

WORLD CONSTITUTION : COMPARATIVE ANALYSIS

B.A POLITICAL SCIENCE

III SEMESTER

CORE COURSE

(2013 Admission)



UNIVERSITY OF CALICUT

SCHOOL OF DISTANCE EDUCATION

CALICUT UNIVERSITY P.O., MALAPPURAM, KERALA, INDIA - 673 635

250-A

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STUDY MATERIAL

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WORLD CONSTITUTION: COMPARATIVE ANALYSIS

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MODULE I

NATURE AND SCOPE OF COMPARATIVE POLITICS – DISTINCTION BETWEEN TRADITIONAL AND MODERN COMPARATIVE POLITICS.

INTRODUCTION:

Comparative politics has a long and very distinguished history dating back to the very origin of systematic political studies in ancient Greece and Rome. Even the most ancient people, compared their situations with those of other people's with whom they came in contact. The Bible is perhaps one of the first written statements of comparative politics. The ancient Greeks carried out the earliest systematic comparisons of a more modern and secular. Plato and Aristotle, the two foremost ancient Greek political scientists, wrote two books 'Republic' (Plato) and 'Politics' (Aristotle) and these are considered as the great books of all the time. In fact, Aristotle, the father of political science, used comparative method for comprehending and analysing principles, issues and problems of his times. He used comparative politics knowledge for building up his theory. Aristotle collected approximately 150 constitutions and used the knowledge for answering many questions of political dimensions. His admirers followed his path, and the tradition still continues.

Several political thinkers like Cicero, Polybius, Machiavelli, Montesquieu, J.S mill and others used comparative method in a highly productive way. In the 19th century comparative politics studies were popularly designated as 'comparative government' studies. Comparative government studies were used by political scientists for arriving at correct and valid conclusions regarding the nature and organisation of state and government. Their basic objective was to find out the historical and legal similarities and dissimilarities among the various governments and their political institutions. A comparative- normative-prescriptive study of constitutions was conducted. It was an attempt to identify the best political institutions.

The dissatisfaction with the traditional approach and scope of comparative government, due to lack of comprehensives in scope, unrealistic nature and unscientific methodology, led to the development of a new science of comparative politics. In the 20th century, the study underwent revolutionary changes. The traditional focus (comparative government)got replaced. A large number of political scientists like Munro, C.F. Strong, Herman Finer, Almond, Powel, Coleman, and others worked hard to replace the traditional norms and methods with modern, scientific methods. In many western countries, comparative politics came to be regarded and developed as an autonomous discipline. In third world countries too, so many scholars got engaged in comparative politics studies and this exercise still continues.

Several developments of the post cold war era greatly revolutionised this area of study. The traditional objective of deciding the best forms of government is replaced by the objective of systematic and comparative politics studies. Now, comparative politics study realistically and precisely analyses and explains all processes of politics. From legal-institutional study it transformed into a behavioural, process-oriented and functional study of political systems in terms of their structures, functions, environments and development processes. This attempt continues even today and Comparative Politics continues to be a popular and highly productive area of study of politics.

NATURE AND SCOPE OF COMPARATIVE POLITICS

Nature and scope of comparative politics is understandable only when one understands at least, the main characteristics and meaning of 'comparative government'. Although the two terms 'Comparative Politics' and 'Comparative Governments' are used loosely and interchangeably, there is distinction between them. Traditionally, the comparative study of politics stands entitled as 'comparative government'. Comparative government includes the study of features and legal powers of political institutions existing in various states. It is the study of state and other political institutions in terms of their legal powers, functions, and positions on a comparative basis. The summary of the main characteristics of comparative government have been:

Emphasis upon the study of political institutions of various countries.

Focus on the study of major constitutions of the world.

Emphasis upon the study of powers and functions of various political institutions working in different countries.

Formal study of the organisation and powers, description of the features of the constitutions and political institutions, and legal powers of political institutions form the basic contents of comparative government study.

To build a theory of ideal political institutions has been the objective.

With all these features, comparative governments remained a very popular area of study upto the first quarter of the 20th century. Thereafter, a large number of political scientists greatly dissatisfied with its narrow scope, unscientific methodology, formal legalistic-institutional and normative approach. They came forward to adopt comprehensiveness, realism, precision and scientific study of the processes of politics as their new goal. Their efforts came to be designated as comparative politics.

MEANING & DEFINITION OF COMPARATIVE POLITICS

The study of comparative politics involves conscious comparisons in studying; political experiences, institutions, behaviour and processes of major systems of government.. It includes the study of even extra constitutional agencies along with the study of formal governmental organs. It is concerned with significant regularities, similarities and differences in the working of political behaviour. Accordingly, comparative Politics can be described as the subject that seeks to compare the political systems in various parts of the

globe, with a view to understand and describe the nature of politics and to build up a scientific theory of politics. Some popular definitions of comparative politics are:

John Blondel : Comparative politics is “the study of patterns of national governments in the contemporary world”

According to M.G. Smith ,”Comparative Politics is the study of the forms of political organisations, their properties, correlations, variations and modes of change”

According to E.A Freeman, “Comparative Politics is comparative analysis of the various forms of govt. and diverse political institutions”.

On the basis of all these definitions, we can say that comparative politics involves a comparative study of not only the institutional and mechanistic arrangements but also an empirical and scientific analysis of non-institutionalised and non-political determinants of political behaviour. Empirical study of political processes, structures and functions forms a major part of comparative political studies.

NATURE OF COMPARATIVE POLITICS

Comparative Politics seeks to analyse and compare the political systems operating in various societies. In doing so, it takes into account all the three connotations of politics- *political activity, political process and political power*. Political activity consists of all the activities involved in conflict resolution or in the struggle for power. Since the basic means of conflict-resolution is the authoritative allocation of values, it involves an analysis of the process by which the authoritative values are made and implemented in all societies. In this sense, politics stands for political process. It involves the study of all formal as well as non-formal structures through which the political process gets operationalised. The political process receives information and signals from the environment and then transforms these informations and signals into authoritative values. Finally politics, being a struggle for power or a process of conflict resolution through the use of legitimate power, involves a study of power or power relations in society. Laswell describes politics as the process of shaping and sharing of power, Robert Dahl holds that politics involves power rule and authority to a significant extent. Hence the study of politics naturally involves the study of power. As such comparative politics involves the study and comparison of political activity, political process and struggle for power in various political systems. It seeks to analyse and compare political systems in a holistic way as well as through a comparative analysis of their structures, functions, infra-structures and processes.

Comparative Politics nowadays characterised by a number of features. Some important features are:

1. Analytical and empirical research
2. Objective study of politics- A value free empirical study-It rejects normative descriptive methods of comparative government.
3. Study of the infra-structure of politics-Comparative Politics, now analyses the actual behaviour of individuals; groups structures, sub-systems and systems in relation to environment. It studies the actual behaviour of all institutions.

4. Inter-disciplinary focus: Comparative Politics focusses interdisciplinary approach. It studies politics with the help of other social science like psychology, sociology, anthropology and economics.

5. It studies political processes in both developed and developing countries. The biased and parochial nature of traditional studies stands replaced and the study of political systems of Asia, Africa, and Latin America enjoys equal importance with the study of African and European political systems.

6. Theory building as the objective:

The objective of Comparative politics study is scientific theory building.

7. Adoption of 'Political Systems'

Comparative politics has adopted the concept of 'system' for the study of politics. It enables political scientists to study politics comprehensively, realistically and empirically.

With all these features, Comparative politics is almost a new science of politics. It has rejected the non-comprehensive scope, formal character, legal and institutionalised framework, normative approach and parochial nature of the traditional comparative government studies.

SCOPE OF COMPARATIVE POLITICS

Traditionally, the scope of Comparative Politics was limited and parochial. It was confined to the study of constitutions and political institutions and political institutions in respect of their features, powers and positions. It was 'parochial' in the sense that it involved a study of only European constitutions. Amongst the European Constitutions, the British constitution was regarded as the mother constitution and standard constitution for measuring the worth of all other constitutions. The emphasis was upon the study of governments and institutions.

In contemporary times, comparative politics has come out of the parochialism and limited scope of comparative government. It has come to acquire a wide scope which includes the analysis and comparison of the political processes, political activities, political functions, and political structures of all political systems, developed as well as developing and European as well as Asian, African and Latin American. After second world war, it has undergone revolutionary changes in respect of its scope and methodology.

Modern political scientists realised the shortcomings of traditional studies and decided to eliminate formalistic, legal institutionalism and extreme normativism of the traditionalists. They accepted that it must include all the process of politics and not only legal institutions. The actual functioning of all formal as well as informal political structures like interest groups, pressure groups, political parties and political elites should also form the part of the scope of comparative politics. They came forward to develop new tools, concepts, models and theories of political processes for analysing and comparing the behaviour of all the political systems. They borrowed several new concepts from other social sciences, and even some from natural sciences, for analysing, explaining and

comparing all political phenomena. Consequently, there appeared a revolutionary change in the scope and nature of comparative politics studies.

Today, comparative politics has secured a very wide scope. In fact, it includes all that comes within the purview of politics--the study of all political processes, political activities, political relations and power relations found in every part of the world. A comparative study of the regularities, similarities and differences among the structures and functions of all political systems forms the core of its scope.

The following are the main subjects included in the scope of comparative politics

All political structures

The scope of comparative politics includes of all structures, formal and informal, governmental and extra governmental. These structures are directly or indirectly involved in the struggle for power. It is not confined to the study of three forms governmental organs—legislature, executive and judiciary. Along with these, bureaucracy, interest groups, pressure groups, elites, political parties and all other political groups of human being forms a part of the scope of comparative politics.

Functional studies

Comparative politics seeks to study more from the functions which constitute the political process and their actual operations in the environment. It studies the functions of interest articulation, interest aggregation, political communication, rule making, rule application, rule adjudication, socialisation, decision making, policy making and the like.

Study of political behaviour

Another important part of the scope of comparative politics is study of the process of politics. Voting behaviour, political participation, leadership, recruitment, elite behaviour, mass politics etc. form an integral part of comparative politics

Study of similarities and differences

Comparative politics also undertake similarities and dissimilarities between various political processes and functions. However, the approach is not descriptive and formalistic. It is on the basis of actual functioning of political structures and processes, the similarities and dissimilarities are explained and compared. The objective is not to decide which is the best process or system. The objective is systematic explanation, understanding and theory building.

Study of political systems

Comparative politics seeks to analyse the actual behaviour and performance of political systems-western as well as non- western. The political systems are analysed and compared in terms of the structures, functions, capabilities and performances .

Study of environment

The study of comparative politics demands a study of the psychological, sociological, economic and anthropological environment. For this study, the political scientists have developed concepts like political culture, political socialisation, political

modernisation etc. The study of the political culture of various political systems forms a very popular focus in comparative politics. This concept has definitely enhanced the ability of political science to explain and compare the functioning of various political systems. Thus, the scope of comparative politics has become very broad. It includes facts within the purview of political processes and activities. It seeks to study all mechanisms of politics. Gabriel A Almond has summarized the new innovations in the discipline of comparative politics and G.Binham Powele has under:

Search for more comprehensive scope

Search for precision

Search for realism

Search for new intellectual order

These four directions have greatly revolutionalised the contemporary comparative politics.

DIFFERENCES BETWEEN TRADITIONAL AND MODERN COMPARATIVE POLITICS

Traditionally, the study of comparative politics is entitled as 'comparative government'. It includes the study of political institutions existing in various states. The features, merits, demerits, similarities and dissimilarities of political institutions were compared. It was an attempt to identify the best of political institutions. This focus, (Traditional view), continued to remain popular up to the end of the 19th century. In the 20th century the study underwent revolutionary changes. The traditional focus of the study of politics got replaced by new scope, methodology, concepts, techniques-popularly known as modern view of the study of politics. Attempts were made by many political scientists to develop a new science of 'comparative politics'. They adopted comprehensiveness, realism, precision and use of scientific methods as the new goals for the study of comparative politics. This new attempt is nowadays popularized as 'modern' comparative politics.

Even though the terms 'comparative government' and 'comparative politics' are often used loosely and interchangeably, yet there exists a number of distinctions between them. Major distinctions between the traditional and modern view of the comparative study of politics are the following:

Difference in scope:

A major area of distinction is with the scope of the two views. In traditional view, the scope of the study is limited. It emphasized mainly on the comparative study of formal political institutions. The legal power and functions of the institutions were examined in it.

In the modern view, the scope of comparative politics is much wider. It includes the analysis and comparison of the actual behavior of political structures, formal as well as informal. Scholars believe that these political structures, governmental or non-governmental, directly or indirectly affect the process of politics in all political systems.

Difference in approach:

Both traditional and modern comparative politics follow different approaches to its study. Traditionalists follow narrow and normative approach. It involves descriptive studies with a legal – institutional framework and normative – prescriptive focus.

As against it, modernists stand for empirical, analytical studies with a process orientated or behavioural focus and they follow always scientific methodology. It seeks to analyse and compare empirically the actual behaviour of political structures.

Traditional view is much older than modern view of the study of comparative politics:

Study of political environment is different:

In traditional view it fails to give due place to the study of the environment of political institutions. But in modern view, it gives due importance to study of environments and infra structures of politics.

Focus of two views are different:

Traditionalists ignore the importance of inter disciplinary focus, but modernists fully accept the importance of it and strongly advocates the use of such focus.

Goals are different:

The objective of the traditional view of the comparative study of politics has been always the description of the ideal of political institutions in different states of the world. The goal of modernists has been always to predict the real structure of political institutions, in a most scientific way.

Traditional view is parochial, while modern view is global:

Traditionalism is parochial oriented specially towards European political systems. Modern scientific view of the study of comparative politics is global and it includes the study of all political systems of the world – European and non European, Western and Eastern and developed as well as developing.

Theory building is also different:

Traditionalist seeks to build of a theory of ideal political institutions. But modernists seek to build up a scientific theory of politics

Though, the study of comparative politics is very old, yet it's has increased its importance only in recent times. In contemporary period all the political scientists accept that for a proper understanding of all political systems, a comparative study of their structures and functions in a most scientific way is essential.

MODULE –II

CONSTITUTION AND CONSTITUTIONALISM

CONSTITUTION

Introduction:- It is one of the celebrated maxims of political science that there can be no society without a state, and there can be no state without a constitution. The word ‘constitution’ is used mainly in many senses—constitution of a body, constitution of trade union, constitution of political party etc. In a political sense, it signifies the constitution of the state. Now the term has attained a normative connotation and has become another term for a ‘democratic political order.’ Every state must have constitution of its own and that its government must be organised and conducted according to the rules of the constitution so that the people must have a rule of law, it constitutes the case of constitutionalism.

Meaning:- In very simple terms, the constitution of a state may be defined as a body of rules and regulations, written as well as unwritten. A constitution may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relation between the two are adjusted. It is a legal document known by different names like ‘rules of the state’, ‘instrument of the government’, ‘fundamental law of the land’ and the like. In most cases, the rules of a constitution may be in a written form, whether in detail or in brief. Some other cases may be in the form of maxims, usages, precedents and customs. It is essential that these rules as a whole determine the organisation and working of the government a state.

Definitions :- Some definitional statements of constitution are the following :

The term constitution signifies the arrangement and distribution of the sovereign power in the community, or the form of government.-G.C. Lewis

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

A constitution is a body of juridical rules which determine the supreme organs of the state, which prescribes their mode of creation, their mutual relation, their sphere of action, and, finally, the fundamental place of each of them in their relation to the state—George Jellinek.

A constitution is a body of those written or unwritten fundamental laws which regulate the most important rights of the higher magistrates and the most essential privileges of the subjects.---James Mc Intosh.

All these definitions differ from one another in some way. But when we analyse them one point becomes clear that the province of the constitution is government. It deals with the fundamental concerns of government and as there are different kinds of

government, there are different kinds of constitutions. But every state, no matter what form of government it has, must have a constitution.

Every constitution grows with the passage of time. James McIntosh and Henry Maine hold that a constitution is not made, it grows. It well applies in the case of England where the constitution is an evolved – a growth and not a make. There are different sources that bring about changes in the constitution of a state. These are:

1 Formal amendment: Every constitution has a procedure for its amendment according to the needs of the time. This process may be very simple as in the case of England and may be very rigid as in USA. Thus some new rules are added to it, or some old rules are revised.

2. Great statutes: Important legislation is another source of constitutional development. From time to time the legislatures of a state make laws as per requirements of the time. These laws effect some important changes. The rules of the constitution are accordingly changed.

3. Executive decrees. The head of the state issues orders, decrees and proclamations, from time to time, which make changes in the rules of the constitution. Sometimes, these changes override the written portions of the constitution.

4. Leading judicial decisions. The provisions of the constitution are also amended by the decisions of the courts given in leading cases. E.g. In India in the Kesavanand Bharathi case the Supreme Court has ruled that no amendment may be effected that is violative of the ‘basic structure of the constitution’.

5. Usages and customs: Finally, the numerous practices, precedents, usages and customs of the country that have their own effect on the provisions of the constitution. John Stuart Mill calls them ‘unwritten maxims of the constitution’ and A.V.Dicey designates them as ‘conventions of the constitution’.

The role of these factors may be seen in the development of any constitution of the world. The basic point is that the rules of the constitution change from time to time as per the requirements of the day.

CLASSIFICATION OF CONSTITUTIONS

Writers have different bases to present a typological study of political institutions. The result is that the constitutions have their own forms in accordance with the grounds taken into consideration by them. In the first place, take up the case of cumulative or evolved and conventional or enacted.

A cumulative or evolved constitution is the result of slowly working evolutionary changes; the product of accumulated material which has moulded and shaped the political institutions of a country. Such constitution is not made; it grows with the roots in the primitive past. It presents the accumulated wisdom of the past and the result of numerous customs, usages, traditions, principles, judicial decisions which have influenced its development. E.g. The constitution of Britain.

A conventional or enacted constitution is the result of deliberative efforts of man. It may be a deliberative creation on paper formulated by some assembly or convention of a particular place. It may be found in shape of a document that itself is altered in response to the requirements of time and age. Or, again, it may be that the bases of a constitution are fixed in one or two fundamental laws of the land, while the rest of it depends for its authority upon the force of custom. A look at the constitutions of the world shows that, the constitution is the selection of legal rules which govern the government of the country and which have been embodied in a document.

In view of the breadth of written provisions, they have been described as written and unwritten constitutions. The distinction between written and unwritten constitutions is more or less the same as is between evolved and enacted constitutions. In simple terms, a written constitution is one whose provisions are written in detail. An unwritten constitution is one whose written provisions are very brief and most of the rules of the constitution exist in the form of usages and customs. The British constitution is the best example of unwritten constitution. The most of the prescriptions of an unwritten constitution have never been reduced to writing and formally embodied in a document. It is made up, largely of customs and judicial decisions.

On the contrary, a written constitution is one in which most of the provisions are embodied in a single formal written instrument or instruments. It is a work of a conscious art and the result of deliberate effort to lay down a body of fundamental principles under which a government is organised and conducted. E.g. The constitution of USA was drafted by a special convention at Philadelphia.(1787). The Indian constitution was drafted by the Constituent Assembly of India.

On the basis of the distinction in the process of amendment, constitutions may be classified as rigid and flexible. If it is very simple and convenient, the constitution is flexible. Its best example is British constitution. Any new law made by the parliament gives a new rule to the constitution. Thus there is no distinction between an ordinary law and a constitutional law in a country having a flexible constitution. A.V.Dicey has aptly remarked that “strictly speaking, there is no constitutional law in Great Britain.” There is no special procedure for making a constitutional law in England. A bill may be passed by both the houses of parliament by a simple majority.

Opposed to this, is rigid constitution. Here, the process of amendment is difficult. A special procedure is followed to make a change in any rule of the constitution. A constitutional amendment bill must be passed by the parliament by special majority. Then it is to be approved either by the provincial units or by the people in a referendum or both. Obviously, there is a clear distinction between a constitutional law and an ordinary law. It is required that the ordinary law must be in conformity with the constitutional law of the land, otherwise it could be invalidated by the courts on the ground of being ‘unconstitutional’. The constitutions of USA, France and Switzerland fall in this category.

Merits of written constitution:-

- It is full of clarity and definiteness because the provisions are written in detail.
- It has the quality of stability .Since people know the nature of constitutional provisions , they feel a sense of satisfaction.
- The rights and liberties of the people are secure because all important points are written in writing.

Demerits of written constitution:-

1. It creates a situation of rigidity. Since all important rules are on writing, attempts are made to act according to rules. It leads to the development of a conservative attitude.
2. It becomes difficult to change it easily quickly as per the requirements of time. As such the possibilities of mass upheaval are increased.
3. A written constitution becomes a play thing in the hands of the lawyers and the courts. Different interpretations come up from time to time that unsettle the judicial thought of the country.

Merits of unwritten constitution:-

- It has the quality of elasticity and adaptability. Since, most of the rules are in an unwritten form, people may adapt them in response to the new constitution.
- It is so dynamic that it prevents the chances of popular uprisings.
- Unwritten constitution can absorb and also recover from shocks, that may destroy a written constitution. It looks like a natural out growth of a national life.

Demerits of unwritten constitution:-

1. It leads to situations of instability. The provisions of such a constitution may change the spur of the moment and so they are always in a state of flux as per the emotions, passions and fancies of the people.
2. It leads to the state of confusion. Controversies often arise over different provisions of the constitution having their place in the usages and customs of the country.
3. Unwritten constitution may be suitable to a monarchical or aristocratic system. It certainly does not suit a democracy where people are always conscious and suspicious of constitutional provisions.

Merits of flexible constitution:-

1. It has the quality of adaptability. It may be easily changeable as per the requirements of time, particularly during the times of national and international crises.
2. It enables the people to seek a change in the rules of the state without preferring to adopt revolutionary means.
3. It is an excellent mirror of national mind. It is representative of the needs and thoughts of the people. It can feel and record the pulse of the people.

Demerits of flexible constitution:-

1. It is always subject to the winds of instability. Crafty politicians may take advantage of the situation and thereby make changes according to their whims and caprices.
2. It is not suitable to people who lack political education and training. Politically backward people would not be able to check their selfish leaders from changing the constitution just for the sake of some political gains.
3. It can be like play thing in the hands of judicial tribunals who may create controversies by giving twists to the provisions of the constitution.

Merits of rigid constitution:-

- It offers a guarantee of solidity and permanence. It is generally secure from legislative encroachments and provides safeguards against hasty changes.
- Since the provisions of the constitution are not easily amendable , the crafty politicians feel discouraged in changing the rules of the state as per their whims and caprices. It, therefore , commands the confidence of the people in general.
- It protects the rights and liberties of the people in a better way. Since the rights of the people are put in writing and since constitutional provisions can not be amended quickly, it is certain that people feel more secure under such a constitution.

Demerits of a rigid constitution:-

- It inculcates the feeling of conservatism. It may fail to keep pace with the changing conditions of the country.
- The element of inelasticity leads to the possibilities of frequent upheavals or revolts.
- It opens room for judicial supremacy. Whenever there is some controversy, matters are taken to the courts for an authentic interpretation. The result is that constitution becomes a lawyer's heaven.

CONSTITUTIONALISM

MEANING

Constitutionalism is a modern concept that desires a political order that governed by laws and regulations. It stands for the supremacy of law. It imbibes the principles of nationalism, democracy and limited government. It may be identified with the system of divided powers. Constitutionalism provides a system of effective restraints upon governmental action. It is a body of rules ensuring fair play, thus rendering the government 'responsible'. In other words, constitutionalism stands for the existence of a constitution in the state, since it is the instrument of government, or the fundamental law of the land. Its objects are to limit the arbitrary action of the government, to guarantee the rights of the governed, and to define the operation of the sovereign power

Whereas the term ‘constitution’ refers to a frame of political society organised through and by means of law and in which law has established permanent institutions with recognised functions and definite rights; a constitutional state is “one in which the powers of government, the rights of the governed, and the relations between two are adjusted”. According to K.C. Wheare, a constitutional government “means something more than a government according to the terms of a constitution. It means government according to rule as opposed to arbitrary government, it means government limited by the terms of a constitution, not a government limited only the desires and capacities of those who exercise power.”

It follows that a constitutional government is one that operates within a universe of positive restraints. However, the degree of restraint may vary from one political system to another. That is, one state may be constituted with more restraints; the other may be of the same category, constituted with few restraints. Thus, the notion of constitutional government is essentially descriptive of two poles: Very strong restraints and very weak restraints. Between these two poles, all actual governments can be ranged.

Constitutionalism, desires a political order in which the powers of the government are limited. It is another name for the concept of a limited and civilised government. There exists no government in the world that may not be called constitutional, though such a government hardly exists in a country under a totalitarian rule where the constitution is seen with ‘contempt’. Because of this, it is only in a democratic country that a constitutional government can be said to exist. A form of government can only be classified as constitutional when the rulers are subject to a body of rules and principles, which limits the exercise of their power.

Liberal versus Marxist notions of constitutionalism

The liberal view of constitutionalism is that a state should have its own rules and regulations to enshrine the ideals of law, rights, justice, liberty, equality, and fraternity in to the fundamental law of the land. These rules may be written or unwritten, framed at a particular time or developed over a very long period of historical development, easily amendable, or amendable with great difficulty. A galaxy of western writers have taken the view that constitutionalism is both an end and a means. It is both value- free and value – laden. It has both normative and empirical dimensions. On the whole, it desires a constitutional state having a well acknowledged body of laws and conventions for the operation of a ‘limited government’. If there is a change, it should be peaceful and orderly so that the political system is not subject to violent stresses and strains. There is the rule of law ensuring liberty and equality to all; there is the freedom of press to act as the ‘fourth estate’. There is a system strives to promote international peace, security and justice.

Marxian view of constitutionalism is different from this. In a socialist country, a constitution is not an end in itself. It is just a means to implement the ideology of ‘scientific socialism’. It is a tool in the hands of the ‘dictatorship of the proletariat’ that seeks to establish a classless society that would eventually turn into a stateless condition of state. The purpose of having a constitution is not to limit the powers of the government but make them so vast and comprehensive that the ideal of a worker’s state is realised and a new kind

of state comes into being. The real aim of the constitution in such a country is not to ensure liberty and equality, rights and justice for all but to see that the enemies of socialism are destroyed and a new system is firmly consolidated. In this way, the real aim of the constitution is to firmly anchor the new socialist discipline among the working people. All powers is concentrated into the hands of the communist party whose leaders lay down their programmes and implement them according to their best judgment without caring for the necessities of a limited government. The communist party becomes the state and its leaders become the custodian of the new socialist order.

Third world countries have, a mixture of the liberal and Marxist notion of constitution. The reason is that, these countries have a linking for the western constitutional system on account of being subject to colonial rule and also their experiments with the political systems of the master countries. At the same time, their attraction to the goal of socialism makes them an admirer of some of the important principles of socialist system so as to achieve the ideal of social and economic justice in their countries.

MODULE III

A COMPARATIVE ANALYSIS OF THE FEATURES OF THE CONSTITUTIONS OF UK, USA, FRANCE SWITZERLAND AND CHINA

INTRODUCTION

We have seen in the preceding module, that there can be no state without a constitution; either written or unwritten. An analytical comparison of the features of the popular constitutions of the present world is possible only through understanding some of the basic and specific features of them. British constitution being the oldest one needs specific attention and first preference and then other constitutions. Hence a brief discussion on the features of the constitutions of Great Britain, USA, France, Switzerland and China, one by one, will enable one to have an analytical comparison.

FEATURES OF THE CONSTITUTION OF GREAT BRITAIN

The official designation of GREAT BRITAIN is “United Kingdom of Great Britain and Northern Ireland.” The British constitution is the product of evolution. It has constantly in the process of development. It is derived from different sources: conventions, charters, statutes, judicial decisions and eminent works done by scholars on the subject. Some important characteristics of the British constitution are:

1) Evolved constitution: - British constitution is the result of evolution of political institutions over centuries. It is based on conventions which are modified by judicial decisions and laws of parliament. It is not one document but a number of historical documents. According to Prof. Munro, “the English constitution is not a completed thing but a process of growth. It is the child of wisdom and chance, whose course has sometimes been guided by accident and sometimes by high designs.”

2) Unwritten:-Another important feature of it is its unwritten character. The rules and principles controlling the distribution and regulation of governmental powers have never been written anywhere else. Most of the constitutional principles have grown by experiences. It is not the handiwork of any constitution making body or Assembly.

The unwritten nature of the British constitution does not mean that none of the principles are written. There are several written parts, like Magna Carta, Bill of rights, Reforms Acts, and Parliamentary Acts of 1911 and 1949. The unwritten part is much heavier than the written part.

3) Evolutionary: - British constitution is the child of wisdom and chance. It has evolved itself. It is the oldest among existing constitutions. Its general frame work has undergone no revolutionary change for the past three centuries.

4) Flexible character: - In Britain there is no difference between ordinary law and constitutional law. The British parliament is supreme. The power to make and amend the constitution is vested with it. By the simple process of law making anything can be added and deleted from it. Since the method of amendment is simple; British constitution is flexible in nature.

5) Difference between theory and practice: - There exist a great gap between the constitutional theory and governmental practice in Britain. Theoretically the government of Britain is vested with the Crown. All of the government are the servants of the Crown. They are summoned and dismissed at the royal discretion. No law is effective without the Crown's consent. The King is the commander in chief of all armed forces. The King alone can declare war and peace treaties. Theoretically the King is the source of all governmental powers

But all this is in theory. In practice the King has become merely a figurehead. He reigns, but does not rule. The government of Britain is in ultimate theory and absolute monarchy; but in actual practice – a democratic constitutional limited monarchy. All the governmental powers are now shifted from the King to the people's representatives in parliament. Hence the practice has quite overturned the theory. Truly speaking the King has now powers only through ministers.

6) Parliamentary sovereignty: - In Britain the parliament is sovereign to make or unmake any law. No institution in England is competent to challenge the Acts of parliament. There is no judicial review. Whatever the parliament does is legal and constitutional.

7) Unitary constitution: - British political system is unitary and not federal in form. In Britain all functions of the government are exercised by one single Central government. There is no division of powers between central and provincial governments. Provincial governments have no original powers. They are created by the central government for the administrative convenience. They can be altered or abolished by the central government at any time.

8) Parliamentary form of government: - England is the mother of parliamentary form of government. The Executive (Cabinet) is always responsible to the parliament. Theoretically all powers are concentrated in the hands of the King but in practice he is only a nominal executive. All his powers are exercised by the Cabinet headed by the Prime Minister. The cabinet (council of ministers) constitute the real executive and they are selected from the parliament. The cabinet is always collectively and individually responsible to the parliament.

9) Rule of law: - Another unique feature of the British constitution is the system of rule of law, which is evolved in Britain. It means that the government acts according to the system of laws. It has never been enacted as a statute but implicit in the various acts of the parliament; judicial decisions and in the common law. It actually implies the supremacy of law in England. There is no act which lays down the fundamental rights of the people. The fundamental rights of the citizens are protected by the principle of rule of law. Prof A.V. Dicey has given three interpretations to the principle of rule of law.

10) Independence of judiciary: - Independence of judiciary has been assured in British constitution. Appointed judges, rather than elected judges, enjoying security of tenure and

emoluments, have been accepted, as factors responsible for the maintenance of judicial independence. In Britain the crown and Lord Chancellor appoint the judges, and are removable only by the sovereign on an address from both houses of parliament. Judges are chosen from distinguished lawyers who are very popular in their profession. Judges are well paid and their salaries are secured by charging them on the consolidated fund.

11) Checks and balances: - British constitution is based on the principle of checks and balances. The parliament can pass a law but no law can be implemented unless and until the Queen signs it. Like wise no order of the queen is valid unless and until it is countersigned by some minister. The cabinet is always responsible to the parliament and the parliament can vacate the cabinet by passing a no-confidence motion. The parliament can also vacate the parliament by asking the Queen to dissolve the parliament. The convention is that whenever the Prime Minister asked for the dissolution, the queen must do so.

12) Absence of the doctrine of separation of powers: - The doctrine of the separation of powers does not apply completely in Britain. The Queen is the head of the executive and judiciary and is also an integral part of the legislature. The Lord Chancellor is a member of the cabinet; president of the House of Lords and the head of the judiciary. The cabinet is the chief executive and the cabinet ministers head all the departments of the government. At the same time, the ministers are the members of the parliament. Hence under the British constitution the cabinet, the legislature and judiciary are closely and continuously associated. Their relation is not in the nature of separation.

13) British constitution is the blend of Monarchy, Aristocracy and democracy: - British constitution has harmoniously blended within itself the three different features of Monarchy, Aristocracy and Democracy. The King represents the Monarchy, which rests on the hereditary principle. The House of Lords is Aristocratic representing the lords and nobles of the land. The House of Commons, the lower house of the parliament is democratic, representing the people of the country.

14) Cabinet system: - The cabinet is the real executive in Britain. The cabinet is exercising the vast and growing powers of the Crown. The cabinet has become the supreme directing authority and the pivot of the whole political machinery. To quote Bagehot "the cabinet is a hyphen that joins, the buckle that binds the executive and legislative departments together" Today, it is the centre of British administration.

FEATURES OF THE CONSTITUTION OF U.S.A

The present constitution of United States of America was adopted at the famous Philadelphia convention held in 1787. It came into force in 1789. It is the oldest written constitution of the world. Its nature, size, system of government, legislature, executive, judiciary, and even the system of distribution of powers are specific and unique. Following are some of the specific features of the Constitution of USA.

1) Written character: - Like all other federal constitutions in the world, the American constitution is written in form. It was the product of the Philadelphia convention. Delegates from 12 states attended the convention and later the representative of Rhode Island agreed with the original draft. It established a federal government allowing maximum liberty to the

states. At the time of adoption of the constitution, 13 states joined the federation and later the number has arisen from 13 to 50.

2) Rigid character:-The constitution of USA is the most rigid constitution of the world. A lengthy and complicated process can amend it. The procedure for amendment as prescribed in the constitution is distinct from the procedure adopted in making an ordinary law. The amendment necessitates the participation of both the sets of government. The rigidity of the constitution is obvious from the fact that, only 26 amendments have been made, so far.

3) Federal character: - The American constitution is federal in character. Originally it was a federation of 13 states but due to admission of new states, it is now a federation of 50 states. A constitutional division of powers has been made between the centre and the federating units. The constitution enumerates the powers of the federal government and leaves the residuary powers to be exercised by the federal states. The constitution thus creates a weak centre. However, the federal centre has become very powerful due to the application of ‘ implied powers’ as propounded by the Supreme Court of America.

4) Supremacy of the Constitution: - The constitution is the supreme law of the land. Neither the Centre nor the states can override the constitution. The Supreme Court of America can declare a law or an executive order repugnant to the constitution unconstitutional and invalid.

5) Separation of Powers: - This is also a feature of the American constitution. It is based on the doctrine of the ‘separation of powers’ as expounded by Montesquieu in his ‘Spirit of Laws’. Accepting this theory, the three branches of government: legislature, executive and judiciary are separated, as much as, possible. The Congress, the executive process by the President and the judicial process by the Supreme Court operates the legislative process.

6) Checks and balances: - The application of the theory of the separation of the powers in its application in the absolute sense would make government itself in difficulty. The framers of the constitution, therefore, introduced a new doctrine, to avoid the difficulty, called ‘checks and balances’. The powers of one organ were so devised as to exercise a check upon the powers of others. The three organs of government have been interlocked and inter checked.

The President through his veto power checks the Congress but the Congress can override his veto by a two-thirds vote. The President has also another power known as ‘pocket veto’. By using this power he can kill a bill presented to him.

The Congress, in turn, checks the President through its power to appropriate money and to impeach the President. The Senate’s confirmation is required for all important appointments and treaties made by the President.

The Supreme Court depends upon the Congress in several respects. E.g. Appropriation and appellate jurisdiction of SC, impeachment of federal judges etc. The president is empowered to appoint judges to the SC and grant pardons, reprieves, commutation and general amnesty. In turn the SC enjoys the power to supervise over the legislature and executive. The SC can declare a law passed by the Congress, or an executive

order of the President as unconstitutional and invalid, if it violates the any provisions of the constitution.

7) Bill of rights: - The Constitution guarantees fundamental rights of person, property and liberty. These rights were not enumerated in the original constitution but incorporated in it by a number of amendments. The rights of citizens are enforceable by recourse to the judiciary. These rights cannot be suspended except by a constitutional amendment.

8) Judicial review:-The SC and the lower federal courts possess the power of judicial review. It can declare any legislation or executive order null and void if the same is found to be inconsistent with the constitution.

9) Republican: - Unlike Great Britain, the USA is a republic with the President as its elected head. The Constitution derives its authority from the people. Moreover, every federal state of USA has a republican form of government.

10) Presidential form of government: - The constitution provides for a presidential form of government in USA. All executive powers are vested with the president. Constitutionally his election is indirect but in practise it has become direct. He is not responsible to the Congress, the legislature of the country. He does not attend the sessions, nor initiate legislation directly nor answer questions. The Congress can not remove him from office during the term of his office (4years).The president can not dissolve the Congress. The members of his cabinet are neither the members of Congress nor answerable to it.

11) Dual citizenship: - The US constitution provides for dual citizenship for the people of USA. An American is the citizen of the USA and also of the state where he is domiciled.

12) Popular Sovereignty: - The American constitution is based on popular sovereignty. The ultimate sovereignty in USA is attributed to the people.

13) Bicameral Legislature: - Like Britain, USA has a bicameral legislature: House of Representatives (lower house) and Senate (Upper house). Unlike other upper houses in the world, the upper house of USA, senate, is more powerful than the lower. It is equipped with legislative, executive and judicial powers. It is described as the most powerful upper chamber in the world. It is a compact house consisting of 100 members. Its tenure is six years. The lower house consists of 435 members and they are elected for only two years.

14) Spoils system: - Another ingredient of USA is its spoil system. According to this system a government office was considered as a spoil for the services rendered to the prospective president at the time of presidential election. Hence, so long as a particular president was in power, he had his supporters in all offices. If their party was ousted in the next election, they had to tender their resignation and the new president had to keep their substitutes in those key posts. It led to inefficiency and corruption.

CONSTITUTION OF FRANCE

France has been described as a laboratory of political experiments. In the field of constitution making the French hold a world record. Prior to the great revolution- The French Revolution of 1789- France had an autocratic government (absolute monarchy), which ignored the interests of the people. The principles of liberty, equality and fraternity

were uplifted in the Revolution and adopted the declaration of the rights of man and citizen. France inaugurated the representative democracy. Prior to the revolution there was no written constitution and the king ruled by 'divine right'. There was a sort of parliament called, 'Estates General'. In 1789 it abolished the privileges of the clergy and nobility and converted itself into a constituent assembly, with the task of formulating a new constitution.

In 1791 it gave to France a written constitution for the first time, but this constitution failed to satisfy the radical revolutionaries of that time. The constitution came into force in 1792. It soon fell under the control of the revolutionary and extremist body known as the committee of public safety. The king was disposed and later put on trial, condemned and guillotined. France was declared as a republic. (First Republic.) Another one in 1793, called as the Montaguard constitution, which never applied, again replaced the constitution. This constitution also soon replaced with rule of Directory in 1795. The Directory was an executive of five members and Napoleon was its leader. Faced by rebellion, the Directory called Napoleon to handle the rebellion. The Directory was replaced by a three-member consulate of which Napoleon was the first. Napoleon acquired political supremacy and crowned himself as Emperor of France in 1804. Hence France again reverted to Monarchy.

Napoleon ruled France till 1814. Louis X VIII replaced him and Bourbon Monarchy was established. The rule of this constitutional monarchy ended in the year 1848. France again became a Republic (II nd). The constitution of the second Republic was prepared and adopted by a popularly elected National Assembly and it declared the people as sovereign. Louis Napoleon was elected as the president. In 1852, he abrogated the republican constitution and declared himself as Emperor. This royal despotism was ended in 1870, as a result of Franco- Prussian war.

In 1870, the Third Republic was established and terminated the system of Monarchy. The constitution of third republic continued till 1940. Under this period, the President was the head of the state with formal powers, while real authority was vested with the parliament.

The constitution for the Fourth Republic remained in force from 1946 to 1958. This constitution was the result of a compromise between several political parties and groups. This was an experiment of weak government functioning on behalf of a supreme parliament. This experiment came to a failure in 1958.

The Fifth Republic was inaugurated under the leadership of Gen. De Gaulle appeared in the Assembly (June 1, 1958) as Prime Minister designate and was accorded with full powers to govern by decree for six months during which period his government was to draw up a new constitution, to be prepared by a referendum. The Fourth Republic transferred itself into Fifth Republic without bloodshed and due respect for constitutional forms. He assigned to Michel Debre, his most devoted supporter, the principal responsibility for the drafting of the constitution. Debre prepared the draft constitution and presented it to the French Council of State for its opinion. On September 4, 1958, Gen. De Gaulle presented it to the French people. The people of France approved the constitution with majority. The Constitution came into force on 4th October, 1958. General De Gaulle

was elected, as the first president of the Fifth Republic in December 1958 and Debre, the author of the constitution, became the Premier.

The main features of French constitution- Fifth Republic:-

A small ministerial committee headed by Michel Debre under the authority of General De Gaulle drafted the constitution of Vth Republic. It came into force after a referendum held on 28th September, 1958. The features of the constitution are the following:-

1) Preamble:- The constitution contains a preamble which affirms the Declaration of human rights of 1789. The Declaration was based on the doctrine of 'natural law and 'general will' and was guaranteed by the right of free speech, press, assembly, and religion. It also guaranteed the principle of government through representation, protection against arbitrary arrest, and the right of the accused to be presumed innocent until proved guilty. But the Preamble is only a statement of principles without any legal basis. These principles cannot be enforced by any judicial action.

2) Written Constitution: - The constitution of Vth Republic is a written document, enacted by a constitutional committee under the leader of Gen De Gaulle. It consists of 92 articles grouped into XV titles. It is a brief document like the American Constitution. The constitution incorporates five principles: - universal suffrage, responsibility of the government to the parliament, separation of the legislature and the executive, independence of judiciary, and the provision of organising the relationship between the Republic and the associated people.

3) Rigid Constitution: - Like the 1946 constitution this constitution also includes a special procedure for amendment.-Article 89. According to this Article, a proposal for revision must, to be effective, to be voted first in identical terms by both the houses of parliament and then ratified by a referendum or, if the president decides otherwise, by a three- fifth (3/5) majority of both houses meeting in joint session. The republican form of government is not subject to revision. No amending procedure may be commenced or continued if it is prejudicial to the integrity of the nation and territory.

The above mentioned provisions for the amendment of the constitution, it is clear that the constitution is a rigid document and can not be amended through the ordinary law making procedure like that of British constitution.

4) A mixture of parliamentary and Presidential forms: - The constitution of the fifth republic seeks to combine two different principles – the principle of parliamentary democracy and the principles of presidential democracy. The text of the constitution is incomplete of the system of government, so it is difficult to label the constitution as parliamentary or presidential. But it provides for a parliamentary system of government. The head of the state and the head of the government are different. The Prime Minister and his colleagues are responsible to the parliament. Prime Minister selects and on the recommendation of the Prime Minister, the President dismisses the ministers. He presides over the cabinet meetings. . The two houses of parliament are democratically elected. The judiciary is independent. The citizens enjoy fundamental liberties, and are possessed of the right of equality before law, without distinction as to origin, race or religion.

The government of Vth Republic is actually more a quasi- presidential than a quasi-parliamentary. The authority of the President is more than the prime minister. The President is real executive like the president of America. He appoints his prime minister and other ministers on the advice of the prime minister .He administers the oath of office and secrecy and accepts their resignation. The decisions of the government are taken in accordance with his wishes. It shows the traits of presidential government.

5) Popular sovereignty: - Article 2 of the constitution declares France as an indivisible, secular, democratic, and social republic. The motto of the republic is 'liberty, equality, and fraternity' and its principle, is the government of the people, by the people and for the people. National sovereignty belongs to the people, (Article 3) who shall exercise their sovereignty through their representatives and by means of referendum. Neither section of the people, nor any individual can attribute to itself the exercise of sovereignty. Suffrage may be direct or indirect under the conditions provided by the constitution. It is always universal, equal. and secret. All men and women, who have reached their maturity and who possess their civil and political rights have the franchise under the conditions determined by law.

7) Republican form of government:- France is indivisible, secular and democratic republic. It assumes equality before law of all citizens without distinction of race, origin and religion. It respects all beliefs. The head of the state-the President - is elected directly by the people.

8) Separation of legislative and executive powers:-Another important feature of the 1958 constitution is the separation of legislative and executive powers. Executive power is not derived from the parliament. The ministers may not depend upon the shifting support of political parties. The government is in charge of legislation and even effective criticism is difficult. The president may refer a bill for referendum or he may postpone a referendum even after a bill is passed by the parliament Under the 1958 constitution the premier of France is nominated by the president. The premier selects his team of ministers who are appointed by the president.

9) Constitutional council: - The constitutional council is a unique institution of France under Vth republic. It has given the function of deciding the constitutionality of governmental or parliamentary acts. The council consists of 9 members, whose term of office is 9 years and is not renewable. One third of its members will be renewed in every three years. Three members are nominated by the president of the republic, three by the president of National Assembly and another three by the president of the senate. All former presidents are the ex-officio member of the council. The constitutional council supervises the election of the president of the Republic. It examines electoral petitions. It decides the regularity of the election of deputies and senators. It supervises the procedure of a referendum and announces its result. All ordinary laws may be submitted to the council before its promulgation to examine its constitutional validity.

10) Recognition of political parties: - The 1958 constitution recognises the existence of political parties. Act 4 of the constitution says that political parties and groups may compete for the expression of the suffrage. They may freely form themselves and exercise their activities. They must respect the principles of national sovereignty and of democracy.

11) Advisory and judicial organs:- One of the advisory organs set up by the 1958 constitution is Economic and Social Council. It gives opinion on the government bills, ordinances and orders and private member's bills submitted to it by the government. It may be consulted on any problem of an economic or social nature concerning the republic. Another advisory body is the High Council of Judges and Public Prosecutors. Its function is to advise the government on appointments to a limited number of higher judicial posts. It also gives its opinion on the proposals of the minister of justice relative to appointments of other judges.

12) Untidy, vague and Ambiguous:- The 1958 constitution of France has been called as an untidy constitution which is in some places vague, and in others ambiguous. It does not completely describe the system of government and has omitted provisions for a number of extremely important institutions.

MAIN FEATURES OF THE CONSTITUTION OF SWITZERLAND

The Republic of Switzerland is a small country, situated in the heart of Western Europe. They speak four different languages. In 1938 Romansh was adopted as the official language. There is no uniformity of religious belief as well. Despite all these differences on the basis of religion, language and race, the Swiss constitute a coherent nation. In fact each group admits the right of the other groups to maintain their distinct entities. Thus a high sense of democracy developed in Switzerland. They deeply cherish and strongly uphold communal and cantonal autonomy. In fact Swiss democracy is not only one of the oldest but the best democracies of the world. Apart from being a home of direct democracy, all of the institutions are based on democratic principles.

Another distinctive fact of Switzerland is its dynamic neutrality. In war torn Europe Switzerland alone could keep itself neutral and enjoy political stability. This policy of neutrality has brought peace and prosperity to the country. Hence it has become the corner stone of the Swiss foreign policy.

Switzerland is the product of a process of unification which started in 1291 and was completed by 1848. In 1291 three cantons constituted a confederation in order to safeguard their independence from the Austrian domination. The number of cantons joined the confederation has been increased in the course of time. The treaty of Westphalia recognised it as a sovereign state. Civil war between secessionists and radicals resulted in the defeat of the former and a new constitutional project was drawn up. It became the organic law of Switzerland in 1848. The constitution of 1848 was revised in 1874. The federal assembly framed this constitution and was referred to the people for their approval and it came to operation on May 29, 1874. Switzerland is still called a confederation of nineteen cantons and six half cantons though since 1848, it has adopted a federal constitution.

Following are the salient features of the Swiss constitution.

A written and a lengthy Constitution.

This is Swiss constitution of 1874 is a written document like that of USA. It is double in size of American constitution and consists of three chapters containing 123 articles.

Rigid.

This Swiss constitution is rigid in character, though not so rigid as the US constitution. The procedure laid down for its amendment is difficult and complicated. A proposal for a constitutional revision, partial or total may come from the Federal Assembly or through a demand put forward by 50000 voters. In either case, it cannot take effect unless it is approved in a referendum by a majority of Swiss voters as well as by the majority of cantons. Evidently this constitution is far more rigid than the Indian constitution but less so than US constitution.

Republican constitution.

Switzerland is one of the oldest Republics of Europe. The constitution of 1874 establishes Republic not only at the centre but also in various cantons. Republicanism is in fact the breath of the Swiss way of life. All political institutions in Switzerland are elective in character.

Federal form of government.

Though the Republic of Switzerland is homely designated as the Swiss Confederation, it's in fact a Federation. The powers of the government have been divided between National and Cantonal governments on the American pattern. The Federal government has been vested with powers of National importance and the residuary powers have been given to Cantons. The Cantons, however enjoy supremacy in the own sphere. But the union of Cantons is permanent and the secession is not permitted. During emergency, the Federal government is vested with the exclusive authority over the Cantonal forces.

Democratic character.

Zurcher says, "Switzerland and Democracy have in recent years become almost synonyms". This statement is justified because as a form of government the people have direct or indirect share in it and it is under their control. In 1848 and 1874, the Federal constitutions removed all aristocratic and oligarchic privileges and republican institutions were established. Further the constitution made all citizens equal before the law and introduced to universal adult suffrage. Initiative and referendum are used more extensively in Switzerland than in any other country and plays effective sovereignty in the Swiss people. Besides, one full Canton and five half Canton of Switzerland continue to possess historic institution of "Landsgemeinde" or the legislative assembly of all citizens. As a result of the existence of these institutions in Switzerland, democracy remains direct.

Rights of the citizens.

The Swiss constitution doesn't contain a formal Bill of rights as we find in Russia or India. This is not to suggest that the fundamental rights of Swiss citizens are not safe guarded by their National constitutions. The only difference is that instead of being consolidated in a single chapter of the constitution, references to specific rights of the citizens are scattered all over the constitutions. Thus, the constitution guarantees every citizen's equality before law.

Plural Executive.

The constitutions vest the executive with the Federal council, which consists of seven members, elected by the Federal assembly for four years. The president of the constitution who is elected by the Federal assembly for a period of one year only is simply first among equals. He in no way enjoys a superior position to that of the rest of the colleagues.

Position of Judiciary.

The Swiss judiciary plays a less vital role than the judiciary in the US or in India. The Swiss Federal Judiciary has limited judicial review. It can only declare a cantonal law unconstitutional. The court shall apply laws voted by the Federal Assembly. The election of judges by the Federal Assembly further establishes the inferior position of judiciary in Switzerland

Bicameral legislature.

The Swiss legislature is bicameral in character. The upper house- Council of states represents the cantons on equal basis as that of the Senate of USA. It is a small house consists of 44 members. The lower chamber is the National Council, which consists of 200 members. Both these houses are kept on a par with each other in respect of their powers.

Dynamic constitution.

The constitution of France is dynamic in character. It has been adapting itself to the exigencies of time and keeping pace with the social aspirations of people. For instance, the traditional freedom of speech and association were curtailed to some extent during the two world wars. Thus the constitution is unique in character in several respects.

THE CONSTITUTION OF COMMUNIST CHINA

China has been in its long history, a land of turmoil and revolution. The revolutionaries under the leadership of Sun Yat Sen staged a revolution on October 10, 1911, put an end to China's feudal autocracy which had lasted for more than 2000 years and established the Republic of Communist China. Sun Yat Sen, an ardent nationalist who stood for democracy, outlined a political and economic programme for leading China towards democracy and economic prosperity. But his programme was not put into practice when the reactionaries led by Yuan Shih- Kai seized power. The provisional constitution drawn by Sun Yat Sen was thrown overboard and the Republic became a sham. In 1923 president Tsao Kun proclaimed a constitution, which was opposed by Kuomintang (a party organised by Sun Yat Sen to fight the reactionaries and save the Republic). In 1927 the Kuomintang dominated by Chiang Kai Shek gained power and renounced the policy of Sun Yat Sen and they ruled China till the end of the Second World War. In 1946 Kuomintang government introduced a new constitution which was opposed by Communist party for which Mao- Tse Tung was an undisputed leader and ensued a civil war between the Communists and the Kuomintang forces. The civil war ended in 1949 bringing victory to the Communist party. The Kuomintang government was thrown off from the mainland and were made to retreat to the island of Taiwan. Since 1949, China has been under governance of the Communist party and during this time, China has emerged as a major power of Asia. For the first few

years, People's Republic of China had neither a national legislature nor a formal constitution. The Chinese People's Political Consultative Conference (CPCCC) governed it. It was in 1954 that All China People's National Congress was elected. The work of drafting a new constitution had started two years earlier and the first draft was completed in March 1954 and after further discussions and deliberations in various forums the final draft was approved on September 1954.

After two intervening versions enacted in 1975 and 1978, the current Constitution was declared in 1982 and was adopted by the 5th National People's Congress on December 4, 1982, with further revisions in 1988, 1993, 1999, and 2004. In addition, changing Constitutional conventions have led to significant changes in the structure of Chinese government in the absence of changes in the text of the Constitution. This Chinese constitution is now the highest law within the People's Republic of China.

The Constitution has five sections, which are the preamble, general principles, fundamental rights and duties of citizens, structure of the state (which includes such state organs as the National People's Congress, the State Council, the Local People's Congress and Local People's Governments and the People's Courts and the People's Procuratorates), the national flag and the emblems of the state

In 1960's itself, a new generation of communism, which may fairly be known as, 'Maoism' has emerged in China. This new Maoism was expected to be a new vision of totalitarian society and a sound departure from Leninist – Stalinist policy. In early 1960's Mao became increasingly concerned about the spectre of revisionism. Mao first launched the Social Education Movement in 1962. His thoughts were highly circulated. By 1966 the Socialist Education Movement got emerged with the main stream of the Cultural .Revolution, launched by Mao. The so-called Cultural Revolution was a ruthless attempt to root out Mao's opponents in the top level of party hierarchy. Mao dubbed intellectuals as the revisionists and foes of communism. It aimed at converting Mao into a demi- God. However after Mao's death, in the year September 1976, resulted in the eclipse of his personality cult and emergence of collective leadership. Some of the major components of Mao's theories and policies have been abandoned. An empirical approach has been envisaged. Authoritarian controls have been a bit relaxed.

The salient features of the new constitution of 1982 may be summarised as follows:

Enacted constitution:-

The new constitution of People's Republic of China (PRC), 1982 is an enacted constitution having 138 articles grouped into four chapters. The Preamble of the constitution throws light on the achievements of the past and the goals of the future. Chapter1 deals with the general principles on which the new constitutional system is based. Second chapter discuss comprehensively on the fundamental rights and the duties of the people. Third deals with the structure of the state and the fourth one deal with the highest organ of state power. It mentions national flag, national emblem and the national capital.

Rigid constitution.

Like the American constitution, this constitution of PRC is famous for its rigidity. National People's Congress (the Parliament) has been empowered to make any amendment in it by two – thirds majority.

Unitary state.

Though China is a very big country, the constitution provides for a unitary system of government. There is no division or distribution of power between National and Provincial powers. All the powers are with the Central government. Provincial, Regional or Local governments are under the full control of Central government.

Unicameral system.

The new constitution of China, like its predecessor, provides for a unicameral legislature. It is National People's Congress (NPC), having powers of legislation despite the fact that its representatives are to be chosen from the ranks of the people, units of provincial and regional administration, and armed forces.

Fundamental Rights and Duties:

The new constitution of PRC provides for a set of fundamental rights and duties to the citizens. Chapter II (Articles 33 to 56) deals with the fundamental rights and duties. The citizens have been given right to education, to elect and be elected on completing the age of 18 years, to work, to have rest and leisure, to get material assistance in old age or in the event of physical inability and like. The state has been enjoined to grant equal rights to protect marriage and the family and the interest of the Chinese people. The constitution also guarantees freedom to profess and practice religion. No person can be arrested except by a decision of people's court and with the sanction of a public security organ. The new constitution also incorporates a set of fundamental duties like the supporting of the leadership of the communist party, strengthening the socialist system and abiding by the constitution and the laws of the country.

Democratic Centralism:

Like the previous constitutions, the new constitution adopts the principle of the democratic centralism to the organisation of the communist party and the government. The leading roles of the party at all levels shall be elected through democratic consultation. The whole party must observe strict discipline. The individual is subordinate to the organisation; the minority is subordinate to majority. The lower level is subordinate to the higher level and the entire party is subordinate to the central committee. The idea of democratic centralism is contained in the official affirmation that the leading units of the party and the government at all levels shall regularly meet and support their working to the respective congresses or general body meeting. Members have the right to criticise organisations and leading members of the party at all levels and make proposals for them.

Central military commission:

Another salient feature of the new constitution is the provision for the establishment of a Central Military Commission consisting of a Chairman, Vice – Chairman and some

members. Its term is linked with the term of NPC. The basic function of the body is to direct the armed forces of the country. Its members shall be elected by the NPC and shall be accountable to it.

A Socialist state :

The new constitution of PRC declares that China is a Communist state. It is people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. There shall be two kinds of ownership of the means of production-socialist ownership by the whole people and socialist collective ownership by the working people.

MODULE –IV

EXECUTIVE, LEGISLAURE AND JUDICIARY OF UK, USA AND FRANCE

INTRODUCTION

On the basis of relationship between the executive and legislature, the modern democratic governments are classified into parliamentary and presidential forms of governments. The parliamentary system of government is also known as cabinet or responsible governments. In a parliamentary government there exists very close relationship between the executive and the legislature. The legislature exercises control over the executive and the executive members are bound to function in accordance with the wishes of the legislature. It has the power to remove the executive.

A prominent feature of parliamentary government is that it consists of two executive authorities, the nominal and real executives. Technically speaking, the nominal executive is the head of the state and authority is exercised in his name. He is the titular head of the state without any real power and authority. The entire administration is carried out in his name, but not by him. The cabinet or the council of ministers performs all the administrative duties of the nominal head. Thus the real executive is the cabinet, and its head is the prime minister. The cabinet, which exercise the real executive power, can remain in power only as long as it commands the confidence of the legislature particularly the lower chamber. In a parliamentary system, there is no separation of powers. The executive and legislature are brought into a close and intimate relation. They are closely connected. The ministers, who constitute the real executive in a parliamentary form of government, are collectively responsible to the lower house of the legislature. The nominal executive may be elected president as in India or a hereditary monarch, as in Great Britain.

Unlike the parliamentary system, the presidential form of government is based on the principles of separation of powers, not on the fusion of executive and legislature. The executive is constitutionally independent of the legislature and is the actual head of both the state and the government. In the presidential system there is only one executive and that is real. The president is the head of the state and the real executive. Both the roles of the chief of the state and the chief executive are united in the office of the president. Executive is not a member of the legislature, and do not take part in its deliberations. The chief executive appointed for a fixed term. USA is the classical example of a presidential executive.

Executive, Legislature And Judiciary Of UK

The British Monarch

In the administrative system of Britain, the King or the Queen is the head of the executive, and all administrative functions are performed in his/ her name. In principle, the

Crown makes all the laws. It is he/ she who implements or enforce all the laws and makes arrangements for the punishment of those who violates the laws. But the actual position is quite different. Although all the functions are performed in the name of crown, yet she does not have power to perform even a single function. All the functions are performed by the council of ministers or the cabinet headed by the Prime Minister. The monarchy is the oldest political institution of Britain. The Prime Minister and other ministers in the cabinet now exercise the real executive power; they govern with the support of the majority of the members of the House of Commons (lower house) and are collectively responsible to it.

POWERS AND POSITION OF THE KING

Executive powers

The king is the head of the state. All administrative powers are vested in him. He appoints the Prime minister, ministers and all the civil and military officers and they remain in office as long as it pleases His Majesty. He is the supreme commander of the armed forces, sends and receives ambassadors and other diplomatic agents.

Legislative Powers

The legislative powers of the king are extensive. He summons, prorogues and dissolves parliament. When a new session of parliament commences, he reads to the members of both the chambers the speech from the throne. He assents to bill passed by parliament. He can refuse assent to any bill. The king creates the peers.

Judicial powers

The king is the foundation of justice. He has the prerogative of granting pardon to criminals or reducing or postponing their sentence. The king appoints judges and all criminal proceedings are started in the name of king.

Fountainhead of honour

The king is the fountainhead of honour. It means that all honours, titles etc. flow from the king. He bestows decorations and titles such as, peerage and knighthood, upon those who have done meritorious service to the nation.

Power to dissolve the parliament

Another important power of the crown is dissolution of the parliament. This is the part of the royal prerogative but the house is dissolved only on the advice of the prime minister who advises the Queen only after consultation with the cabinet.

Head of the church

The king is called 'defender of the faith'. He is head of the established churches of England and Scotland. In that capacity he appoints archbishops and bishops.

Actual Position of the king

In theory the king exercises all the above powers, but in reality they are exercised by various other agencies. The king must act on the advice of the ministers. Minister, who is

responsible to the House of Commons, countersigns all his acts. The king has no power. He reigns but does not govern. When he has no real power, he cannot be held responsible for acts that are performed in his name. Therefore he can do no wrong. If any act done in his name be wrong, the minister concerned would be held wrong.

But the above description does not mean that the king is nonentity. There are certain functions which the king actually performs. He has a right to advise his cabinet and this right he does exercise.

The Privy Council

The Privy Council is an important institution in the governmental system of England. There was a time when it was the chief source of executive power in the state. As the cabinet system developed, the Privy Council gradually lost its importance. Many of its powers were transferred to the cabinet and much of its work was handed over to newly created government departments, some of which were originally the committees of the Privy Council.

CABINET

The cabinet is the most powerful institution in the political system of England. The fact that the British system of government is known as Cabinet system indicates the key position the cabinet occupies in the governmental machinery of the country.

According to Prof. Bagehot, Cabinet, is a hyphen which joins, a buckle which fastens, the legislative part of government to the executive part of government.

Lowell calls it 'the key stone of political arch'

Ramsay Muir describes it as 'the steering wheel of the ship of the state'

The cabinet system of Britain functions on the basis of certain principles which may be termed its salient features.

Composition of the Cabinet

When a new government is to be formed, the first step is the appointments of a prime minister by the monarch. Now it is a well-established convention that the Prime Minister must be a member of the House of Commons. The monarch has to summon the leader of the majority party in the House of Commons to form the government. As soon as the prime minister has been designated, he proceeds to draw up a list of other ministers. All ministers must have seats in one or another of the two chambers of parliament. But it is not essential that a minister should be a member of parliament at the time of appointment. He may be first appointed, and then he may qualify himself with a seat either by election to the House of Commons or being created a peer. The Prime Minister also assigns to each minister his individual portfolio in consultation with other party leaders.. When the list is finally completed, the Prime Minister submits it to the king by whom the formal appointments are made.

FUNCTIONS OF THE CABINET

Executive Functions

The cabinet is the principal custodian of executive power and coordinator of administrative action. But legally, the cabinet is not the executive. In legal the executive is the king. It is the ministers who carry out the day-to-day business of the government. So in the ultimate analysis the exercise of executive power is directed and controlled by the cabinet.

To formulate policy

As the ultimate custodian of executive power, the most important functions of the cabinet is to formulate a clear policy. It is deliberative and policy formulating body. It discusses and decides upon all sorts of problems, national and international. In side the cabinet, ministers can express their opinions freely and frankly, but when decisions have been taken, all of them, must oblige to it .Failure to do so would have disciplinary consequences, perhaps a removal from the cabinet.

Coordination

The day –today ministers in charge of various departments carry out business of government, but administrative functions cannot be rigidly divided between them and the activities of one department may affect other departments. It is, therefore, the essential functions of the cabinet, to coordinate the activities of various departments, iron out their differences and impart coherence and unity to the administration as a whole.

Orders in council

It may remember that legally speaking, the cabinet has no authority ‘to direct anybody or order anything’. The cabinet surmounts this difficulty by resorting to the device of orders in council.

Legislation

In England there is no separation of powers; the executive and legislature are not independent to each other. All ministers are members of the parliament and responsible to House of Commons. Therefore, the cabinet has very important role to play in legislation. Though legally all legislative powers are vested in parliament, nowadays it is the cabinet that legislates, with the advice and consent of parliament. All bills introduced by the cabinet are invariably passed due to the assured support of the majority party.

Controlling the budget

The cabinet controls the national finance. It is responsible for the whole expenditure of the state and for necessary revenue to meet it. The government prepares the estimates for expenditure and the treasury decides upon proposals for taxation. The budget containing proposals of expenditure and revenue is placed before the House of Commons by the cabinet.

THE PRIME MINISTER

The British Prime Minister stands out head and shoulders above his Cabinet colleagues. But his office is not legally established. His powers and functions are not formally defined. However, his position was legally recognised by the Ministers of the Crown Act 1937.

Selection of the Prime Minister

In theory it is the sovereign who chooses the Prime Minister. But in practice his choice is determined by the electorate. After the election the sovereign summons the leader of the majority party in the House of Commons to form government.

POWERS OF THE PRIME MINISTER

Powers over the Cabinet

In the words of Morley the Prime Minister is the keystone of the cabinet arch. Although in the cabinet all its members stand on an equal footing, yet as its head, the Prime Minister is, first among equals. He also presides over cabinet meetings. He exercises a general supervision over the activities of other ministers. He settles disputes between departments, controls the cabinet secretariat and is generally responsible for seeing that departments faithfully implement cabinet decisions.

Powers in relations with the Monarch

The prime minister is the confidential advisor of the Crown and the principal channel of communication between the cabinet and the monarch. The Prime Minister alone has access to the Queen. It is his duty to put government business before her in a systematic manner.

Powers in Parliament

The prime minister is also leader of the House of Commons. In the house he represents the cabinet as a whole. No other minister can play that role. His statements on the government's policy are regarded as authoritative. He answers questions on the general conduct of the government. He speaks on most important bills. He can advise the monarch to dissolve the house of commons.

Spokesman of the nation

The Prime Minister is the principal spokesman of the nation on international problems. In international conferences it is he who speaks for the nation. His position in foreign affairs is so important that he is always in close contact with the foreign secretary. There may be occasions when an immediate decision has to be taken by him on some urgent international question when there is no time to hold a meeting of the cabinet.

Powers of dissolution of the House of Commons

The Prime Minister can request the sovereign to dissolve the House of Commons at any time. It means that the members of the house hold their seats at his mercy. This terrifying power enables him to maintain discipline in his party in parliament and to control

the commons. The members of the House of Commons do not like to run the risk of a fresh election.

It is clear from the above that the Prime Minister occupies a unique position in the governmental system of England.

Ministerial responsibility

The principle of ministerial responsibility is a very important feature of British governmental system. Responsibility implies two things: liability before the court of law and responsibility to the House of Commons. The first form of responsibility is legal. If an act, which a minister has countersigned, is illegal, then that minister can be held responsible for that Act in a court of law.

The second form of responsibility is based on conventions. This is the essence of parliamentary system of government. The members of the executive are individually and collectively responsible to the House of Commons for every policy that adopt and for every action that they take.

There are many methods of enforcing ministerial responsibility. They are by the device question, by vote of censure, by no confidence motion and by rejection of bill or adoption in different form.

THE BRITISH PARLIAMENT

Parliament is the supreme legislative authority in the British political system. It has been called the mother of parliaments. It consists of the Queen, the House of Lords and the House of Commons. The consent of all the three parts of parliament is necessary for a piece of legislation to become a legal enactment with binding force. Moreover, parliament has unlimited power- it is sovereign and legally omnipotent. No law passed by parliament can be challenged as unconstitutional in a court of law, which is not the position in federal states like USA and India. The House of Commons is the real centre of power of in British parliament.

THE HOUSE OF LORDS

The House of Lords is the upper house or the second chamber of the British parliament. It has more than 1000 members, the number varying through deaths and the creation of new peers. It consists of seven categories of members. The House of Lords is made up of hereditary and life peers and peeresses, lord spiritual and the law lords who perform the judicial functions of the house. The presiding officer of the lords is the Lord Chancellor who occupies the woolsack.

FUNCTIONS OF THE HOUSE OF LORDS

1. Executive powers

The House of Lords enjoys a share in executive powers. Some ministers are members of the House of Lords. The lords have the right to ask questions, to seek information from the government on any aspect of administration and debate its policies. But the ministers are not responsible to the House of Lords.

2. Legislative powers and functions

It examines and revises the legislative work sent up by the House of Commons.

3. Financial powers

On the matter of money bill the House of Lords has no power at all.

4. Judicial powers

The house of lords was the supreme court of appeal for cases in the UK and Great Britain and Northern Ireland and a court of impeachment for the trial of important officers of the Crown. As the highest court of appeal the whole house never meets. It is only the Law Lords which performs the judicial functions of the House. 1 October 2009 marks a defining moment in the constitutional history of the United Kingdom: transferring judicial authority away from the House of Lords, and creating a Supreme Court for the United Kingdom.

The house of lords has been criticised on the grounds of its composition, class character and dominance by a single party and capitalist ideology.

5. The House of Commons

The House of Commons is the oldest popular legislative chamber in the world. There are 635 members in the House of Commons. The normal tenure of the house is 5 years which may be extended in emergencies like war or the house may be dissolved earlier by the Crown if the Prime Minister wishes to have fresh mandate to gain solid majority. The most important official of the house is Speaker who holds one of the 'most honourable, dignified offices in the world,. His duty is to maintain law and order in the house.

The members of parliament enjoy certain privileges. The first and foremost is the freedom of speech which is ensured to all members by the bill of rights.

POWERS AND FUNCTIONS OF HOUSE OF COMMONS

Law making

Its most important function is law making. Parliament is the supreme law making body, with no legal restrictions on its powers. A bill is passed by the Commons goes to the House of Lords, and if passed by that house, it is presented to the King for his assent which is invariably given. However, the House of Lords can delay the passage of a bill by one year.

Financial functions

The House of Commons is supreme in financial matters. All money bills originate in the Commons. The term 'money bill' is so defined as to include measures relating not only to taxation but also appropriation and loans and audits.

The power to decide whether a bill is or is not a money bill is given to the speaker of the House of Commons, with no appeal from his decision

Controlling the executive

The ministry emerges from the House of Commons. The Crown calls the majority party in the house to form ministry. Most of the members of the cabinet belong to the House of Commons. The ministers are collectively and individually responsible to the House of Commons. They hold their office only so long as they enjoy the confidence of House of Commons. The opposition can move a censure motion or a vote of no-confidence in the House of Commons and thereby bring out the fall of the ministry. As the Commons controls the purse, no ministry can afford to ignore its wishes.

Ventilation of grievances

It is a function of the House of Commons to call attention of the executive to administrative and other abuses to demand the redress of public grievances. This is done through the practice of asking question and through general debate.

Selective functions

The House of Commons is a training ground for politicians. This gives encouragement to ambitious member to work hard and ultimately able men and women manage to reach the top rungs of the political ladder.

COMPARISON OF BRITISH AND AMERICAN LEGISLATIVE PROCESS

Although basically they seem to be similar, there are many differences between two systems. In the USA there is no distinction between private bills and public bills and between a government bill and private members bill. All bills are introduced in the American Congress by private members.

In USA, the chairman of the committees plays an important role. In England, bills are referred to committees after their fundamental principles have been approved by the House of Commons or the House of Lords.

In England there is a regular time for asking questions and replying to them. In the USA when a Congressman desires information from any department, he telephones or writes for it.

In England the members of parliament deliver all speeches. However, in USA many undelivered speeches are also printed.

Judicial system in England

It is desirable to refer to some of the salient features of the judicial system in England. The first thing to be noticed is that the courts in England have reputation for fairness, impartiality and incorruptibility. Another feature of the English judicial system is the absence of judicial review. In the case of USA and India, the courts have the power to decide as to whether a particular law is ultra virus or unconstitutional. There are no separate administrative courts in England. In the case of France, there are two separate sets of courts, viz. Ordinary and Administrative courts.

An important feature of the British judicial system is the distinction between the civil and criminal courts applying the laws. There are two separate kinds of courts to hear civil and criminal cases.

Rule of Law

Rule of law is one of the unique characteristics of the English constitution. The British judicial system is based on the doctrine of Rule of Law. The 'Rule of Law' means that administration is carried on in accordance with the law of the land. Law is supreme over all. None can claim exemption or immunity from it.

Organization of the Judiciary

The present judicial system of England based is on the Acts passed during the 1870s. There is no uniform judicial system for the whole country. There is difference in the judicial systems for the different parts of the country.

HOUSE OF LORDS

The House of Lords was the highest court in Britain till 2009.. It had original and appellate jurisdiction. It was the highest court, both in civil and criminal matters.

Civil courts

Country court is the smallest court of the country. There is one judge in the court. The country courts hear cases controlling certain amount of money or property worth that amount.

The high court is a part of Supreme Court. It has three divisions known as chancery division, king's bench division, and probate, divorce and admiralty division.

Criminal Courts

The lowest criminal court is summary jurisdiction. It deals with petty offences. From these courts, appeal can be taken to court of quarter session. These courts are also known as country courts. Appeals can further be taken to the Assizes. Appeal can be further taken to the court of criminal appeal. The House of Lords is the highest court of appeal for Great Britain and Northern Ireland. A certificate of the Attorney – General is essential in criminal cases.

Supreme Court of UK

The Supreme Court is a relatively new Court being established in October 2009 following the Constitutional Reform Act 2005. Formerly, the Highest Court of Appeal in the United Kingdom was the House of Lords Appellate Committee made up of Lords of Appeal in Ordinary, also known as Law Lords. This Law Lords with other Lord Justices now form the Supreme Court. Such Law Lords were allowed to sit in the House of Lords and were members for life.

The judges of the Supreme Court of the United Kingdom are known as Justices of the Supreme Court, and they are also Privy Counsellors. Justices of the Supreme Court are granted the courtesy title Lord or Lady for life. The Supreme Court is headed by the President and Deputy President of the Supreme Court and is composed of a further ten

Justices of the Supreme Court. The Justices do not wear any gowns or wigs in court, but on ceremonial occasions they wear black damask gowns with gold lace without a wig.

THE AMERICAN EXECUTIVE - THE PRESIDENT

According to Article II section I of the American constitution, the executive power shall be vested in a President of the USA, who shall hold office during the term of four years. An electoral college elects the president of USA. Although constitutionally the method of election is indirect, the growth of political parties and political customs has converted it into a direct method. In the presidential system government, the executive is constitutionally independent of the legislature in respect of duration of tenure, and is not responsible to political policies. In such system, chief of the state is not merely the titular executive, but he is the real executive, and actually exercises the powers which the constitution and laws confer upon him.

Qualification

Any natural –born American citizen, at least thirty five years of age and fourteen years of resident with in the US may stand for election.

Removal from office

The President may be removed from office before his legal term is over on impeachment for and conviction for treason, bribery, or high crimes of misdemeanours. The House of Representatives adopts, by a majority vote of the members present, articles of impeachment charging the person with certain high crimes and enumerates his particular offences. The charges thus prepared are submitted to the Senate. The Senate then fixes a date for hearing the charge and sits as a court. The President is being tried by the Senate, which is being presided by the Chief Justice of the Supreme Court. After the arguments of both sides have been heard, the Senate may decide by 2/3 majority to impeach the president.

Powers and Functions

The President of USA is the most powerful elected executive in any democratic country in the world. His powers may be discussed under three heads executive, legislative and judicial.

EXECUTIVE POWERS

The president's executive powers are derived from the constitution, from statutes, and from the implications of his office.

a) Head of Administration

He is the head of the administration. It is his duty to see that constitution, laws and the treaties of the US and judicial decisions rendered by the federal courts are duly enforced throughout the country. In the fulfilment of his duty, he may direct heads of departments and their subordinates in the discharge of the functions vested in them by the Acts of congress.

b) Power of Appointments

As administrative head, the President appoints, with the advice and consent of a simple majority of the senators present, ambassadors, ministers, consults federal judges, and other officers of United States.

c) Senatorial Courtesy

There are a number of federal officers, especially those of a local nature, who are subject to a rule known as senatorial courtesy. This rule decrees that the senate will refuse to confirm the President's nomination of an appointee in a particular state if their senator from the state objects.

d) Power of Removal

The power to appointments, according to Supreme Court interpretations, includes power to remove.

e) Power of Foreign Affairs

The conduct of foreign affairs is in the hands of the President, but a treaty made by him requires ratification of two-third of the Senate.

f) Power in War

The President is commander-in- chief of the armed forces and thus the authority for ensuring national defence.

g) Control Over cabinet

Cabinet is made up of his personal choices and is completely subordinates to him. He is not bound by its decisions. The President can force any cabinet member to resign or to pursue particular policies within his department.

LEGISLATIVE FUNCTIONS

American political system being non-parliamentary, the President is neither chosen by the legislature, nor can be removed by it. He and his advisors do not have the right to be present in Congress and take part in its deliberations. They are, therefore, not in a position directly to provide initiative and guidance in law making. Besides, the President does not have the right to dissolve any of the Houses of Congress. It does not, however, mean that the President's role in legislation is insignificant. His legislative powers are follows:

a) Informative Powers

The constitution states that the President shall from time to time give the Congress information of the state of the Union, and recommended to their consideration such measures as he shall judge necessary and expedient.

b) Power to Summon Session

The President is authorised to summon extraordinary session of one or both houses of Congress.

c) Budgetary Power

The Budget and Accounting Act of 1921 gives him power over the preparation of national budget that he submits to Congress with annual budget message.

e) Refusal of assent of Bill

He may refuse his assent to a bill passed by the Congress. This is an effective power to prevent hasty and unwise legislation and has been frequently used.

f) Power to Veto

In certain circumstances this limited or suspensive veto may become an absolute veto.

JUDICIAL POWERS

The President has the power to grant reprieves and pardons for offences against the state, except in case of impeachment.

Power of Head of the State

The President of United States is not only the head of the executive branch of the government, he is also the head of the state and performs, like the British Queen, the ceremonial dignified functions. The functions of the head of the state and the head of the government are combined in his person. This fact imparts special dignity and prestige to his office.

AMERICAN PRESIDENT VS. BRITISH PRIME MINISTER

In the democracies of the world the office of the President of America and that of Prime Minister of England are regarded as most powerful, prestigious and dignified. The two offices represent two different systems of government, one presidential and other parliamentary. The following points are the main differences of the two executive systems.

Different methods of election

An electoral college elects the US President indirectly, but in effect his election is direct. The titular head of the state, i.e., the Queen, appoints the British prime Minister, on other hand, though her choice is confined to the leader of the majority party in the House of Commons.

Duration of office

US president is elected for fixed term of four years. He cannot be removed from his office except by impeachment. The Prime Minister, on other hand, remains in his office only as long as he and his party command confidence of a majority in the House of Commons.

Differences as Head

The President of USA is the head of the state as well as of the Government. The British Prime Minister on the contrary, is the only the head of the government.

Difference in Answerability

The executive and legislature spheres of the government are clearly demarcated, and the authority of the President in his sphere is supreme. He is not answerable to the Congress for his acts. The position of the Prime Minister is totally different. He is responsible to the parliament and answerable to it not only for his own acts but also for those of his cabinet members.

Difference in Power over Cabinet

The American President appoints the members of his cabinet and can dismiss them at will. Though the Prime Minister chooses his ministers and can dismiss them, they are not completely subordinate to his wishes. In many respects they are his equals.

Differences in Legislative Power

In the legislative sphere the position of the American president is definitely weaker than that of the British prime Minister.

Cabinet

The cabinet has been described as an extra statutory and extra constitutional body. It is a mere creation of President's will and made up of his personal choice. It exists only by custom. The cabinet is a purely consultative body. It has no rule of procedure; President discusses the special affairs of each department with its heads separately.

THE AMERICAN LEGESLATURE (THE CONGRESS)

The legislature of USA is known as Congress. Congress is a bicameral legislature, consisting of Senate and the House of Representatives. In accordance with the dictates of the theory of separation of powers, the US constitution vests the law-making powers of the federation in the Congress of the United States. The Senate is the upper chamber. Unlike the British House of Lords, the American upper house is elected. There are many differences in the functioning of the legislatures of UK and USA.

The Senate

The Senate is the upper chamber of American Congress. The American constitution is federal. So it needs a powerful upper chamber to represents the states. In accordance with the federal principle, all states are equally represented in the senate. Each state elects two senators. As there are 50 states, there are 100 members in the senate. The senate members are directly elected by the people on the basis of universal adult franchise. Each member has a six-year term. One third of members of the senate retire every two years. So the Senate enjoys a permanent tenure.

POWERS AND FUNCTIONS OF THE SENATE

Legislative Powers

The Vice-president of America presides over the meetings of the Senate. In the field of legislation, the senate possesses equal powers with the House of Representatives, except money bill. But the senate has the right to amend any money bill or budget. The Senate is the most powerful second chamber in the world.

Executive Powers

The American President makes a number of appointments to federal offices. These appointments are to be confirmed by the Senate.

Judicial Powers

The Senate conducts the trial of impeachment of the President and the judges' of the Supreme Court. Apart from these, the Senate enjoys equal power with the House of Representatives in amending the constitution.

The House of Representatives

The House Representatives is the lower house of the American Congress. However, despite being a lower house, it enjoys less power than the upper house, the senate. There are 435 members in this house. . The people on the basis of universal adult franchise directly elect the members. The term of office of the house is two years. The house elects a speaker to preside over the meetings.

Powers and functions

The house of representatives enjoys powers in legislative, financial, constituent, electoral and judicial spheres.

Ordinary Legislation

The constitution empowers the House of Representatives to enact laws on any subject includes in the federal list. A legislative measure can be initiated in any of the two chambers. The legislative powers of the two houses are absolutely equal.

Finance

The money bill can be introduced only in this House. But the American lower house cannot override the upper house like the British lower house. Thus the financial powers of the House of Representatives are, in effect, not superior to those of senate.

Constitutional Amendments

In methods of proposing amendments the House of Representatives have coequal powers with the senate.

Admission of new States

The constitution empowers Congress to admit new states to the Union. The House of Representatives shares with Senate equal powers to admit new states to the Union.

Impeachment

The House of Representatives initiates impeachment proceedings by framing charges against the officer concerned.

Investigation

The House of Representatives, like the Senate, appoints investigation committees to enquire into the working of the executive departments. In this way it enforces accountability of the administrative departments.

The Speaker

The chairman and leader of the House of Representatives is its speaker, who is elected by the members of the House from amongst themselves. Unlike England, the election of the American speaker is not unanimous. The American speaker does not resign from his party after his election. He presides over the sittings of the House of Representatives and performs normal duties of a presiding officer. He maintains order and decorum in the house. He recognizes members and allows them to speak. This is a most important power. But he has no power to punish an unruly member. That power belongs to the House itself.

THE AMERICAN JUDICIARY

The American constitution gives special significance to the judiciary. It has the power of judicial review. The USA is a federation. So there are two sets of courts known as Federal Courts and State Courts. Thus, there is a dual judicial system. The courts in the state are not subordinate to the federal courts.

The judiciary in America is normally divided into constitutional courts and legislative courts. The former are those courts which have been established under Article III of the constitution and which deal with 'cases' and 'controversies'. The latter courts are created by the Congress.

SUPREME COURT

The Supreme Court stands apex of the federal court system, which includes 11 circuit courts or court of appeal. The Supreme Court is the highest federal court. The President with the approval of the Senate appoints the judges of the Supreme Court. The constitution does not say anything about the qualification of the judges. The judges are appointed for life time. They can be removed only by impeachment.

POWERS AND FUNCTIONS

It has original jurisdiction in all cases affecting ambassadors, other public ministers and consul and cases in which a state is a party. It has appellate jurisdiction. The Supreme Court acts as the guardian of the fundamental rights. The Supreme Court has advisory functions too. The President may seek its advice on general matters. The Supreme Court interprets the constitution. Judicial review is an important power of the Supreme Court.

Federal courts

In USA below the federal courts, there are circuit courts of appeals. They here appeal from lower courts. Below the circuit courts, there are district courts. These courts would hear the cases related to federal laws. Apart from these, Congress may establish certain special courts.

Court of the State

Each state in the USA has its own judicial system. Each state has a supreme court. It is the highest court in a state. Below the Supreme Court, there are intermediary courts of appeal. These courts hear appeal against the decisions of the lower court. These courts hear both civil and criminal cases. Below the intermediary courts, there are districts or county

courts. Besides this there are some small courts. These courts decide local problems and disputes. The judges of these courts are elected.

Judicial Review

The 'judicial review' is the power of the judiciary to examine the laws passed by the legislature and orders issued by the executive. Through judicial review, the judges determine whether such laws are in accordance with the provisions of the constitution or not. If the judiciary feels that any law or executive order under dispute contravenes any provision of the constitution, it can declare the same *ultra vires* and unconstitutional. This power to declare a law null and void is called judicial review. By judicial review the Supreme Court prevents the federal government and state from going beyond their limits.

THE POLITICAL EXECUTIVE OF FRANCE

The government of the French Republic is a semi-presidential system determined by the French Constitution of the fifth Republic. The nation declares itself to be an "indivisible, secular, democratic, and social Republic". The constitution provides for a separation of powers and proclaims France's "attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789."

The national government of France is divided into an executive, a legislative and a judicial branch. The President shares executive power with his or her appointee, the Prime Minister.

Parliament comprises the National Assembly and the Senate. It passes statutes and votes on the budget; it controls the action of the executive through formal questioning on the floor of the houses of Parliament and by establishing commissions of enquiry. The constitutionality of the statutes is checked by the Constitutional Council; members of which are appointed by the President of the Republic, the President of the National Assembly, and the President of the Senate. Former Presidents of the Republic also are members of the Council.

The independent judiciary is based on a civil law system which evolved from the Napoleonic codes. It is divided into the judicial branch (dealing with civil law and criminal law) and the administrative branch (dealing with appeals against executive decisions), each with their own independent supreme court of appeal: the Court of Cassation for the judicial courts and the Conseil d'Etat for the administrative courts.

Election of the President

The President of France is elected by direct universal suffrage for a term of seven years. There is no bar to re election. Article 7 provides that the President is to be elected by an absolute majority of the vote casts. If this is not obtained in the first ballot, there is a second ballot on the second Sunday following. Only the two candidates who have received the greatest number of votes on the first ballot present themselves, taking into account the possible withdrawal of more favoured candidates.

POWERS AND FUNCTIONS OF THE PRESIDENT

The French Fifth Republic is a semi-presidential system. Although it is the Prime Minister of France and parliament that oversee much of the nation's actual day-to-day affairs, the French President wields significant influence and authority, especially in the fields of national security and foreign policy. The president holds the nation's most senior office, and outranks all other politicians.

The president's greatest power is his/her ability to choose the Prime Minister. However, since the French National Assembly has the sole power to dismiss the Prime Minister's government, the President is forced to name a Prime Minister who can command the support of a majority in the assembly. When the majority of the Assembly has opposite political views to that of the president, this leads to political cohabitation. In that case, the President's power is diminished, since much of the de facto power relies on a supportive Prime Minister and National Assembly, and is not directly attributed to the post of President.

When the majority of the Assembly sides with him, the President can take a more active role and may, in effect, direct government policy. The Prime Minister is then the personal choice of the President, and can be easily replaced if the administration becomes unpopular.

The president promulgates laws. The President may also refer the law for review to the Constitutional Council prior to promulgation. The President has a very limited form of suspensive veto: when presented with a law, he or she can request another reading of it by Parliament, but only once per law.

The President may dissolve the French National Assembly. The President may refer treaties or certain types of laws to popular referendum, within certain conditions, among them the agreement of the Prime Minister or the parliament.

The President is the Commander-in-Chief of the French Armed Forces.

The President names the Prime Minister but he cannot dismiss him. He names and dismisses the other ministers, with the agreement of the Prime Minister.

The President names certain members of the Constitutional Council.

The President may grant a pardon to convicted criminals; the President can also lessen or suppress criminal sentences. This was of crucial importance when France still operated the death penalty: criminals sentenced to death would generally request that the president commute their sentence to life imprisonment.

All decisions of the President must be countersigned by the Prime Minister, except the dissolution of the French National Assembly.

Discretionary Powers

Besides the powers discussed before, the constitution vests the President with discretionary powers, in the exercise of which the countersignature of the premier is not required. The constitution specially mentioned four such powers.

First, the President can declare the dissolution of National Assembly.

The second discretionary power of the President relates to submission of bills to a referendum.

Third power of the President is related to emergency.

Finally, the President must submit to the constitutional council organic laws before their promulgation and regulation of parliamentary assemblies before they came into application.

FRENCH PRESIDENT AND THE AMERICAN PRESIDENT

The President of France is elected by direct suffrage. The US President formally elected by a electoral college, but in actual practice his election also becomes direct. Both presidents have a fixed tenure. Both preside over the council of ministers secretaries and issue orders. Both are commanders of the armed force of their country. Both have right to return bill to parliament for reconsideration.

But the President of France has some special powers, which US President does not possess. The French President can dissolve the National Assembly. The French President enjoys emergency powers. The French President makes appointments to civil and military posts. Such appointments are not subject to ratification by any of the chambers of the legislature. The French President has the discretionary power to submit a bill to referendum.

In some respects American President enjoys more power than his French counterpart. In US, the cabinet is responsible only to the President. The American President is the sole executive authority. The French President does not enjoy that position. There is council of ministers which determines and directs the policy of the nation.

The French Council of Ministers

The French council of ministers is composed of the Prime Minister and other ministers. In the language of the constitution, this council is the Government of the Republic. The President appoints the Prime Minister, and on the proposal of the Prime Minister appoints other ministers. The Prime Minister and other members of the government are not members of parliament. The council of ministers is a collective body and its decisions are the decisions of all of its members. The council of ministers are responsible to parliament. The National Assembly can defeat the government either on its programme or on a declaration of general policy. In such a situation, the government as a whole resigns. The President presides over the council of ministers.

Functions

The council of ministers determines and directs the national policy. It has at disposal the administration and directs the policy of the nation. Ministers direct operations of the government. He is responsible for national defence. He ensures the execution of the laws.

The Prime Minister has the right to initiate legislation. Government bills are first discussed in the council of ministers and then filed with the secretariat of one of the two assemblies. The government may, in order to carry out its programme, ask parliament to

authorize it, for a limited period, to take through ordinance measures that are normally within the domain of law. The Prime Minister has the right to propose amendments to the constitution through the President of the Republic. The Cabinet plays a major role in determining the agenda of the parliament houses. It can propose laws and amendments during parliamentary sessions. It also has a number of procedures at its disposal to expedite parliamentary deliberations.

French legislature- Parliament

The French Parliament is the bicameral legislature of the French Republic, consisting of the Senate and the National Assembly. Each assembly conducts legislative sessions at a separate location in Paris: The Senate is elected indirectly for a term of nine years, one third of its members retiring after every three years. It represents the territorial units of the republic. French citizens living outside France are also represented in it.

The National Assembly is a representative chamber elected for a term of five years. But it can be dissolved earlier by the president. The President of the National Assembly is elected for the duration of the legislature. The President of the senate is elected after each partial re-election of the senate. Parliament is empowered to convene two ordinary sessions in a year. It convenes an extraordinary session at the request of the Prime Minister or of the majority of the members comprising the national assembly, to consider a specific agenda. The president has the right to send message to Parliament. Members of Parliament enjoy parliamentary immunity.

POWERS AND FUNCTIONS

Legislative Functions

Unlike the British Parliament, the French Parliament is not a sovereign law-making body. Its powers are limited. The subjects on which parliament can make laws have been enumerated in Article 34 of the constitution. Apart from this rule-making power of the executive, the government may also, with the permission of the parliament, take over, for a limited period, the responsibility for dealing with matters that fall within the domain law.

Financial Powers

In financial matters also, the French parliament does not enjoy supreme power. The government to parliament submits the finance bill. Bill and amendments introduced by members of parliament cannot be considered when their adoption has, as consequences, either a diminution of public financial resources or the creation or increase of public expenditure. Article 47 prescribes the procedure for enacting the finance bill. If the National Assembly does not complete the first reading of the bill within a time limit of 40 days, the government refers the bill to Senate, which must rule within a time limit of 15 days. If the parliament fails to reach a decision within a time limit of 70 days, the provisions of the bill may be enforced by ordinance.

Control of the Executive

Although the members of the government are not the members of the parliament, they are responsible to it. There are three methods of enforcing ministerial responsibility.

First, the Premier, after deliberation by the council of ministers, may pledge the responsibility of the government to the National Assembly with regard to the programme of the government or with regard to a declaration of general policy.

Second, the National Assembly may question the responsibility of the government by the vote of a motion of censure.

Third, the Premier, after deliberations by the council of ministers, may pledge the government's responsibility to the National Assembly on the vote of a text.

Declaration of War and ratification of treaties

In France, parliament authorizes the declaration of war. Treaties are negotiated and ratified by the President. But peace treaties, commercial treaties, treaties or agreement for the finance of the state, those that modify provisions of legislative nature, those relating to the status of persons, and those that call for cession, exchange or addition to territory, may be ratified only by law. It is evident from the above that the constitution of the fifth republic has considerably restricted the power of the parliament.

The Judicial System of France

In France, judges are considered civil servants exercising one of the sovereign powers of the state, and, accordingly, only French citizens are eligible for judgeship. France's independent judiciary enjoys special statutory protection from the executive branch. Procedures for the appointment, promotion, and removal of judges vary depending on whether it is for the judicial, administrative, or audit court stream. A special panel, the High Council of the Judiciary, made up of other judges from receiving court, must approve judicial appointments. Once appointed, judges serve for life and cannot be removed without specific disciplinary proceedings conducted before the Council conducted in due process.

The Ministry of Justice handles the administration of courts and judiciary including paying salaries or constructing new courthouses. The Ministry also funds and administers the prison system. Lastly, it receives and processes applications for presidential pardons and proposes legislation dealing with matters of civil or criminal justice. The Minister of Justice is also the head of public prosecution, though this is controversial since it is seen to represent a conflict of interest in cases such as political corruption against politicians.

At the basic level, the courts can be seen as organized into: ordinary courts, which handle criminal and civil litigation and administrative courts (*ordre administratif*), which supervise the government and handle complaints

The structure of the French judiciary is divided into three tiers:

Inferior courts of original and general jurisdiction;

Intermediate appellate courts which hear cases on appeal from lower courts;

Courts of last resort, which hear appeals from, lower appellate courts on the interpretation of law.

Organization of the Judiciary

Constitutional Council

The constitution of Fifth Republic establishes three principal judicial organs in addition to the regular courts. In the first place, there is the constitutional council. It consists of nine members whose term of office lasts nine years. One third of membership is renewed every three years. The President, three by the president of National Assembly and three by the president of the Senate appoints three of members. Former Presidents of France are ex-officio members for life of the constitutional council. The President of France appoints the president of the constitutional council.

High Council of Judiciary

Article 64 of the constitution provides that the President of the Republic shall be guarantor of the independence of the judicial authority. He is assisted by High Council of the judiciary. He presides over the council.

The high council presents nominations for judges of the Supreme Court and first presidents of courts of appeal. It is consulted on questions of pardon. The council is also acts as a disciplinary council for judges.

The High Court of Justice

Article 67 of the constitution provides for a High court of Justice. It is composed of members of parliament elected, in equal number, by National Assembly and Senate, after general or partial election to these assembles.

The Ordinary Court System

The lowest court in France is the *tribunal d' instance* (tribunal for instance). There are 454 such tribunals. These tribunals consist of only one judge. He decides minor civil and criminal cases. Above these are 23 courts of appeal. They hear appeals against the judgements of the lower courts.

The highest court in France is the Court of Cessation (supreme court of appeal). The judges of this courts are appointed by the President on the recommendation of the High Council of the Judiciary. It only hears appeal and has no original jurisdiction.

Administrative Courts

A peculiar feature of the French judicial system is that there are separate, administrative courts. These courts administer what is known as administrative law. Dicey defines administrative law as that "body of rules which regulate the relations of administration or administrative authority towards private citizens".

Administrative law deals with the liability of the state and municipal bodies for the wrong done to private individuals or property. There are separate courts in France to decide suits brought by private individuals against officials. There are 23 administrative tribunals. These are the courts of first instance for deciding cases involving administrative law. Each administrative tribunals consist of a President and four members appointed by the Minister of Interior.

The Council of State is the highest administrative court. It is composed of 15 members who are appointed by the President of France. It is divided into several sections. The judicial section is further divided into chambers in which five councillors decide cases. They hear appeals from administrative tribunals. The council has also original jurisdiction in certain matters.

The council of state has got other powers as well. government bills are discussed in the council of state. The government enacts ordinances after consultation with the council of state.

Rule of Law and Administrative law

There are certain differences between the concepts of rule of law and administrative law. Under rule of law there is a single system of courts. All cases are tried in the same kind of courts. But under administrative law, there are two sets of courts, known as ordinary courts and administrative courts.

The basic idea of rule of law is equality of all citizens in the eyes of law. But under administrative law, the government officers are above ordinary citizens.

MODULE –V

COMPARE FEDERAL AND UNITARY SYSTEMS – U.S.A., INDIA AND SWITZERLAND (FEDERAL SYSTEMS) – U.K., FRANCE AND CHINA (UNITARY SYSTEMS)

INTRODUCTION:

Federalism constitutes a complex governmental mechanism for the governance of a country. Federalism is the existence of dual government. It seeks to draw a balance between the power in the Centre and those of number of units. A federal Constitution envisages a demarcation of governmental functions and powers between the Centre and the regions by the sanction of the Constitution, which is a written document. Federalism in some form or other has its roots in the remote past, for it was not unknown among some of the city-states of Ancient Greece. We find it again in the middle Ages among some of the cities of Italy, and indeed, since the thirteenth century its history has been continuous in the development of the Swiss Confederation, which was born when the three Forest Cantons banded themselves together for protection in 1291. The federal type of constitution is adopted by a number of newly emergent nations in Africa, Asia and Latin America as a response to their often widely diversified cultural, territorial, and political traditions. Federalism varies in from place to place and from time to time. In its loosest form it is a congeries of states which in fact do not make a state at all.

A federal state requires two conditions for its formation. The first condition is a sense of nationality among the units federating. The second condition is that the federating units, though desiring union, do not desire unity. The federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and state sovereignty. The division of power, however, it may in the various federations of the modern world be carried out in detail is the essential characteristic of the federal state. Basically three ways in which federal states may vary from one another, first as to the manner in which the powers are distributed between the federal and state authorities, secondly as to the nature of the authority for preserving the supremacy of the constitution over the federal and state authorities if they should come into conflicts with one another, and thirdly as to the means of changing the constitution if such change should be desired.

The powers may be distributed in one of two ways, either the constitution states what powers the federal authority shall have and leaves the remainder to the federating units, or it states what powers the federating units shall possess and leaves the remainder to the federal authority. This remainder is generally called the 'reserve of powers'. The object of stating the powers is to define and hence to limit them. When federal constitution defines the powers of the federating units the aim is to strengthen the federal authority at the expense of the separate members of the federation. Such states are less federal in nature. Where

constitution defines powers of the federal authority, as in the case of US, the object is to check the power of the federal authority as against the federating units. They want a federal state with a real power, through which they can express their common nationality, but they want at the same time to maintain their individual character as states as far as possible. The division of powers implies that both the legislature of the federation and that of the federating units are limited in their scope and that neither of them is supreme. There is something above them, the constitution. In truly federal state the power to maintain equilibrium between centre and states is granted to a supreme court of judges whom should ensure the protection of constitutional provisions.

The word Federalism derived from the Latin word 'foedus' which means treaty or agreement. The term is usually used to mean an association of states. The term "federalism" is used to describe a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units such as states or provinces. Federalism is a system based upon democratic rules and institutions in which the power to govern is shared between national and provincial/state governments, creating what is often called a federation. A federal state is a system of two sets of governments within a single state. It represents a compromise between large state and small states.

Federal system: Meaning and Dynamic Implications

Political system of the world are either federal or unitary or a mixture of both. While countries like USA, Switzerland, Canada and India should be placed in the category of federal states, others like Britain, France, Sri Lanka and China are examples of unitary states. Different from both, some countries having a system based on the principles of the division of powers along with very high level of concentration of powers in the hands of central government are treated as quasi-federal.

According to Finer a federal state is one in which part of authority and power is vested in the local areas while another part is vested in the central institution deliberately constituted by an association of the local areas.

According to Daniel J. Elazara, "Federalism provides a mechanism which unites separate polities within an over-arching political system so as to allow each to maintain its fundamental political integrity."

Dicey defines federation as "political contrivance, intended to reconcile national unity and power with the maintenance of state rights".

In the words of Hamilton a federal state is an association of states that forms a new one.

According to Garner "federal government is a system in which the totality of government power is divided and distributed by national constitution as the organic act parliament creating it, between a central government and the governments of the individual states or other territorial subdivisions of which the federation is composed

FEATURE OF A FEDERATION

Division of Powers

The division of powers between the federal government and units is an essential feature of a federation, which is specified in the constitution itself. Since the federation consist of two levels of governments, there is an imperative needs for division of power demarcating the sphere of authority. Normally matters of national importance are given to the federal government and matters of local importance to the units. Each government has complete in its own sphere.

Supremacy of the Constitution

Both the levels of the governments derive their powers from the constitution. The provisions of the constitution control every governmental authority. The constitutions mention the powers of the centre and units, thereby prohibiting the encroachments of powers.

Written Constitution

The constitution should be a written one in a federation, because the division of governmental powers can be properly specified in a written constitution.

Rigid Constitution

The constitution should also be a rigid one, which cannot be easily altered. The amendment procedure of the federal constitution is invariably more difficult than the enactment of ordinary laws. Any amendment process must require the explicit participation of the federal units.

Dual Polity

In a federation two sets of government are constitutionally knit together.

- a) The federal or national or union government
- b) Regional governments may called states (as in USA and India) or cantons as in Switzerland.

The national government governs the entire territory consisting of all units. The regional governments have this jurisdiction limited only to their respective territory. Each government act within its own sphere.

Presence of an Independent Supreme Court

It is very essential to settle disputes which are likely to arise between two sets of governments. The judiciary should interpret the constitution and acts as the guardian of the constitution. Its main functions are to see that no government encroaches in the sphere of others. In all matters affecting the constitution the Supreme Court is the final arbitrator.

Bicameral Legislature

In a federation a citizen enjoys dual citizenship. First he has a citizen of the federating units in which he resides and secondly the federal state.

ESSENTIAL CONDITIONS FOR THE SUCCESSFUL OF FEDERAL GOVERNMENT

Geographical Contiguity:

A federal state must have a geographical contiguous area. The size of the state may be very large or very small. What is needed is that the entire area of the state must be geographical contiguous. If a big distance cuts off the parts of state from one another, federal system cannot be successfully worked out there.

Community of Interests:

A federal system is the community of interests in the sphere or spheres of language, religion, culture and the like. According to Dicey a federal system desires as a 'union not a unity'. It stands on the principles of unity in diversity. It aims to forging a union and created a united nation. The cases of US, Switzerland, Canada and India illustrates that are sought to be preserved.

Similarity of Social and Political Institutions:

It is required that the pattern of government systems should be the same both at the national and regional levels. That is the centre and the states must have same of government. In federal countries like Canada and India that the parliamentary form of government prevails at the centre and also in the states. Likewise, in USA presidential form of government prevails at the centre also in the states.

Absence of Marked Inequality:

As far as practicable, the units of a federal state should enjoy equality of status in respect of their powers though not in respects of their territorial and demographic compositions. It is not possible that all units of a federal state are of equal size, or they have equal density of population. It is, however, essential that there should be no inequality in matters relating to the distribution of powers, as far as possible.

Socio- Economic Development:

A federal system cannot work successfully unless there is social and economic development of the country. Economic development is also equally necessary. Moreover, it is essential that social and economic development cover the entire country. There should be no imbalance in this regard

Political Ability:

The political ability of the people has its own significant role. It refers to a developed political culture.

Political and National Integration:

The people of a federal country should be integrated politically as well as nationally.

Centre- State Relations:

There should be a happy coordination between the central and regional governments. Though the areas of their respective jurisdictions are specifically earmarked, it is also

required that some inter-linking arrangements be devised so that the two governments remain connected with each other.

The defects of the Federal System are glaring. But they do not outweigh the advantages of the system. For the countries with diversities of language and culture this is the best system. The systems has provide success in USA, India, Switzerland, Canada etc.

UNITARY GOVERNMENT

Unitary government is one organised under a single central government. The whole government authority is fundamentally vested and is exercised by one central organisation. Britain, France, Japan, Iran and Italy are examples of unitary states.

According to Prof. Dicey, “Unilateralism is the habitual exercise of supreme legislative authority by one central power”.

In the words of Garner “Unitary government is that form in which the supreme governing authority of a state is federation”.

To Finer “the unitary state is one in which all authority and power lodged in a single centre, whose will and agents are legally important over the whole area”

From these definitions it is clear that in a unitary state, ultimate authority and control over all affairs of government and administration are vested with single central government. Supremacy of the central legislature is the essence of a unitary government. In a unitary constitution powers of the state are in a single central government and there is no constitutional division of powers between central and state governments. But sake for the administrative convenience, unitary states are divided into a number of local governments. They are given a certain amount of autonomy and limited powers of local government. But their creation as well as existence depend on the will of central government and is not determined by the constitution. The powers and autonomy of local governments are not original, but it derived powers, from the central government, which may enlarge it or restrict it at will. In short in a unitary constitution all the spheres of governmental action are assigned to a single central governmental. Local governments are merely agents of central governments.

Features and Characteristics of Unitary Government

A single central, all-powerful governments

There is a single common source of authority located at one common centre.

No constitutional division of power

The local governments are mere parts and agents of the central government and derive power delegated by the central legislature, not from the constitution.

Single citizenship

Local government are the creation of the central government. Unitary system does not envisages two levels of government. Hence there is single citizenship and no question of dual citizenship.

Powers of local units are not original

In a unitary government local authorities are mere parts or agents of central government and are created for the purpose of administrative convenience.

Supremacy of the central legislature

In a unitary system, there are no constitutionally autonomous local units. There is no need for a second legislative chamber.

A written or unwritten constitution or a rigid or flexible constitution

In a unitary government a written constitution is not necessarily required as is the case in federal government. Since all the powers are vested with the centre and there is no division of powers, it is not essential to have a written and rigid constitution. But in a federation a written or rigid constitution is necessary as there is division of powers between the central and local governments which needs to be specifically written down.

Distinction between Unitary and Federal Government

Every modern state is either unitary or federal. The two forms are quite different from are quiet different from each other. Unitarianism is the exercise of supreme legislative authority by central power. Federation is an association of states. It is political contrivance intended to reconcile national unity and power with the maintenance of state rights.

Governmental set-up

In a unitary state all the powers of the government whereas in federation there are two sets of government, one national and other provincial government. Each of them is independent in its sphere, demarcated by written and supreme constitution.

Division of powers

A federal government is characterised by decentralisation and distribution of powers. The powers are distributed between the central government and the component units by constitution itself. But in a unitary state there is no constitutional division of powers, but concentration of powers in the central government.

Organisation of legislature

The legislature is an essential characteristic of a federation. The country as a whole is represented by one house of the legislature and the component units are represented by the other house. But in a unitary system, is there are no constitutionally autonomous local units. There is no need for a second legislative chamber.

THE FEDERAL FEATURES OF INDIAN CONSTITUTION

The Indian Federalism is the result of historical evolution. It springs from the necessity for the union of a number of independent states which are not strong enough individually to protect themselves from outside danger, and whose union is requisite for their safety and for the promotion of their economic interests, but which are not prepared to surrender their independence completely. The impulses which lead to the formation of a federation are usually the idea of national unity, the desire to promote common economic

interests, the amicable resolution of common problems and consideration of defence and international prestige.

The provisions of American, Canadian and Australian federations have mainly influenced the founding fathers of the Indian constitution. Some scholars of government describe India as a quasi- federal state, and some even regard as a more unitary as federal. The Indian federalism has many characteristics, which are essential for a federal polity. The main federal features of the Indian Constitution are as follows:

Written Constitution

For a federation it is essential that its constitution should be a written one so that both the units as well as the centre can refer to that as and when need be. Accordingly Indian constitution is a written document containing 395 articles and 12 schedules and therefore fulfils this basic requirement of a federal government.

Supremacy of the constitution

India's constitution is supreme and not the hand-maid of either centre or of the states. If or any reason any organ of the state dares to violate any provision of the constitution, the courts of law are there to ensure that dignity of the constitution is upheld at all costs.

Rigid constitution

Another essential characteristic of a federation is that the constitution should be rigid. The Indian constitution is largely a rigid constitution. All the provisions of the constitution concerning Union – State relations can be amended only by the joint actions of the State legislature and Union parliament. Such provisions can be amended only if the amendment is passed by two- thirds majority of the members present and voting in the parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one- half of the States.

Division of powers

In a federation there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. The seventh Schedule of Indian constitution contains three legislative lists which enumerate subjects of administration, viz., Union, State and Concurrent legislative list.

The union list consisted of 97 subjects, the more important of which are defence, foreign affairs, railway, p& t, currency etc. The state list consisted of 66 subjects, including public order, police, public health etc. The concurrent list embraced 47 subjects including criminal law, marriage, divorce, electricity, economic and social planning etc. The union government enjoys exclusive power to legislate on the subjects mentioned in the union list. The state governments have full authority to legislate on the state list under normal circumstances. And both centre and the state can legislate on the subjects mentioned in the concurrent list. The residuary powers have been vested in the central government.

Independent Judiciary

For a federation it is also essential that the judiciary should be supreme and independent. It should be a custodian of the constitution. In India, the constitution provides a supreme court and every effort has been made to see that the judiciary in India is independent and supreme. The supreme court of India can declare a law as unconstitutional or *ultra vires*, if it contravenes any provisions of the constitution. In order to ensure impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by parliament.

Bicameral Legislature

The constitution of India provides for a bicameral legislature at the centre consisting of Lok- Sabha and Rajya Sabha. While Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the state legislative assemblies. However, all the states have not been given equal representation in the Rajya Sabha.

Unitary features of the Constitution of India

As opposed to this is the opinion of some scholars who regard the Indian Constitution to be unitary in nature. It has been argued that the Indian Constitution does not satisfy certain essential tests of federalism, namely - the right of the units to make their own Constitution and provision of double citizenship. Further, in the three-fold distribution of powers, the most important subjects have been included in the Union list, which is the longest of the three lists containing 99 items. Even regarding the Concurrent list, Parliament enjoys an overriding authority over the State Legislatures. Article 253 empowers the Union Parliament to make laws implementing any treaty, agreement or convention with another country or any decision made at any international conference, association, or other body.

Some of the other Constitutional provisions, which are often quoted in favor of the Unitary status of the Indian Constitution are - emergency powers of the president to declare national emergency or declaring emergency in a state in the event of failure of Constitutional machinery, the appointment of governors, unification of judiciary and the dependence of the States on the Centre for finance. The power of the Union to alter the names and territory of the states, to carry out Constitutional amendments and to affect co-ordination among the States and settle their mutual disputes is also regarded as an indicator of the unitary character of the Indian Constitution.

American Federalism

The modern idea of federalism starts with the formation of the American federation. It has all the conditions necessary for the success of a federation. The features of American federation are the following.

Written and Rigid Constitution

All federal constitution must be a written one. The American constitution fulfils this condition as it is a written document consists of 7 Articles and less than 70 amendments. The constitution is supreme in the sense that all the governmental organs legislature,

executive and judiciary are the creation of the constitution and these organ can exercise only such powers as are delegated by the constitution. No governmental organ can exercise those powers which are not confined to them by the constitution. The American constitution is a written one and it is the supreme law of the land. It is also a rigid constitution. The American constitution can be amended only by both the governments- federal and federating units. No alteration in the boundaries of the existing states can be made without the consent of the legislature concerned.

Division of Powers

In the US federation the powers of the central government was enumerated. There exist a list, known as Federal List which contains only nineteen items of national importance and is delegated to the central government. The major federal powers enumerated as powers granted to the Congress, the President and the Supreme Court. These powers include foreign relations and treaties, declaration of war, borrowing the nation's credit, armed forces, postal services etc. However, powers of the central government have developed considerably since the forming of the constitution. A large number of such powers have been acquired by the federal government as a result of the "implied powers" interpreted by the Supreme Court, and the residuary powers that is the powers not mentioned in the federal list vested with the state.

The Supreme Court

In a federation it is necessary to have a Federal Court with an autonomy to interpret the constitution. The Federal Judiciary the Supreme Court performs two important functions. Firstly, it decides disputes of jurisdiction arising between the central government and regional governments or between regional governments. Secondly, it keeps different governments within their limits so that no one may encroach upon the sphere of jurisdiction of the other. As Prof. Munro says, "federation by its very nature implies a division of authority between the nation and states with the certainty that disputes concerning the range of their respective power will arise". A strong independent judiciary is particularly necessary in a federal state to settle such controversies fairly, promptly and decisively.

Equality of representation of the State in the Second Chamber of the Congress

A second chamber is indispensable for a state having federal form of government. The lower chamber represented the people of the nation as a whole and the federating units represent the second chamber. The second chamber of the American Congress, the senate, is composed of representatives of the American States. In the senate all the federating units are representing equally irrespective of their size or population. This system was accepted as one of the compromise of the constitution with a view to protecting the smaller states against the domination of a larger one. While in the Indian federation the second chamber, the Rajya Sabha is represented by the states on the basis of their population.

Dual Citizenship

In American federal system the citizen enjoys two types of citizenship- one of the Union and other of the States. They are identified as citizen of a particular state and at the

same time they are also recognised as American citizens. This is due to the fact that the American always stood for regional autonomy and for national unity simultaneously.

Federal State Relations in America

The American is a model federation and its first among the federal system in the modern era. In the American federation the central government can exercise only such power as enumerated in the constitution. That means the national government has only a limited power. So in theory the national government of America is a weak central government. But the modern trend in the U.S.A. reveals that the central government became more and more powerful due to some provisions of the constitution and judicial interpretation.

Swiss Federation

In the Swiss Confederation, we have the oldest of existing federal states. In spite of its name it's now a true federation and not a confederation. When Europe was plagued by revolutionary uprisings, the Swiss drew up a constitution which provided for a federal layout, much of it inspired by the American example. This constitution provided for a central authority while leaving the cantons the right to self-government on local issues. Giving credit to those who favored the power of the cantons the national assembly was divided between an upper house (the Swiss Council of States, 2 representatives per canton) and a lower house (the National Council of Switzerland, representatives elected from across the country). Referendum is made mandatory for any amendment of this constitution.

In some respects the Swiss confederation afford an even more striking example than the United States of how conflicting state interests can be overcome, without annihilating state identity, by the political device called federalism. Even the language difference is officially recognized in the federal legislature where a member may speak in German, French or Italian. The Swiss confederation for example speaks of the Swiss 'nation', a word unknown to the American Constitution, but at the same time, it divides the powers in such a way as to leave the 'reserve' with the cantons. Yet, it shows at some points both an incomplete nationalization and an incomplete federation. In the election to the upper house, the constitution leaves every detail to the cantons, whereas in US the constitution lays down a uniform method. As to the judiciary, the two houses of the legislature sitting together as one tribunal elect members of the Supreme Court of judges for six years. However, they may be, and often are reelected. This Supreme Court, however, has no powers of interpreting the constitution comparable to those of the Supreme Court in the US, for the Swiss court cannot declare any federal law invalid as infringing some provision of the federal constitution. That power is expressly left to the legislature, which passes the law. However, the Supreme Court does decide in cases of conflict between cantons and it is the court of final appeal in all cases.

To summarize, we may say that, in the Swiss confederation, the powers are divided so that 'reserve of powers' is left with cantons; the constitution is supreme, but it is left open at every point to an absolute democratic check by the instruments of the referendum and the popular initiative; and finally the federal judiciary has no power of interpreting the constitution.

Unitary system

A unitary state is a state governed as one single unit in which the central government is supreme and any administrative divisions exercise only powers that their central government chooses to delegate. The great majority of states in the world have a unitary system of government. The two essential qualities of a unitary state may therefore said to be the supremacy of the central parliament and the absence of subsidiary sovereign bodies. A unitary state is a single unit in it. It concentrates all power and authority in one single government. Constitution does not envisage it to share the power with any government. It is the discretion of the central authority to create units for administrative conveniences. These units are mere creations of the center and they can be entrusted with certain powers and withdraw them at the pleasure of the central authority. Prof. Dicey says, "Unitary government is the habitual exercise of supreme legislative authority by one central power."

In unitary state, there is only one state and one government. There is only one supreme legislature, executive, and judiciary. The authority of the central government extends throughout the length and breadth of the country and it has power on all subjects concerning the country and the people. However, there are administrative units for convenience they have to derive their powers from the central government. It follows that the concentration of all powers in the central government is the essential feature of a unitary system. The local governments enjoy no autonomy; their position is like that of subordinate governments. Thus, they are merely parts of the central government created and altered at the will of the center and not by the constitution. The local units in Britain are called 'Boroughs' and that France, 'Departments'.

British Unitary System

The United Kingdom is an example of a unitary state. Scotland, Wales, and Northern Ireland which, along with England are the four constituent countries of the United Kingdom, have a degree of autonomous devolved power – the Scottish Government and Scottish Parliament in Scotland, the Welsh Government and National Assembly for Wales in Wales, and the Northern Ireland Executive and Northern Ireland Assembly in Northern Ireland. But such devolved power is only delegated by Britain's central government, more specifically by which is supreme under the doctrine of parliamentary supremacy. Further, the devolved governments cannot challenge the constitutionality of acts of Parliament, and the powers of the devolved governments can be revoked or reduced by the central government. For example, the Northern Ireland Assembly has been suspended four times, with its powers reverting to the central government's Northern Ireland Office.

The UK government remains responsible for national policy on all matters that have not been devolved, including foreign affairs, defense, social security, macro-economic management and trade. It is also responsible for government policy in England on all the matters that have been devolved to Scotland, Wales, or Northern Ireland. The UK Parliament is still able to pass legislation for any part of the UK, though in practice it only deals with devolved matters with the agreement of the devolved governments. In Scotland, Wales, and Northern Ireland, some government policies and public services are different from those in England. The UK central government has given certain powers to devolved

governments, so that they can make decisions for their own areas. Following referendums in Scotland and Wales in 1997, and in both parts of Ireland in 1998, the UK Parliament transferred a range of powers to national parliaments or assemblies. The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly were established, and took control in 1999. The arrangements are different in the three parts of the country, reflecting their history and administrative structures.

Within the UK government, the Secretaries of State for Scotland, Wales and Northern Ireland are responsible for the Scotland Office, the Wales Office and the Northern Ireland Office. They ensure that devolution works smoothly, and help to resolve any disputes. They represent their parts of the country in UK government, and represent the UK government in those parts of the country. Most contact between the UK government and the devolved administrations takes place between the individual government departments that deal with particular matters.

Finally the UK system seems to be unitary. Sovereignty is retained in Parliament. The UK Parliament retains the ability to amend the terms of reference of the Scottish Parliament, and can extend or reduce the areas in which it can make laws. For the purposes of parliamentary sovereignty, the Parliament of the United Kingdom, at Westminster continues to constitute the supreme legislature of Scotland. Devolution differs from federalism in that the powers devolved may be temporary and ultimately reside in central government, thus the state remains, de-jure, unitary.

Chinese Unitary Government

China established in 1949 its unitary system, which is totally different from the federal system in Switzerland and USA. The *Common Program of the Chinese People's Political Consultative Conference (CPPCC)* in 1949 provided that "all local people's governments throughout the country shall obey the Central People's Government" and the jurisdiction of local people's governments "shall be prescribed by the decree of the Central People's Government Council". The latest *Constitution of the People's Republic of China (CPRC)* provides that this constitution is "the fundamental law of the state and has supreme legal authority" and "the division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities". Therefore, unitary system with some decentralist factors was finally established in the forms of laws, particularly the constitution in China. Generally, a country does not take a system, unitary or federal, at random. Instead, there are some essential conditions to drive a country to make a decision. This was also the case in China.

In a word, historical traditions, ethnic groups and international environments all contribute to the establishment of the unitary system in China. China adopts a typical unitary system. The CPRC, the only constitution in China, has the highest legal force and is the fundamental law. The Central People's Government (the State Council) in the People's Republic of China is the highest administrative executive organ and local people's governments are all the China's executive organs under the unified leadership of the State Council. All the people in China's ethnic groups have Chinese nationality while double

nationalities are prohibited in China. The Central People's Government of the People's Republic of China is the sole representative for standing for the P.R.C in the foreign affairs. The most important of all, the power of local authorities is authorized by the central government, which is a fundamental feature of unitary system. On the other hand, there are also some decentralist factors in China's unitary system. Firstly, as for the central-local relations, local governments have some self-determination powers in some aspects. Secondly, in concentrated communities where minority nationalities live, which allows the self-governed organs in the areas to exercise the power of autonomy to a certain degree. Thirdly, Hong Kong and Macao have built the Special Administrative Regions (SARs), which enjoy a high degree of autonomy.

Because of the factors mentioned above, some writers believe that China has established a special unitary system. Some even see China's *de facto* federalist structure or behavioral federalism from the behavioral perspective and some suppose that China will go toward federalism. All these ideas do not tell the fundamental difference between the unitary system and the federal system, from which we can realize that China adopts a typical unitary system. As far as state structure is concerned, there are no absolute advantages or disadvantages. Hence, federal system and unitary system can learn from each other. The fundamental distinction between the two systems lies in the original resources of the power. Specifically, local governments' power is given in to central government in a federal system while local governments' power is authorized by central government in a unitary system. Obviously, China has a typical unitary system from this perspective. However, those ideas above ignore the substance of a state structure and therefore come to a wrong conclusion.

China has large number of regions, which take different forms. Of the 31 regions, 4 are municipalities, 5 are autonomous regions for ethnic minorities and the remainder are provinces. A number of comparative politics and economic scholars have noted a conspicuous shift in the balance of power between the central government and china's regions over the last two decades. This shift has been one of increasing regional powers at the expense of the central government. This has been particularly evident in recent economic policy and it has coincided with the ongoing implementation of market economic reforms. China has increased the powers of regional and local governments dramatically through the recent "The Law Making Law of the People's Republic of China" adopted in March 2000. Yet the law left the central government in the position to control activities at the regional level, if necessary. Thus, china remains a unitary system now.

French Unitary System

France is a unitary semi-presidential republic with both a President and a Prime Minister who share power. The French parliament is a bicameral legislature comprising a National Assembly and a Senate. The National Assembly deputies represent local constituencies and are directly elected for 5-year term. The Assembly has the power to dismiss the cabinet, and thus the majority in the Assembly determines the choice of government. An electoral college chooses senators for 6-year terms (originally 9-year terms), and one half of the seats are submitted to election every 3 years starting in September 2008. The Senate's legislative powers are limited; in the event of disagreement

between the two chambers, the National Assembly has the final say, except for constitutional laws and lois organiques (laws that are directly provided for by the constitution) in some cases. The government has a strong influence in shaping the agenda of Parliament. France is a republic. The type of government it has is called a parliamentary democracy. France has a unitary semi-presidential republic. They have a President and Prime Minister. A unitary state is a state whose three organs of state are governed constitutionally as one single unit, with one constitutionally created legislature. The semi-presidential system is a system of government in which a Prime Minister and a President are both active participants in the day-to-day administration of the state. The government of the French Republic is a semi-presidential system determined by the French Constitution of the fifth Republic. The nation declares itself to be an "indivisible, secular, democratic, and social Republic".^[1] The constitution provides for a separation of powers and proclaims France's "attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789."

The national government of France is divided into an executive, a legislative and a judicial branch. The President shares executive power with his or her appointee, the Prime Minister. The cabinet globally, including the Prime Minister, can be revoked by the National Assembly, the lower house of Parliament, through a "censure motion"; This ensures that the Prime Minister is always supported by a majority of the lower house. It passes statutes and votes on the budget; it controls the action of the executive through formal questioning on the floor of the houses of Parliament and by establishing commissions of enquiry. The Constitutional Council checks the constitutionality of the statutes; members of which are appointed by the President of the Republic, the President of the National Assembly, and the President of the Senate. Former Presidents of the Republic also are members of the Council. The independent judiciary is based on a civil law system, which evolved from the Napoleonic codes. It is divided into the judicial branch (dealing with civil law and criminal law) and the administrative branch (dealing with appeals against executive decisions), each with their own independent supreme court of appeal: the Court of Cassation for the judicial courts and the Conseil d'Etat for the administrative courts. The French government includes various bodies that check abuses of power and independent agencies. France is a unitary state. However, the administrative subdivisions—the regions, departments, and communes—have various legal functions, and the national government is prohibited from intruding into their normal operations. Since the Revolution of 1789, France has had an uniform and centralized administration, although constitutional changes in 2003 now permit greater autonomy to the nation's regions and departments. The country is governed under the 1958 constitution (as amended), which established the Fifth French Republic and reflected the views of Charles de Gaulle. It provides for a strong president, directly elected for a five-year term; an individual is limited to two terms as president. A premier and cabinet, appointed by the president, are responsible to the National Assembly, but they are subordinate to the president. The bicameral legislature consists of the National Assembly and the Senate. Deputies to the 577-seat National Assembly are elected for five-year terms from single-member districts. The 348 senators are elected for six-year terms from each department by an electoral college composed of the deputies, district council members, and municipal council members from the department, with one

half of the Senate elected every 3 years. France's 22 administrative regions have a directly elected regional council, primarily responsible for stimulating economic and social activity. The regions are further divided into 96 departments (not including the four overseas departments), which are governed by a locally elected general council, with one councilor per canton. Further subdivisions are districts, cantons, and communes. The districts and cantons have little power. The communes, however, are more powerful because they are responsible for municipal services and are represented in the national government by the mayor. France's political institutions have undergone several changes since the 1789 revolution. The present constitution, adopted in 1958 and revised in 1962, established the Fifth Republic and provided for a powerful president, originally Charles DE GAULLE, and a bicameral legislature with less power than it had in the past.

The National Assembly is elected every five years. The minimum voting age is 18 years. The four leading French political parties are the Socialist party; the conservative Rassemblement pour la République (RPR), founded by Charles de Gaulle and now led by Jacques CHIRAC; the Union pour la Démocratie Française (UDF); and the French Communist party. François Mitterrand, leader of the Socialist party, was elected President in May 1981, giving the Fifth Republic its first socialist government. When a UDF-RPR coalition won a majority of seats in the parliamentary election of 1986, Mitterrand had to call on opposition leader Chirac to form a government, marking another first for the Fifth Republic--a "cohabitation" arrangement in which the President and the Prime Minister were of different parties. The Chirac government modified many of the socialist reforms introduced earlier by Mitterrand. When Mitterrand was elected to a second term in 1988, he was able to replace Chirac with a succession of Socialist premiers. A second period of cohabitation under Prime Minister Edouard BALLADUR began after a Socialist defeat at the polls in March 1993. Chirac won 52.6% of the vote in the presidential election of May 1995, winning a narrow victory over his Socialist opponent, Lionel Jospin. Local administration of France is organized around 22 administrative regions and 96 metropolitan departments, and the Mitterrand government implemented (1982) a devolution plan, giving more authority to regions and departments. Each department covers about 5,000 sq km (1,930 sq mi) and is administered by an elected departmental council. Within the departments are about 36,000 communes, corresponding to the parishes of pre-revolutionary France, which are small and are headed by elected mayors.
