

Unit - 05

Chapter - 11

Organs of Government

The state is a necessary and universal institution for civilized human society. In fact the state is a regional society, which is interpreted as government and people. The natural form of the state-based intangible organization is the government. Government is the agency of the state through which the State expresses and executes its objectives of public welfare. According to Prof. Garner, “In the absence of government, the population will be unaffiliated, unorganized, non-political people and it will not be possible to have any group work”. In the words of Gaitel - “Government is made up of a group of its organs, whose functions differ, but whose responsibilities and goals are the same and whose cooperation is essential for success”.

It is therefore clear that the government is a necessary element of the state. Despite the population, territory and sovereignty, even if the government is not there, the imagination of the state is not possible. The government has been called the soul of the state, which has the responsibility of law enforcement, implementation of law and the right to punish those who violate the law. In order to fulfill

these three basic objectives, the organization of the government can be expressed as the following three organs-

Legislature

Meaning of the Legislature- Of the three organs of the government, the status of legislature is the highest. The legislature, commonly known as the Parliament. The English word parliament. Is derived from the Latin



word Parliamentum which means speaking or discussing. In ancient times, laws were not made, but were found in society. They were called public rules. In the Middle Ages, the Council of Legislative Assembly was called Parliament, in which the King interacted with the judges on the petitions submitted for redressal of grievances. In the modern democratic system, the British Parliament is the world's first democratic parliament. Hence, the Parliament of Britain is called the mother of parliaments.

In the current era, the legislature is the most influential organ in all the democratic countries, which expresses the public opinion or national desire. In the words of Prof. Garner, “Of all the organs through which the will of the state is expressed and applied, the place of the legislature is unquestionably the highest”. In such a situation, the legislature can be said to be the mirror of the state's desire which is the main means of expression of the public's will. This is a representative meeting of the public which provides legal form to the general rules of society in the democratic governance. The administrator is the regulator of administration

(executive). In India, the legislature is called Parliament; in United States Congress; Parliament in Britain and Diet in Japan.

Functions of the Legislature

The functions of the legislature can be expressed as follows-

1. Law Making Function- The main and important task of the legislature is to create the law. Parliament, in accordance with social conditions, creates new laws and makes necessary amendments in the old laws. It eliminates unnecessary laws. Under the law making, the three-tier system is most popular in which-

First – Bills are drafted and presented in Parliament.

Second - Detailed discussion on the bills by the committees.

Third – The bills are implemented by the House. This process in the bicameral parliament is made by the second house and the legislation becomes law by the signature of the President.

2. Executive Function - In Parliamentary democracy, executive is responsible for the legislature. By asking the question on the Cabinet, the work is stopped by legislature through the proposal, by bringing the insult proposal and ultimately by the no confidence motion. In the words of 'Bezahat' - "The formation of legislature is formally for the formulation of law, but its main function is to make and control the executive". In the presidential system, the legislature controls the executive. In the United States, the approval of the Senate is required on the appointments and treaties made by the President.

3. Financial Function - There is complete control of legislature over the Central finance. Without the permission of the legislature, the executive can neither impose any type of tax on the public nor make

any kind of expenses. The details of income expenditure is presented annually to the legislature. The national budget is passed by the legislature. If the legislature does not agree with the annual budget presented by the executive, then the crisis becomes a problem to the government. The legislature considers the Auditor's report.

4. Judicial Function - In many countries of the world, the legislature also fulfills judicial work. In England, The parliament discusses matters of privilege. There the highest appellate court is the House of Lords. In the USA, the Senate works as a court to consider the question of impeachment imposed on the President. In India, it can hear the impeachment cases against the President, the Vice President and the judges and can remove them from their post. Parliament is the master of its process, so it reserves the right to punish the convicted person for loss of the house's respect.

5. Election Function - The administration of many countries of the world also fulfills the election related work. Members of the Central and State Legislative Council participate in the election of the President, Vice President and members of the Rajya Sabha in India. In France and China, the President is elected by the parliament. The highest executive officer in Switzerland is elected by the governor.

6. Constitutional Amending Function - The legislature from time to time also performs the functions related to constitutional amendment to keep the constitution of the country unchanged. The procedure for constitutional modifications in different countries is different. After acceptance by the 2/3 members of the Constitution Amendment Congress in America, it is necessary to pass 2/3 state legislative assemblies. Three methods of constitutional amendment in India are in vogue - by general majority, by 2/3 majority and by states' approval by more than half alongwith 2/3 majority.

7. Function in relation to foreign affairs - Determination of mutual diplomatic relations with

foreigners, War and peace announcements are done by the executive. The work agreements done by the nations is approved by the legislature. The legislature also supports the executive in determining the country's foreign policy.

8. Other Functions - In addition to the above mentioned activities, the legislature directs the executive in the establishment of various corporations. and the tribunals It decides on the representations submitted by the the Commission. In India, The declaration of emergency by the President is approved by the Parliament. The restructuring of states in the federal structure is also done by the legislature.

In fact, the legislative body is an important organ of the government. Along with legislation, analysis of governance policies and proposals, passing or accepting critique and making meaningful initiatives towards realizing the aspirations of the people is a major task. In the words of Prof. Laski - "The real work of Parliament is to monitor the process of administration so that the personal freedom of the citizens can be safe".

Organization of Legislature

In the beginning of the republican regime, there was a single House legislation in most of the countries, but gradually it was felt that the legislature must be bicameral to curb the power of the first house and to reconsider the work done by the first house. The question of being a member of the administrative or bicameral has been a matter of controversy in political analysts. On the one hand, Sir Henryman's statement is that "There must be a second house." On the other hand, Laski is of the opinion that "it is wrong that the second house is an effective guarantee to protect the association".

In most countries today the bicameral administrative system is in vogue. One is called first house, lower house or representative house, whose election is directly done by the public. In India it is called Lok Sabha, in England the House of Commons

and in America House of Representatives. The second house has been given the name of the Upper House, the Second House or the Senior House. In India it is called Rajya Sabha, House of Lords in England and Senate in America.

Single House Legislature-Bicameral Legislature

Argument in favor of the bicameralism:

1. Check on the autocracy of the First House

- The legislature must be restrictive bicameral so that it does not autocratic. The autonomy of the first house will be checked naturally as a result of the existence of the first house. In the words of Leacock - "a gentleman may be overwhelmed and unresponsive".

2. In accordance with the democratic traditions - If there is a single house legislature, then the power is centered in the hands of the House, which is likely to create the risk of human freedom because power makes the person or institution corrupt. Power will be decentralized in the bicameral legislature and all sections of society will be represented.

3. Support to First House - After the excessive increase in the work of the State, the first house cannot do justice with all the bills. There is a need for adequate time and eligibility to pass the public welfare bills carefully. Work can be divided by having two houses of legislation. Those Bills which do not have special differences can be presented in the first house. The first house can focus its attention towards more important problems.

4. Helpful in formation of public opinion- After the passage of a bill in a House, the process of passing the bill in the second house takes time. In this way before getting the bill in the second house, the public gets the time to think about the bill. There is an opportunity to express their views on the proposed bill by the general public, the political party and the press.

5. Experienced and Efficient: Because the first house is popular, many times qualified and efficient people do not win the election. In such a situation, the

country has to be deprived of its merit. If seen in the second houses of countries like England, India, America, it is clear that members of the upper houses of these countries are highly experienced in political terms. The country takes benefit from their political maturity and experience. In the words of J.S.Mill, “If the lower house is a House of Representatives of the people, then the Upper House is the House of the Politicians and Artists, because it is the nomination or election of members on the basis of Literature and Social Services.

6. Suitable for the unitary system: - In different units of unionized states, there is a lot of difference in terms of area and population. The first house represents the entire nation in the bicameral system, the second house represents the provincial units. No change can be brought about in the fundamental form of provincial units without the consent of the second house. Thus, the protection of the interests of all the units of the association can be possible.

7. The means of judicious ideas: - The second house is the first effective way to ban the House’s hasty and arbitrary laws. Its number of members is relatively small. Based on qualifications and experience, the second house can peacefully reach the diagnosis by considering a problem. Representatives of the public are passionate, revolutionary and impractical. They are often prepared to make such laws, which have more harm than the place of profit. In such a case, the second house may put an end to the laws enacted arbitrarily.

8. Historical Experience: Democratic History is also a big argument in favor of the utility of the second house. At the time of the Civil War in England (1549-60) after the Civil War and 1777 to 1787 in the United States and for a while in France, there was a single house legislation, but in all these countries, the experience of a legislature was not good and the autocracy increased in government. As a result, in the states of England, France, America, Mexico, Spain,

Portugal etc., the bicameral legislature was accepted in place of a single house legislature.

Obviously the natural tendency of hatred, tyranny and corruption of a House needs to be kept under control by the other house. Blanchetti has rightly said: “Four eyes always look better than two eyes, especially when it is necessary to consider a question from different perspectives.”

Arguments against the bicameral legislature

Many scholars have criticized the bicameral legislature, and it has been described as unusable. Benjamin Franklin has been critical of the bicameral legislature: “Bicameral law is exactly the same as in the front and back both sides of the carriage, the horses are given in front and they should be dragged in the opposite direction.”

The following arguments can be argued against the second house:

1. Non-democratic: In the democratic governance, sovereignty resides in the public, and this sovereignty is inseparable. Directly elected members of the public represent the general public’s will. For this, sovereignty should also be contained in a house. The French scholar Abusez’s statement is, “If the second house represents the agreement from the first house, then it is unnecessary and if it opposes then the devil”.

2. Delaying institution: - In the opposition of the second house, it is argued that it unnecessarily delays in passing the laws. The result is that sometimes good laws are not passed on time or are canceled. There is no need for a second house for the crisis. In most of the countries except the US Senate, the powers of the second house are very limited, therefore the utility is also limited.

3. Problems of organization: There are also many countries in favour of the organization of the second house. In most countries, the second house is

formed on various traditions and principles. In most countries, the formation of the second house is non-tribal. In England the organization of the House of Lords is hereditary and it represents only the elite class. The absence of unity in the House is due to the coming of different institutions and rich persons. In Canada there is a nomination in the second house, on which serious disclosures are made. In some countries, including India, elections are held indirectly, which often causes corruption. Satisfactory creation of the second house is really a big problem.

4. Wastage of money: - Due to the bicameral law, the unnecessary expenditure of funds is increased. Prof. Laski thinks that “the needs of modern states can be met by a gentle legislator, because there is a recurrence of bicameral legislation. Time is lost and there is unnecessary load on the national treasure.”

5. Probability of conflict between both houses: - There is always the possibility of conflict between the first and the second house in the bicameral legislature. This situation becomes even more difficult when the government has a majority in the House of Representatives, but in the second house, it is in minority, as is being observed in India in recent years. The tendency to stop or delay the bills passed by the first house by the second house increases political reasons for. In such a struggle, there is a bad effect on the bill.

6. Unnecessary for the federal system: - The bicameral legislature is not indispensable for the unitary arrangement. Due to party discipline, the second house also takes care of the interests of its political parties rather than protecting the interests of the states. In any case, it is possible to protect the interests of minorities and various units of the Union by constitutional protection and independence judiciary. In Lasky's opinion, “it is wrong that the second house is an effective guarantee to protect the Sangh.”

Conclusion: - Despite these criticisms of bicameral legislature, it has been recognized worldwide

for representative democracy. There is a greater probability of seriousness and intelligence in the bicameral legislature. On the representation of different sections in the presence of the second house, the law can be expected to be done with a sense of public welfare. But all political thinkers accept this fact that the powers of the second house should be less than the popular House because the first house represents the aspirations of the people in the right sense.

Decline of Legislature

There have been many revolutionary changes in the world in the beginning of the twentieth century and early 21st century. The effect of these changes is also on the legislature. Although the legislature still holds its place in the democratic system, but in this age of anxiety and intensity, the legislature has weakened in comparison to the executive due to its organization, work system and partial politics. Actually, the strength of the legislature has increased, but in practice the executive emerged as a more powerful institution. The following reasons are responsible for the decline of legislature

1. Increasing effect of the executive: - In the parliamentary system of governance, the function of the Parliament session is to convene a session of Parliament, dissolve, disband the popular House of the legislature, present the budget, and even the draft of the speech given by the Head of the State. it happens. Most of the bills are presented by the executive and on the basis of majority, bills are passed. In such a case, the actual work of legislation is not in conformity to the wishes of the executive and in accordance with the wishes of the executive.

2. Ascribed Legislation: - The legislation is the responsibility of the Swiss Democracy to the world. In the parliamentary system, this work has been transferred to the administrative executive. It has limited the ability of law enforcement of the legislature. In practice, the executive has started making many laws under the provided legislature. The existence of the

legislature on the passage of budget and the important government bills depends on the existence of the executive, so a big job of law-making work has left the hands of the legislature and gone into the hands of the executive and legislature has become the puppet of executive's hand.

3. Party and factional Discipline: - Members of the Administrators represent the expression of desire, but in reality, while dealing in the House, they live in the dual role of the supporters of the government policy or the critic because they are the members of the ally (Deepak) in the form of party discipline Contains control. The Chief Leader treats them with “political masters”. Based on the party's support, the executive powers have the power to do anything from the legislatures. As a result, according to Ellen Baal's opinion, “the growing power of the executive in the twentieth century, the growing powers of the executive and its growing area has reduced the legislature.”

4. Role of Judiciary: - The role of the court has also caused the loss of the powers of the executive. In states like India and America, judicial review system has weakened the power of the legislature. Ironically, the increase in executive power is being seen in fear and fear while the growing power of judiciary is being accepted. America's Supreme Court is called the third organ of the Congress (American administrator).

5. Impact of Media: - The development of communication medium has been the main reason for the decline in the effect of the legislature. Today the executive can compile the will of the legislature without any means of communication in the public. The development of the means of communication has brought the executive head directly to the public. He can talk directly to the public and get the opinion. In India, “the thing of the mind” is the effective medium of communication between the executive and the public. Actually, not only the political parties but the media is also playing the role of counterpart.

In addition, the control of the army, prominence in foreign affairs, the concept of the philanthropic state, dependence on subject experts and the abundance of people with general qualifications in the administration have reduced the importance of the administrator. But as a representative of the consciousness of democracy and the representative of the people's desire, the administrator is still the focal point of democracy.

Executive:

The executive is another important organ of government. The use of terminology is the realization of the general government. In the ancient times, the executive was the supreme authority. Policy making, policy implementation and judicial work were done by the head of the government. In the modern democratic polity, the nature and powers of the executive have changed. In most of the countries, executive is multiplied by singles and due to the principle of power dissociation, establishment of executive law has been established. Head of the nation, President the Chief of the Governing Council, the Council of Ministers and the Administrative Officers come under the executive.

Meaning and definition of the Executive

The executive is an important organ of the government that results in the laws created by the legislation. In political science, the word ‘executive’ is used in compressed and comprehensive terms. In the broadest sense, the President, the Prime Minister and his ministerial council and the group of administrative officials who are related to implementing the will of the state come under the executive, whereas in the constricted sense the executive means only the head of the state and the government and the ministers. Its actual nature is the political executive that determines policies. In India, the President, Prime Minister and his Cabinet are examples of executive.

Various scholars have given the following definitions of the executive:

1. Gil Crist: “The executive is the part of the government that results in the state’s desire expressed as a result of law.”

2. Dr. Finer :” The executive is the body of the government that does the remaining functions of the legislation and the judiciary”.

3. Garner : “The executive is the axis around which the administration system revolves”.

Thus, the executive is born with the development of the state. This is the real part of the government by which all organizations, office bearers and agencies implement the collective desire of the state expressed as law. There are mainly two parts of the executive-political executive in which the President, the Prime Minister and his Cabinet come and the permanent executive in which the administrative personnels come.

Types of Executive

1. Nominal Executive- When the head of state or state is only nominally seen, and powers are used instead of self, then it is called nominal executive. In the constitutional arrangement, all powers have been given to the emperor or the President by the Constitution, but he uses these powers only in consultation with the Prime Minister and the Cabinet. All the functions of the government are done in the name of the President in India and in the name of the emperor in England But they themselves do not have the freedom to use these powers. Actually the executive power is in the hands of the Prime Minister and the Cabinet.

2. Actual Executive: - When the head of state is not nominal, and exercises all the powers of the state on his own, then it is called the actual executive. The USA president is an example of the actual executive.

3. Parliamentary Executive: - Where the executive is a mere name and in reality the powers are exercised by the prime minister and his ministerial staff, it called parliamentary executive. In this, the Prime Minister and the Cabinet are liable to the executive for

their work and the executive full control over the legislation. In England, France and India there is a similar type of executive.

4. Presidential Executive: - When the President uses the actual powers is not liable to the executive for his actions, it is called the Presidential Executive. In it, there is no effective control of the executive on legislature. There is a presidential executive in America.

5. Single and Plural Executive: - When the last authority to decide on executive matters lies in one person, it is called a single executive. In the parliamentary and presidential system, the focal point of governance is the Prime Minister and the President. So there is a single executive. There is a single executive in America, India and England. While executive power is not rooted in a person, it is contained in groups of individuals, it is called multiple executive, such as Switzerland and former Soviet Union’s executive. The executive powers in Switzerland reside in a federal council of 7 members .

6. Authoritarian Executive: - When a person takes possession of power without statutory means and becomes autocratized, it is called the authoritarian or dictatorial executive. In 1936, General Franco had taken possession of power in the same way. Mussolini-Hitler dictatorship is the prime example of power. In India’s neighboring states, this type of executive has been emerging from time to time.

Functions of the Executive –

In the past years, the work of the executive has increased, as well as the nature of the state has also changed. In the philanthropic nature of the state, the executive has been getting many resources to satisfy the human aspirations. As a result, the work of the executive has increased. The functions of the executive can be discussed as under:

1. Internal Administration : The State is internally an organized society, and its purpose is not

fulfilled unless the internal peace system is established. It is a natural task of every executive to provide internal and external security and peace to the citizens. The executive governs according to the law made by the legislature. The heads of the various departments of the government are the ministers, who cooperate with the collective responsibility under the leadership of the Prime Minister in determining and implementing the state's policy. The executive holds complete control over the appointment, discipline and staff of the employees for their work.

2. Diplomatic Function- In general, the legislature determines the foreign policy of a state, but it makes least interference in the real rule of the foreign Department. The executive operates the contact relations with foreign states. All the agreements, negotiations, war or peace announcement with different states are made by the executive. The approval of the executive on these agreements and treaties is just a formality. The Executive appoints its ambassador to oversee diplomatic operations and welcomes foreign ambassadors here.

3. Legislative Function: Although the lawmaking function is primarily of the legislature, the executive also provides its support to it. In the parliamentary system, the executive gives permission to convene a session of the Parliament, to dissolve, dissolve the first house, and to present all important bills, including diplomacy. No Bill can be passed without the approval of the executive. Only after the President's signature in India, the bill takes the form of law. Ascribed legislation has further increased the legislative power of the executive. In special circumstances, the executive also issues ordinance, which gets the same importance as the law made by the legislature.

4. Financial Function : Theoretically, the entire control of the country's income-expenditure is made by the legislature, but in practice, this work is done by the executive. In India and England, the money is

presented to the legislators and in the first house, on the basis of majority, party discipline is passed as per their wishes. The budget is prepared in the United States under the direction of the the President. The Executive does the task of raising, and lowering public taxes for the necessary funds. The executive holds control over and inspects the entire income-expenditure.

5. Judicial Function: In each state, the Executive also performs some judicial functions, including the appointment of judges and the act of pardon. Judges of High and Supreme Court in India are appointed by the President. The Prime Minister of India, Britannia and America have the right to reduce, eliminate the sentence given by the Supreme Court, and to grant pardon to the criminals.

6. Military Functions: The President is the supreme commander of the country. The executive is responsible for the security of the country. The Executive does this work through the Department of Defense. The appointment of senior military officers is executive. Military help can be taken not only for external security but also for internal peace. The executive declares war or peace. In India, the President announces emergency. In the emergency, the executive can also apply military rule.

7. Other Functions: In addition to the above mentioned works, the Executive also does some other tasks like making plans for economic progress, giving degrees or honors to famous people, providing citizenship to foreign citizens in the country, special services Arranging financial assistance, important work in public health, public education and industry etc.

Increase in the Executive Function

In the present era, the executive's powers have increased tremendously. The concept of public welfare state has given the executive much wider power than to the other organs of government. Today the executive has a universal effect on the administration. The reasons responsible for it can be enumerated as under-

1. Increase in the state sphere: Public welfare and socialist concept has increased the work area of the state. Most of the responsibilities of social and economic reforms in socialist states are on executive. The role of the police state has been reduced and the executive interference in other aspects of national life has increased. In the form of the real administrator of the state, the work of the executive has increased at both national and international level.

2. Delegated Legislation - Detailed study of all the bills by the executive is not possible due to increase in state activities. Therefore, the legislature has remained limited to the general principles in the formulation of bills. The task of extending its expansion has been entrusted to the executive. This is called delegated legislation. Due to it, the executive power has increased greatly.

3. Party discipline: The government on the basis of support of its party or group in the parliamentary governance is in principle responsible for the legislature, but in practice, the executive behaves like its political masters with members through the whips. The executive receives the mandate to operate the country due to which it works independently, but sometimes it begins to rule arbitrarily.

4. Decline of Powers of Legislature: In the present era, the nature of the legislature has changed. The state has to face complex problems, which require more knowledge and qualifications. This experience is with the members of the executive and not with the members of the legislature. The executive has retracted the legislature due to efficient leadership and expertise. As a result, the strengths of the legislature are reduced. Ramsay Myor calls it “dictatorship of the cabinet”.

5. Industrial revolution: Today's era is an era of industrial revolution, which has resulted in an increase in the work area of the state. Most progressive countries are adopting the method of economic planning. Industrial revolution has attached the state to

social, economic and industrial work. This has led to a natural increase in executive powers.

Conclusion: - The above explanation clearly shows that there has been a massive increase in the executive's powers over the past years. Thereby many times the fear of freedom of citizens and the threat of fundamental rights is born. The announcement of the emergency in India from June 1975 to March 1977 is seen as a ministerial dictatorship. Due to the ultimate power in the democratic system, in the hands of the public, in 1977, the Indian public mind had ousted the authoritarian tendency from power. There is a need to impose discretionary control on the growing power of the executive, in order to make it more public welfare and accountable, withholding the autocratic conduct of the executive.

Judiciary

The judiciary is the third and important organ of the government. It is possible only in the presence of judiciary that the main difference between the democratic government and the authoritarian government can be seen. The judiciary is the only way to establish the rule of law. In the words of Marriott, “As far as the important functions of the government are concerned, judicial work is most important, because it is directly related to the citizens. Regardless of how wide the machinery and mechanisms of the law building are, whether the organization's organization is complete, the life of the citizens can be unhappy and the danger of his property can arise if there is a delay in judging or a fault in justice or the interpretation of the law is biased or misleading “

Meaning and Importance of Judiciary

Man is a thoughtful creature. Ideas of each person can be different. Reciprocal conflict is also very natural due to the difference in views. At the same time, the ruling classes can also cut down the rights of citizens and misuse their powers. In such a case, there must be an independent judicial power, which can solve the

mutual disputes of individuals and force the government to live in its limits. In the opinion of Prof. Laski, “judiciary of a state can be defined as a group of officers whose work is to complain about violation or breaking of any particular law in the state, between different people or between citizens and the state, and that resolves and decides “. Thus, the judiciary is the institutional arrangement to resolve disputes arising out of the prevailing laws in society.

Lord Brice has expressed the importance of the judiciary in these words: “If the rule of law does not work with integrity, then it will be assumed that salt has lost its basic nature. If judiciary gets dissolved in darkness, then how can the intensity of darkness be estimated? “The importance of judiciary increases further in the democratic and federal regime. In the federal system, division of rights between the union and the state units is there, so the possibility of legal conflict between the two is high. Only a free and fair judiciary can overcome this struggle. In fact, the judiciary is not only required to do justice but also to protect the freedom of the people and punish those who violate the law. Pro.Laski wrote: “When we know how the nation does justice to us here, then we know what level of moral character it has.” Professor Garner emphasized the importance of judiciary in very simple words. “In the absence of judiciary, a decent state cannot be imagined.”

Organization and Functions of judiciary

Organization

1. Judges elected by the public - Judges in some nations of the world are elected by the public through direct election system such as in some of the US and Switzerland regions. But the system is faulty because in it the election of qualified persons is doubtful and the judge can be a victim of the debate. Prof. Garner has said that “The main drawback of the judges elected by the public is that it is born of weak and free-of-charge courts”.

2. The judiciary elected by the Legislature- Some Kents of Switzerland and the former Soviet Union have been appointed by the legislature. In it there is the danger of the judiciary’s being a puppet of the executive. Besides, judges are not likely to be appointed on the basis of merit but on the basis of party’s political beliefs.

3. Judiciary appointed by the executive - Judges in most countries of the world have been appointed by the executive. This arrangement stops the political debate and the person is appointed as a judge.

Functions of Judiciary - In general, the judiciary of each country fulfills the following tasks-

1. Giving Judgement and the punishment to the criminals: - The judiciary’s first task is to do justice according to the law and punish the infringer of the law according to the law. The judiciary disposes of disputes between individuals and individuals and states or states. Civil, judicial and constitutional matters, know the facts and decide on the basis of the legal reasoning given by their respective parties. It has been the judicial function of the Judiciary to punish the violator of the law since ancient times.

2. Interpretation of the Constitution: - The language of the constitution and law is often difficult to understand in general. Sometimes the interpretation of the law in connection with the disputes arises out of the Constitution and various lawsuits become the fundamental task of the judiciary. Where the law is silent or obscure, the judiciary not only clarifies the law, but also produces different types of laws from its decisions, which is called case law. The interpretation of judicial law by the judiciary and the importance is the same as made by the legislature.

3. Protection of Constitution: - The judiciary is the custodian of the Constitution of the country. In particular, the constitutional states have the supremacy of the Constitution. If there is no executive or administrative executive, then the judiciary declares it

unconstitutional and protects the constitution. In 2015, the Supreme Court of India declared the 'National Judicial Appointment Commission' as illegal and preserved the law provided in the Constitution.

4. Protection of Fundamental Rights: - The Constitution of each country has given its citizens some fundamental rights. Whenever the fundamental rights of the citizens are infringed, the citizens take refuge in the judiciary to protect these rights. The court protects the rights of citizens by issuing different types of articles. The right to constitutional remedies in India is an important means of protection of the fundamental rights under which the court protects the fundamental rights of the citizens by postponing demonstration, permutation, protest, inducement and rights.

5. Settlement of Union-state disputes: - In the unitary federal system, the division of powers between the Center and the States is done by the Constitution. But there is a dispute about powers in the Central and States at times, in which the judiciary preserves the interests of both, settling disputes through judicial and legislative decisions. Therefore, it is imperative to have a free and fair judiciary for the federal regime. The judiciary can force the union and states not to encroach in the area of each other.

6. Consultation related Functions: - Another important task of the judiciary is to give advice to the executive. It advises the executive on the need for hearing and settlement of the cases along with the need for constitutional issues. The judicial committee of the Privy Council of Britain has the power to consult the State President on legal issues. Although the US Supreme Court has no consultation jurisdiction. But with the approval of the constitution in India, including Sweden, Kanada, ASTE. Under the Article 143, the judiciary has the right to give advice.

7. Administrative Functions- The judiciary has adequate authority in relation to its internal administration. The highest and higher courts determine the terms, conditions, appointments, transfers, etc. of

their subordinate officers / employees themselves. In the internal administration of the court there is no interference of executive in the executive. The task of implementing the small rules of the internal administration of the court itself is of the judiciary.

8. Miscellaneous Functions: In addition to the above works, the judiciary also performs some other important functions such as issuing the certificate of marriage, divorce and citizenship, punishing any person on their defamation, appointing the trustee of public property, the bankrupt firm For the appointment of 'receiver', appointment of guardians of minors, certification of testament names, judicial review etc. Chief Justice of the Supreme Court presides over the meeting of the Senate convened to discuss the impeachment brought against the President or a judge in America. In India, the Commission is constituted under the chairmanship of judges for matters related to corruption and misuse of powers.

Independence of judiciary

Independent and impartial judiciary is essential in any democratic and federal system. The independence of the judiciary means that there should be no interference of the executive and legislature in the functioning of the judiciary and the interpretation of the law made by it should be given due recognition. 'Hamilton' has written about the importance of the judiciary's independence: "How good is the law of any state, without a free and fair judiciary, it is inexhaustible." The freedom of the judiciary can be protected by the following means-

1. Appointment of judges: - The first requirement of the judiciary's freedom is the method of appointment of judges. The basis of appointment of judges is only qualification and experience, not political fidelity. Often three types of judges appointments have been prevalent throughout the world- , appointment of judges by the public, by the legislature and by executive. Appointment of judges by the public or by the legislature is not considered good. It will be a risk of being a

statesman rather than being the judge. Therefore, the best way to appoint judges is appointment by the executive. Occasionally the executive appoints judges on the basis of political recognition. In Article 124 (3) of the Constitution in India, the President has given the right to appoint the judges in consultation with the Chief Justice of the Supreme Court. But in the Emergency, the then government had ignored three senior judges and appointed their favorite Ajitnath Roy as Chief Justice. Even in the Supreme Court in 2015 the Supreme Court declared the National Judicial Appointment Commission as unconstitutional, that in the 6-member commission three members, including the Law Minister, are representing the executive and every member has got Veto Power. It is therefore necessary that an independent and unbiased judiciary should be appointed by executive.

2. Long and safe Tenure- The tenure of the judge should be properly prolonged. It is neither a lifetime of a judge of the Supreme Court of America nor the short term of 4 or 5 years like communist nations. The age of the retirement age of the judge should be fixed and the proper arrangements for the removal of the corrupt and incompetent judges are inherent in the constitution. The way of judging the judges is neither so easy nor the executive should be misused by the day and neither is it too harsh that despite the constitutional violation by the judge, he can not be removed. There has been adequate provision in this regard in the Indian Constitution. Here the judges have been given long and safe tenure and also the provision of removal by impeachment process.

3. Sufficient Salary and Allowances: To maintain the independence and fairness of the judiciary, it is necessary that the judges get adequate and appropriate salary allowance. Hamilton wrote in his book Political Elements “It is a human nature that the person who has power with the vision of his livelihood. He has a strong force of resolve power too. “If the lives of the judges remain inadequate, then they can

become corrupt in the temptation of money. Therefore, they get salary allowances according to their social status level and the legislatures will not have the right to interfere in normal circumstances under the rewards they receive.

4. Separation from the executive: Having executive and judicial power in the hands of a single person, it is possible to disregard the principle of justice. The judiciary is required to be exempted from the stipulations of the executive. In the Constitution of India, in the Policy Director Elements (Article 50) it is expected that the executive should not interfere in the functions of the judiciary. In the work of the judges, the executive or the legislature should not interfere until the constitution is conducive to their conduct and behavior.

5. Restrictions on advocacy and appointment after retirement- To prevent misuse of power, it is necessary to prevent the judge from practising law after retirement, at least in that court, where he has been the judge. At the same time, if the judge is appointed as the Ambassador, the Governor or the Minister after retirement, then it is likely that he will be loyal to the Executive during his term. As a result, coming near retirement, he will be violating the natural law of justice with the will of the state’s legislature seeking a reward. The judge should have a proper pension after retirement and his services should be used in the judicial commission or tribunal.

It is obviously clear that the constitution and governance of any country can be evaluated by the fair and independent judiciary of that country. In the absence of a healthy, fair and independent judiciary, we can not imagine good governance. In the words of Dr. Garner: “If there is no freedom to give judicial verdict and decision, then the entire structure of the judiciary will seem hollow and there will not be any accomplishment for that purpose for which it has been constructed.”

Judicial review

The judicial review was first used in the United States. There is a system of judicial review in the countries where there is currently a strict constitution and fundamental rights, especially in the countries of federal rule. A judicial review has been made in the Indian Constitution.

Meaning of Judicial Review: - The judicial review gives the Supreme Court the right to protect the constitution. If the Legislative Assembly of the Union and the States violate its constitutional limits or makes any deficiency in the fundamental rights, then any such law made by the Parliament or the Legislature can declare the Supreme Court as illegal. Also, the Supreme Court can review the decision given earlier and change the decision in light of new facts. This power of the court is called judicial review. According to Corbin, “The judicial review refers to the power of law that is applicable in relation to the decision of the court of the law to be enforced under its jurisdiction and in refusing to enforce those laws, they think of illegal and meaningless ‘’.

Bases of the judicial review- the constitution principle works on two basis. Supremacy of the legislature or supremacy of the constitution In the UK, the legislature is paramount and it has got unlimited power of law making. While the United States and India have the supremacy of the Constitution. In Indian Constitution, the powers of all the units of governance (center-state) are obtained from the Constitution. If any unit of governance encroaches upon its powers, then the judiciary has been empowered to declare it illegal.

In India, the Supreme Court has not been given as much power as it has been given to the Supreme Court in the US. In the Indian constitution, the word ‘process established by law’ has been adopted like the Japanese Constitution. The Indian Constitution gives the Supreme Court the right to declare the law invalid made by the federal and state legislative assembly.

While the term ‘proper procedure for law in America’ has been adopted. Under this, the US Supreme Court examines the validity of the law on the basis of legislation, whether proper procedure for legislation has been adopted or not. This arrangement of the American Constitution shows the intervention of the judiciary in the work of the legislature. In the words of Prof. Laski, “due to the power of judicial review, the Supreme Court has become the third house of the Congress.”

Criticism of judicial review

The power of Judicial Review has given birth to the possibility of the intervention by the judiciary in the work of the legislature. With the judiciary declaring an important law or administrative decision in the US and other countries including India, it has been a victim of criticism of the judiciary’s authority by the ruling political parties. In India from 1967 to 1973, the situation of confrontation with the judiciary has been special. The judicial review can be criticized on the following grounds:

1. Against the theory of separation of powers- In the democratic governance system, emphasis is made on balance of power in all the three organs of governance. The main feature of the Constitution in America is power dissociation. The power of the judicial review ignores the theory of power dissociation by giving the judiciary the opportunity to interfere in the affairs of the executive and legislature.

2. Barrier in Progressiveness- The last power in democracy lies in the public. Parliament represents the power of the people. The power of the judicial review of the judiciary often obstructs progressiveness by declaring public laws as illegal by the Parliament. In the US the National Reconstruction Act and Agricultural Organizing Act, the laws were repealed. Similarly, in India, land reform law, termination of privaries, nationalization of banks, public welfare legislation was abolished.

3. Contradictory Decisions: - In judicial review, the courts periodically give birth to mutual contradictory circumstances by making changes in their earlier decisions. In India, in 1952 and 1965 Parliament was justified by the power of limiting or amending the fundamental rights, but in the ‘Golaknath controversy’ in 1967, it was said that Parliament can not restrict fundamental rights. Such a situation often gives the judges an opportunity to be voluntary or to impose their social political concerns.

4. Supporter of Supremacy of judiciary: In America, the Supreme Court has the power to review the justification of the law, along with proper process terminology of law. This power is largely inappropriate in a democratic way. The legislature represents public aspirations. Therefore, it gives the judiciary supremacy in the review of the justification of law brought for public welfare and it is interpreted as the third organ of the legislature.

Despite the criticisms, the system of judicial review has provided stability to the federal regime. The judicial review has played an important role in protecting the constitution, protecting the fundamental rights of citizens and reducing the powers of governance.

Judicial activism and public interest litigation

In the past years, the judiciary has become more active through public interest petitions. Generally justice is established only by the victim’s party seeking asylum. But at present, voluntary organization for financially and socially vulnerable groups and any rich person or group can file a dispute in court. Judicial activism in India is considered from the beginning of 1986. When the Justice PN Bhagwati, hearing of a PIL filed on a postcard in the Supreme Court, has changed the role of judiciary in the 1990s and subsequent changes in the political system in the years to come. The executive’s voluntary duty, dissent, excessive corruption, political instability, and criminalization have emphasized the judicial activism. In matters like the Cauvery water

dispute, Veerappan’s arrest and cleanliness in Delhi, the Supreme Court has displayed its judicial activism by direct directions to the government. According to Justice P.B. Sawat, “Those whose duty is to implement the law, when people do not respect the law, then such circumstances compel the judiciary to intervene and play their role firmly in the form of guardians of the law”. Judicial activism can be a capable medium of maintaining democratic system by constructing a constructive interpretation of the constitution and implementing the theory of separation of power.

Important points

Government – Concrete form of the state, the means of expression of state’s objectives.

Organs of the government- legislature, executive, judiciary

Legislature- Legislation, legislative bodies

Different names in different states, Parliament in India.

Functions of the Legislature

- Law making
- Control over the executive, Stop work proposal by asking questions,
- Non confidence proposal
- financial functions
- Judicial functions
- Election related functions
- functions relating to constitutional amendment.
- Foreign affairs and other functions.

Organization of Legislature

- Single House System
- Bicameral System - Lower House, First House, Popular House, Second House, Senior House, Upper House
- First House - representation of the public - (Lok Sabha in India, House of commons in England, House of Representatives in America)

- Second House - Representation of States - (Rajya Sabha in India, House of Lords in England, Senate in America)

Decline in Legislature

- Increasing impact of the executive.
- Delegated legislation
- Party discipline.
- The role of judiciary.
- Impact of communication media

Executive

Meaning of Executive:

Important Organ of government
Institution to enforce the law
Focal point of governance
Broad and narrow meaning

Types of Executive: -

Nominal executive
Actual Executive
Parliamentary executive
Presidential executive
Single and multiple executive
Autocratic executive

Functions of Executive:

Internal administration
Diplomatic Functions
Legislative Functions
Financial Functions
judicial Functions
Military Functions
Other Functions

Enhancement in the Functions of executive

Increase in the work area of the state

Delegated legislature

Party discipline

Decline in the powers of executive

Industrial revolution

Evaluation

Helpful in the establishment of public welfare and responsible governance, rather than being a autocratic, increasing the working of the executive and being autocratic.

Judiciary

Meaning

Third important organ of the judiciary government
Structural arrangements of judicial process.
Means of rule of law.
Interpreter of law

Importance -

Ensurance of judicial rights
Basis of democratic system
More useful for federal governance
Basis of civil society

Organization of Judiciary: -

Elected by the public
Elected by the legislature
Appointed by executive

Functions of the Judiciary

Judgement and punishment to criminals
Interpretation of the Constitution
Protection of the Constitution
Protection of fundamental rights
Settlement of Union territory disputes
Consultation related Functions
Administrative Functions

Miscellaneous Functions

Independence of Judiciary-

Appointment of judges

Long and safe duration of office

Sufficient pay allowances

Separation from the executive

Restrictions on advocacy and appointment after retirement

Judicial Review:

First experiment in the United States

Required to protect the constitution

Suitable for limited use of parliament and legislative bodies.

Acceptance of supremacy of the constitution

Use of the term “established procedure of law” in India

Use of ‘proper vocabulary of law’ in USA

Criticism of judicial review-

Against the separation of power theory

Obstacle in Progressiveness

Conflicting decision

Acceptance of supremacy of judiciary

Importance:

Protection of the Constitution

Stability of federal rule

Protection of fundamental rights

Means of keeping the powers of governance dignified

Judicial activism-

Active on neglecting work by executive and legislature

Public interest litigation

Increase in the activation of judiciary in India in the 1990s

Active in Kaveri water dispute

Important Questions

Objective Questions:

1. The direct expression of the state's will is -

- (A) Judiciary (B) Legislature
(C) Executive (D) means of communication

2. The highest most powerful house of the opposition is-

- (A) Senate (B) House of Lords
(C) Rajya Sabha (D) Lok Sabha

3. In the opinion of the bicameral legislature critics, it is-

- (A) Delinquent Institution
(B) Reactivist House
(C) Anti-Sovereignty Theory
(D) All above

4. Effective means of control of legislation on executive is-

- (A) By asking questions
(B) Stop work proposal
(C) Attention of proposal
(D) No confidence proposal

5. The example of hereditary executive is?

- (A) India (B) America
(C) England (D) France

6. “The executive is the axis around which the administration system revolves” ‘Whose statement is this?

- (A) Garner (B) Finer
(C) Laski (D) Gil Christ

7. The main responsible institution for law enforcement is -

- (A) Legislature (B) Executive
- (C) Judiciary (D) press

8. Presidential Executive is -

- (A) Switzerland (B) England
- (C) India (D) America

9. The example of multiple executive is-

- (A) India (B) Switzerland
- (C) England (D) the USA

10. It is necessary for the independence of the judiciary?

- (A) Appointment of the judges by the public
- (B) short term
- (C) Simple process of impeachment
- (D) Fixed and Long term

11. The work of interpreting the law is of ?

- (A) Executive (B) bureaucracy
- (C) judiciary (D) Legislature

12. "If justice is merged into darkness, then what can be estimated in the depth of darkness" is the statement-

- (A) Lord Brice's (B) Laski
- (C) Gerrar (D) of Merriet

13. The basic function of the judiciary is-

- (A) law making
- (B) justice according to law
- (C) Implementation of the law
- (D) Appointment of the Prime Minister

14. Dispute between union states is settled -

- (A) In Parliament (B) in Supreme Court
- (C) in the legislative assembly
- (D) by the President

Very short question:

1. Who does the main work of law making?
2. What is bicameral legislature?
3. Whose control is there over national finance?
4. Who has the power to amend the constitution?
5. Which state's Supreme Court has been called the third house of the administration?
6. What does the executive mean?
7. In which country is the hereditary executive prevalent?
8. What is the main function of the executive?
9. Explain the autocratic executive?
10. What is the main reason for the increase in executive powers?
11. Who is the supreme commander of the country?
12. Who has the ultimate authority for pardon?
13. In what country is the judicial review under proper procedure of law made?
14. To which organ of the government is the consultation related work of the judiciary relates?
15. What is the best way to appoint judges?
16. What is public interest litigation?
17. Why is the freedom of the judiciary necessary?
18. What is the main function of the judiciary in federal rule?
19. "Without judiciary, a civilized society cannot be imagined" Whose statement is this?

Short question:

1. Explain the meaning of the legislature.
2. Explain the importance of the legislature in the modern state.
3. Argue in favor of bicameral legislature.
4. Explain the work legislature related to constitutional amendment in the context of India.

5. What is the difference between parliamentary and presidential executive?
6. What does the nominal executive mean?
7. What is delegated legislation?
8. Explain the form of the single and multiple executive?
9. "The executive has pushed the legislature back." How?
10. Explain the meaning of the judiciary?
11. What is the judicial review?
12. What do you mean by the activism of court?
13. How is Judicial review an obstacle in progressiveness?
14. Explain the process of appointment of judges in India.

Essay type questions-

1. Illuminate the functions of legislature clarifying its meaning.

2. What do you mean by organization of legislature? Argue in favor and against the bicameral legislature.
3. Explain the causes of the decline of legislature.
4. Explain the meaning of the executive, what are its major forms?
5. What do you mean by the executive. Highlight different types of executive?
6. Explain the reasons for the increase in the functioning of the executive?
7. Explain the meaning of the judiciary and highlight its organization and work?
8. Describe the means of the freedom of the judiciary, describing its meaning.
9. Critically interpret the judicial review?

Answer - Objective Question:

1. (B) 2. (A) 3. (D) 4. (D) 5. (C)
6. (A) 7. (B) 8. (D) 9. (B) 10. (D)
11. (C) 12. (A) 13. (B) 14. (B)