



CHAPTER

2

Forms and Organs of Government

UNIT I

Contents

- I. Introduction to the Organs of Government
- II. Forms of Government
 - A. Monarchy
 - B. Aristocracy
 - C. Dictatorship
 - D. Democracy
- III. Main Organs of Government and its Functions
 - A. General Functions of Legislature as Organ of Government
 - B. General Functions of Executive as Organ of Government
 - C. General Functions of Judiciary as Organ of Government
- IV. Exercises

UNIT II

UNIT III

Learning Outcomes

Students will be able to:

- Construct the political system which forms the foundation of our legal system
- Describe all forms of government seen globally with relevant examples
- Differentiate between all forms of government
- Recall organisation of legislature globally and their advantages
- Identify the organs of government
- Explain the functions of legislature
- Enumerate the functions of executive and link it to modern welfare state
- Explain the functions of judiciary
- Evaluate the overlap in functions of all organs

UNIT IV

UNIT V



UNIT I

I. Introduction to the Organs of Government

In the preceding chapter, we discussed ‘Government’ as an essential element of the ‘State’. Government can be said to be a set of institutions that exercises control through legal devices and imposes penalties on those who break the law. A government normally functions by distributing its functions between its organs with each organ performing some specific functions. It primarily performs three functions: making the laws, enforcing the laws and adjudicating disputes. These three essential functions are termed legislative, executive and judicial functions.

A government achieves the purpose of a state through the performance of the above functions. These functions constitute the minimal requirements of any form of government. The legislature makes laws, the executive implements them and the judiciary interprets laws and adjudicates disputes. This system of distribution of powers among the three organs of a government is called ‘Separation of Powers’.

UNIT II

II. Forms of Government

A. Monarchy

Monarchy is the oldest form of government. The state machinery worked according to the commands and rule of the monarch. Monarchy is thus a form of political regime in which the supreme and final authority is in the hands of a single person wearing a crown, irrespective of whether his office is hereditary or elective. It is the will of one person which ultimately prevails in all matters of governance.

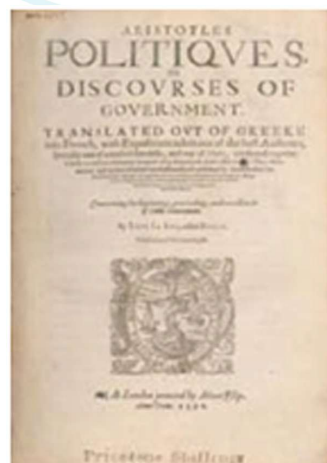
J.W. Garner (1871-1938) stated “In its widest sense, any government in which the supreme and final authority is in the hands of a single person is a monarchy, without regard to the source of his election or the nature and duration of his tenure. In this sense, it is immaterial whether his office is conferred by election (by parliament or people) or is derived by hereditary succession, or whether he bears the title of emperor, king, czar, president or dictator. It is the fact that the will of one man ultimately prevails in all matters of government which gives it the character of monarchy.”

With the development of Republican and Democratic forms of government, monarchical form of government declined. In some cases, as in the United Kingdom, monarchs are merely retained as the ‘ceremonial’ or ‘nominal’ heads of government, devoid of key political powers. As observed by C.C Rodee, “Constitutional monarchs are loved and respected by their people as the symbols of unity of the nation or empire, but are devoid of political power.”

UNIT III

UNIT IV

UNIT V

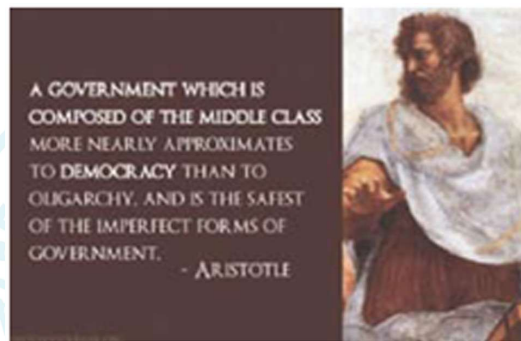




B. Aristocracy

The word 'Aristocracy' originates from the greek word 'aristo' which means 'the best' and another greek word, 'kratein', which means 'to rule'. In aristocratic form of government, political power of the state is vested in the hands of a few people. It is a form of government in which relatively small proportion of people determine the policies of the government. It can be a combination of priests, soldiers, professionals, landowners or men of wealth.

As defined by Garner, Aristocracy is the form of Government "in which relatively a small portion of citizens have a voice in choosing public officials and in determining public policies." Those few people are chosen from among the people of the state on varied basis, such as wealth (land owning class), education (nobles), religious positions (priestly class), family, succession, physical force etc. The ruler is considered as a class separate and superior from the ruled.



C. Dictatorship

In the words of Alfred Cobban (1901-1968), "It is the government of one man who has not obtained the position by inheritance, but either by force or consent or a combination of both. He possesses absolute sovereignty, that is all the political power emanates from his will and it is unlimited in scope. It is also exercised in an arbitrary manner by decree rather than by law. The authority of the dictator is not limited in duration, is not subject to any other authority, for such a restriction would be inconsistent with his absolute rule".

Dictatorial form of Government is the rule by a single person or a determined set of individuals. He controls and exercises the political powers of the state. He occupies the position by force, invasion, intervention and militarism, in contrast to a monarch. His dictates are law of the country. He implements them and adjudges according to his will. He holds the absolute power. He is not accountable or answerable to the citizens of the state. Modern Dictatorship plays the role of totalitarian states.

D. Democracy

Pericles (495-429 B.C.) the Greek leader defined democracy as a form of Government in which people are powerful. Bryce defined democratic form of government as one where the ruling power of the state was vested not in a particular class or classes but in the community as a whole. Democratic form of Government is the most popular form in the modern civilized states. The word, 'democratic' originated from the Greek word 'Demos' meaning people and 'Kratia' meaning rule, i.e. rule by a popular vote.

Abraham Lincoln (1809-1865), a former President of the U.S., in his speech at Gettysburg defined democracy as a 'government of the people, by the people and for the people'.

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V



UNIT I

'Government of the people' implies equal distribution of political powers and influence among the citizens of the state, 'government by the people' implies participation of all citizens in forming a government, 'government for the people' implies the rule of government for the promotion of public welfare.

Democracy exists in two major forms: **Direct or pure democracy and indirect or representative democracy.** As defined by Garner, 'A pure democracy so called is one in which will of the state is formulated or expressed directly and immediately through the people in mass meeting or primary assembly, rather than through the medium of delegates or representatives chosen to act for them'. The political power is in the hand of the citizens of the state as a whole to enact legislations, to administer regulations and the citizens, by common vote, elect their public officers. This is referred to as initiative, plebiscite or referendum.

UNIT II

This form of democracy operated in Greek city state, Athens during 4th and 5th century BC and in Rome during the early stages of the Roman polity, as an ideal system of popular participation. This form of democracy is not possible in the states having large population and territory. In contemporary times, this form of democracy is prevalent in the provinces of Switzerland. The voters meet in open air Parliament known as Federal Assembly, to deliberate upon and decide public affairs by way of Initiative, where a specified number of voters prepare a bill for acceptance or approval by legislature or general public. If approved it becomes law. Referendum is where the bill passed by the legislature is forwarded to the voters for final ratification. The term plebiscite is used where an important issue could not be decided by the government, and is decided by the votes of people. Voters recall their elected representatives when they are not satisfied by their conduct.

UNIT III

The other form is Representative or Indirect Democracy, on the basis of universal suffrage. In this form, citizens of the country elect their representatives on the basis of popular votes. The will of the state is formulated and expressed through the representatives. The representatives form a law making and law-executing agency for a fixed term. On the matters of governance, the representatives are accountable and answerable to the public in general. As observed by Garner, 'this kind of democracy resembles its pure form in the sense that political power remains vested in the people, but the two differ in respect to their exercise'. Thus all the citizens of the state have equal opportunity of participation in the political affairs of the state in contrast to monarchy or dictatorial form of Government. The political power remains in the hands of people.

UNIT IV



UNIT V





Presidential and Parliamentary form of Government

In Parliamentary system the legislature and the executive are related to each other, by way of membership in the two bodies and their accountability. This form of government is well prevalent in India and United Kingdom. The executive body, while implementing laws and discharging its responsibilities like health, education, food and public distribution, defence, police services etc., is responsible to the legislature.

As stated by Professor M.P. Jain, “A notable principle underlying the working of parliamentary government is the principle of collective responsibility which represents ministerial accountability to the legislature. The principle of collective responsibility means that the Council of Ministers works as a team, as a unit and is responsible as a body for the general conduct of the affairs of the government. All the Ministers stand or fall together in Parliament, and the government is carried on as a unity.”

This form of Government is also termed as Cabinet Government by Sir Ivor Jennings (1903-1965), an English lawyer and academician, and Prime Ministerial Government by Richard Crossman (1907-1974), an English author and politician.

In the Presidential system, executive branch of the government is independent of the legislature for its tenure and actions. In the words of Garner, “Presidential government is that form in which the chief executive is independent of the legislature as to his tenure and, to a large extent, as to his policies and acts. In this system the nominal head of the state is also the real executive.”

This form of government is prevalent in United States of America and Argentina. The President is elected by the people, whether directly or indirectly, for a fixed period unless removed on impeachment by the legislature on the grounds stated in the Constitution of the country. This system works on the principle of ‘separation of powers’ and ‘checks and balances’.

Unitary and Federal form of Government

The Unitary form of Government is one where the whole state with all its units and provinces is organized under a single central Government. The local/provincial Governments are created by the central Government as its subordinates for better administration. The central Government delegates powers and authority to the local/ provincial Government. As remarked by Garner, “Where the whole power of Government is conferred by the constitution upon a single central organ or organs from which the local governments derive whatever authority or autonomy they may possess, and indeed their very existence, we have a system of unitary government. It is the characteristic of this form of government that there is no constitutional division or distribution of powers between central government of the state and subordinate local governments.”

As remarked by Garner, “Federal Government as distinguished from a unitary government is a system in which a totality of governmental power is divided or distributed by the national Constitution or the organic act of Parliament creating it, between a central Government and the governments of individual states or other territorial sub divisions of which the federation is composed. Local/ provincial Government is considered as part of central Government with full autonomy.” As listed in the Seventh Schedule of the Constitution of India, the matters concerning national importance like international relations, war and peace, atomic energy, etc. are dealt with by the Central Government.

The matters of regional and local importance listed in the state list can be legislated by the state governments. There are matters on which both the Central and State governments are authorized to make laws which are included in the Concurrent list. Constitution of India despite having adopted federal features does not claim to establish India into a federation of states. In the words of K.C. Wheare, India’s system of Government is federal in character and unitary in spirit.

During recent periods, the governments of most States have combined different forms stated above.

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V



UNIT I

For instance the British Government combines Monarchy, Democracy, and Parliamentary forms. India is a Democratic Republic with Parliamentary form of government with Unitary and Federal features.

Composition of the Legislature

facts about parliament

- Parliament of India is circular which represents “Continuity”
- 2 houses are horse shoe in shape
- Lok shaba - Green Carpet that represents agriculture, Rajya shaba-Red Carpet royalty and sacrifice done by the freedom fighters
- library - 2nd Largest in India
- Circumference – 1/3 of a mile i.e..536.33m

UNIT II

UNIT III

Legislature may be organized as Bicameral or Unicameral Legislature. In a Bicameral System, there are two houses or chambers. Indian Parliament is a bicameral legislature, its houses being the House of People (Lok Sabha) and Council of States (Rajya Sabha). In the States of the Indian Union, the legislature consists of the Vidhan Sabha (lower house) and Vidhan Parishad (upper house). However, certain states have only one house. The House of People (Lok Sabha) consists of the representatives of citizens of the entire country living in states and union territories. Council of States (Rajya Sabha) consists of the representatives elected by the Legislative Assemblies of the states, and other nominated members from the field of art, culture, academics, sports, literature science and social service. The purposes and functions of the second chamber are to check hasty and ill-considered pieces of legislations, with the sober advice of experts and eminent persons. Thus, it becomes possible to examine issues from different standpoints, and to safeguard the interests of states in a federal system.

UNIT IV

Unicameral legislature implies one legislative house. This system of legislature is seen in Turkey, which is known by the name of Grand National Assembly of Turkey; in Bangladesh by the name of House of Nation, etc. This system is supported by the reason that the legislative body representing people’s interest must be one, failing which delays and conflicts may arise in the enactment of legislation.

UNIT V

India has 28 States and 8 Union Territories.

There are 24 states which have a unicameral structure.

The list of these states are given below:

1. Arunachal Pradesh
2. Assam
3. Chhattisgarh
4. Delhi
5. Goa
6. Gujarat



7. Haryana
8. Himachal Pradesh
9. Jharkhand
10. Kerala
11. Madhya Pradesh
12. Manipur
13. Meghalaya
14. Mizoram
15. Nagaland
16. Odisha
17. Puducherry
18. Punjab
19. Rajasthan
20. Sikkim
21. Tamil Nadu
22. Tripura
23. Uttarakhand
24. West Bengal

The names of the six states having bicameral legislature are:

1. Andhra Pradesh
2. Bihar
3. Karnataka
4. Maharashtra
5. Telangana
6. Uttar Pradesh

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

Difference between Unicameral Legislature and Bicameral Legislature

Difference	Unicameral	Bicameral
Number of House	One	Two
Sharing of Power	Concentrated in one house	Shared between two houses
Decision-Making	Flexible and efficient as bills are introduced and passed in only a single house	Time-Consuming as both the houses have to pass the bill hence, their approval is a tedious task
Suitability	A unicameral legislature is best suited to smaller states.	Bicameral legislature is more suited to larger states



III. Main Organs of Government and its Functions

Let us now try to learn about the three main organs of government (the legislature, the executive and the judiciary), their functions and various related provisions. Here we also try to explain the relationship between various organs of a government.

A. General Functions of Legislature as Organ of Government

Parliament, Assembly and Congress are the synonyms used for the term 'Legislature' in various countries. The word 'Parliament' is derived from the French word 'parler'. Parliament means meeting for discussion. The following are some functions of this organ:

1. Expressing and formulating the will of the state and enactment of laws

The legislature formulates and expresses the 'will of the state'. The 'will of state' in a representative democracy is the will, opinion and sentiments of its citizens and the public issues concerning them. In a monarchy or dictatorial Government, the 'will of the state' is the interest and objectives of its ruler.

Laws when enacted are called 'Acts'. These Acts are the direct source of law to control and regulate the institutions running in a state and society. All legislations are enacted for the achievement of certain objectives and purposes. For example, the Indian legislature enacted the Consumer Protection Act, 1986 with the purpose of protecting the interest of consumers and the speedy settlement of their disputes.

2. Ensuring accountability of the executive

Article 75(3) of the Constitution of India states that the Council of Ministers shall be collectively responsible to the House of the People. Parliament exercises check and ensures executive and administrative accountability through its control over finances. Parliament assesses governmental policies and performance of administration through procedures like questions, calling attention motions etc. Motion of No-Confidence may be moved and passed against the Council of Ministers, in the Lok Sabha.

Parliamentary procedure and enactment of laws

A Bill is a statute in draft and cannot become law unless it has received the approval of both the Houses of Parliament and assent of the President of India. A Bill can be introduced either by a Minister, when it is called a Government Bill; or a member other than a Minister, when it is known as a 'Private Member's Bill'.

The legislative procedure for introduction and passing of Bills is laid down in Articles 107 to 108, in the Constitution of India, in the case of ordinary Bills; and in Articles 109-110 in the case of Money Bills. Article 111 provides details of assent to Bills by the President.

- a. Ordinary Bills may originate in either House of Parliament.
- b. A Money Bill contains provisions for imposition, abolition, alteration or regulation of any tax, custody of the Consolidated Fund or Contingency Fund of India, payment of money into or withdrawal of money from any such Fund and related matters. However, a Money Bill shall be introduced only in the House of People and not in the Council of States.
- c. Annual Financial Statement is the annual statement of estimated receipts and expenditure of the Government for the ensuing financial year. Article 112 of the Constitution of India states that the President shall cause the statement to be laid before both the Houses of Parliament. The Members of Parliament debate on the provisions of the proposed Bill. Generally, a Bill is passed after three readings.



3. Legislature and its judicial functions

The Legislature performs judicial functions while hearing and trying cases of impeachment (removal from office before term). The Constitution of India lays down the procedure for impeachment of President and Vice President of India, Judges of the Supreme Court and High Court and the Chief Election Commissioner. It performs judicial function while deciding on the privileges of the Members of the House.

4. Legislature and its Administrative functions

In India, the elected members of both Houses of Parliament and elected Members of the Legislative Assemblies of the States form an electoral college to elect the President. The Vice-President is elected by an electoral college comprising of Members of both Houses of Parliament. The members of the Lok Sabha elect two members as the Speaker and Deputy Speaker, while the members of the Rajya Sabha elect the Deputy Chairman of the Rajya Sabha.

B. General Functions of Executive as Organ of Government

Executive is often referred to as the 'government' of a state. In a representative democracy, the term 'Executive' has a broad meaning.

The following are the functions of the executive organ:

1. Internal and External Administration of the State

The chief function of the executive is the maintenance of internal and external administration - law and order, financial matters, infrastructure and industrial development, welfare and development of the people (health, education, labour, employment, rural and local development), environment and forests, natural resource management, trade and commerce etc., on the internal front and defence, foreign affairs, international relations etc on the external front.

2. Executive and its Legislative functions

The executive performs certain legislative functions.

Delegated Legislation

Delegated legislative functions are performed by the executive. Delegated legislation is an enactment made by an individual or body other than Parliament. By delegating the power to make a legislation to the Executive, the Parliament empowers different people or bodies to integrate more details to an Act of Parliament. Parliament along these lines, through essential enactment (for example an Act of Parliament), authorises the executive to make laws and guidelines through delegated legislation. It frames orders, rules, regulations, ordinances, by-laws, and circulars. They carry equal force of law if framed within the sphere and policy of the parent legislation.

Ordinance

Under Article 123 of the Constitution of India, the President has the power to promulgate an ordinance during the recess of the Parliament. An ordinance is a law that is promulgated by the President of India only when the Indian parliament is not in session. President promulgates an ordinance on the recommendation of the union cabinet. Using ordinances, immediate legislative actions can be taken. However, it must be noted that for an ordinance to exist, it should be approved by the Parliament within six weeks of being introduced. Parliament is required to sit within 6 weeks from when the Ordinance was introduced.

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V



UNIT I

3. Executive and its financial functions

The executive imposes and collects taxes and incurs expenditure on the various activities of the state. It prepares budget of the financial year, maintains accounts of government departments and prepares national policies. It also arranges financial grants from international entities like International Monetary Fund, World Bank etc.

4. Executive and Judicial functions

Judicial functions of the executive include power to grant pardon (Presidential), to suspend or lessen the punishment on special grounds or to exchange one form of punishment for another, on the petition of a person convicted of any offence by the court.

C. General Functions of Judiciary as Organ of Government

1. To Hear and Decide disputes

The first and the foremost function of the judiciary is to hear and decide a case, according to the substantive and procedural laws of the land. The role of the judiciary is expanding with the expanding role of the executive. Disputes may arise among citizens of a state, between citizens and state, among the federal units, between the various departments of the executive and in international relations, calling for intervention by the judiciary.

Dispute settlement and adjudication require the independent functioning of judiciary, without political influence or interference. Impartial and time-bound justice delivery are essential requirements for the judiciary.

2. Judicial Review

Judicial review is the power bestowed upon the judiciary by the constitution, by virtue of which the judiciary can examine legislative enactments and executive orders of the governments, be it state or central, and declare them null and void if they contravene the provisions of Constitution.

Judiciary and its Jurisdiction

Judiciary refers to the set of courts having civil and criminal jurisdiction. With the expansion and diversification of state and its agencies, and expansion of arbitration and conciliation, tribunals and various for a have also become part of the conventional judicial system, such as the Motor Accident Claims Tribunal under Redressal Forums under the Consumer Protection Act, 1986 etc.

The judiciary exercises jurisdiction on the basis of territorial limits, pecuniary/financial limits, appealable matters, matters for review and revision. The judiciary consists of Magisterial courts, District and Sub-District Courts at the lower level and the higher judiciary comprising of High Courts and the Supreme Court. Decision given by them is known as 'judgment', 'decree', 'order', or 'award'.

3. Interpretation of laws

Wherever the law is ambiguous (confusing) or not clear or silent or appears to be inconsistent with other laws of the land, the courts after proper analysis determine or interpret the intent, purpose and meaning of the provisions of law.

4. Advisor to the President

The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution.

UNIT II

UNIT III

UNIT IV

UNIT V



5. Role of Judiciary as an activist

In India, perhaps the first instance of the activist role of the judiciary was after the Emergency, when the Supreme Court came up with public-interest litigation (PIL), a tool meant to ensure justice for the under-privileged and the marginalized.

6. Legislative and executive function of the judiciary

The judiciary has been empowered to frame rules and execute them for the smooth functioning of its own administration. This is also done to ensure independence of the judiciary.

IV. Exercises

Based on your understanding, answer the following questions:

Q-1 Provide one point of difference between the following-

1. Monarchy and Democracy
2. Parliamentary and Presidential form of government
3. Direct and Indirect democracy
4. Lok Sabha and Rajya Sabha
5. Unicameral and Bi-cameral legislature

Q-2 Give an example for the following-

1. A country where unicameral legislature exists
2. A country where presidential form of government prevails
3. A country where the monarch enjoys the absolute power
4. A country where direct democracy exists
5. A country where constitutional monarchy exists

Q-3 Write brief notes on the following-

1. Money Bill
2. Annual Financial Statement
3. Democracy
4. Unitary form of government
5. Judicial function of executive

Q-4 Explain the role of the following organs of Government.

1. Legislature
2. Executive
3. Judiciary

Q-5 A country, Amerintina was governed by representatives on behalf of the citizens. Another country, Plicia was governed by the citizens themselves by various methods. Identify the above two forms of government and differentiate between their processes.

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V