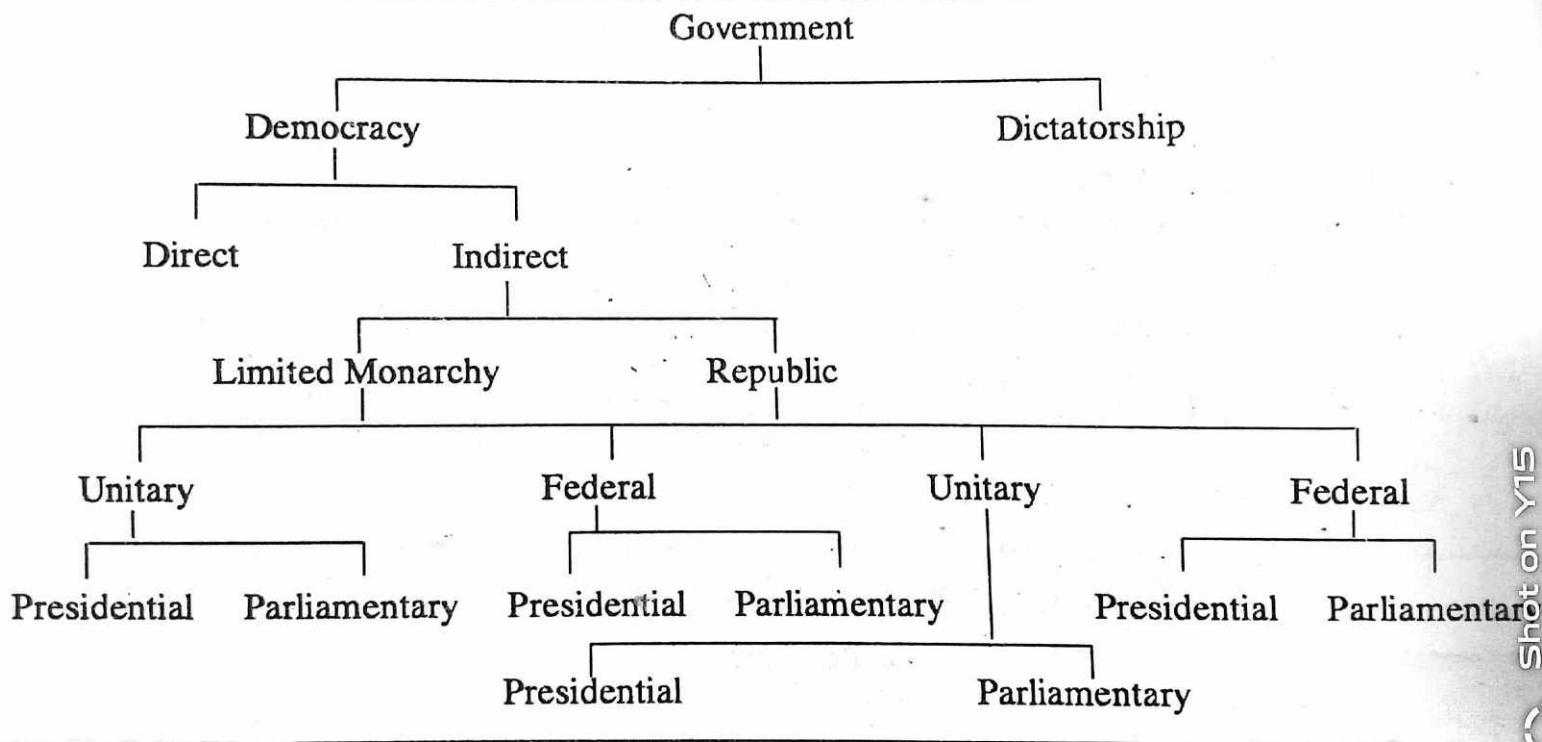


Study Material for  
Semester - II paper: C-4  
"Cooperative Constitutional  
System" - (Unit - 1)  
By → Dr. Annila Banerjee.



## 2.5. Unitary Government

We have already seen that in the Unitary form of government all governmental executive powers and sovereign law making authority are exercised by one central government. There may be separate departments of the same government, but no separate governments other than the Central Government are found in a Federal system. There may also be local institutions having limited power under the all powerful central government.

### 2.5.1. What is a Unitary system ?

The Unitary government is also called the National government or Central government. C.F. Strong, while discussing the Unitary government says : *The essence of unitary state is that the power of the central government is unrestrained, for, the constitution does not admit any other law making body than the Central one.* In other words, in a unitary government it is not merely that the executive power is concentrated in one Centre, but the law making power also is. The authority of the Union Parliament stretches over the whole of the country. Dicey calls it *the habitual exercise of supreme legislative authority by one central power.* Britain is an outstanding example of Unitary system.

### 2.5.2. Features of a Unitary System

The distinguishing features of a Unitary Government are discussed :

1. The chief characteristic of a Unitary system is that only one government exists in the whole political system. However, the existence of a number of local institutions and departments is not ruled out. In practice, self-governing institutions are recognized and found in every Unitary

4. Unlike a Federal constitution, a Unitary constitution is normally flexible. As for example, the federal constitution of the United States is rigid whereas Britain which has a unitary system, has a flexible constitution.

5. Another salient feature of unitary system is the supremacy of Parliament *as it is found in Britain* rather than the supremacy of the Judiciary *as found in the U.S.A.*

There is Unitary system of government in countries like Britain, France, Norway, Denmark and New Zealand. In fact, one of the chief characteristics of the British government is its Unitary system. In the unitary governments there are local bodies which have been instituted to decentralize administration but they are not recognized as governments. The only government that exists in the Unitary state, enjoys the supreme power and the Legislature is the only sovereign law making body there.

### **2.5.3. Merits of the Unitary Government**

Like all other forms of government, the Unitary system also has its merits and demerits.

1. **Strong government** : Unitary system tends to make the government strong and powerful, for all the governmental powers and authority in the political system are enjoyed by it.

2. **Uniformity in law and administration** : Another merit of Unitary system is that it ensures uniformity in law and administration throughout the country.

**7. Less expensive :** This system is far less expensive than the Federal system. The expenditure of running one single government is substantially less than those of a number of governments along with their corollary institutions. So Unitary system is also economical.

**8. National Cohesion :** A Unitary system is expected to maintain and strengthen national cohesion more effectively, as there exists little scope for raising separatist and divisive demands in a Unitary political system.

#### 2.5.4. Demerits of the unitary Government

The Unitary system has also a good number of demerits.

**1. Development of different Regions and Nationalities ignored :** A State composed of different nationalities and distinct regional identities, is not suitable for a Unitary system. Development of scripts, language, culture, literature of a nationality and the economic development of a region can only be ensured by a government of its own. But such a scope does not exist in a Unitary system.

**2. Separatist tendencies likely :** Each nationality has a natural urge for a government of its own. And any liberal-rational approach favours the necessity and advisability of allowing separate government for each nationality having separate identity, language, culture and tradition for its development and welfare. But this demand is ignored in a Unitary system. In a Unitary system the people of the different regions do not have the scope to form their own governments. Consequently, different languages, cultures etc. cannot develop well. This, in course of time, may engender separatist tendencies in the Unitary State.

Movements of the Irish rebellion during the last quarter of the nineteenth century for Home Rule against the British Unitary government is an example of the expression of this trends.

**3. Unworkable in large States :** The Unitary system may work in a small State, but it cannot function well in a vast or large State. If there is only one Government in a vast State it is impossible for it to satisfy the needs of the people of every region. For example, had India been an Unitary state, it would not have been possible for the Central Government alone to administer the entire country or to take immediate steps in the remote corner of the country at the hour of need.

**4. Tendency to be despotic :** Centralized power in a Unitary State tends to make the government autocratic and dictatorial and such a government fails to protect popular rights and liberty. Laski, therefore, thinks it proper that the power should be divided and made decentralized.

**5. Lack of political consciousness :** (In a Unitary government there is limited scope left for the people to get involved in the governmental activities) — executive, legislative and judicial. This limited scope and improvement fail to generate sufficient political interests and consciousness among the people.

**6. Growth of Bureaucracy :** In a Unitary system there is only one government which alone is required to perform all the governmental activities across the length and breadth of the country. As a result, a substantial part of the functions is left to the bureaucrats to discharge. This engenders *big bureaucratic State*.

#### 2.6. Federal form of Government

The concept of Federalism is very important for the students of political science and constitution. The United States of America is an outstanding example of a federal system. The federal systems of government are also found in States like Canada, Mexico, Brazil, India



Australia and in many other states. But before we enter into a discussion about the federal form of government, we must know what is meant by a Federal system.

### 2.6.1. What is a Federation ?

When a State is politically divided for the convenience of administration or for some other reasons, into several distinct regions and a Union Government is formed at the Centre and separate Governments are created in each region or State, the system is known a Federal system of Government. Sometimes, again, several small States may unite for some reasons under a Central Government and form a Federation. In a federal form of government, different nationalities may come under one State in spite of geographical, social, ethnic, religious and cultural differences.

In the words of Finer, *A federal State is one in which part of the authority and power is vested in the local while another part is vested in a central institution deliberately constituted by association of the local areas.* Professor Wheare observes : *By the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent.* In a federation, a balance is attempted between the unity of the nation and the rights and autonomy of the units.

*A federal constitution, thus, attempts to reconcile the apparently irreconcilable claims of national unity and power with the maintenance of state rights.* Hence, a federation is essentially a balance between national unity and regional autonomy.

But it should be noted that mere co-existence of two types of governments is not sufficient. The significant difference between a Unitary State and a Federal State lies in the fact that unlike the local bodies of a Unitary State, in a federation the regional governments or the federated units derive their existence direct from the constitution of the land and not from the Union or central government.

### 2.6.2. Formation of a Federation : Conditions and Processes

According to Dicey, a federal state is a political contrivance intended is reconcile national unity with the maintenance of *state-rights*. Sometimes urge for unity may develop among different nationalities occupying separate but adjacent territories, and these nationalities may wish to be united without losing their own characteristics. In such cases, political solution lies in the formation of a federation. It is only by forming a federation that such apparently contradictory desires may be reconciled. The nationalities would have formed a Unitary Government if they had no desire to maintain their separate identities. On the other hand, they would have organized themselves into separate States if they had no desire to maintain national unity. So when the question is one of reconciling national unity with the *maintenance of state rights* a federation is the obvious answer.

Two distinct processes are usually adopted in the formation of a federation. In some cases a few small and independent states may for their economic development and for maintaining their existence or owing to their being won over by another state, combine and form one big State. Here the *process of centralization* operates in forming a Federal State. An example of a federation formed in this way is the United States of America. Sometimes on the other hand, a big State may be divided for the convenience of administration into several regions, each under a more or less independent government, but under the overall control of a Central Government. Here the federation is formed through the *process of decentralization*, an example being Canada.



### 2.6.3. Characteristics of a Federal system

Features

The characteristics of a Federal system may be listed below.

#### ✓ 1. Co-existence of Central and Regional Governments

A federal state is divided into a Union or Central Government and a number of Regional Governments. A State is divided territorially into different regions each of which has a government, besides there being a Central or Union government at the national level. For example, in India we have a Union or Central Government and twentyfive Regional or State Governments, such as governments of West Bengal, Assam, Bihar, Maharashtra, Tripura, Tamil Nadu, Punjab etc

#### 2. Division of Powers

✓ One of the chief characteristics of the federal system is the distribution of power between the Centre and the States. The powers of the government under such a system are distributed between the Centre and the States in such a manner so as to vest the central government with matters of national interest and to leave other areas of power with the state governments. For example, in India there are three lists for the distribution of powers between the Central and the Regional Governments—the Union List, the State List and the Concurrent List. Subjects not covered by any of the above three Lists are called Residuary Powers.

In the distribution of powers between the Centre and the States there are no uniform principles and method varies from federation to federation. In some federations the residuary powers are left to the Regional governments to deal with. In some others, on the contrary, the powers of the Regional governments or States are fixed and the Union exercises power over the residuary powers. In the constitution of India and Canada the residuary powers have been vested in the Union. Moreover, if there is any conflict between the Union and the States about the exercise of power under the Concurrent List, the Indian Constitution provides that the authority of the Union shall prevail.

Whatever the case may be, the Union and the States enjoy independence in respect of authority and powers, except in certain matters of national importance. According to Dicey, federalism means the distribution of the powers of the State among a number of co-ordinate bodies each originating in and controlled by the constitution.

#### 3. Both governments derive authority from Constitution

Mere co-existence of two types of governments and the division of powers between them are not sufficient for a federal system. The significant difference between a Unitary State and a Federal State lies in the fact that both the governments— of the Union and the states derive their existence and powers direct from the constitution of the land. So, unlike local governments the Regional or State governments in a Federation do not derive their power from the Union government but from the constitution.

#### ✓ 4. Both Governments Co-ordinate and Independent

In their respective jurisdictions specified by the Federal Constitution, the Union and State Governments act more or less independently. Yet, they coordinate with each other. This is why Professor Wheare says : *By the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent.*

#### ✓ 5. Written and Rigid Constitution

The Constitution of a federation is essentially written and preferably rigid. For specification

to codify the scheme of the division of powers as written in the constitution. The constitution must also be a rigid one so that the arrangement of division of power cannot be altered or amended by either of the governments easily. The federal system of the U.S.A. is an example of written and rigid constitution.

### 6. Independent Federal Judiciary

Since the co-existence of Union and State governments is the basic feature of a Federation, the need of an independent federal judiciary cannot be denied in a federation. The existence of an independent federal judiciary is a must for a federation. The judges of this federal court should be dispassionate and neutral and should have supreme authority. The independent federal judiciary acts as the guardian of the constitution. For example, the Supreme Court of India is the federal judiciary. In the United States, the existence of a federal judiciary is a feature of its federal system.

### 7. Supremacy of the constitution

In a federation both the Central and the State Governments derive their authority and power from the constitution itself. Besides, it is the constitution which divides the powers of the Central and State governments. So the constitution is supreme in a federation. In the United States the constitution is regarded as supreme law of the land.

### 8. Dual citizenship

Dual citizenship, as found in the U.S.A., is considered by many as a characteristic of a federation. The idea originates from the notion that allegiance to national and regional governments necessitates citizenship from both the governments. But in India there is no provision for dual citizenship, we are all citizens of India.

### 9. Supremacy of the Judiciary

The existence of an independent judiciary is not sufficient to make a federation. It must be assured by the Federal Judiciary that the constitution is not violated and that the powers and rights of the Centre and the federated States are safeguarded and exercised properly. This Court will adjudicate cases arising out of the constitutional validity of laws. In other words, a federation must recognize the supremacy of the Judiciary. This highest or the Supreme Federal Court (in the case of India, the Supreme Court) is at once a federal court, a court of appeal and a guardian of the constitution. In the United States one former Chief Justice said : *We are under a constitution, but the constitution is what the judges say it is.* The supremacy of the judiciary is ensured by allowing the judiciary to enjoy the power of judicial review.

### 10. Bi-cameralism

For the representation of the federated states in the Central Legislature the existence of a second chamber is considered necessary in a federal system. Bicameralism can guarantee the representation of the federated states or units in the federal legislature.

Bicameralism can guarantee the representation of the federated states or units in the Federal Legislature. In the federal systems of India and the United States there are bicameral Federal Legislatures.

On the basis of these characteristics, K.C. Wheare likes to divide the federal governments into two classes— federal and quasi-federal. In some federal systems we find the federal structures, but most of the characteristics of federation are conspicuous only by their absence. For example, India has a federal structure; yet, it is regarded as a quasi-federal State.

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### **Conclusion**

A federal system may function and succeed only when the above conditions are fulfilled. But sometimes a Unitary system may achieve success under conditions exactly suited for a federation and on the other hand, a federation may function successfully in spite of the absence of some of the above conditions and features. So it may be presumed safely that these conditions are preferably desirable for a federation but not absolutely indispensable.

As a result of the process of centralizations, in vogue in most of the federations, the Union government are growing in power and strength and the States are continuously getting crippled. It can be said that if these trends continue, the federations will ultimately be turned into Unitary in essence, if not in form.

## 2.8. Distinction between Unitary and Federal Systems

At this stage of our study we may now proceed to make a distinction between the Unitary and Federal Governments. The distinctions could be listed as follows :

1. **Government** : In a Unitary system only one government, in the proper sense of the term government, exists in the whole political system. We may find different authorities under different names in a Unitary system, but only one Government functions in the entire political system. For example, Britain, being a Unitary system, has only one Government in London, though there are different local authorities, such as the institutions of local self-government.
2. **Division of Powers** : Since there is only one government in a Unitary State, the question of division of powers between the governments at different levels does not arise. But the existence of two sets of Governments in a Federation made and specified in necessitates the division of powers between the Central or National Government and the State Governments. This division of powers is made and specified in the constitution. For example, in the Constitution of India there are three lists dividing powers between the Central and State Governments.
3. **Written Constitution** : A Unitary State may or may not have a written constitution. But a written constitution clearly defining division of powers and activities between the Central and State Governments, is essential for a federal State. Britain, a Unitary State, has no written constitution, but India or the United States, being a federal State, has a written constitution.
4. **Rigid Constitution** : A Unitary State may work under a flexible Constitution, but the constitution of a federation must be rigid. So a written constitution is not enough for a federation. It must also be assured that the constitution cannot be easily amended by either of the Central or State governments to its advantage. So the Constitution ought to be rigid in a federation. For example, the British constitution which has a Unitary system, is flexible, but the Constitution of India or of the U.S.A. being federal, is not flexible.
5. **Supremacy of Constitution and Judiciary** : A federal constitution and its Judiciary must enjoy supremacy. But such principle is not required to be applied in a Unitary State. The source of authority of the Central and State Governments in a federal State is the constitution from which both the governments derive authority. And it is the Judiciary which stands against any case of violation of the Constitution. So the British constitutional system maintains the supremacy of neither the constitution nor the judiciary. But in a federation, as obtained in the USA, the supremacy of the constitution and the judiciary has been maintained.

## 2.9. An Overview of a Federal Constitution

## 2.17. Presidential System

An useful division of government is that between the Presidential system and the Parliamentary or Cabinet system. The focal points of division of governments into such two types are :

- (i) The nature of the power of the head of State,
- (ii) the relation of the legislature to the executive and
- (iii) the concentration or distribution of governmental power.

If the President is constitutionally a real head of State in terms of power and influence, it is Presidential form of government. In such a system there is no close relation between the executive and legislature. Instead of concentration of power we find separation of powers in such a system of government. An outstanding example of the Presidential Government is that of the United States.

The real governmental power in a *Presidential form* of government remains for a fixed term in the hands of the President. He is the head of State and the head of government at the same time. He is the head of State in name as well as in fact. Separation of powers is usually found in such a system. The Legislature makes the laws and the President governs. The President, the highest executive is not responsible to the Legislature, he is rather responsible to the people.

### An Illustration

The fact of there being a President in a country does not necessarily indicate that it has Presidential form of Government. The important point is whether the President wields real power. India, for example, has a President and yet the system here is a Cabinet form of government, for the real and effective power of the President is but little. He cannot act without the Cabinet's advice. The Cabinet in its turn has a close relation with and is responsible to Parliament. So there is no separation of powers in India. The power of the President of India is formal, that of the Cabinet is real. The President is the constitutional or titular head of State. On the other hand, the constitutional system is quite different as in the U.S.A. The American government is a Presidential form of government. The American President is not responsible for his actions to the Legislature. He wields large executive powers. He gets into office for a term of four years and it is difficult to remove him from office during this term. The ministers, not being members of the National Legislature, the Congress, are officers subordinate to him and are responsible to him. It is, moreover, the President who appoints the ministers and who can dismiss them.

### 2.17.1. Characteristics of the Presidential System

In view of the above discussion, the chief characteristics of the Presidential form of government may be discussed under the following heads :

- (i) The Chief executive, the President is not formal head of State— he is the real head of state :
- (ii) The President is directly elected by the people, and not by the Legislature.

(iii) The President and his Ministers are neither members of the Legislature nor a part of it, and they cannot be removed by the Legislature. The President can only be removed through the process of Impeachment.

(iv) The President does not remain responsible to the Legislature.

(v) The President cannot dissolve the Legislature.

(vi) In a Presidential system we find the application of the doctrine of the separation of powers.

(vii) In a cabinet system the ministers enjoy constitutional status and prestige. They are colleagues of the Prime Minister. But in a Presidential form the ministers are not colleagues of the President. There exists a servant-master relation between them; and the Ministers enjoy no constitutional status either.

(viii) In a Presidential form of government the ministers are not members of the Legislature—they are selected by the President on his personal capacity.

### 2.17.2. Merits of the Presidential System

Presidential and Parliamentary systems have their respective merits and demerits. The defects of one, obviously, are the merits of the other.

The merits of the presidential system are listed below :

**Firstly**, One merit of the Presidential form of government is its stability. The President is elected for a fixed tenure and generally he cannot be removed from his office during his tenure of office. Because of this stability it is possible to adopt long-term programmes and implement them in the Presidential system.

**Secondly**, in such a system the men at the helm of the government give more importance to governmental business than to election campaigns and populist work.

**Thirdly**, Presidential system is highly effective in times of emergency. The President can exercise all executive powers since he has no colleague with equal powers. His ministers are mere paid officers. He is not obliged to seek for anybody's advice. This enables him to take quick decisions and give effect to those in emergencies.

**Fourthly**, The Presidential form of government is very suitable in a country where there are too many political parties and where Governments topple frequently. So Lord Bryce says that the Legislatures are less dominated by party spirit under the Presidential system than under the Cabinet system.

**Fifthly**, due to the application of the theory of separation of powers, no organ of the government is allowed in a Presidential form to assume the powers of the two others. So in such a system of government none of the executive or the legislature or the judiciary can become a despot.

**Sixthly**, The Presidential system has the opportunity for the utilisation of the service of the efficient, experienced and capable persons in the government. Due to the availability of this scope, the American president sometimes appoints his ministers on the basis of efficiency without taking into consideration the political faith or belief of the person.

**Seventhly**, the Cabinet members of a Presidential form of government are not members of the Legislature. So they do not face the electorate to get themselves elected for getting a berth in the Legislature and the Cabinet. Under such circumstances they can act freely for the welfare of the people and the nation. They do not require to pursue populist policy to please the electorate at the cost of the nation. But under cabinet system the representatives,



including the ministers are forced to follow populist policy which may sometimes prove to be very costly.

### 2.17.3. Demerits of the Presidential system

The demerits of the Presidential system are no less in number and importance.

1. Due to the absence of the doctrine of individual and collective responsibility as is found in the Cabinet system, the President is not responsible to the Legislature. He may and generally does act through his ministers. The President has no accountability. This tends to make the President dictatorial.

2. President and his ministers are not members of the Legislature in a Presidential form of government. So they have hardly to play any legislative role. Under the circumstances the responsibility and accountability of legislation are not easy to locate in the Presidential form.

3. In the Presidential system the ministers are not the representatives of the people. So they do not face neither the electorate, nor the public opinion. As such, the impact and the influence of public opinion are not that much felt in a Presidential form of government.

4. The doctrine of separation of powers works in a Presidential form of government. As a result, the conflict between the executive and the legislature becomes a rule of the game of the Presidential form. When the executive and legislature are dominated by two different parties there may appear serious deadlock in the functioning of the Government.

5. The Judiciary often mediates in conflicts between the Executive and Legislature and in the process it gains preponderance. Instead of Legislative supremacy the Presidential system establishes judicial supremacy.

6. The Presidential form of government is neither flexible nor elastic; it is totally rigid. Under a rigid constitution no constitutional adjustment can be made in the hours of need. Bagehot says : *There is no elastic element, everything is rigid, specified, stated.*

7. Presidential government has been criticized on the ground that this system begets irresponsible government. The President and his ministers are not responsible to the Legislature for their political policies and executive acts. Garner says that votes of censure, condemnation or want of confidence by the legislature have no legal effect and they never think of resigning in consequence of such votes of censure.

### 2.18. Parliamentary or Cabinet Government

The Cabinet system, originated in England, was the product of history rather than invention. The basic point of a Parliamentary or Cabinet Government is the formal or nominal nature of the head of State. In a Parliamentary or Cabinet system all executive powers and authority are exercised by a Cabinet or the Council of Ministers. A King or a President, as the case is, usually remains as the head of this government. He, however, is a nominal or titular head and not the real ruler. He is the symbol of the nation, but does not rule the nation. He is the head of State, but not the head of government. His post has honour and dignity but not authority and hence has no responsibility either. The Cabinet governs in his name. The Cabinet remains responsible to the Legislature. The real executive, the cabinet is legally responsible to the Legislature for its political acts and ultimately to the electorate. The Cabinet rules according to the laws that Parliament enacts. Members of the Cabinet are the members of either House of the Legislature. The Cabinet guides and leads the Legislature. The system is, therefore, called Parliamentary or Cabinet system of government. Under this system the Cabinet is to resign if its acts are not consented to by Parliament. This form of governments are obtained in India and the U.K. This system is alternatively called Responsible Government.



### 2.18.1. Characteristics of Parliamentary System

The Parliamentary system has certain important characteristics which are discussed below :

1. There is a nominal or constitutional head of State whose functions are chiefly formal and ceremonial. The British Queen is such a nominal head of State.

2. The political influence of the formal Head is limited. The formal Head may be a President as in India, or a Monarch as in Britain. On the other hand, the Cabinet under the leadership of the Prime Minister is the political executive.

3. The political executive, such as the Prime Minister together with his Cabinet members, is part of the Legislature.

4. The members of the Cabinet including the Prime Minister, are members of either of the Houses of Parliament. They are responsible to the Legislature. The Cabinet can be removed by the Lower House of the Legislature by withdrawing its support.

5. The leader of the Cabinet, the Prime Minister, is also the leader of the Legislature. The Prime Minister is not only leader of the Cabinet, he is a political executive and is the leader of the Legislature.

6. The Cabinet is to resign if a no-confidence motion is passed in the Legislature or if an adverse resolution is adopted in the Legislature.

7. In a Parliamentary system, generally it is the Legislature which is supreme, if not sovereign. In the British Parliamentary system Parliament is sovereign but Parliamentary sovereignty is not in vogue in India.

8. In a Parliamentary system the Cabinet is formed by the Party which has a majority in the Lower House of the Legislature.

9. Existence of a responsible opposition is a feature of Parliamentary system. Wade and Philips observe that Parliamentary system works best where opposition is capable to take concerted action. In fact, in a Parliamentary system the opposition acts at once as an alternative government, and as a platform for the outlet of the discontent of the people.

### 2.18.2. Merits of the Parliamentary System

The merits of the Parliamentary system can be discussed under the following heads :

1. The first merit of the Cabinet form of government is that there is close relation and co-operation between the Legislature and the Executive. This close co-operation assures effective government. As Professor Laski says : *It secures an essential co-ordination between bodies whose creative interplay is the condition of effective government.*

2. The Cabinet system, being flexible in nature is better suited to cope with emergencies. The Cabinet under this system is easily alterable at the hour of need. So in critical times a reshuffling of the Cabinet may go a long way to meet the eventuality. Critics like Bagehot and Dicey say that flexibility and elasticity are important merits of the Cabinet form of government.

3. The members of Parliament try to control the Cabinet according to the turns of the public opinion. This establishes some sort of a popular rule. And this makes the executive necessarily responsible. The executive is responsible individually and collectively to Parliament and indirectly to the people at large. Lord Bryce observes that being in constant contact with members of the opposition party, as well as in still closer contact with those of their own, the executive has opportunities of feeling the pulse of the Legislature and through it the pulse of public opinion.

between the Executive and the Legislature.

## 2.20. Distinction between Presidential and Parliamentary System

The following may be said to be the most important distinctions between the Presidential and the Parliamentary Governments :

1. The head of State of a Presidential government is a real head. He is both nominal and political head of State, i.e. he wields both ceremonial and real power.

On the other hand, the head of State in a Parliamentary government, is only formal and nominal head without having any political power. The Head of State is not a political Head.

2. The head of State in a Presidential government is not elected by the Legislature. He or she is elected by the people directly or indirectly through an electoral college.

On the contrary, the head of State in a Parliamentary government is elected by the Legislature.

3. The President and members of his Cabinet, under the Presidential government, are not constituent parts of the Legislature. They are neither members of it nor responsible to it. So they cannot be removed by the Legislature.

In a Parliamentary government, the formal executive and the political executive as well, are all parts of the Legislature. So the Legislature in Britain is qualified as Queen-in-Parliament and in India as President-in-Parliament. The Political head of a Parliamentary government, including his Cabinet colleagues, not only form a part of Parliament— they are also members of it and can be removed by it.

4. In a Presidential System the President, the head of State, cannot dissolve the legislature and order fresh elections.

But in a Parliamentary System the Legislature can be dissolved on the advice of the Prime Minister by the President. The government lasts so long as the Legislature has confidence in it.

5. The Cabinet under the leadership of the Cabinet leads the Legislature in a Parliamentary system. It is the Cabinet which initiates the bills and decides the business to be taken up in the Legislature.

On the contrary, in Presidential system, neither the President nor his Cabinet leads the Legislature. Their existence also does not depend on the confidence of the Legislature.

6. The Cabinet in a Presidential system merely acts as a bunch of advisers to the President without having any real and effective power.

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7. Parliamentary system is based on the principle of close relationship between the Executive and the Legislature, and as such, this system negates the theory of separation of powers.

But the doctrine of separation of powers operates in the Presidential system of government. Consequently, the executive, legislative and judicial branches of the government remain separate from each other and none of these branches interfere in the affairs of the other.

8. Cabinet, in the Presidential government, has no relation, whatsoever, with the Legislature. So the Legislature under no circumstance can remove the Cabinet. The Cabinet members are appointed by the President to whom they are held responsible. This is what we find in the United States of America.

But the Cabinet members of a Parliamentary form of government are appointed by the President on the advise of the Prime Minister. The Cabinet members are responsible to the Legislature. The Legislature can remove them by expressing its no-confidence on the Cabinet. Even the Cabinet is obliged to resign in consequence of adverse votes on policy issue in the Legislature.

9. Cabinet of a parliamentary government is formed on the basis of unity, integrity, cooperation and the leadership of the Prime Minister. All cabinet members are colleagues of each other.

But Cabinet of a Presidential government is a loose body of heterogeneous elements who share a master-servant relation with the President.

10. Parliamentary government generally functions under the Constitution which is generally flexible.

On the contrary, Presidential system functions preferably under a rigid Constitution.

### 3. Cabinet responsible to Parliament

It may be pointed out by the way that the constitutional experts of India threw up a turbid controversy some time ago about whether the President of India is just a figurehead or has been given real powers by the Constitution. But the established conventions during the last fifty years or so prove amply and unequivocally that the President of India, like the King or Queen of Britain, is just a constitutional head and acts on the advice of the Cabinet. The *44th Amendment Act* has also provided in unequivocal terms that the President was to act in accordance with the advice of his ministers.

In accordance with the British practice, there is a Cabinet in India led by the Prime Minister. The President is helped and advised by the Cabinet which, in fact, rules the country. In a Presidential form of Government— as in the U.S.A.— the members of the Cabinet are not members of the Legislature and are not, therefore, responsible to it. But the members of the Union Cabinet of India must be members of either House of Parliament. Ministers are responsible individually and collectively to Parliament for their acts done and policies adopted and must bow out of power if a motion of no confidence is passed in Parliament against them. The Indian system is thus a *Responsible form of government*.

The personal initiative and liking of the American President in the matter of appointing ministers and in the formation of the cabinet is very important. In fact, it is the American President who can appoint any one as his minister. But the British Queen and the Indian President have no choice of their own. They are bound to appoint the leader of the majority party as the Prime Minister and to appoint other members of the cabinet on the advice of the Prime Minister.

### 4. Removal of Government

In India the constitutional head cannot ordinarily remove the Cabinet from office so long as it enjoys the confidence of Parliament. But Parliament of India can remove the government by withdrawing its confidence on it.

### 5. Close relation between Executive and Legislature

In the Indian Parliamentary government there is a close co-operation and co-ordination between Parliament and the Cabinet, for, the party that secures majority in the Legislature forms the Cabinet and every Cabinet member is a member of Parliament also. The laws which Parliament makes or proposals which are placed for discussion in Parliament are determined and decided on by the Cabinet beforehand. Nowadays the Cabinet or the Executive controls and prevails over parliamentary activities due to the fact the party system is becoming highly mature and integrated. But in America where the form of government is Presidential the executive does not and cannot control Legislature. There is separation of powers in America. But no such separation of powers is found in the constitutional system of India— here we see concentration of powers, instead of separation of powers between the Executive and Legislative functions.

### 6. Indian Parliament not sovereign

Another feature of the British Parliamentary system is that Parliament is sovereign by all intents and purposes. No British Court can annul a law passed by Parliament or declare it unconstitutional. But the Constitution of India has not given such power to Parliament. Rather in pursuance of American practice, the Supreme Court of India has been empowered to determine the constitutionality of the laws passed by Parliament. In India, in reality, the supremacy of the Judiciary has been recognized. In recent years we find an almost judicial take-over caused by large scale corruption at the high political level.



The Constitution of India thus follows, on the whole, the British Parliamentary model and as such the principal characteristics of a Parliamentary or Cabinet form of government are present here, though not in every possible detail.

#### 7. Recent trends

Of late, the question of amending the constitution in order to make Parliament sovereign was raised. There has been an opinion in the air that the Supreme Court should be stripped of the power to decide the constitutionality of the laws made by Parliament and that, like Britain, the Indian Parliament, being also the highest representative body in the country, be made sovereign.

But in reality, we find in India the decline of Parliament and virtually a Judicial take-over. This has happened due to large scale corruption at the high political level. This is indirectly adding fuel to the powers of the judiciary at the cost of decline of the political institutions.

#### 2.22. Monarchy