congress has a reverse tradition of keeping its upper house in a strong position overshadowing the authority of the lower one. When the position of the Senate is contrasted with that of the House, it looks like an upper chamber for technical reasons alone, otherwise it may well claim to be the first chamber of the Congress on the basis of its real prestige and authority.

2.5.16 HOUSE OF REPRESENTATIVES

The lower chamber of the American Congress is known by the name of House of Representatives. It is a national chamber in the sense that it consists of 435 representatives elected directly by the people of 50 States in proportion to their population. Obviously, the organization of the lower house is democratic where units of the American union have their representation on the basis of their population as a result of which big States have greater number of representatives than the smaller ones. The Founding Fathers wanted to organize the Senate on the federal principle and that is why they allotted two seats to every unit irrespective of its area or population. As the leading American writers put: "Intended as the popular branch of Congress, the House of Representatives was made larger and more responsive to the public will than the Senate. The latter, as a deliberative upper chamber, was made smaller and more removed from the popular pressure."

2.5.17 COMPOSITION

The Constitution does not specify the strength of the house. It simply lays down three points in this regard - that the representatives shall be appointed among several States according to their respective numbers, that there shall not be more than one member for every 30,000 people, and 'that every State, shall be entitled to at least one representative regardless of its size or population. Due to this, the appointment of seats became a matter of controversy and revision took palace after every census until the Act of 1929 fixed the total number of representatives at 435 which was then increased to 437 in 1961 with the inclusion of two States in the American union - Alaska and Hawai for... some time. In 1962 the strength of the House was reverted to 435.The Constitution has vested the work of conducting elections in the States as a result of which times, places and manners of holding

elections are prescribed by the laws of the States. But the Congress has the overriding power of making laws which may alter State laws and regulations. It has been clearly provided that no state can make any discrimination in the sphere of suffrage on the grounds of race, colour, sex, or previous condition of servitude. The Congress has passed a law providing that franchise can not be restricted by a State on the basis of non-payment of poll taxes.It follows from the above that it is within the authority of a State government to delimit constituencies which need not be equal, compact and contiguous. This loophole has given birth to a notorious practice called 'Gerrymandering' after the name of Elbridge Gerry of Massachusetts. It means district making on a partisan basis for political reasons. The practice of Gerrymandering signifies an unnatural or arbitrary arrangement of electoral districts for considerations of personal or partisan advantages. It is all done to assure maximum possible chances of winning elections by shaping and reshaping electoral districts in a way that 'doubtful' parts of the constituency are mutilated. Due to the application of this pernicious device, the shape of electoral districts looks like a scorption, serpentine, lizard, shoe-string, Sadie-bell etc. The technique of Gerrymandering signifies that "in districting a State or city, spread the majority of your party all over, or over as many districts as possible. If you have enough votes to control every district, concentrate the strength of your opponents in as for districts as possible, so that it will do them the least good."

2.5.18 QUALIFICATIONS AND TERM OF THE MEMBERS

The Constitution requires that a member of the House of Representatives must have three qualifications - that he must be the citizen of the United States of at least 7 years' standing, that he must be of at least 25 years of age, and that he must not be holding any office under the government of the United States. In addition, it is also needed that he must be the resident the State from which he is elected. A convention has developed to require that the representative must belong to the same Congressional district. This is called the locality rule to close the door for in outsider called 'carpet bagger'. The reason behind it is that only a local man knows the problems of his constituents and is expected to be their genuine representative. In order to fulfil this conventional qualification, leading political figures of the country have their residence or office in several towns of the States so that the constituents may carry conviction in the fact that even after election he "keeps his ear close to the ground - so close, as someone has said, that he gets it full of grass hoppers."

It is provided that in the case of death or resignation of a member of the House of Representatives, the Governor of the State concerned shall call a special election

for the unexpired portion of the term or in special circumstances may nominate someone to represent the constituents. Like Senate, the House of Representatives has the power of disqualifying its duly elected member on a substantial charge. For this a resolution must be' passed by simple majority. For example, it effused to allow a duly elected representative (B.H. Roberts) of Utah to take his seat on the charge that he was a polygamist." The House also adopted, at the same time, a new rule that required the members or officers of the House, their principal assistants, and professional staff members of committees to file with the committee on standards of official conduct each year a report disclosing certain financial interests - which were to be available to the public – and a sealed report on the amount of income from their interests. As under the Senate rules, the sealed report could be opened by the committee only if it so decided that it was essential for an investigation, while the data that might be made public, were extremely limited.

The House of Representative is elected for a term of two years. After every second year, elections take place in the month of November which the Americans call an "off year" in case the Presidential elections do not coincide with the elections of this chamber. The House meets at least once a year. Its regular annual session begins on 3rd January and continues till the end of June or July. Both the houses of 'the Congress hold their meetings separately but simultaneously adjourn their sitting according to the resolution passed by them. But the President may adjourn the session if there is a disagreement between the two on the date and time of adjournment. If circumstances so require, the President may call an extra-ordinary session of the House. A majority of the House is required to constitute its quorum. However, when the quorum is not available, 15 members may compel the attendance of absentees by instructing the Sergeant-at-arms to arrest and bring them to the House in order to keep the running business under transaction.

2.5.19 SUMMARY

Apart from the weaknesses, we can say that the Senate stands not only as the most powerful upper chamber in the world, it is also the most successful political institution of the American constitutional system. It consists of the leading political personalities of the country and acts as a potent check on the executive authority of the President and, as is said in defence of a bi-cameral system, acts as a check on the rash, hasty and ill-considered legislation adopted by the lower chamber. Laski says that the Senate "gives a vivid reality to political democracy in the United States which no other institution as fully or so gladly upplies."

Some critics reject the assertion that the House is the more

representative of the two houses of Congress. They point out that because many representatives ten to stress local interest, the House may be less responsive to national problems than the Senate. Its unwieldy size, and the power vested in the Rules Committee, often make its less able than the Senate to cope with contemporary legislative problems. Nevertheless, the American voter tends to regard his representative as his most direct contant with the national government.

2.5.20 KEY WORDS

Implied Powers
Tribunals
Millionaires Club
Pro Tempore
House of Representatives
Electoral Corruption

2.5.21 LONG ANSWER TYPE QUESTIONS

1. Examine in detail the powers and position of the American Congress.
2. "The American Senate is the most powerful second chamber in the world." Discuss.
3. Give reasons that make the House of Representatives in U.S.A. a weak chamber despite the fact that it is an elected and representative body?
4. Composition and Powers and Position of House of Representations.

2.5.22 SHORT ANSWER TYPE QUESTIONS

1. What do you know about Lobbying?
2. What is Filibustering?
3. What are the Special Powers with the Senate?

2.5.23 Suggested Readings

C.O. Johnson: Government in the United States
J.C. Johri : Comparative Politics

LESSON NO. 2.6 UNIT - II

FEDERAL SYSTEM : NATURE & WORKING

2.6.0 OBJECTIVES OF THE LESSON

This chapter will explore the nature of American federalism and its constitutional structure. As a way of distributing power, federalism raises key questions of representation and responsibility. After reading this chapter you will be able to answer the questions: What groups gain, what groups lose under the division of authority between national and state governments? To what extent does federalism advance or retard the welfare of the whole nation? Federalism also sharpens the elitist-pluralist debate. To what extent does dispersing power among one national, fifty state, and thousands of local governments fulfill the pluralist ideal of a wide distribution of power? To what extent, paradoxically, does it tend to support the elite-theorist charge of an actual concentration of power behind the facade of dispersion.

2.6.1 FEDERALISM

A system of government in which power is divided by a written constitution between a central government and regional or subdivisional governments. Both governments act directly upon the people through their officials and laws. Both are supreme within their proper sphere of authority. Both must consent to constitutional change. By contrast, a “unitary” system of government is

one in which the central government is supreme and in which regional and local government derive their authority from the central government.

2.6.2 CREATIVE FEDERALISM

A term coined by the Johnson Administration during the 1960s emphasizing joint and mutual decision making as the basic for the planning and management of intergovernmental programs. Creative federalism goes beyong cooperative federalism in that in addition to furnishing funds to state and local units, federal officials consult directly with state and local officials in implementing plans and programs. In adiition, creative federalism looks toward the reinvigoration of local responsibility by providing block grants or revenue-sharing programs to state and local units with few, if any, strings attached.

2.6.3 COOPERATIVE FEDERALISM

A concept that views the states and the national government as cooperating partners in the performance of governmental functions rather than as antagonistic competitors for power. The grant-in-aid programs typify this relationship between the national and state government.

2.6.4 CONSTITUTIONAL STRUCTURE OF AMERICAN FEDERALISM

The constitutional framwork of federalism may be stated simply. The national government has only those powers, with one imjportant exception, delegated to it by the Constitution; the states have all the powers not delegated to the United States except those denied to them by the Consitution; but within the scope of its operation, the national government is supreme. Furthermore, some powers are specifically denied to both national and state governments; others are specifically denied only to the states; still others are denied only to the national government.

2.6.5 FEDERAL SYSTEM OF UNITED STATES : NATURE AND WORKING

While discussing the general features of U.S. Constitution in the previous lesson, it was stated that the Constitution establishes a federal polity in the U.S.A. Although even today U.S. System is to be treated as federal, yet, there have been several stresses and strains which have appeared in the American federation. It has changed its earlier nature and character during its working for more than two centuries. We will discuss the nature of American federalism and the changes that have taken place since its birth. The word federation has been used in different senses by the known and popular thinkers.

According to Hamilton “a federation is a union of states creating a new one”. Montesquieu says, “Federal government is a convention by which several similar states agree to become members of a large one.” According to Dicey “A federal state is nothing but a political contrivance intended to reconcile national unity with the maintenance of state rights.” Finer opines that a federal state is one in

which a part of authority and power is vested in the local areas and another part is vested in a central institution deliberately, constituted by an association of the local areas. So it must be clear from these definitions that a federal state is that in which a authority remains divided between the centre and the units. Certain conditions are essential for the formation of a federaton, for example, geographical unity, community of languages, culture etc., equality of units, common social and political institutions and desire for union etc. None of them is, however, essential or absolute. If we have an idea about the basic features constituting a supreme constitution, distribution of powers between the centre and states and the existence of a supreme judiciary. All these features are found in the American federation. There is a written and rigid Constitution which is supreme law of the land. Government power is divided between the Union Government and the state governments. The Constitution provides for a supreme judicial organ to resolve the conflicts between the Union and the states. In addition to this, the states in America, had separate Constitution for themselves. Besides, is dual citizenship in U.S.A. From this, one may infer that U.S.A. is a typical case of federation.

2.6.6 CONSTITUTIONAL BASIS

Distribution of Powers

In order to understand the distribution of powers between the federal government and the states it is essential to note that none of the states was prepared to surrender its sovereignty completely. Union was desired but so was State autonomy. So the chief before the framers of the Constitution was to create a national government powerful enough to encounter the dangers which beset the old Confederation but not so powerful as to be able to crush out the states. They succeeded in this work by assigning large but not unlimited powers to be federal government. Thus they provided that the national government should have sufficient revenue but they did not give it unlimited power of tax. They authorised it to regulate foreign and inter-state commerce, but they prevented it from interfering with commerce within the states. Similarly, they empowered it to maintain armed forces at the same time left each state free to have its own forces. In short, the national government, was given specified and delegate powers. The Constitution was framed on the principle that the federal government would exercise only such powers as were 'enumerated' in it or as could reasonably be inferred from the enumerated powers. The 10th Amendment declares "The Powers not delegated to United States, nor prohibited by it to the States, are reserved to the State for use respectively, or to the people.' The major federal power are enumerated as power government to the Congress, the President and to the Supreme Court. The important among them are to tax, to declare war, to establish interior courts, to raise

army, to maintain navy, to conduct foreign relations and the like subjects of national interest.

The Doctrine of Implied Powers

The Powers of the federal Government have increased enormously since the framing of the Constitution. Today many powers are enjoyed the Federal Government which have not been mentioned in the Constitution. This expansion of federal powers has been possible because of section 8 of Article I of the Constitution which enumerates the powers of Congress and also authorises the Congress to make all laws which shall be "necessary and proper" for caring into execution, the powers, which are specifically given it to by the Constitution or vested in any department or officer of the Government of U.S.A. The "elastic" or "necessary and proper" clause has given rise to extensive controversy over the extent of national authority.

'The strict Constructionalist versus "broad Constructionalist" conflict, over this point, has ranged at several period of history. What unspecified powers reasonably be implied from these specifically delegated was the question. Hamilton and this followers claimed that Congress possessed authority to domain things in addition to the powers explicitly stated. Jefferson and his supports insisted that federal powers should be interpreted by the Constitution and that no authority could be exercised unless specifically delegated. Thus the "broad constructionalists' have used the clause "necessary and proper" for their execution within the jurisdiction of the federal government. The Supreme Court which has interpreted the terms of the Constitution so as to define the limits of federal jurisdiction has swung between the extremely broad construction of Justice Marshal and the extremely strict construction of Justice Tawny. The net result of the Supreme Court interpretation has been to extend considerably the jurisdiction of federal authority. Inspite of the above fact we must remember that the federal government can only exercise specifically delegated powers and such other powers as may reasonably be inferred from them. Ogg and Ray truly remark that "President, Congress and the Courts have no proper authority except such as can be found some where within the four corners of the Constitution.

2.6.7 THE CONSTITUTIONAL POSITION OF THE STATES

The powers of the states are also derived from the Constitution, which reserves to them all powers not granted to the national government subject only to the limitations of the Constitution. Of course, states may not use their reserved powers to frustrate national policies. The Constitution, as we have noted, contains certain explicit limitations upon state power in behalf of individual liberties. In addition, it forbids the states to make treaties, impair the obligation of contracts, coin money, and pass bills of attainder or ex post facto laws. States may not, except with the consent of

Congress, collect duties on exports or imports or make compacts with another state.

So far as the powers of the States are concerned they possess an indefinite grant of the remaining powers that are not given to the Federal government nor prohibited to the states. The sweeping nature of this authority is indicated in the language of the 10th amendment. Thus, while the powers of the federal government are delegated and specified, those of the states are original and reserved. It must not be concluded, however, that the states enjoy unlimited powers. The states, are in fact, forbidden to do many things e.g. to make treaties, to make other than gold and silver, legal tenders to grant title of nobility or to tax imports or exports.

Being residual in nature, state powers are broader than those of the Federal government. The states are assumed to have authority to do anything that is not prohibited in Federal or State Constitutions. The important powers exercised by the states are regulation of trade within the states, the police power, education, civil and criminal law, control of the local government organisation and control of corporations taxation for local purpose and borrowing of the state's credit Concurrent Powers. All government power, however, cannot be classified exclusively into federal or state categories. Some powers are shared jointly by the two levels of government. Those powers are usually called "concurrent powers". Thus, both state and federal governments tax and borrow, establish and maintain courts, standards of weight, measures, take property for public purpose and spend money to provide for general welfare.

Ever since the establishment of the American federation, the powers of the government have greatly increased. This, however, has not limited the field of jurisdiction. There has been an increase in the power of states also that the original balance between the states and federal government has not been seriously upset. We may not briefly analyse the place of the states in the American Federal System. We must remember that in forming the union, the states surrendered only a part of their sovereignty and that they wanted to retain their sovereign entity. The states are supreme within their own sphere. Except for the powers delegated to the union or those which may be reasonably inferred from them or those which are specifically, forbidden to them, the states are free to exercise all residual authority without federal control. This, however, does not mean that a state is free to secede from the union on its own initiative. The Supreme Court declared in 1869 in Taxes Versus White case that the U.S.A. is "an indestructible union of indestructible states."

All the 50 states in the U.S.A. are legally equal despite the diversities in size, economic position and population etc. All have the same obligations towards

the Federal Government and the Federal Government has the same obligation towards all the states. Congress can, however, impose special limitations at the time of admitting new states to the Union. The legal equality of all the states is also clear from the fact that all states have equal representation in the Senate despite great differences of size, wealth and population etc. To give protection to the position of the states in the federal system, the Constitution imposes certain obligation on the federal government. Firstly, the federal government is required to respect the geographical unity and territorial integrity of the states. Secondly, the Constitution requires that the federal government "shall guarantee to every state in this union a Republican form of government". Thirdly, Article IV, section 4 of the Constitution, requires, the federal government, to "protect each of them against invasion, and on application of the legislature or of the Executive, against domestic violence." In case of an invasion the federal government intervenes without waiting for a request from the state. In case of internal violence, it intervenes only when requested to do so by the state concerned. Having discussed the obligations of the Federal government towards the states, now let us see if the states have also got some obligations towards the Federal government. Negatively they are forbidden by the Constitution to do a number of the things which may infringe the prescribed jurisdiction of the Federal Government. Positively, the states are obliged to conduct election to federal officers. Presidential electors are chosen in each state in the manner prescribed by the concerned state legislature. Senators are elected directly by the people in each state. Members of the House of Representatives are elected in each state. Finally, the states are required to play their role in the process of Constitutional amendments.

2.6.8 SELF CHECK EXERCISE

1. What is the difference between Creative Federalism and Co-operative Federalism?

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2. What is the place of States in American Federal System?

   _____

2.6.9 FACTORS LEADING TOWARDS CENTRALISATION IN U.S.A.

There are a number of factors which are responsible for the growth of national power and the element of centralisation in the American Federal System. The first among these has been the change in the country's physical, economic and social setting. The expansion of territory, the growth of the population, the increasing complexity of economic and social organisation have contributed a lot to the gradual march of power to Washington. The territory of the Unite States was

being expanded by the inclusion of new states. By 1860 the number of states had grown from 13 to 50 and the present boundaries of the United States were defined by 1853. The vast development of communications and commerce, great technological advances created problems which the states failed to regulate and control. Thus step by step the national government got control over what the states could not do and consequently the powers of the national government went on expanding.

It was during the great economic slump, when there were loud cries for help from distressed citizens and local governments, that the federal power grew immensely. The two great world wars also constituted to it. The budget expenditure of the federal government grew from less than 5,000 million dollars in 1931-32 to 75,000 million dollars in 1953. This tremendous increase in national expenditure is due to America's becoming a welfare state and her role, it has come to play in world politics. The power to tax incomes which led to a great change in centre state relations. The national government has started giving grants-in-aid to state and local government which has enabled it to exercise greater control over them.

It may be noted the high degree of centralization which characteristics the American federal system today would not have been possible without the very great degree of centralization achieved in industrial sphere. Large scale and highly centralised industry invites and necessitates a greater degree of government control than rural agricultural economy. The policy of 'laissez faire' had to be modified by the government. It had to assume a large degree of control over production. The Central Government is constitutionally, authorised to wage war. The problem of common defence today is entirely different from what it was in 1787. No country can afford to wait for defense until war is declared. It must always to ready ward off the probabilities of war and to win, if it actually comes. In brief the national government has the power to wage war and wage it successfully. In total war, it means total power. And it can only be possible when the power is fully centralised. The modern atomic age has made centralisation all the more necessary.

"The Civil War of 1761-65 was a milestone in the constitutional history of the U.S.A." says Potter. It decided the issue of nation-state relations in favour of the primacy of the national integrated nation, with the result that matters which were once of a 'local' nature become more 'national' in scope and importance. Griffith aptly points out in The American System of Government' that "the broad acts of the President and Congress, in carrying on the war and in the reconstruction that followed, left a heritage of expanded, federal powers, never subsequently to be surrendered."

The impact of international situation has also strengthened the tendency toward centralisation in the American federal structure. The end of the Second

World War has bought the United States in the very centre of the international scene where it has assumed the role of leadership of one of two mighty power blocs. In such a situation, with the emphasis on military preparedness, the tightening of central authority is unavoidable, because in this ways alone can the entire resources of the country be moblised for meeting emergencies, "The most obvious giant, pushing up towards the centre" says L.D. White, "is the Russian Bear" "Cold War" means continual crises and crises always compel centralisation.

The most powerful factor in expanding the power of the national government has been the role played by the Supreme Court which has interpreted Constitution in such a way that the authority of the federal government, the final word in the interpretation of the Constitution has been spoken by the federal government itself. Article I, section 8 of the Constitution authorises the Congress to make all the laws which shall be necessary and proper of crying into execution, its constructional obligations. 'The Supreme Court has taken advantage of the limits laid down in the Constitution. For example, in the opinion of the Supreme Court, the power of the Congress to regulate strikes in the steel industry and rail-road is "necessary and proper" to enable Congress to carry out its Constitutional obligation to regulate inter-state commerce. The Supreme Court has interpreted very liberally the "commerce" and the "general welfare" clauses in the American Constitution. This had resulted in a steady, shift of power to the federal government. Thus the doctrine of "implied powers" had been employed as a mighty lever for expanding the authority of the federal Government.

In view, of these tendencies towards centralisation of authority, writers like R. Drummond have remarked "our federal system no longer exists and has no more chance of being brought back into existence than an apple pie can be put back on the apple tree." The Supreme Court does not impose any limitations on the national government. It can, therefore, use the right of the state easily. The actions of the States are not free even in the field of jurisdiction that has been constitutionally demarcated for them because the federal government exercises control over them through conditional grants-in-aid.

However, it would be wrong to conclude that American federalism "no longer exists". Doubtless the powers of the federal government have grown enormously, and the federal government has tried to invade the field of the states so many and the federal times. Yet, it cannot be conceded that American federalism is dead. When we compare it with other federations of the world like the Swiss, the Canadian, the Australian and the Indian, we find that American presents the most ideal federalism. It provides for a dual citizenship and a double set of a constitutions which we

in India don't possess. It is free from the unitary bias existing in Indian federal system. It ensures the exercise of all residuary powers to the states, whereas in India, they belong to centre. Thus we find that American federalism is still the best in the world.

U.S.A. has now entered the era of cooperative federalism, the states and the federal government working together in various sectors of action with the federal government exercising powers of guidance, control and supervision. The states have not been "finished". In fact, it is impossible for them to exercise "exclusive" jurisdiction even in the most rational state functions.

No doubt, the states have lost a part of their authority but at the same time they have developed their own reserved powers. They still enjoy autonomy to a large measure. They are still important partner in the American federation. U. S. is a vast country with great physical, racial and economic diversities which dictate the necessity of the states as self sustaining units of government. The continued existence of the states as autonomous units in the American federation is also ascribed to the psychological reason that there are strong emotional ties binding the affections and loyalties of citizens of their states. The Congress set up a Commission on inter-governments relations to study the national state-local relations. Its report published in 1955 marks a milestone m the evolution of American Federalism. It found the American federal system an asset and not a liability, and preferred the existing balance between the center and state governments.

It is thus clear that both decentralising and centralising tendencies have been operative in the history of American federalism. Centralising tendencies, however, have been more powerful than decentralising tendencies as has been found in every democratic country.

2.6.10 SUMMARY

If one wishes to speak precisely and technically, Congress has no general grant of authority to do whatever it thinks necesary and proper in order to promote the general welfare or to preserve domestic tranquillity. And as recently as the Great Depression of the 1930s, consititutional scholars and Supreme Court justices seriously debated whether Congress could enact legislation dealing with agriculture, labor, education, housing and welfare. Only a decade or so ago, there were constitutional questions about the authority of Congress to legislate against racial discrimination. But as a result of the emergence of a national economy, the growth of national demands on Washington, and a world in which total war could destroy us in a matter of minutes, our constitutional system has evolved to the point where the national government has ample constitutional authority to deal with any national or international problem. Federalism, in short, no longer imposes constitutional

restraints on the power of Congress, or the President, or the federal courts. Today constitutional restraints on national power stem from provisions that protect the liberties of the people rather than from those relating to the powers of the individual state governments. Still, the distribution of governmental authority between the national and state governments is of great significance. For despite the growth of national authority, federalism is very much alive and the states are vital and active governments.

In this lesson we have studied the federal features in the U.S. Constitution. We have noted that American federation came into existence as a result of a contract among some states. The states which were keen to become members of this federation did not want to surrender their sovereignty and they did not want to lose their independent existence. because of these reasons the Federal government was provided with limited powers. But with the passage of time, the position changed. Through many sources, federal government become more powerful, and powerful to such an extent, that many critics alleged that federalism has disappeared for America. But this is not a correct estimation. The States of American federation enjoy much independence and their existence is as safe as it was in the beginning. When all is said and done, however, perhaps the most important single point to note about the nature of American federalism is made in Article VI of the Constittution. The Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutional or Laws of any State to the Contrary not with Standing. Thus, to the extent that the American federal system is a competition between the national government and the states, the chief umpire is a member of one of the two competing teams.

2.6.11 KEY WORDS

Division of Authority
Cooperative Federalism
Creative Federalism
Concurrent Powers
Centralization
Law of the Land

2.6.12 LONG ANSWER TYPE QUESTIONS

1. Discuss the working of Federal system in America.
2. What are the sailent features of the American Federal System?
3. Write a detailed note on the factors leading towards Centralization in USA.

2.6.13 SHORT ANSWER TYPE QUESTIONS

1. What do you mean by Federalism?
2. How the distribution of subjects has been made under American Constitution?

2.6.14 SUGGESTED READINGS

A.C. Kapoor : Selected Constitutions
J.C. Johri : Major Modern Political System
C.O. Johnson : Government in the United States

PARTY SYSTEM IN U.S.A. AND U.K.

STRUCTURE

2.7.0 OBJECTIVES OF THE LESSON

The main objective of this lesson is to give you an idea about the working of party system in USA and UK. You will also know how the emergence of party system in the United States and UK is a matter of extra-constitutional growth. By understanding the working of parties in these two countries, you will be able to appreciate how policies are determined and governments are carried on.

2.7.1 INTRODUCTION

The party system of the United States and the United Kingdom resemble in a few but differ in many respects. First, we take up the case of some points of resemblance. In the first place, both countries are well-known for having a bi-party system. The Conservative and the Labour parties in England and the Democrats and the Republicans in the United States are the examples of the two major parties. Moreover, while some other or minor parties exist in both the countries, they have no real significance as the alternation of power invariably takes place between the two leading parties. One may say that, is rather a superficial point as the very nature of the American party system is basically different from that of the United Kingdom. Second, party system in both countries is a matter of extra-constitutional growth. Political parties have no place in the written parts of the constitutions of the two countries under reference. The evolution of party system in both countries is a matter of conventional development.

Like Britain, the emergence of party system in the United States is a matter of extra-constitutional growth. As already pointed out, it has belied the sincere expectations of those founding fathers who had deliberately sought to envisage a framework of government which, as Madison said, would be free from the 'violence of the faction.' In spite of the solemn warning issued by the greatest leader of the nascent American nation (Washington) against the sinister role of political parties, the growth or party system occurred gradually but incessantly. His successors took note of the same 'pernicious' development and Jefferson in his farewell address had to observe that political parties "are likely, in the course of time and things, to become potent energies by which cunning, ambitious and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government." "The inevitability could not be undone" and, as Munro says, the calls for a party less politics "fell on deaf ears."[60] So much so that by the middle of the nineteenth century, party system became a recognized fact of the American political life. It is well observed: "The American party system consists of two major elements, each of which performs in specified ways or follows customary behaviour pattern in the total system. To remove or alter the role of one element would destroy the system or create new one."

2.7.2 GENERAL FEATURES

Since the party system of every country has some special features of its own, the salient characteristics of the American party system may be enumerated as under:

1. America is known for having a bi-party system. The Democrats and the Republicans are the two major parties and the power alternates between them. In a strict sense, America may be described as having a multi-party system as there have been several 'minor' parties, though their value is equal to nothing as they have never been able to make a tilt in the distribution of power.
2. The American parties lack the essential ingredient of what is meant by the 'party' in other democratic countries of the world. The element of ideology is missing. The two parties differ on issues as they are, not on the lines of ideological commitments.
3. The American parties may be described as federations of specific interests. The absence of the ideological factor has made them like coalitions of interests. Leading American writers admit that no political association can be more than their Democratic Party and the Republicans, for all their sterner commitments to principle and respectability are very much less of an army with a hundred different banners. Both parties are happily described as a vast enterprise in 'group diplomacy'.
4. The structure of the American political parties is marked by decentralization of authority and consequent enfeebling of discipline to an exaggerated degree. Both parties may be regarded as loose confederacies of States parties since the locus of power is not there at the Centre. Each party has its units at the Centre and below, i.e., at the State and local levels where its unit looks like an independent, self-sustaining, sovereign force in the balance of political forces.
5. The American party system not only exhibits the total absence of what is ill-named as 'bossism', it also shows that both parties pick up candidates for the Presidency or important seats in the

Senate from amongst those who have never held their membership. That is, each party may go for the rank 'outsiders' in matters of nominations for the top elective posts.

In fine, the American party system displays "more pluribus (plurality) than unuum (uniformity)." It would not be wrong to say that the structure of each American party smacks of a peculiar brand of feudalism "with few enforceable pledges of faith, feudalism in which the bonds of mutual support are also loose that it often seems to border on anarchy, feudalism in which one party does not even have a king."[63] Absence of Ideology: The absence of ideology and its presence in a different sense in the American party system is certainly a surprising feature having no comparison with its British counterpart. An analysis of voting behaviour in the Congress reveals that there is hardly a single issue that brings about a clear-cut division between the two parties and a sizable proportion of their members is invariably found on each side of the controversy. Herman Finer goes to the extent of saying that in America there is only one political party - Republican-cum-Democratic Party - divided into two nearly equal halves by habits and the contest for office. In the earlier days of the Constitution the division appeared more clear but with the passage of time, it blurred so much so that Lord James Bryce in his scholarly study could maintain that the great parties of America were like two bottles of liquor each having a different label but no wine.

Much change in this regard has also occurred owing to quick progress of the country in the economic sphere. Now the factors of economics, if regionalism are so inextricably intermixed with each that the basic elements of 'agriculture' v. 'industry', or the menacing features of 'solid north' v. 'solid south' no longer figure prominently. Each party, as says Brogan, is basically traditional marked off from its rival, not by any doctrine or class but by ancestry and geographical distribution of strength. Leading American writers endorse that no party "ever enlisted the undivided support of any entire economic interest or group or geographical section." Laski has put his impression in these words that the American party system "is more like a bloc of interests than a system ofprinciples." It may be easily found that both parties "are interested in the votes of men, not in the principles, and they care not at all whether the votes they father are bestowed with passion or with indifference - so long as they are bestowed and counted. The task that they have uppermost in mind is the construction of a victorious majority and in a country as large and diverse as ours this calls for programmes and candidates having as nearly universal an appeal as the imperatives of politics will permit."

2.7.3 U.S.A. PARTY MACHINERY AND HOW IT RUNS

Neither of the two major American parties requires ideological conformity as a requirement for participation. In an authoritarian state, a single party, typically requiring rigid adherence to its ideological dogma, is used to develop policies and run the government through dual-party and governmental leadership positions. In multiparty democratic states, in which each party can compete for a share of political power, individuals join the party that best promotes their economic and social interests. Political parties in the United States : (1) stimulate interest in the political process; (2) publicize political issues; (3) recruit candidates and carry on national, state, and local campaingns; (4) raise finances for political activity; (5) help maintain the honesty of elections; (6) take responsibility for operating the machinery of government or providing an oranized opposition; (7) mobilize mass political power to control elite groups; (8) help to manage confict; and (9) contribute to the building of

intersectional and interclass consensuses.

2.7.4 AMERICAN PARTIES AND PLURALIST DEMOCRACY

American political parties are an essential part of American democracy; they do the jobs that have to be done in nay healthy system of representative government. They build a bridge between people and their government. They shore up national unity by brining confilicting interests into harmony. They soften the impact of the extermists on both sides. They stimulate and channel public discussion. They find candidates for the voters and voters for the candidates. They help run elections. Parties shoulder much of the hard, day-to-day work of democracy. Yet today our party system is under attack, expecially from elite-theorists who charge that both major parties represent a consensus of elitist interests and do not give the people a real choice.

2.7.5 PARTY SYSTEM AT WORK

We have seen that the American party system lacks the essential traits of a responsible party system finding their place in a party's adopting a reasonably clear programme and having some centralized authority to exercise effective control over all subordinate units. Though either of the two parties wins national elections relating to the offices of the President, the Senators and the Representatives, it is difficult to say as to what mandate is with it. One may draw some broad points from the survey of important utterances made by the candidates during the time of election campaigns, but a thing like voters' mandate is either missing altogether or it is too general, even vague, not explicit. And yet the working of the American party system shows that they perform, though with uneven success, on account of this fact that they are only one of the several forces working towards co-ordination in the government.

A study of the American party system in its operational dimension reveals that they are very active at the time of the elections of the President, the Senators and the Representatives. It does not mean that they are out of work after the election business is over. Their prominent role can be understood when the session of the Congress starts. Matters relating to the election of the Speaker, formation of the committees and the election of their chairmen, introduction of bills and debates thereon etc, are all conducted on party lines. The appointments made by the President are governed by party consideration, so is with their ratification by Senate. The result is that the highest bureaucrats of the country are usually of the same party as the President aids in communication and co-ordination. The members of the President's party in the Congress form a natural starting point for his attempts to influence the Congress and, for this reason, are called "President's friends". In this way, the party 'helps to bind the disparate formal institutions of the political system together."

Since the American constitutional system is based on the principle of separation of powers, decision-making agencies are different and also disparate. The parties play the role of a co-ordinator. At the same time, the supplementary structure of checks and balances enables them to establish a sort of interlinking bond between different organs of the department. Thus, we find that President no~ being a member of the Congress manages to influence the legislative behaviour. It also happens that while the Presidency is captured by one party, the Congress by another. In such a situation there occurs the 'deadlock of democracy.' And yet it is the loose party system of the United States that acts as

the resolve of conflicts. One may ask as to how does it happen? The answer is that often persons "jump the party tracks and work at cross-purposes with their fellow party member. This occurs within the Congress, within the bureaucracy, between the Congress and the President, between the President and the bureaucracy, and on and on." The Republican Party and Democratic Party in U.S.A., are little fundamental ideological differences between the two parties in America. Both upheld capitalism and regulated free enterprise.

2.7.6 CRITICAL APPRECIATION

The points of difference between the American and British party systems are vital. In the first place, while British party system stands on the basis of the principles or a definite ideology, there is nothing like it in the case of the American party system. American parties have never been bodies of men united on some general principles into concrete form by legislation and by administration. It is considered wise to begin by accepting the fact that the emptiness of the names of the two great American parties may be significant, not of the emptiness of the role of parties, but of the fact that they cannot be understood, if they are judged in European, or more strictly British, term.

British party system, like the constitution itself, has an evolved character. As such, the history of its origin and growth dates back to the early phase of the modern period when two conditions contributed to the evolution of the party system, namely, the movement that the Parliament should become a legislative body in all its essentials with its rights fully established and that there should be political issues of a broad and deep character on which the people may combine themselves in group. The rise of the political parties may combine themselves in group. The rise of the political parties became natural after the Restoration Movement (1660) when in 1679 a conflict developed over the passage of the Exclusion Bill. This bill was designed to forestall the succession of James II as the King of England after the death of Charles II. When the line of cleavages grew very sharp, the monarch (Charles II) dissolved the Parliament. Soon after, the supporters of the bill strongly petitioned of the calling of another Parliament and thus they came to be known as 'Petitioners', while their opponents became the 'Abhorers'. In due course, the former became the Whigs and the latter the Tories.

Liberals started thereafter a remarkable development took place at this stage that resulted in the establishment of the third party, called the Labour party in 1920. It consisted of the representatives of several labour unions. In due course, the Liberal party declined and its place was taken by the Labour making Britain once again the example of a bi-party system. The Labour Party had first change to be in power in 1929 when Ramsay MacDonald was appointed as the Prime Minister.

2.7.7 SELF CHECK EXERCISE

1. Write any two features of Party System in America.

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2. Name any two Political Parties of America.

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2.7.8 MAIN CHARACTERISTICS OF PARTY SYSTEM IN ENGLAND

The party system of Britain has its own characteristics that may be discussed briefly as

under:

1. Britain affords the brilliant case of a two-party system. Once there were two factions called 'Petitioners' and 'Abhorers'; then they became 'Whigs' and 'Tories'; the Whigs were replaced by the 'Labour' with the result that the country came to have two parties known as 'Conservative' and 'Labour'. In a wider sense, the party system of Britain does not rule out the existence of other or 'third' parties. Even now there are some small organisations like Scottish Nationalists in Scotland and Plaid Cymru in. Wales. However, what entitles Britain for being a model of bi-party system is that only two major political parties playa detennining part in the mechanism of representative government. Power alternates between the two parties.
2. Quite misleading are the names of the major political parties of Britain. While the Conservatives have not invariably been opposed to change tooth and nail, the Liberals and now the Labourites have also not been propagating reforms vigorously. Within the ranks of both there have been many shades of opinion. The only point that may be added by way of generalisation is that the persons of a conservative temperament have by tradition gravitated to the Tory (Conservative) party, while men of a liberal disposition have done the some first for the Whig and now for the Labour party.
3. The two parties of Britain have their sharp ideological distinctions despite the fact that both have no faith in the doctrine of scientific socialism. While the Conservative party stands for the protection and promotion of the interests of the affluent class having control over the means of production and 'distribution, the Labour Party does the same by and large for the class of the workers. Moreover, while the Conservative party stands for the survival of British imperial dignity and for this reason strives for the retention of British hold over the poor and backward parts of the world, the Labour Party desires peace and liquidation of capitalism in the national and of colonialism in the international spheres.
4. A very important feature of British political parties should be traced in their being well-organised and disciplined and by virtue of that in their enjoying a hard core of electoral support. There is rigorous discipline due to which political maladies like cross-voting and floorcrossing are uncommon. The well-organised and highly disciplined character of the party system has made the working of cabinet system not only successful but an ideal for other countries to follow and to emulate.
5. British political parties have their full and unflinching faith in using democratic and constitutional means to realize their aims and objectives. It is time to this that events of violent manifestations do not occur :n this country the like of which we may find in a country like Franc. Influencing the electorate by means of publications, speer-hes and sometimes by strikes done by the labour organisations are the principal ways by which political parties take part in the political process of the country. Any attempt to make use of violence or undemocratic action is carefully avoided. The result is that the two major parties remain like well-organised bodies and act in a way that gives stability as well as strength of the cabinet system of government.

2.7.9 CONSERVATIVE PARTY

As stated above, the Conservative party has never been a body of thoroughly superstitious men. Its name hardly denotes its essential nature. As such, instead of calling it an organization of the opponents of reform, democracy and social justice, it would be more appropriate to describe it as a body of those who obdurately value their traditions and precedents and desire change at a very slow pace as far as possible. Under the leadership of men like Peel and Disraeli, for instance, it showed its 'militantly progressive' orientation. Hence, no one, as says a leading American writer, with a knowledge of English political history, "would contend that it has always been the party of reaction, or of obstruction to progress." No if ally, the Conservatives oppose change or reform, but they accept it willy-nilly when they have to do it. One of their leaders once rightly said that they are 'cautious and circumspect reformers.

What deserves attention at this stage is that the Leader occupies a very important position. He is appointed for an indefinite period as there is no provision for annual election, though he lives under strict supervision of his party MPs and he may be forced to quit in case he conupits a serious lapse. If the party gets clear majority, he becomes the Prime Minister, if the party is in the opposition, he selects his 'shadow cabinet'. Whips are appointed by him. His authority is by no means absolute in as much as the committee of the backbenchers (1922 Committee as it is called) may impeach him for his acts of commission or omission and thereby force him to take a different line of action.

Let us now look into the factor of ideology. As already pointed out, this party stands for broad principles that may be enumerated as under:

1. It believes that the nation is sustained by the existence of different social classes playing their part on the basis of merit. Ability and not accidents of wealth or birth should be the guiding consideration. No class should be favoured over or against another.
2. Freedom is the *sine qua non* of human life and its progress. Stress should be laid on the significance of free enterprise. The wider the choice, the greater scope for the development of self-reliance.
3. State activity in the economic sphere should be limited. There should be no attempt in the direction of nationalization of private industries until it is wan-anted by the exigencies of the situation.
4. National institutions should be protected and honoured. As such, due respect should be given to the honour and greatness of the monarchy and the House of Lords.
5. British imperial interests should be safeguarded. Britain should play an effective role in the European Union for maintaining her political and economic power and prestige.

2.7.10 LABOUR PARTY

The Labour Party is a more socially representative organization. It draws strength mainly from the middle class intelligentsia and manual workers. Its members are of four main categories: 'professions' (like university and college teachers), 'minor professions' (like journalists, organizers, public lecturers, insurance salesmen), small businessmen (like shopkeepers. accountants and executives) and 'working class occupations' (like labourers, artisans, clerks, etc.). In the main, the composition of the party is dominated by the 'professions' and 'workers' . The members of this party are of two

types –individual (belonging to a constituency branch) and indirect (belonging to an affiliated trade union or Socialist Society). Individual members are required to pass an eligibility test of not being a member of any other party or ancillary organisation. No such test is required for affiliated members, and some of these can not even be classed as party sympathisers. Officers at local and national level must be individual members of the party.

The Labour Party is committed to the doctrine of democratic socialism. Different from the socialist parties of the European countries, it has a socialism of its own based on the doctrine of Fabianism. The writings of such thinkers as Morris, Shaw, Cole and Tawney have helped furnish a native socialist tradition more influential than imported continental ideas. On the other hand, such writers reflect be mood and the spirit of British socialism; they rarely mould it. The party's policies and aspirations seem to be determined far more by prevalent political circumstances than by the pre-conceived philosophies. For this reason, the socialism of the Labour Party is fundamentally at variance with that of Marx. Its commitment to the principle of "common ownership of the means of production, distribution and exchange" did become a hot gospel for stalwarts, but party policy was never subsequently moulded in such a way that wholesale nationalisation could be a real possibility. "The Labour Party's brand of socialism has been tempered by the exercise of power. The chief aim has become the establishment of a Labour government rather than the bringing about of socialism."

The broad principles on which the Labour Party stands may be described as follows:"

1. Man is inherently good and that institutions and societies are mostly to blame for making him behave badly and live miserably. Democracy, therefore, should be extended from the sphere of politics to that of economics and society.
2. It follows that scramble for private profit should be substituted by co-operative fellowship. Private firms and economic enterprises should be brought under social ownership and control. Key industries should be nationalised, the rest democratised.
3. It stands for the establishment of a welfare state so that private economy is placed under the regulation of social control. Social welfare services are performed by the State.
4. It desires that national institutions conform to the establishment of genuine democracy. As such, the privileges of the Lords should go.
5. There should be collective co-operation among the nations of the world. The United Nations should be strengthened so that there is peace in the world. Dependent peoples of the world should have freedom.

2.7.11 SUMMARY

British government is party government, for parties nominate parliamentary candidates and elect a leader who is prime minister or in charge of the Opposition. An election gives voters the choice of deciding between parties competing for the right to govern. Control of British government, is Britain a two-party system, for since 1945 a monopoly of power has alternated between the Conservative and Labour parties. Yet neither party has won as much as helf the popular vote. Successive British governments have altered the electoral system for contests that do not affect the composition fo the

Westminster Parliament. The opposition in England is as organised as the Government itself. It is officially recognised. The leader of the opposition gets an annual salary charged as those of the Ministers. He stands side by side with the Prime Minister when the Monarch opens the Parliament. He is justly described as Her majesty's opposition. He is the alternative Prime Minister. The existence of an organised and officially recognised opposition is almost peculiar to great-britain. Her majesty's opposition in England plays an important role in the actual administration of the government. It keeps always the government on right track. The opposition criticises the arbitray acts of the British government. It has been rightly said that parties are everywhere and inevitable. No country is without them these are life lines of democracy. Political parties in USA and UK are performing an important function of making the representative government work.

2.7.12 KEY WORDS

Group Diplomacy
Petitioners
Whigs
Tories
Absence of Ideology

2.7.13 LONG ANSWER TYPE QUESTIONS

1. Discuss general features of American party system?
2. Discuss main characteristics of party system in England?

2.7.14 SHORT ANSWER TYPE QUESTIONS

1. What kind of role do play Political Parties in American Political System?
2. Write a short note on Labour Party.
3. Write the name of any two main Political Parties of U.K.

2.7.15 SUGGESTED READINGS

Mackintosh : The Government and Politics of Britian
C.O. Johnson : Government in the United States

PRESSURE GROUPS IN U.K. AND U.S.A.

STRUCTURE

2.8.0 OBJECTIVES OF THE LESSON

The main objective of the lesson is to give you an idea about the working of Pressure Groups of USA and UK study. You will also know how the emergence of Pressure Groups in the United States and UK is a matter of extra-constitutional growth.

2.8.1 INTRODUCTION

What is of special significance in the study of pressure groups is their operation in the political process of the country that varies from country to country according to the nature of the political system. Two important points should, however, be given at this stage that have their peculiar place in the British political system. First, Britain has a stable two-party system with the result that while business groups invariably support the Conservatives, the labour groups do the same for the Labour party. And though the professional groups are by and large free from such ideological ties, they change their stands from time to time as per their specific interests. Second, the operational dimension of pressure group politics covers three distinct areas - executive, legislature and the public in general.

A novel feature of the American political system should be discovered not in the

operation of a representative democracy through political parties taking part in the biennial elections of the Congress and the quadrennial elections of the President but in the role of several interest organizations operating at every level through which the people sharing common economic or social characteristics or policy objectives struggle for the protection and promotion of their specific interests. There is no dearth of such groups, though only some of them may be taken for the purpose of our study as they play their part in the determination of an official policy or in the implementation of some governmental law or order.

Pressure group has been defined as the 'field of organized groups possessing both formal structure and real common interests in so far as they influence the decisions of public bodies, or alternatively, in so far as they seek to influence the process of government. A pressure group plays the role of hide and seek in politics and, as such, it becomes fundamentally different from a political party that plays its part openly in the political process of the country. Moreover, the range of interest of a pressure group is so limited that its role in the politics of the country varies from one point of time to another. Thus, a group maintains the peculiar life of being in as well as out of politics as per the involvement of its specific interest. It may be found that by no means all organized groups, or even a majority of them, normally have the slightest concern in what the government is up to, but at any point of time they might be so concerned and might wish to try to influence the official policy.

In Britain there are literally thousands of pressure groups of varying size, structure, functions and influence from the Confederation of British Industries and the TUC on the one hand to local, social and cultural groups on the other although, as a political study, our concern is primarily with those principal organisations that seek to affect public policy as long as they do so. The groups are, moreover, by no means a new phenomenon although detailed academic interest in the politics of pressure groups is of a comparatively recent past. The Convention of Royal Burghs in Scotland which can be traced back to the fourteenth century is generally regarded as the oldest surviving organized group in Britain. In the eighteenth century there emerged a good number of political associations that agitated for the democratisation of the Parliament. The name of the Committee for the Abolition of the Slave Trade formed in 1807 was a much successful body. The Anti-Com Law' League was an outstandingly successful pressure group of this period. A new development took place after the middle of the last century when several organisations, big' and small, allied themselves with the leading political parties - Whigs or Liberals and Tories or Conservatives. However, the emergence of the Labour Party has a significance of its own as it grew out like "a combination of various pressure groups from the trade union and socialist movements."

One of the dominant facts of the British political system today is that pressure groups have become 'a growing force'. However, certain broad features can be discerned

in this regard:

1. Since Britain has a full-fledged democratic set-up, there is no limit on the size and working of the pressure groups. As a result, numerous are the pressure groups right from business organisations to labour and professional unions.
2. Britain is a unitary state with a stable bi-party system. As there is the concentration of central authority in the hands of the government situated at London, pressure groups are bound to direct their activities towards the machinery of a single central government. Here the nature of pressure group politics becomes basically different from that of its American counterpart where federalism has affected not only the governmental but also the non-governmental spheres of life. Moreover, as Britain is known for having a stable bi-party system, most of the groups live in clandestine relationship with one of the major political parties.
3. British pressure groups scrupulously observe the norms of democracy and constitutionalism. Hardly we hear about the role of anomie organizations that emerge like spontaneous outfits to vitiate the normal atmosphere of the country.

What is really impressive about the nature of the politics of pressure groups in Britain is that their number and nature are not of an astonishingly complex variety and that their1'Olitical behaviour does not smack of an irresponsible way of doing things for the sake of protecting and promoting their specific interests. Unlike their counterparts operating in other democratic political systems like those of America and France, British pressure groups "today are more concerned with details and administration and are perhaps more powerful and Successful (if vocal) as a result."

2.8.2 STRUCTURE AND ORGANISATION OF PRESSURE GROUPS IN U.K.

A major illustration of the British pressure groups can be presented on the basis of their general structure and organisation, kind and nature of the interests they represent, the weight of authority they seek to exercise, the methods they want to employ and the like. Broadly speaking, they fall into two main types with a hybrid in between. While some like business groups, co-operative and trade unions defend economic interest, others promote special causes such as pacifism, nuclear disarmament, protection of animals and children. An initial distinction can also be made between sectional interest groups like the Automobile Association or the Institute of Directors and cause groups like the League Against Cruel Sports or National Viewers and Listeners Association that are bodies created specifically to lobby on behalf of some general cause.

Though a detailed catalogue of the .British interest groups can be made, it cannot be lost sight of that all of them do not have equal significance in the political process of the country. Sectional interests always dominate because they are specific, not general, and for till Sreason they have a potential membership of active workers

and leaders. These sectional groups may be classified as business, labour and professional groups. While the business groups include the vast number of industrial, commercial and managerial bodies like the Institute of Directors, Confederation of British Industries, British Bankers Association of British Chambers of Commerce, National Federation of Building Trade Employers etc., labour groups are primarily the TUC and the individual unions. Then, there are the professional groups like British Medical Association, National Union of Teachers and Royal Institutes of Architects and Surveyors. The cause groups are formed for some purpose of general good like prevention of cruelty to animals and children, abolition of capital punishment, reform of prison conditions, preservation of rural England, maintenance of international peace and security etc.

What deserves particular mention at this stage is that a neat and water-tight division of British interest groups cannot be made on account of the nature of their organisation and working. While the categories of business and labour groups can be chalked out without much difficulty in view of their economic character, others may not be categorised in the like manner. For this reason, any categorization of interest groups looks like being arbitrary or incomplete, by all means, it may be regarded as illustrative though not a conclusive presentation of the matter under study.

2.8.3 SELF CHECK EXERCISE

1. How will you define Pressure Groups?

   _____

2. Write any two names of Pressure Groups in UK.

   _____

2.8.4 OPERATIONAL DIMENSION

Of the three levels of pressure group activity mentioned above, the exercise of pressure on the Government and Civil Service "is the most direct and most important sphere of influence, as the concentration of constitutional authority in the hands of the central government, and in the executive machine particularly, means that pressure on Parliament and the public is used only as a means of indirectly influencing the Government. Also the most likely success for pressure groups is in the field of administrative and legislative action, and here it is influence with executive that is most valuable. Government departments and private associations generally co-operate with each other, since both sides stand to gain through such activities as the exchange of information and the sharing of each other's goodwill. Between government administrators and private associations, there is an extensive system of both formal and informal contracts.

The nature of public 'administration has now become such that the Government

relies upon outside bodies for technical advice. And information, for co-operation in the framing of legislation, and for help in the implementation of its policy. For instance, the Ministry of Agriculture relies heavily upon the NFU for membership of some 50 agricultural advisory committees, from the Beer' Diseases Advisory Committee. The Government cannot ignore some organisations like County Councils Association and the Association of Municipal Corporations over the reform of local government. Some bodies actually administer legislation on behalf of the Government; for example, the Law Society administering Legal Aid and the Royal Society for the Prevention of Accidents acting as a Government agent. In addition to the formal machinery for contact between the Government and the outside bodies, pressure groups are able to exert influence upon individual ministers and civil servants in less formal ways. After having a close look at this development of the British political system, Beer has laid down his doctrine of' quasi-corporatism.'

Pressure group activity at the Parliamentary level is easily visible. A group that has failed to have satisfaction from a minister or a civil servant, may try to exert pressure by taking the matter to the Parliament. Thus figures in lobbying or contracting MPs for raising a matter, putting a resolution, demanding discussion, and supporting or opposing a particular measure. It may be done through the representatives sitting in the House of Commons who could win elections with the active help and cooperation of some interest groups, or other ways can be adopted to influence the MPs. Some pressure groups may engage the services of professional lobbyists called Parliamentary Agents. Some groups like the NFU have local Parliamentary correspondents to maintain contact with their local MPs. The role of these MPs may, thus, be seen in their actions, by words or deeds, in tabling a motion or supporting a bill whether in the House or in its committees. Amendments to the official bills can be made at the instigation of pressure groups, with the Confederation of British Industries and other pressure groups being particularly active with regard to the passage of the Finance Bill though the House of Commons each year.

The role of pressure groups in the working of the Parliament is usually checked by the very firm discipline exerted on each party by the Whips, but sometimes particular interest group may win enough sympathy in the House with both the majority party and the Opposition to force a minister to change his mind. .Pressure groups have the greatest chance of influencing legislation in Parliament when the normal party alignment is broken. If there is a dissension among Government back-benchers with regard to a particular piece of official policy, this can be exploited by the opponents of the policy. Thus, in 1964-66, Parliament business groups opposed to the steel nationalization benefited from the dissent among Labour backbenchers over Government's proposals. Earlier in 1957, a combination of the Labour Opposition and some Conservative backbenchers had persuaded the Conservative Government to postpone the operating

date of the Rent Act to the satisfaction of the tenants' interest groups.

It should, however, be added at this stage that the influence of the business and labour groups waxes and wanes according to the complexion of the government in which the weight of the public opinion has its own place. Moreover, while the labour groups do enjoy the privilege of exercising influence on the Labour government, the influence of the business even on the Conservative government is not absolute but conditional. It is qualified by the voting power of the working class, for Conservative party has to keep the support of .some 7 million labour voters in order to stay in or get back into power. The essential fact, however, remains that "for better or for' worse, such self-government, as the English people now enjoy today is one that operates by *and through the lobby."*

How do the pressure groups operate in England.

1. Sending of petitions
2. Use of Press
3. Demonstrations strikes, and Rallies.
4. Propaganga to presurise the government
5. To extend support to different political parties in elections.
6. lobbying
7. To take recourse to courts
8. Appeare before parliamentary committee
9. and to establish close contacts with members of the legislature.

2.8.5 CRITICAL APPRECIATION OF PRESSURE GROUPS IN U.K.

There is no doubt that pressure groups can be seen performing a number of valuable service in the British political system in various ways. Their activity smacks of participation in the decision-making process between general elections and also acts as a healthy check over, as well as a prime mover of, the parliamentary government. The groups provide information, administrative co-operation and public and political supports. It can be argued that those who are most closely affected by Government activity should be most closely consulted and should be able to influence policy. Indeed, pressure groups are indispensable to the executive for the part they play in policy-making and also in administration. Thus, pressure groups draw people into the process of government and at the same time break down party domination of political process, bringing to the fore issues like capital punishment, which might otherwise lie outside the sphere of party politics.

The weak side of the pressure group politics can not be lost sight of. It is rightly contended that pressure group politics can not be identified with mass politics in as much as not all sections of the people take part in it, nor are they capable of exerting influence in a more or less equal measure. The 'concurrent majority' as represented

by the powerful pressure groups is seen as having too much power as compared with the 'numerical majority' as represented in the Parliament. Thus, the rise in the importance of pressure group politics has led to the emergence of a new hierarchy of political influence, based on the organization of group interests, producing what has been described. as 'new Medievalism whereby a person "is politically important only in so far as he belongs to a group. The leadership of pressure groups is often unrepresentative and authoritarian, as it has to be powerful if it is to be in a position to negotiate. The secrecy in decision-making is to a large extent inevitable."

There should be no doubt that pressure groups influence government policy and, in turn, the government influences pressure group activity with limited amounts of coercion and no bribery. Each needs the other. For this reason, it shall be highly imprudent to suggest measures that may outlaw the operation of organized groups. As factions are bound to play their part in the democratic process, so is the case with interest groups. As in many relationships, close ties may at times produce harmony and at times strain. The process of-continuous contract and bargaining is dialectical exchange of influence, resulting in policies that are often the product of the dialectic, and not specifically of one or the other group. As a matter of fact, so close has been the relationship between the political parties and pressure groups on the one side an~ government activity and political process of the country on the other that the two can not be extricated. It is due to this that there is a two-way traffic between those who really rule and those whose interest are at stake because of their ruling. The merit of the whole phenomenon is that a sort of workable.

2.8.6 GENERAL CHARACTERISTICS OF THE PRESSURE GROUPS IN U.S.A

In the United States, there are literally thousands of pressure groups of varying size, structure, functions and influence ranging from the National Association of Manufactures (NAM) and American Federation of Labour - Congress of industrial Organization (AFL-CIO), American Medical Association, American Bar Association, American Civil Liberties Union etc. to local and social or cultural groups like Southern Christian Leadership Conference and Urban League. Our concern, in the main, is with those principal organisations which seek to affect public policy. The salient features of their operation may be put as under:

1. Pressure groups in the United States are numerous; they are also autonomous to a very great extent. The reason for this lies in America's being a vast democratic country with a federal system and having a huge population dedicated to the ideals of mammon worship and pragmatism. The party system is too weak to keep the numerous groups in order. The result is that organized groups feel nothing like committed to a particular political party. Not only this, the role of groups is so potential that it determines the behaviour of the political parties in most of the cases and not *vice versa.*

2. The constitutional system of the United States is such that the pressure groups find ample scope for making their influence felt. There is separation of powers coupled with the system of checks and balances with the result that the decision of one department may be hecked by another. Interest groups thus fix their attention at all centres of decision-making, including its implementation. American political system stands on the principle of separation of powers whereby the will of the President cannot become a law in every case and that the federal judiciary may strike down any order of the President or any law of the Congress on the ground of its being *ultra vires* of the Constitution. Mostly the groups have their eyes fixed on the President as he is the virtual ruler of the country, but when they fear some frustration, they make their potential articulation through the legislative bodies with the result that there is pressure and cross-pressure upon the government. Sometimes, lobbying assumes a very serious proportion to act as a counterblast to the authority of the President as a result of which there occurs, what is called, the deadlock of democracy.

3. What makes the subject of American pressure groups a matter of interesting study as well as an object of denunciation is their technique of lobbying. It means exercising pressure on public officials in order to have the purpose served, though in a strict sense its application is taken as confined to persuade and influence the members of the Congress who are concerned with the business of legislation. In actual practice, the scope of lobbying has now covered almost every nook and corner of the American administration whether at the national, or state, or local level. Not only this, sometimes the lobbyists go to the final extent of bearing their weight upon the public officials by all means, whether proper or improper that becomes' grass-roots lobbying'. Though one may find glimpses of the use of this technique even in other countries like Britain and France, it may be said that the magnitude 'Of lobbying in the United States has no parallel in the world. Legitimate use of this technique is contained in the observation of a leading Congressman: Lobbying is an essential part of the representative government, and it needs to be encouraged and appreciated."

2.8.7 LOBBYING

The technique of lobbying implies putting influence on the men in authority roles, it covers every sphere of the government whether legislative, or executive, or judicial. It would be too simple a view to agree with the phraseology of the law of 1946 or the interpretation of the Supreme Court of 1954 that the scope of this tactic is limited to influencing the members of the Congress only. Today no branch of American government can be said to be immune from the onslaught of the technique of lobbying.

The strictly legal implication is thus totally unrealistic in view of the fact that the executive agencies "have given considerable leeway in implementing legislation through interpretation and administrative rule-making. In addition, the groups wish to influence policy proposals that are often authored in the agencies and then sponsored by Congressmen. For their part, members of the Congress branch want the co-operation and political support of their clientele in their dealing with Congress."[72]

No doubt, the technique of lobbying has its own set of evils, but the Americans have their own notions about its legitimacy. To them it may be regulated but not outlawed as its abolition would amount to the infringement of the essential liberties relating to speech, expression and assembly as provided in the Constitution by the First ten Amendments. To them the principal method of regulating lobbying is disclosure rather than control. They agree that the statutory definition of this ten has been unclear and the enforcement of the Federal Regulation of Lobbying Act of 1946 minimal. It is clear from the fact that so far disclosures have been few giving limited and thus their effects have been of a questionable nature. It is also feared by many people that severe restrictions on the tactic of lobbying would hamper legitimate methods of influencing the decision-makers without checking more serious abuses. To them, the consolidated and highly effective opposition of the lobbies cannot be lost sight of. Moreover, it is also emphasized that there should be no ban on the desire of some capable men who want "to keep open avenues to a possible lobby career they may wish to pursue later." The American Pressure groups are peculiar in nature; There number is greater than England, they are Autonomous and their lobbying tacticts are at expensive level.

2.8.8 CRITICAL APPRECIATION

The existence and articulation of interest groups has been denounced by the critics for being opposed to the doctrine of the genuine representation of, what Rousseau called, the general will. It is also said that in this type of politics a very shrewd and corrupt leadership enjoys a position of special advantage at the expense of the position of others who are more deserving than them. It is also alleged that the behaviour of the interest groups is hardly democratic either towards their own members or other groups operating at the same level. The manner of 'hide and seek in polities' as shown by the groups not only differentiates them with political parties, it also makes them immune from public accountability. All these evils of the politics of influence are very much existent in the United States, though other democratic countries of the world cannot be said to be exceptions in this regard.

If the politics of pressure groups has its weaknesses, it has its strong sides also. According to leading American people, such type of politics makes its own important contribution to the successful operation of their democratic system. The interest groups "play an indispensable function in identifying the interests in the society

to which the political system must respond. They also serve to increase participation and to clarify issues in connection with the other great input function of the political system - leadership selection. Pressure groups thus offer an important supplement to the official system of representation. By permitting a more precise expression of special interests than can be expected through the broad political parties or through district's Representative, pressure groups may prevent a sense of alienation and enhance the stability of the system."

2.8.9 SUMMARY

The United States has been called a nation of joiners. Yet most of these groups are serious in their aims, and they play an enormous role in politics. Moreover, joining is not an exclusively Amercian trait. It is a common trait of human beings and a biological factor as well. That is why many political scientists agree with Harold D. Lasswell that the essence of government is deciding "who gets what, when, and how." In the United States, however, the political parties are much weaker and less cohesive than those in most other democratic system. Consequently, pressure groups play a major role in both interest articulation and aggregation in the United States. Many foreign observers of America's peculiar politics have been especially struck by the great variety and power of our organized political groups. Today they are even more numerous and important than in the past. They take two main forms, each of which specializes in a particular technique for influencing government: (1) political action committees and campaign contributions and (2) pressure groups and lobbying.

Groups also differ in the nature of their interests; some are concerned with material objectives, whereas others deal with single causes cush as violence in the media or race relations. Most interest groups pursue four goals : Information about government policies and changes in policies, Sympathetic administration of established policies, Influence on policymaking, Symbolic status, such as being given the prefix "Royal" in their title. Whitehall departments are happy to consult with interest groups insofar as they can provide government officials with reciprocal benefits. Cooperation in the administration of existing policies, Information about what is happening in their field, Evaluation of the consequences of policies under consideration, Assistance in implementing new policies. As long as the needs of Whitehall and interest groups are complementary, they can bargain as professionals sharing common concerns. Both sides seek a negotiated agreement, because this avoids decisions being made by politicians who know less and carel less about details than interest group officials and civil servants involved in departmental administration.

2.8.10 KEY WORDS

Quasi-Corporatism
Symbolic Status
Lobbing
Interest Groups

2.8.11 LONG ANSWER TYPE QUESTIONS

1. Write an essay on Pressure groups working in England.
2. Discuss the characteristics and functions of Pressure groups in U.S.A.
3. Critically analyse the functioning of Pressure Groups in U.S.A.

2.8.11 SHORT ANSWER TYPE QUESTIONS

1. What is Lobbing?
2. Write the functions of Pressure Groups in Great Britan.
3. Write a short note on the tectics of Pressure Groups in America.

2.8.12 SUGGESTED READINGS

C.O. Johnson: Government in the United States
Mackintosh : The Government and Politics of Britian

Lesson No. 2.9 Unit -II **Author : Dr. Hardev Singh**

THE SUPREME COURT IN THE UNITED STATES OF AMERICA

STRUCTURE

2.9.0 Objectives of the Lesson

The Supreme Court in the United States of America takes care of the rights of the Citizens. It also helps in revolving disputes. In this way it gains importance to talk about legal system. This lesson will emphasis upon the organisation of the Supreme Court as well as Rule of Law in USA.

2.9.1 Introduction

An efficient judicial system is essential in all organized societies. Its organization and role vary with the form of government, political theories, social and economic systems, traditions and customs. The

Articles of confederation did not provide a federal judiciary in the United States. The Judicial task was left exclusively to the States. When the plans for a federal government were being laid at the Philadelphia Convention, the necessity for a federal judiciary was felt. Hamilton said, "A circumstance which crowns the defects of the confederation remains yet to be mentioned, for want of a judiciary power. Laws are dead letters without courts to expound and define their true meaning and operation". In order, therefore, to function successfully, it was realised that the federal system of government must have a strong judiciary which shall remove not only the defects of the confederation but also provide harmony among the conflicting decisions of the highest state courts. This will also be in consonance with theory and practice of federalism. Accordingly, the constitution provided in Article III that "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 Congress enacted the Judiciary Act of 1789 which with numerous amendments forms the basis of the federal hierarchy of courts.

2.9.2 THE SUPREME COURT

2.9.2.1 Its Organisation

The Supreme Court is the creation of the constitution as it has been specifically mentioned in Article II. The other federal courts have been created by the Congress. The Supreme Court stands at the apex of the American judicial pyramid. The constitution has not fixed the number of judges. As first constituted, it consisted of a chief justice and five associates. Its membership was reduced to five in 1800; increased to seven in 1807; increased to nine in 1837 and ten in 1863; reduced to seven in 1866; and in 1869 it was fixed at nine. Today the Supreme Court consists of one chief justice and eight associate judges.

2.9.2.2 Appointment of the Judges :

All the judges are appointed by the President and with the advice and consent of the Senate. The constitution prescribes no qualifications for the judge. Hence the President is free to appoint any one for whom senatorial confirmation can be obtained. The rule of "senatorial courtesy" does not limit the choice of the President. From its very inception, an attempt has been made almost invariably to select men of high prestige and outstanding ability. Though sometimes appointments have also been made to repay political debts, to show deference to a particular section of the country or even to provide representation for a political party which would not otherwise be represented even then the calibre

of the men selected has been, in general, high.

2.9.2.3 Tenure

The judges hold office during good behaviour and are removable by impeachment only. A judge may retire, if he wishes, when he reaches the age of seventy or at any time thereafter. He can retire with full salary provided he has served on the Bench for ten years. He may retire at sixty-five with fifteen years of service, and receive full pay for life. Since the judges do not readily give up office even when they reach the retirement age, there has been criticism of life appointments. It is contended that a tribunal made up of life appointees is undemocratic. The life appointees lack the needed incentive to keep up with the times and to exercise their functions in harmony with the dominant sentiments of the people. On the other hand, the defenders of life appointments contend that without security to tenure the court would lack the security of outlook which is necessary for sound performance. However, it may be said that the prestige of the Supreme Court has generally been maintained at a high level so as to indicate that the court has justified the confidence bestowed upon it in giving life tenure to its members.

2.9.2.4 Sessions

The Supreme Court holds one regular session every year beginning on the first Monday in October and ending early in the following June. Special sessions may be called by the Chief Justice when the court is adjourned, but the occasion must be of unusual importance and urgency. Six Judges constituted the quorum. The Chief Justice is the executive officer of the court; he presides at all sessions and announces its orders. The court conducts hearings on Tuesday, Wednesday, Thursday and Friday. On Saturday, the Judges confer among themselves and register their opinions. On Monday, judgements are delivered in public. All the judges sit together. There are no benches. A decision may be unanimous or divided, if divided, their majority and dissenting opinions are usually written. The Judges who agree with the majority decision, but not with the reasons may write concurrent opinions. The decisions of the Supreme Court are published in the United States Reports.

2.9.3 Jurisdiction of the Supreme Court :

Section 2 Article 111 of the Constitution states : "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority-to all cases affecting ambassadors,

other public ministers and controversies to which the United States shall be a party, to controversies between one or more states; between a State and citizens of another state, between citizens of different States; between citizens of the same state claiming lands under grants of different States, and between a State or citizens thereof, foreign states, citizens or subjects". Clause 2 provides, 'In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and to fact, with such exceptions, and under such regulations as the Congress shall make". Analysing these two clauses, the Supreme Court of America has both the *original* and the *appellate* jurisdiction.

(a) Original : The original jurisdiction is limited to the following cases;

(i) Cases involving ambassadors, other public ministers and consults;

(ii) Cases in which a state shall be a party. By way of clarification, the congress has stipulated that the original jurisdiction of the Supreme Court can be invoked only in cases against ambassadors and other public ministers, and only in cases where, if a state is one of the parties, the other party is the United States, a foreign State or a state of the Union. The original jurisdiction of the Supreme Court is thus based on the kind of parties to the case rather than on its legal subject matter. The theory is that the dignity of the parties i.e. the ambassadors or the States demand that cases involving them should be lodged in the highest court in the land since appearance before the inferior courts may lower their dignity.

In fact very few cases come to the purview of the Supreme Court in its original jurisdiction. Generally cases involving question of constitutionality or otherwise commanding extraordinary importance are brought before the Supreme Court. Even the approximately 1,250 or more cases are dealt with by the highest tribunal of the country. In all the other cases, the Supreme Court has.

(b) appellate jurisdiction, that is, it hears appeals in cases already decided either in State courts or in lower federal courts. Appeals can not be taken in all the cases. The appeal to the Supreme Court can lie only in those where the highest state court :

(i) has held invalid some state law which is alleged to be in violation of the federal constitution, of a law made by the congress, or of a treaty made by the United States;

(ii) has held invalid a federal law or treaty. Since 1914, the Supreme

Court has been given discreationary power to review the decision of a state court, if it sees fit, even when this decision has held a state law invalid on a question of federal right. Sometimes in consents to review such decisions, more often it declines.

Thus appeals to the Supreme Court can lie only on some legal or constitutional point. In other words, the appellate jurisdiction of the Supreme Court is based upon the subject matter of the case. If in a case the law involved concerns the federal treaties, the appeal can be taken to the Supreme Court. It may be noted that appeal from the highest court of a state on any matter.

No Advisory Jurisdiction :

It will not be out of place to point out that the Supreme Court of America, unlike the Supreme Court of India, does not perform the advisory function. It has refused to advise the executive on hypothetical questions. Nor does the court pass judgement upon political questions. It acts only when a law has been violated and the matter is raised in a specific suit.

2.9.4 Role of the Supreme Court :

A mere description of the jurisdiction of the Supreme Court cannot give a correct picture or the role it plays in the American system. According to Bryce, "No feature in the Government of the U.S.A. has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration, been more frequently misunderstood than the duties assigned to the Supreme Court and the functions it discharges in guarding the arc of the Constitution".

(i) As a protector of Federation : Generally in a Federation the powers are divided between the federal government and the states. In a federation there is always the possibility of disputes. According to Dr. Munro, "Without the provision of the Supreme Court, the American Constitutional system would have become a hydra-headed monstrosity, (there are 48 states in U.S.A. when Munro remarked this of forty-eight rival sovereign entities). It would have never gained that strenghtened regularity of operation which it possesses today." By working out the doctrine of Implied Powers, the Supreme Court has conferred wide powers on the congress. The words of the Supreme Court in the case of Maryland vs. Mc Culloch, "Let the end be legitimate, let it be within the scope of the constitution with the letter and spirit of the constitution are constitutional", are historic words. It is on account of the liberal interpretation by the Supreme Court that the federal structure devised in the eighteenth century to satisfy the requirements of thirteen states,

with a small population living in pastoral-cum-agricultural age, is equally suitable to the needs of the most industrialized country consisting of fifty states today. Without a liberal interpretation by the Supreme Court, the U.S. federalism might have failed in the time of growing industrialisation and centralism.

(ii) Saviour of the Constitution : The Supreme Court is the guardian of the constitution. It can declare null and void a law passed by the legislature or any executive organ in the United States, if it is repugnant to the constitution. Its power of judicial review has protected the constitution from being violated and has checkmated the monarchical ambitions of the President and the democratic recklessness of the congress. Hence it has been rightly considered as the empire of constitutional conflicts.

(iii) Guardian of the Rights : The Supreme Court has been empowered to issue writs like *habeas corpus, mandamus, certiorari* and injunction for the protection of the rights of the people. It has kept the various organs of the government within their defined fields and prevented encroachments of human rights. It has declared laws unconstitutional not only on the basis that they were beyond the jurisdiction of a particular organ but also on the ground that they were unremarkable or unjust. It has determined the constitutionality of laws on the basis of due process of law, clause of the constitution. Before 1930's the Supreme Court gave great protection to the right to property and declared governmental regulation of prices as taking away liberty and property its interpretation of the due process clause for the protection of civil liberties and restricted the protection given to property. This indicates a trend in the beliefs of the court. As now constituted, the Court believes that men ought to be free to the maximum extent possible. In more than a score of cases the Supreme Court has upheld the right of freedom of religion. In a case decided in 1948 the court held that "Neither a State nor Federal Government can set up a church. Neither can pass laws which aid one religion, and all religions, or prefer one religion over another." In a number of cases the court has upheld the rights of the Negroes. In the case of Browns vs. Board of Education, Chief Justice Warren observed in 1954, "Does segregation of childrne in public schools simply on the basis of race, even though physical facilities and other tangible factors may be equal, deprive the children of the miniority group of equal educational opportunities? We believe it does. To separate them from others of similar age and qualifications solely because of their race, generates a feeling of inferiority as to their

status in the community and may affect their hearts and minds in a way unlikely ever to be undone....Separate educational facilities are inherently unequal". With regard to the work of the Supreme Court in the field of personal liberties, the Report of the President's Committee on Civil Rights observed in 1947, "It is not too much to say that during the last ten years, the disposition of cases of this kind has been as important as any work performed by the court. As an agency of the Federal Government, it is now actively engaged in the broad effort to safeguard civil rights".

(iv) Development of the Constitution : The Supreme Court has done much towards the growth of the constitution. The constitution of America is a skeleton document comprising 7 Articles and about 7,000 words. It was framed in 1797 for a country of thirteen states having a pastoral agricultural economy. Today America is a country of fifty states and is the most highly industrialised country of the world. It is the biggest world power. Obviously a constitutional structure devised for a pastoral economy could not have meted out the needs of the present day America which has landed its cosmonauts on the moon. The necessary adoption could not have been secured through constitutional amendments as the constitution amending procedure is extra-ordinarily rigid. The Supreme Court has played a significant role in adapting the eighteenth century constitution to the space age needs of nuclear America. By putting a liberal interpretation it has facilitated the growth of the constitution without the necessity of formal amendment. In the words of James M. Beck, "The Supreme Court is not only a court of justice but, in a qualified sense, a continuous Constitutional convention. It continues the work of convention of 1787 by adopting through interpretation the greater character of government". In the words of justice Hughes "Americans are under a constitution but the constitution is what the judges say it is".

(v) Highest court of Appeal : The Supreme Court is the final court of appeal in the United States. It can entertain appeals from the state high courts and federal courts. Though its appellate authority is limited as not all cases may be appealed but there is no appeal against its judgement. Its opinion on a question of law is final. It has been termed as a "super legislature" or a "third chamber". It stands above both the President and Congress. "Unlike acts of the congress it is immune to Presidential votes and unlike Presidential votes, it is immune to over riding by congress". In a sense it may be called the most autocratic political institution of America.

From the above account it is thus clear that Supreme Court is an institution of great importance in the American federal system. It has been, according to Finer, "the cement which has fixed firm the whole federal structure". Laski rightly called it as one of the most successful institutions "not surpassed by any other institution in its influence in the life of the United States".

2.9.5 Self Check Exercise

1. What is advisory Jurisdiction?

   _____

2. What is the tenure of Judges in American Supreme Court?

   _____

3. Write any two features of American Judicial System.

   _____

4.9.6 JUDICIAL REVIEW

2.9.6.1 Meaning of Judicial Review :

By judicial review we mean the power of the judiciary to determine whether a law passed by the Congress, or any law enacted by a state legislature or any provision in the state constitution or any other public regulation having the force of law, is in consonance with the constitution. If it is note, the court refuses to give effect to the statute in question. In determining the constitutionality of the legislation, the court is not concerned with the wisdom, experience or policy of legislation. In the words of chief justice Marshall, "It neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the constitution; and having done that its duty ends". Even if the Court considers the Act unwise and harmful to both public and private interests, it is its obligation to sustain the Act provided it is within the delegated power. As we know, the constitution is a general document which requires a great deal of interpretation to discover its meaning. It gives powers to the executive and the legislature. While doing some act in pursuance of their powers they give their own interpretation to the words of the constitution to determine the constitutionality of the Act challenged. This power to interpret the constitution and determine the constitutionality of a statute is called the power of judicial review. The American constitution has accepted the principle of judicial review which has made the Supreme Court the most powerful judicial agency in the world.

Judicial Review does not only apply to federal and State statutes.

Its scope is wider. The constitution of the states, treaties made by the Federal Government and the orders issued by the Federal and State executive's authorities come with in its purview. However, questions of political nature do not fall within its purview. This has resulted in restoring of public confidence in the Supreme Court.

2.9.6.2 Constitutional basis for Judicial Review :

The American constitution does not specifically grant the power of judicial review to the Supreme Court. Some writers have challenged the court's right to exercise this power. Professor S. Corwin rightly comments that the American Constitution "anticipated some sort of judicial review....." President Jefferson had declared that the design of the founding fathers was to establish three, independent, departments of government and to give the judiciary the right to review the acts of the congress and the President. It was not only the violation of the intentions of the framers of the constitution. However, evidence records that majority of the members of the Philadelphia convention favoured judicial review. Alexander Hamilton intended the Supreme Court to have the power to set aside Congressional legislation. He suggested independent judiciary as "an excellent barrier to the encroachments and oppression of the representative body". A specific provision was not added because-they believed the power to be clearly implied in the language of Articles III and VI. Article VI Section 2 reads, "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, under the authority of the United States shall be the supreme law of the land". Article III Section 2 reads, "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority."

2.9.6.3 Origin of Judicial Review :

The Supreme Court faced the issue of judicial review for the first time in the case of 'Marbury vs. Madison' which was decided in 1803. The facts of the case were that the congress had provided in the judiciary Act of 1789 that requests for the writs of *mandamus* might originate in the Supreme Court. On the night of March 3, 1801, Marbury had been appointed justice of peace for the District of Columbia by President Adams, whose term expired before the commission was delivered. The incoming President Jefferson and his Secretary of State, Madison, refused to deliver the commission to Marbury who immediately petitioned to the Supreme Court for the issue of the write of *mandamus* under the judiciary act of 1789. Chief Justice Marshall, who wrote the issue

the writ because the Judiciary Act of 1789 had enlarged the original jurisdiction of the Supreme Court as prescribed by the constitution, and therefore, it was null and void. (The congress cannot enlarge the original jurisdiction of the Supreme Court which has been prescribed by the constitution itself).

Chief Justice Marshall said that the constitution is the supreme law of the land and therefore must be paramount to any statute in conflict with it. He based his judgement upon the following assumptions:

(i) The constitution is a written document that clearly defines and limits the powers of government;

(ii) The constitution is a fundamental law and superior to ordinary legislative enactment;

(iii) An act of the legislature contrary to the fundamental law is void and therefore can not bind the courts;

(iv) The judicial power together with oath to uphold the constitution that judges take, requires that the courts so declare when they believe acts of congress violate the constitution.

After this judgement, the principle of judicial review was firmly embodied in the American system of government. It is now as clearly established as though it had been expressly provided in the constitution.

2.9.6.4 Experience with Judicial Review :

After the Supreme Court's decision in Marbury vs. Madison case, the power of striking down an act of Congress was not used until in the Dred Scot vs. Sanford case in 1857. In this case the court declared the Missouri Compromise of 1820 unconstitutional. This intensified the situation which later on erupted into the civil war. After the civil war there was a considerable increase in the restrictive activities of the Supreme Court. Between 1865 and 1900 it handed down some twenty-four decisions in which acts or parts of acts of congress were held unconstitutional. From 1900 to 1934 which was a period of greater increase in the amount of legislation, there were some forty such decisions which established barriers to the New Deal Programme. After 1937, the Supreme Court manifested a change of mind and did not stand in the way of social and economic legislation. Although the court continued to pass upon the constitutionality of statutes, its decisions, however, did not arouse the controversy and indignation which its decisions had stirred during the New Deal period.

2.9.6.5 Criticism of the Power of Judicial Review :

Although the pre-eminence of the Supreme Court in the American

Constitutional system has been generally accepted, criticism has been frequently made of its power of judicial review. The following points of criticism may be noted in this respect :

(i) It has become non-elective super-legislature : The first point of criticism against the power of judicial review is that it has made the Supreme Court a non-elective super legislature; Laski calls it a 'third chamber'. The court while deciding the cases acts as a quasi-political body and determines not only the constitutionality but the property and justness of the laws. Many a law has been declared unconstitutional because, according to the court, they were not fair, just and reasonable. And what is just and fair is a political and not a legal question because the concept of justness and fairness is affected by the 'due process of law'. The judges, "can hardly fail to be swayed consciously or unconsciously by their social philosophies and general outlook on affairs". Between 1888 and 1937 the court became "an aristrocracy of the robe and twisted the due process clause into a most around all forms of private property". It censured all socialistic legislation, thereby protecting the right to private property and economic freedom. It did not even hesitate to veto the popular measures like rail road pension act and a state minimum wage law. In one case the court regarded income tax as a sheer assault on capital and contended that "it will be both the stepping stone to others, large and more sweeping, till our political contests will become a war of the poor against the rich, a war constantly growing in intensity and bitterness". When the Supreme Court invalidates a law by imposing upon the nation its own interpretation of what the social and economic order ought to be, it certainly assumed to itself the role of a super-legislature. In Polter's words, "to strike down a national law is to drop a people in the legislative pool creating a disturbance that ripple out from the point of contact across a considerable surface of potential legislation:. According to Jackson, its decisions "prick out the drift of national policy". In the Adkins case Mr. Justice Sutherland "defined the role of the court in a way that a radical critic could hardly have bettered". Referring to this case, Mr. Baudin remarked, "the announcement that the court had constituted itself in a super legislature is perhaps plainer than in any other case". According to C.J. Hughes "We are under constitution but the constitution is what the judges say it is".

(ii) One man tyranny : The decisions of the court have taken place by majority vote. This resulted in one man tyranny. Critics have pointed out that the laws have been declared unconstitutional by 'five

to four decisions' i.e., decisions in which five of the judges hold it to be valid. In other words, it means that the opinion of a single judge supporting, may set aside the action of the congress and the President. The critics term it as "one man tyranny and as such an undemocratic arrangement".

(iii) It has clogged social progress : The critics allege that judicial review has often clogged the wheels of progress and obstructed the enactment of social and economic reforms. Presidents Jefferson, Jackson, Lincoln as well as Roosevelt have publicly condemned the court on this score. The excessive dependence on legal formulate shown by the judges has seriously retarded social progress. For the Supreme Court, Laski writes, "due process has meant not a road but a gate, and the thing it barred was an attempt to transform political democracy in the United States into social democracy". The court once called income tax as a sheer assault on capital. For more than twenty years the judges thwarted congress in enacting child labour legislation. They prevented states from establishing minimum wage laws of Roose-velt's New Deal programme and declared many New Deal measures as unconstitutional. The Supreme Court, it is said, is least responsive to public opinion and is never a ready contemporary institution.

(iv) Judges act as politician : The History of the Supreme Court reveals that judges act as politicians. Chief Justice Hughes and his associates played a vital role in the defeat of Roosevelt's effort to pack the Supreme Court with his own men. When judges take to politics, prestige of judiciary is undermined and it ceases to play the role of custodian of the constitution.

2.9.7 Summary

The above points of criticism are, however, mere exaggerations. A second thought on the whole issue will convince that the power of judicial review has not been abused by the Supreme Court. It is not correct to term "judicial review as judicial veto". Moreover, the effect of judicial review has not been very significant. In a period of about one hundred and ninety-two years or so, the Supreme Court has invalidated only about a hundred laws out of about seventy thousand laws passed by Congress. In most of the nullified laws, only a part of the law concerned was declared unconstitutional. This shows that the "incidence of judicial review of congressional legislation has been extremely slight". President Truman used veto on the Congress laws more than the Court did in its entire history, i.e. 226 times; Roosevelt used veto 631 times and Cleaveland 583 times. But for judicial review, writes Munro, "The

American Constitutional system would have become a hydra-headed monstrosity of fifty rival sovereign states. In a country having separation of powers and a political system in which the executive is independent of legislative control and the legislature cannot be dissolved earlier than the expiry of its term the power of judicial review constitutes the ultimate safeguard of individual liberty.

In Great Britain the need for judicial review has not been felt because in that country the executive is responsible to the legislature and in case of a difference between the two the will of the legislature prevails. Secondly, Great Britain is not a federation of states and hence there is no rigid division of powers between the states and union. The United States has a written Constitution wherein the citizens have been guaranteed some fundamental rights and the states have been given separate and independent powers. Hence the need for judicial review in the United States is greater than in Great Britain.

It has been alleged that the power of judicial review has been used to clog the wheels of social progress. This is far from truth. If we probe into the facts, we discover that the Supreme Court has from time to time upheld progressive measures. It has not always been conservative in its attitude. Had it been so, the Congress would not have rejected the proposal of President Roosevelt to 'pack' the Supreme Court with new and younger members of the Supreme Court who would not have obstructed the economic development of the country. The United States is today the most highly industrialised country in the world. The Supreme Court has always continued to act as the protector of these rights which are guaranteed to individuals and minorities by the constitution. It has given decisions aiming at improving the status of the Negroes in the country.

It may, therefore, be said that the abuses of judicial review have been rather exaggerated. Judicial review is no doubt a great power but it is neither so absolute nor so irresponsible as it seemed in its hey day. Whatever dissatisfaction may arise over the court's exercise of its power of judicial review, there is no workable substitute for it. None of the proposals to reform the Supreme Court has evoked popular enthusiasm. Americans have never been willing to put full trust in the majority. They will never be prepared to abolish the power of judicial review. They are more apprenhensive of unchecked legislative and popular majorities than of an independent and strong judiciary. In the words of Finer, "Such a court with such functions is the most original, the most distinctive American contribution to political science. It is the

cement which has fixed firm the whole federal structure.

2.9.8 Key Words

Appellate Jurisdiction
Civil Rights
Third Chamber
Judicial Review
Super-Legislature

2.9.9 Long Answer Type Questions

1. Write a detailed note on the Supreme Court in U.S.A.
2. What do you mean by Judidcial Review in U.S.A.

2.9.10 Short Answer Type Questions

1. What is the original Jurisdiction of the American Supreme Court?
2. What is the Judicial Review?

2.9.11 Suggested Readings

C.O. Johnson : Government in the United States
A.C. Kapoor : Selected Constitution

Lesson No. 2.10 **UNIT - II** **Author : Dr. Hardev Singh**

Judicial System & Rule of Law in England

STRUCTURE

2.10.0 Objectives of the Lesson

Judiciary administers justice. It works according to Law. It settles the disputes and punish law breakers according to law. So the judiciary in England needs to be study thoroughly. After reading this lesson, students will understand the judicial system in England. They will also know in detail, about the Courts: Civil Courts and Criminal Courts.

2.10.1 Introduction

The judiciary occupies an important place in the actual administration of a democratic country. The judicial system of England is based on unwritten concepts of the Common Law and it consists of courts and institutions that came to be established from time to time without a settled plan. But, today the British judicial system is considered to be the most efficient and impartial in the world. Judiciary's main function is to protect the rights given by constitution. It checks the legislative and executive from encroachment on these rights.

2.10.2 Organisation of Judicial System in England

The present-day organisation of the English Courts is relatively modern. Though the courts themselves are much older, they were entirely reconstituted by the Judicature Acts of 1873-1876, as amended by the Act of 1925. Prior to 1873 the judicial organisation of England was in a state of chaos, with numerous courts possessing special functions, archaic procedures and overlapping jurisdictions. The Acts of 1873 systematized and recognized the courts and simplified the judicial procedure. Now the courts in United Kingdom are divided into Civil and Criminal Courts, though sometimes criminal cases are also heard in Civil Courts and civil cases may be heard in Criminal Courts. No hard and fast line can be drawn between them.

(A) Civil Courts in England and Wales –The most important of the Civil Courts in England are :

1. County Courts—The County Courts are the lowest courts in civil matters which decide disputes in which the amount involved is not more than £500. It may be regarded as a popular Tribunal. On the average a million cases are entered in it very year, though only a few ever reach the stage of trial. Many are settled out of court. County courts are presided our by a paid judge, sitting alone. Eighty County Courts judges may be appointed. They are appointed by the Lord Chancellor from among barristers of at least seven years' standing. The area of their jurisdicition is a district. There are about five hundred such districts. The districts are grouped into fifty-five circuits, to each of which is assigned one or two judges which hold court in each district approximately once a month. Procedure in the county court is very simple. Appeals from this court are heard by the High Court.

2. Supreme Court of Judicature--- The next tier above county courts is the Supreme Courts of Judicature. It is divided into two branches:

(a) High Court of Justice, and (b) Court of Appeal.

(a) The High Court of Justice has *three* divisions : (i) The Queen's Bench Division, (ii) The Chancery Division , and (iii) The Probate, Divorce and Asmiraly Division.

The High Court of Justice forms the lower chamber of the Supreme Courts of Judicature set up in 1875. Cases are distributed among the three branches as tradition and convenience dictate. The Queen's Bench Divisions consists of the Lord Chief Justiceand and 25 other judges. They are mainly concerned with ordinary civil actions, such as debt cases, actions for damages, revenue cases, insurance cases, commercial cases, etc. But they also hear criminal cases at Assize. The Chancery Division is officially headed by the Lord Chancellor. Its jurisdiction is derived from the equity system and its work covers actions for the administration of

the estates of deceased persons, partnership actions cases connected with trus and mortgages, some tax cases, the case of infant' estates, and company and bankruptcy matters.

The Probate, Divorce and Admiralty Division deals with the proof of wills, with Admiralty and shipping cases, and with divorce cases. Many divorce cases even are heard before Queen's Bench and county court judges.

The judges of the High Court are appointed by the Crown on the recommendation of the Lord Chancellor. They hold office during good behaviour. They sit singly and in groups according to rules.

3. Court of Appeal--- The Court of Appeal receives appeals from both the county courts and the three divisions of the High Court. Appeals can be taken only on question of law. There is no appeal on question of fact, though an application may be made to the Court of Appeal to order a new trial. This court is composed of the Master of the Polls and eight other judges. For appealed cases the court sits in trial. It may be noted that the High Court has both original and appellate jurisdiction. On its original side it has jurisdiction in cases in which the amount involved is sufficiently large. On its appellate side it entertains appeals from the county courts. The Court of Appeal is an appellate court which receives appeals both from the County Courts and the High Court of Justice. In the Court of Appealno witnesses are heard, and there is no jury. The Court of Appeals sits in London.

4. The House of Lords as a Court--- In the British Judicial System the House of Lords is not only law making body but is also a judicial body. Both civil and criminal cases end only in the House of Lords which is the last body to say the last word in these cases.

The House of Lords, as we have seen, is a large body consisting of over one thousand members, but all the members of the House do not take part in its judicial business. The appeals which come to the House of Lords are heard by Lords, namely, the Lord Chancellor and nine Law Lords of appeal in ordinary. The law Lords are men of high judicial distinction who are made life pears so that they may exercise judicial functions which belong to the House as whole. These law lords, it may be noted, constitue for judicial purpose the whole House of Lords and not just a committee of it.

5. The Judicial Committee of the Privy Council--- The Judicial Committee of the Privy Council is the final Court of Appeal in cases which from the Court of the colonies and from certain of the dominion, as well as from the ecclesiatical courts in England. Formally, it is an administrative body to advise the Crown on the use of its prerogatives regarding appeals from the courts of the colonies, and the Commonwealth. It, as it stands today, was constituted by a Parliamentary Statute of 1833. It consists of the Lord Chancellor and former incumbents of his office, the

nine law lords,the Lord President of the Prvy Council, the privy councillors who hold or have held high judicial positions, and varying number of judicial persons connected with overseas superior courts.

The appeal goes straight forward to the Judicial Committee which recommends to the Crown that the appeal be accepted or rejected. There is no appeal from the decisions of the Judicial Committee, it is a Supreme Court within its own field of jurisdiction.

6. Civil Courts in Scotland--- Scotland has preserved her own system of courts. The main inferior courts are the Court of the Sheriff and the Sheriff Substitute. There are twelve Sheriffdoms, each provided with a Sheriff and a varying number of Sheriffs Substitute. They correspond roughly to county courts but their jurisdiction is much wider unlimited by the value of amount involved. Above is the Court of Session which is the Supreme Civil Court in Scotland. It is divided into two parts—the Inner House and the Outer House. The Inner House is divided into two divisions, each consisting of four judges. The first Division is presided over by the Lord President, and the second Division by the Lord Justice clerk.it is mainly an appellate court. The Outer Division is a Court of First Instance where all cases for divorce are taken. From the Inner House an appeal may lie to the House of Lords.

(B). Criminal Courts in England and Wales---These courts are :

(1). Petty Sessional or Magistrates' court (Court of Petty Sessions or Justices of the Peace) ---The lowest rung of criminal courts is the Justice of the Peace. In England when a person is charged with a crime he is brought before one or more Justices of Peace, or in the larger towns, before a stipendiary magistrate. The stipendiary magistrates receive regular salaries and are appointed by the Home Secretary in the name of the Crown from among the barristers of seven years standing. The Justices of Peace are honorary and are appointed by the Lord Chancellor. They have no legal training and are laymen taken from all social classes and professions. The magistrates have jurisdiction over the same classes of cases as Justice of the Peace. The jurisdiction of the Justices of the Peace and magistrates extends over minor misdemeanous which are punishable by a fine of not more than fourteen days.

When the court is presided over by two Justices of the Peace or two stipendiary Magistrates it is known as Court of Petty Session. A single Magistrate court tries petty cases in which a fine of not more than £1 or a sentence for not more than 14 days can be imposed the court of Petty Session tries more serious cases. It can impose a fine of £100 or upto six months and in certain cases a fine of £500 and sentence of one year. The accused can demand trial by jury if the offence is punishable by imprisonment for more than three months for the trial of children

and young persons, there are Juvenile courts consisting of three justices. One must be a woman.

(2). Courts of Quater Session--- There are two different kinds of Quarter Sessions---county sessions and borough sessions. Both are normally held four times a year, and it is for this reason that it is called "Quarter Sessions." County Quater Sessions consist of the Magistrates of the county, assembled together under a legally qualified Chairman. A borough session is presided over by a Recorder, who is a salaried barrister, as sole judge. In both the courts trial by jury is the practice. This court exercises both original and appellate jurisidiction. It can hear appeals from the lower courts and it also hears directly serious criminal cases but more serious cases, such as murder, forgery, libel and bribery, are heard by Assizes.

(3). Courts of Assizes---These courts are branches of the High Court of Justice. These are held in the county towns and in certain big cities three times a year. It is presided over by a judge of the High Court or a commissioner of Assizes who may be a barrister commissioned to act as a judge. The Assizes Judges work on circuits covering England and Wales, travelling from one county to another. The Assizes Jugde sits with a jury. They can try any indictable offence committed in the County. At the Winter and Summer Assizes, civil as well criminal cases may be taken. The Autumn Assizes is confined to criminal cases alone.

(4). Central Criminal Court--- It acts as the Court of Assizes for the criminal business on London, Middlesex and parts of the home Counties. It sits at least twelve times a year. It consists of a judge chosen from the King's Bench Division by rotation, the Recorder of London, the Common Serjeant, and two additional judgesof the Mayor's and City of London Court.

(5). Court of Criminal Appeals---The Court of Criminal Appeals was set up by an Act of 1907 to hear appeals from the verdict of a jury in a criminal trial. From both Assizes and Quarter Session an appeal lies against convicition or sentence but not against acquittal to the Court of Criminal Appeals. Apeeals may be made on point of Law and by leave on point of fact also. The court consists of the Lord Chief Justice and a number of Queen's Bench Jugdes, three in session is the usual number.

(6). The House Of Lords as a Court--- The Judgement of the Courts of Appeal is final except in the rare instances when an appeal can be taken to the House of Lords upon a point of law which the Attorney General certifies to be public importance. Under no circumstances can the prosecutor appeal. The case is heard by the Law Lords presided over by the Lord Chancellor, though all Lords have got the right to sit and vote. Its judgement is final.

(7). Criminal Courts in Scotland---These are police courts in burghs and Justices of Peace Courts in counties for the trial of minor offences. Cases go to the Sheriff court also. But more serious cases are heard by the High Court of judiciary which

is the Supreme Court of first instance. It also hears appeals from lower courts. It consists of Lord Justice General, the Lord Justice clerc, and thirteen Lords Commissioners of Judiciary. The High Court is the appellate court only. Appeals are heard by three or more judges. There is no further appeal to the House of Lords.

(8). London Courts---These are the Court of the Recorder of London and the Mayor's and City of London Court. This court does the work of a County Court for the city. It is a combination of Mayor's Court and the City of London Court.

Besides the above regular courts there are many other courts for special purposes. The Coroner's Court inquires into the causes of unnatural deaths reported to it. The Church of England has its own set of Ecclesiastical Courts. There are special Tribunals for the exercise of administrative justice. Military courts are for the trial of military personnel.

2.10.3 The Salient features of the British Judicial System

This system has many special features of its own. These features may be briefly enumerated as follows:

(1). No Single form of Organization--- There is no single form of judicial system that prevails throughout the entire United Kingdom. There is one arrangement of courts for England and Wales, another for Scotland differs and still another for Northern Ireland. The law of Scotland differs both in principle and procedure and accordingly the organization of courts is also different. The judicial system of Northern Ireland also is unlike the English system.

(2). Independence and Impartiality of Judiciary--- The judiciary in England enjoys a world-wide reputation for its independence and impartiality. This independence is due to the fact that the judges are appointed by the Crown on the recommendation of the Lord Chancellor and they hold office during good behaviour. Once appointed it is very difficult to remove them. They can be removed only on a joint address by the parliament to the Crown and that too for corruption, unsoundness of mind, etc. They get decent salaries and their salaries cannot be reduced during their tenure. Thus they are neither under the influence of legislature nor under the influence of the executive. In England a judgeship is not the starting point. Judges are appointed there from among the leading members of the bar who have reached maturity in life. They remain where they have been fixed up. This adds to the independence of judiciary in England. The judges in England regard themselves as the watch dogs of the man in the street against the usurption of his rights by any authority whatsoever.

(3). Absence of Judicial Review--- In England there is no system of judicial review. No act of the Parliament can be declared *ultra vires* by any court of law. Parliament is supreme and the courts have to apply whatever law has been made by it. The

concept of unconstitutionality is absolutely unknown to the English courts. Their function is to apply law as it has been passed by the Parliament. They can not declare any act of Parliament as invalid on any ground whatsoever. There is Parliamentary sovereignty in England. It is both Legislature and a constitution-making body. Even if a Law is repugnant to the provisions of any of its previous acts, the courts have to accept it and apply it.

(4). The Courts in England are the Custodians of the Liberties and Rights of the People---In England the liberties of citizens are guaranteed not by any parliamentary statute but by the common law of the land. The civil rights, e.g., freedom of speech ,freedom of press, freedom worship, etc. guaranteed by the usages and traditions which are strictly enforced by the courts of the land. Moreover, these freedoms have become so sacred to the English people that the Parliament with all its omnipotent powers cannot dare to touch them. There is liberty in England because there is Rule of Law. A person has a maens for enforcing his right for a speedy trial, an application on his behalf can be made to the Lord Chancellor or any other judge, for a writ of habeas corpus directing the detaining authority to bring the person before the court.

(5). There is Jury System in England--- Enland is considered to be the early home of the jury system. Grand Jury and Jury have become regular agencies of enquiry and adjudication. In the trial of all English courts except the lowest and highest. The charge is framed by the judicial clerk with the aid of the presenting solicitor and the trial is held by the judge with the assistance of the jury. Moreover, the jury in England has not been overburdened by extending it to the trial of unimportant disputes,

(6). Trials are speedy in England--- England can be proud of the high quality of justice dispensed by her courts. The British Courts operate under salutory principles and follow simple procedure. Cases are decided with much greater speed than in many other countries. The judges in England enjoy great dicretion in dealing with legal technicalities and as a result they can decide cases quickly. The English judges do not permit the dilatory tactics employed by the lawyers. The High Courts deal with the merits of the case and with the petty technicalities. So seldom they reverse the decisions of lower courts. Speedy trial is the essence of justice. Delayed justice, it is rightly said, is no justice.

(7). The Course of Justice is within Easy Reach of all---The whole judicial system in England has been organized in such a way that every person can hope to get justice without much difficulty. All the courts are organized in a hierarchical way. There are different grades of courts, Civil and Criminal, and in each of these grades there are different degrees of courts, beginning at the bottom with the smallest courts, then the next higher appellate courts, and the High Court.

(8). The Legal Profession is Efficient and Standarized--- The standard of legal profession is very high in England, the profession is strictly divided into two classes of lawyers---barristers and solicitors. Solicitors are professional men who undertake legal business for lay clients. Barristers, on the other hand, advise on legal problems submitted through solicitors and they conduct legal proceedings in the higher courts. This division of work makes for efficiency of work.

(9). The House of Lords as the Highest Court of Appeal---It is really a unique feature of the judicial organisation in England that the House of Lords which is second Chamber of the Parliament should perform the function of acting as the final court of appeal in the country both in criminal and civil matters. In theory, all the members of the House of Lords numbering near-about one thousand, have got the right to take part in the judicial proceedings of the House and vote, but in actual practice there is the long-standing convention that only nine Law Lords of Appeal take part in the judicial proceedings. The Lord Chancellor presides over the proceedings.

(10). Trials are open---Cases in England are tried in open courts to which the public has access. Judgement is given in open court. Both the accuser and the accused have the right to be represented by counsel.

(11). There is Rule of Law in England---Rule of Law is the most important feature of the English Constitution. The English judicial is based on it to a very large extent. In its simple meaning the term Rule of Law denotes that law reigns supreme in the country and not the arbitrary will of any individual. **(for further details see next part of the lesson).**

2.10.4 Self Check Exercise

1. Write a short note on Civil Courts in UK.

   _____

2. What do you mean by Rule of Law?

   _____

2.10.5 Rule of Law in England.

England has no written constitution. The parliament can alter any constitutional principle by passing an ordinary law. It is, indeed, astonishing to see that the British people feel themselves securely fee in the midst of an unwritten and evolved constitution. The reason for this lies in a constitutional government what the English writers, particularly Professor Dicey, call by the name of “Rule of Law”. It is based on Common Law of the land. It is the product of centuries of struggle between the King, determined to rule by the virtue of ‘Divine Rights’, and the law made by the people to protect their inherent rights and privileges.

There is Parliamentary Sovereignty in England and Parliament functions under the direction of the Cabinet which, with the help of its majority in the House of Commons, can get all its legislative proposals passed, it means the government can get the laws it desires. The question is: does this not lead to arbitrary rule? In other words, what is there to protect the rights and liberties of the people against arbitrary encroachments on the part of the government? In England, like other democratic countries, there is neither a Bill of Rights nor the courts exercise judicial review over laws passed by parliament. However, it is fact that the rights and freedoms of the people are as real or safe in England as anywhere else.

The protector of people's liberties in England is the Rule of Law. As a basic principle of the British constitutional system, the Rule of Law means that "the exercise of the powers of the government shall be conditioned by law and the subject shall not be exposed to the arbitrary will of his ruler."

2.10.6 Main implications of the Rule of Law or Professor Albert Venn Diecy's Views Regarding the Rule of Law

According to Dicey's famous exposition, the principle of Rule of Law protects the people against arbitrary authority in three ways. In other words, it has three distinct meanings or it may be regarded from three different points of view. They are as following :

(1). Supremacy of the Law---It means ,in the first place, the predominance or supremacy of law, as opposed to the influence of arbitrary power and excludes the existence of arbitrary powers or prerogative or even of wide discretionary authority on the part of government. The rule of law guarantees liberty of person and property by implying that no person can arbitrarily deprived of life, liberty or property by arrest or detention except for a definite breach of law tried in and held so by a court of competent jurisdiction. Englishmen are ruled by the law alone. A person can be punished for a breach of law established before the ordinary court by the ordinary law procedure and for nothing else. There can neither be an illegal imprisonment nor illegal punishment of any kind in England.

A person arrested with any authority of law can apply for a writ of Habeas Corpus and if the detaining authority cannot put forward a legal plea in its defence, the arrested person has to be set free.

(2). Equality Before the Law---The Rule of Law ensures equality. It means, no man is above law but that every man, whatever his rank or position, is subject to the ordinary law of the land and amenable to the jurisdiction of ordinary tribunals." That is, all persons are equal in the eye of law and subject to the ordinary courts of the country regardless of their private or public position. Rule of law in this sense means equal subjection of all classes to the ordinary law of the land administered

by the ordinary law courts. It rules out the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of ordinary tribunals. Every individual is under the control of the law made by the parliament or common law emanating from judicial decisions and under the jurisdiction of ordinary courts. There is no such thing as administrative law or administrative courts in England.

(3). Rights of the People are the Result of Judicial Decisions--- The third meaning of the term 'Rule of Law' is that the rules of the Constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts. In Dicey's own words, In the third place, rule of law means " the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before courts." From this meaning we infer that 'legal' rights of individual, e.g., the freedom of speech, assembly etc.in England are not guaranteed by a constitutional code. On the contrary, they are safeguarded by the operation of ordinary laws and the remedies are available under these ordinary laws against those, whether public officials or private persons, who unlawfully interfere with these liberties. Other rights such as the right to bear arms, immunity from excessive bail and from cruel and unusual punishment rest upon statutes or upon judicial decisions similarly the right against unlawfull arrest and detention is guaranteed by the Habeas Corpus Act of 1679.

2.10.7 Certain Exceptions to the Rule of Law.

The description of the Rule of Law as given by Dicey in his very famous work *Law of the Constitution (1886),* was hardly a true picture of the situation as it stood at that time. Since then, several developments have occurred and they have considerably affected the working of Rule of Law England. Critics point out that Rule of Law which has been so much praised by Professor Dicey, suffers from certain limitations. There are certain exceptions to it. Some of them are as following:---

(1). Parliamentary sovereignty and Rule of Law.---The British Parliament, at any time, limit or abrogate any right of the people whether it is based on statute or common law. In times of national emergency, such as a war, Parliament exercises this power of restricting the freedom of the people by passing an ordinary law like the Defence of the Realm Act of 1914 or the Emergency Powers Act of 1939 etc.

(2). The Exception of the Crown.---An important maxim on which the British constitutional structure rests is "the king can do no wrong". It means that king is above law and cannot be tried in any court of England for any wrongful act done by him, because there is no process known to English law by which he can be brought to trial. In short, this maxim ensures complete personal immunity to the king from

the jurisdiction of ordinary courts of law. Moreover, the king can grant or refuse passports to travel in any other country. This power cannot be challenged in any court.

(3). Delegated Legislation and the Rule of Law.---In England, there is the increasing use of 'delegated legislation'. With the constant extension of the state's sphere of activity, Parliament cannot find enough time to give full consideration to the immense volume of legislation it has to cope with. A practice has, therefore, developed for Parliament to pass legislation in general outlines determining broad principles and to authorise the executive departments to frame rules and regulations with a view to achieving the purpose of the legislation. Sometimes the regulation-making power vested in a minister or subordinate authorities includes the power to 'modify the provisions' of the act as passed by Parliament. This discritonary power given to the executive departments has been condemned as the "new despotism" of the bureaucracy which has dominated Parliament and has become a serious challenge to the rule of law and democracy in England.

(4). Special Position of Judges.---Judges of both superior and inferior courts are exempt from all acts done within jurisdiction, however malicious, corrupt, or oppressive. But this immunity extends only to judicial acts. In Criminal Courts the Justice of Peace are also protected from any proceeding for any official act done by them within their jurisdiction to the same extent, i.e., if they have not acted maliciously.

(5). Foreign Diplomats are Immune from the Laws of the Land.---According to established international rules, like other countries, the English law also provides immunity to the foreign diplomats before courts. Even the foreign rulers enjoy immunity before courts. They cannot be tried even if they break a law of the country.

(6). The Public Officers' Immunity from Prosecution.---The public officers enjoy personal immunity from prosecution before a court for any act done in their official capacity. The state is responsible for all official acts of the public officers and the latter are, therefore, not personally responsible before any court. Some acts of Parliament such as the Public Authorities Protection Act of 1893 as amended by the Limitation Act 1939 and the Crown Proceedings Act of 1947, impose serious restrictions on the right of private citizens to bring actions against public authorities and their officers and confer certain privileges and immunities on the latter. All these things are contrary to the Rule of Law.

(7). Judicial Powers are Exercised by Non-Judicial Bodies.---In England, non – judicial bodies exercise such powers which are not of executive nature, but from every respect they are of judicial nature. For example, it is pointed out that the Home Secretary has an absolute dis creation to grant to aliens certificates of

naturalisation as British subjects. He also can cancel such certificates at any time. There are more examples as the Minister of Health, National Health Insurance Commissioner, the Minister of Education, Board of Trade, the Minister of Transport, Railway Rates Tribunal etc., are such non-judicial bodies which have ultimate decision making powers in different cases and that cannot be challenged in any court of law. All these things are violation of the very spirit of Rule of Law.

(8). Exercise of Extraordinary Powers by the Executive.---The rigid application of law by the judges hampers the action of the Executive. The officials can only escape from its hard and fast rules by getting from Parliament the discretionary authority which is denied to the Crown by the law of the land. In the times of emergency or civil war or foreign attack many persons are sometimes to be arrested on suspicion only or some steps taken not in accordance with law. So in all such cases the executive has to approach the Parliament for sanctioning their illegal actions or for exercise of extraordinary powers.

2.10.8 Present Position of the Rule of Law in England.

The respect for Rule of Law has definitely diminished during the last century. Parliament has passed many acts in recent past, such as Factory Acts, the Education Acts, etc. Which give judicial or quasi-judicial authority to officials, thus diminishing the authority of law courts. Cases arising under these acts cannot be heard by the ordinary courts. They are decided by the Departments concerned. Then there is growing disturbs of judges and courts on the part of such bodies as Trade Unions. These Unions claim the there rules of discipline and work must be interfered by the Courts. On the other hand, the extensive use of delegated legislation, Orders-in-Council and Provisional Orders is largely responsible for undermining the prestige of law courts. Because, their validity cannot be questioned in any court of law.

2.10.9 Summary

After discussing the various limitations of Rule of Law in England, we can conclude that it is still a distinctive feature of the British constitution. But the Rule of Law as expounded by Professor Dicey needs now drastic modifications though it may still be an important feature of the English Constitution. But there is the need for constant vigilance on the part of the people and particularly, on that of Parliament if the bureaucracy is to be prevented from establishing its despotism . The consensus of opinion, however, is that the alleged “new despotism” has not, so far, overpowered democratic government in Britain and that the Rule of Law remains a principle of the British Constitutional system.

2.10.10 Key Words

Delegated Legislation
Judicature
New Despotism
Rule of Law
Trials

2.10.11 Long Answer Type Questions

1. What are the salient features of the judicial system in England?
2. Describe the organization and functions of Courts in England?
3. What do you understand by the Rule of Law? What are the exceptions to it?

2.10.12 Short Answer Type Questions

1. Write short notes on:
   (a) House of Lords as a Court of Law.
   (b) The Rule of Law as understood by Professor Dicey.

2.10.13 Suggested Readings

Mackintosh : The Government and Politics of Britain
J.C. Johri : Major Modern Political System.

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