

# THE GOVERNMENT OF THE UNITED KINGDOM

## CHAPTER I

### Nature and Content of the Constitution

#### Nature of the British Constitution

In almost every country in the world, except the United Kingdom the term 'Constitution', means a selection of the legal rules which delineate the government of that country which have been embodied in one or several documents. Such a document may have been drawn up either by a Constituent Assembly, or it may be the handiwork of a legislature, or it may have been granted by a King binding himself and his successors to govern according to the provisions of the Proclamation. The Constitution thus understood means a written, precise and systematic document containing the general principles under which government functions. It is distinct in character, the supreme law of the land, which is held in special sanctity. The 'Constitution' is amended and altered by a procedure different from that required in amending a statutory or ordinary law. The statutory law must be consistent with the letter and the spirit of the Constitution otherwise it is held unconstitutional or *ultra vires*, as soon as a court has an opportunity to review it.

But the British Constitution has never been devised and reduced to writing.<sup>1</sup> It remains undefined, unsystematized and uncodified. It lacks precision and coherence. The Englishmen never drew out their political system in the shape of a formal document and, consequently, there is no single place in which 'The Constitution' as a whole is clearly and definitely written down. Many books may be found which describe the British Constitution, but no one of them can be said to contain it. There are, no doubt, some enactments of Parliament which make the British Constitution, but these enactments do not bear

the same date. They are scattered as they were made as and when they were needed and the circumstances demanded. But the most important part of the British Constitution is just what is kept out of the written law and given over to the sole guardianship of custom. Nor is there any law in the United Kingdom of which we can say that since it is a part of the Constitution, it can be altered by a procedure different from the one required for altering the statutory law. Here the Constitutional Law and Statutory or Ordinary Law stand at par with one another. Both emanate from the same source and undergo the same procedure in passing and amending them. Obviously then, no court or any other authority can legally refuse to enforce and set aside any enactment of Parliament.

The British Constitution is, therefore, to a large extent an unwritten and flexible Constitution. It is the product of history and the result of evolution. It has grown with the growth of the English nation, changed with its wants, and adapted itself to the needs of various times. Jennings has aptly remarked, "If the Constitution consists of institutions and not of the paper that describes them, the British Constitution has not been made but has grown—and there is no paper."<sup>2</sup> The institutions necessary for carrying out the functions of the State were established from time to time as the need arose. "Formed to meet immediate requirements they (institutions) were then adapted to exercise more extensive and sometimes different functions. From time to time, political and economic circumstances have called for reforms. There has been a constant process of invention, reform and amended distribution of powers. The building has been constantly added to, patched, and partly recon-

1. Except for the Instrument of Government of 1653. The Instrument of Government which made Cromwell Lord Protector and established a new legislature was, however, the British Constitution for a few years only. Restoration put an end to it and England returned to the old form of government.

2. Jennings, W. Ivor, *The Law and the Constitution*, p. 8.

structed, so that it has been renewed from century to century, but it has never been razed and rebuilt on new foundation."<sup>3</sup> In other words, the British Constitution is "the child of wisdom and chance,"<sup>4</sup> it is the result of a process in which many elements, like charters, statutes, judicial decisions, precedents, usages and traditions, have entered piling themselves one upon the other from age to age and shaping the political institutions of the country according to the exigencies of time. The British Constitution is ever growing and always undergoing modifications. It is a dynamic Constitution with its roots in the past and branches in the future. Lord Morrison cogently said, "But as a whole, ours has been a peaceful development, learning as we moved on, establishing the foundation of further progress."<sup>5</sup> No man in 1688 could have foretold, with any measure of accuracy, what the Constitution of present day Britain would be, and no man of our times can predict how the Constitution will evolve a few decades hence.

Briefly, the British Constitution is a body of basic rules indicating the structure and functions of political institutions and the principles governing their operation. It is just the same in nature as the constitution of any other country, the only difference being that the British Constitution has never been systematized, codified and put in an orderly form. Probably, no attempt will be made in future, too, to bring all these rules and principles together to make the Constitution a consistent and coherent whole. In fact, it is an impossible task, for not only do the usages and traditions cover a wide range, but many of them are not sufficiently definite to be reduced to writing. Moreover, the Englishman, as a political entity, has never favoured a system of government based upon fixed principles involving the application of exact rules. He is practical, matter of fact, and zealous for business. Expediency is the guiding principle of his life and he seizes opportunity by the forelock. He knows no logic and the British Constitution lacks all logic. The result, as Ogg says, "is a constitutional structure which lacks symmetry, governmental system which abounds in the illogical." But it does not

mean that it is a mere hotchpotch of heterogeneous elements. The rules and principles which govern the governmental machinery have been deduced from British experience and consciously adhered to and applied.

Thomas Paine and Alexis de Tocqueville were the two prominent among many writers who were of the opinion that the British Constitution did not exist. Thomas Paine, a great champion of written constitutions, categorically declared that where a Constitution "cannot be produced in a visible form, there is none." In a spirited reply to Burke, who eminently defended the British Constitution in his *Reflections on the French Revolution*, Paine asked, "Can Mr. Burke produce the English Constitution?" If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a Constitution exists or ever did exist." De Tocqueville, the celebrated French writer on Foreign Governments, a generation later said that in "England the Constitution may go on changing continually or rather it does not exist."<sup>6</sup> Whatever be their reasons for making these assertions, Paine and de Tocqueville were both wrong. There can be no State without a constitution. It is true that there is no single document intended to comprise the fundamental rules of constitutional practices to which a student of the British Constitution may turn for reference, as one does in the United States or in India, but there is no constitution which is either wholly written or entirely unwritten. Written and unwritten elements are present in every constitution. All written constitutions grow and expand with the passage of time either as a result of customs or judicial interpretations. Written constitutions, remarked Bryce, become "developed by interpretation, fringed with decisions, and enlarged by customs so that after a time the letter of their texts no longer conveys their full effect." Nor can the makers of a written constitution foresee the future and shape the constitution to fulfil the needs of the people to come. Man is dynamic and so are his political institutions. The conventional element in any system of government is inevitable. Finally, a written constitution does not contain all the rules relating to all

3. *Ibid.*

4. As Strachey has called it in his *Queen Victoria* and quoted by F. A. Ogg in his *English Government and Politics*, p. 68.

5. Lord Morrison, *British Parliamentary Democracy*, 2.

6. "En Angleterre la constitution peut changer sans cesse : Ou plutôt elle n'existe point." It will be observed that de Tocqueville's emphasis is more on the flexible character of the British Constitution. He could not reconcile himself to the fact that the constitutional law and the statutory law should emanate from the same source and both be amended by ordinary legislative process. He, accordingly, concluded that the British Constitution did not exist.

the institutions of government. A selection is made of both. For instance, the Constitution of the United States of America contains only seven Articles and occupies about ten pages. The Constitution of India, on the other hand, is the lengthiest Constitution in the world containing 395 Articles and twelve Schedules. The difference between the two Constitutions is suggestive, for it shows that within limits a written constitution may contain as much or as little as is thought desirable by the father framers. And yet no constitution is complete by itself. "It is a framework, a skeleton which had to be filled out with detailed rules and practices. It is concerned with the principal institutions and their main functions, and with the rights and duties of citizens which are, for the time being, regarded as important. It may contain more or less, according to the circumstances of the moment and the special problems being faced by the State while it is being drafted." All written constitutions provide for amendments in order to cater to the future needs of the people. Customs and judicial decisions, too, supplement the constitutional provisions. The difference between a written and unwritten constitution is, therefore, one of degree rather than of kind. Wherever there are rules determining the creating and operation of governmental institutions, there exists a constitution. Britain has such institutions and such rules; "and certainly long before the times of Paine and de Tocqueville England had such a body of rules, with Englishmen equally conscious of its existence and proud of its history."<sup>7</sup>

### COMPONENT PARTS OF THE CONSTITUTION

#### Sources of the Constitution

The sources from which the British Constitution is drawn are many and diverse and these may be divided into seven main categories.<sup>8</sup> In the first place there are certain great Charters, Petitions, Statutes and other landmarks such as Magna Carta (1215), the Petition of Rights (1628), the Act of Settlement (1701), as modified by the Abdication Act of (1936), the Act of

Union with Scotland (1707), the Great Reform Act (1832), the Parliament Act of 1911, as amended in 1949, the Government of Ireland Act of 1920, the Public Order Act of 1936, the Ministers of the Crown Act of 1937, Representation of the People Act, 1949, the Life Peerage Act, 1958, the Peerage Act, 1963, the Statute of Westminster 1931, the Indian Independence Act, 1947, etc. Most of these are Acts passed by Parliament. But a document like Magna Carta is considered to be a part of the Constitution as it makes a great landmark in national history, and various Acts of Parliament "may, without undue violence to the facts be regarded as in direct line of descent from Magna Carta."<sup>9</sup> Elder William Pitt called Magna Carta, the Petition of Rights and the Bill of Rights as the Bible of the British Constitution. One thing, however, very significant about these Charters and Statutes is that they were the product of political stress and crisis and they contain the terms of settlement of that crisis. They are a part of the Constitution because of what they deal with. It is the context of the constitutional struggle within which they originated that they bear the impress of the constitutional law.

Secondly there are a good number of Statutes, which Parliament has passed from time to time, dealing with suffrage, the methods of election, the powers and duties of public officials, etc. These Statutes, unlike the constitutional landmarks enumerated in group one, are not the outcome of a constitutional struggle. They were passed as and when the exigencies of time demanded them under the ordinary process of things. For example, none of the laws extending the right to vote, which were passed between 1867 and 1948, aroused popular excitement as the Reform Act of 1832. Nonetheless, all these Statutes are vitally important for the development of political democracy and any attempt to repeal them would now be regarded against the "constitutional sense" of the nation. In fact, the system of Government obtainable in Britain, would become unworkable if ever an attempt is made to repeal any one of such Statutes, though Parlia-

7. Ogg, F. A., and Zink, H., *Modern Foreign Governments*, p. 26.

8. Sir Maurice Amos divides the rules of the Constitution into three kinds: (i) Rules of Law; these include Rules of the Common Law, Rules of Statute Law, and the law or so-called "privileges" of Parliament; (ii) the conventions of the constitution; and (iii) principles which relate to the liberty of the subjects, *The English Constitution*, p. 24.

9. Gooch, F. K., *The Government of England* p. 64. Magna Carta, writes Gooch "is technically an enactment of the King, with the advice of his great council; parliament grew out of the great council; and even at present, an Act of Parliament is technically enacted by the King with the advice and consent of Parliament." Similarly, Gooch tries to prove that the Petition of Rights does not differ in principle from an Act of Parliament: "the Bill of Rights is, in the most literal sense, itself an Act of Parliament." *Ibid.*, pp. 64-65.

ment is a sovereign body and it has "the right to make or unmake any law whatever."<sup>10</sup>

The third source of constitutional rules is to be found in the decisions of judges on cases heard by them in the law courts. When judges decide cases, they interpret, define and develop the provisions of the great Charters and Statutes. While doing so, their judgments create precedents which succeeding judges respect. Since many of these judgments related directly to constitutional matters, the legal principles and judicial precedents of these judgments are an important element in the British Constitution; they resemble and correspond to the decisions of the Supreme Court of the United States which have helped to clarify and expand the provisions of the American Constitution. The decision in the case of the Sheriff of Middlesex in 1840 established the principle that Parliament has the right to punish its own members for a breach of privilege, no other legal authority being necessary. The judgment in *Bradlaugh v. Gossett* in 1884 established the supremacy of Parliament over the courts in all matters concerning the internal affairs of Parliament.

In the fourth place, are the principles of the Common Law and several matters of major constitutional importance covered by them. It is from the Common Law, for example, that the King derives his prerogative,<sup>11</sup> and that Parliament derives its supremacy. The civil liberties of the people, which in America are embodied in the Bill of Rights, are ensured in Britain by the rules of the Common Law. Freedom of speech, of press and of assembly, the sanctity of a citizen's home, and the right of jury trial are Common Law rights which today have their effective meaning in the long line of decisions judges have made. The laws of Parliament may redefine or modify the manner of exercising these rights, but such laws are in their turn subject to judicial interpretation made in the light of the many precedents of the past.

The principles of the Common Law are not established by any law passed by Parliament or ordained by the king. They grew up entirely on the basis of usage. Common Law, according to

Blackstone, consists of customs "not set down in any written statute or ordinance, but depending on immemorial usages for their support." The judges recognised "the customs of the realm", applied them in individual cases, and set precedents for decisions in later cases. As these decisions were "broadened down from precedent to precedent there grew up a body of principles of general application which stand as a bulwark of British freedom and an essential part of the British Constitution."<sup>12</sup> The Common Law, like statutory law, is, thus, "continually in the process of development by judicial decisions."<sup>13</sup>

Another source of constitutional rules is to be found in usages or conventions. The conventions of the constitution, as they are called, are the centre and soul of the constitutional law in Britain. The fundamental convention, from which practically all others flow, is the convention of the Cabinet Government. Although the validity of the conventions of the constitution cannot be the subject of proceedings in courts of law, yet they cover some of the most important parts of the British political system and are observed with due respect. Conventions are, says Herman Finer, "rules of political behaviour not established in statutes, judicial decisions or Parliamentary customs but created outside these, supplementing them, in order to achieve objects they have not yet embodied. These objects, in the British Constitution, can be summed up thus: to make the executive and the legislature responsible to the will of the people. To add concreteness we could use the terms *Crown, Government, or Cabinet* in place of *Executive* and *Parliament*, meaning the House of Commons (especially) and the House of Lords, in place of *Legislature*."<sup>14</sup>

Next but less reliable are the commentaries by eminent writers whose works have come to be regarded as authoritative expression on the British Constitutional Law. These commentators have systematised the diverse conventional rules, established a definite relation of one to another, and, then, linked them into some degrees of unity by reference to central principles. In certain cases such writers have provided compendious and

10. Dicey, A. V., *Introduction to the Study of the Law of the Constitution* p.10.

11. The term prerogative was in origin used to denote the sum of the rights ascribed to the King as a feudal overlord. But the expression is used today to refer to the Crown's discretionary authority, that is, to what the King or his servants can do without the authority of an Act of Parliament.

12. Carter, M. G., and Others, *The Government of Great Britain*, p. 43.

13. Common Law may be regarded as that part of the Law of the land which is traditional and judge-made. "The explanation of the adjective 'common' is that in medieval times the law administered by the King's superior courts was the 'common custom of the realm', as against the 'particular customs with which local jurisdictions were concerned.'" Harrison, W., *The Government of Britain*, Appendix 'B', pp. 161-62.

14. Finer, Herman, *Governments of Greater European Powers*, p.46.

detailed accounts of the operation of particular categories of rules and their works have acquired the status of constitutional documents, probably, the most authoritative of such works is Erskine May's *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*. It is the classic guide to the procedure and privileges of Parliament and is constantly referred to by the Speakers of the House of Commons on the formulation of their rulings on question of privilege and procedure. Also (although to a much lesser extent) A.V. Dicey's *Law of the Constitution* has acquired over the years an authority that makes it more than merely a commentary on constitutional practice.

Finally, the exercise of the Royal prerogative forms another aspect of constitutional practice. The power to declare war, make treaties, pardon criminals and dissolve Parliament are important functions performed by Royal Prerogative. They are executed through *Orders in Council* or through proclamations and writs under the great seal. Today, these functions are performed by Ministers on behalf of the Monarch, and, as such, the authority for the decision comes from the Crown rather than from Parliament.

The nature of the British Constitution may be summed up in the words of Anson. It is, he wrote, "a somewhat rambling structure, and like a house which many successive owners have altered just so far as suited their immediate wants or fashion of the time, it bears the marks of many hands, and is convenient rather than symmetrical. Forms and phrases survive which have long since lost their meaning, and the adaptation of practice to convenience by a process of unconscious change has brought about in many cases a divergence of law and custom, of theory and practice."<sup>15</sup> Walter Bagehot in his classic work: *The English Constitution*<sup>16</sup> asserted that such a system of Government as obtainable in Britain was possible because there existed certain prerequisites: mutual confidence among electors, a calm national mind, and the gift of rationality. All these qualities add up to an adult and practical

nation. The obvious result is that the "British for the most part think that the nature of their Constitution is most sensible and that a codified constitution like the American is more trouble than it is worth....."<sup>17</sup>

## CONVENTIONS OF THE CONSTITUTION

### Sanction behind Conventions

The Conventions of Constitution,<sup>18</sup> the name given by Dicey to the indefinite number of customs, traditions and precedents, form an integral part of the British Constitution.<sup>19</sup> So deep-rooted have these conventions been found in the habits of the Englishmen, and so firmly the mechanism of government is erected on their foundation that without them the Constitution becomes maimed if not absolutely unworkable. And yet they are not the law of the Constitution; they are nowhere written down in any formal or official document.

A distinction is very often made between laws of the Constitution and conventions of the Constitution. But conventions are not really very different from laws and it is frequently difficult to place a set of rules in one class or the other. Jennings has rightly said that the Conventions, like most fundamental rules of any Constitution, rest essentially upon general acquiescence. "A written constitution is not law because somebody has made it, but it has been accepted." Conventions are based on usage and acquiescence and their binding force, like laws, is derived from the willingness of the people to be so bound. If obedience to law is deemed a fundamental duty, obedience to conventions is among the political obligations, because they help the wheels of political machine going in accordance with the will of the people. Both, law and conventions, are inevitably similar as they serve the common purpose of regulating the structure and functions of government aiming at the good of the people and are the result of common consent. "What is law and what is convention," Jennings maintains, "are primarily technical questions. The answers are known only to those whose business it is to

15. Anson, W. R., *Law and Custom of the Constitution*, Vol. I., p. 1.

16. The book was first published in London in 1867.

17. Brogan, D. W., and Verney, D. V., *Political Patterns in Today's World*, p. 87.

18. John Stuart Mill referred to them as "the unwritten maxims of the constitution", while Anson, referred to them as "the customs of the constitution." None of the phrases, according to Jennings, exactly expresses what is meant. Dicey's phrase has, however, now been sanctioned by common use. *The Law of the Constitution*, op. cit., p. 80.

19. "Though in 1837 the terms 'conventions of the constitution' had not attained regular currency, the thing meant thereby was in effective operation and had been so in essence since the revolution." Keith. A. B., *The Constitution of England from Queen Victoria to George VI*, Vol. I, p. 12.

know them. For the mass of the people it does not matter whether a rule is recognised by the judicial authorities or not. The technicians of Government are primarily concerned."

Technically, the difference between laws and conventions spreads to three aspects. In the first place, laws emanate from a legally constituted body and carry with them greater sanctity. Conventions are extra-legal and they grow out of practice. Their existence is determined by usage. In the second place, law is usually expressed in more precise terms and it has the added dignity of extracting unquestioning obedience from everybody. Conventions are never formulated. They grow out of practice, they are modified by practice, and at any given time it may be difficult to say whether or not a practice has become a convention. Finally, law is enforced by the courts and it is the duty of judges to consider whether Acts are legally valid and to take such steps that they are obeyed. Conventions are not enforced by the courts and judges cannot force their obedience as they have no legal sanction.

But even from the technical point of view no definite boundary line can be drawn between legislation, on the one hand, and conventions, on the other hand. If a given provision is a part of the British Constitution, it is either law or convention and the fundamental conventions have well-nigh been recognised by many Acts of Parliament. The Preamble to the British North America Act, 1867, (now Canada Act), an enactment of British Parliament, read: "the Provinces of.....have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom.....with a constitution similar in principle to that of the United Kingdom."<sup>20</sup> The Constitution of the United Kingdom is a body of rules determining the structure and functions of political institutions and the principles governing their operation. These rules and prin-

ciples of political governance are primarily unwritten and lie scattered in the various Charters, Statutes judicial decisions and conventions and mark a steady transference of power from the King as a person to a complicated impersonal organisation called the Crown. The King has become the Crown and that is the core of the constitutional system in the United Kingdom and around it revolves the entire machinery of government. Recognition to constitutional conventions was, again, accorded by Article 2 of the Agreement for a Treaty between Great Britain and Ireland in 1921, when the law, practice, and constitutional usage governing the relationship of the Crown or of its representatives, or of the Imperial Parliament to the Dominion of Canada, were made applicable to the Irish free State. In Section 4 of the Status of the Union Act, 1934, of the Union Parliament, specific reference is made to the constitutional conventions regulating the use by the Governor-General of his legal power of summoning and dissolving Parliament, and of appointing ministers.<sup>21</sup> Some of the conventions regulating relationship between the Dominions and the United Kingdom have been inserted in the Preamble to the Statute of Westminster, particularly those relating to alterations in the law touching the Succession to the Throne, or the Royal Style and Titles,<sup>22</sup> and the legislative authority of the British Parliament.<sup>23</sup> The importance of the first of these conventions was demonstrated in the abdication of Edward VIII. The change in the Royal Style and Titles after the Indian Independence Act, 1947, was brought about by the full assent of the Dominion Parliaments.

The Cabinet system of Government presupposes the pre-eminence and leadership of one single person and he is the Prime Minister. Abolish the institution of Prime Minister or diminish any part of his powers, the entire political struc-

20. Mackenzie King, the Prime Minister of Canada, said, "This British Constitution we love. It is partly unwritten, it is partly written; it finds its beginning in the core of the past, it comes into being in the form of customs and traditions, it is found on the common law; it is made up of precedents, of Magna Carta, of Petition and Bill of rights; it is to be found partly in the statutes and partly in the usages and practices of Parliament itself. It represents the highest achievement of the British genius at its best. No one has ever seen it; no one has ever adequately described it; yet its presence is felt whenever liberty or right is endangered, for it is the creation of the struggle of centuries against oppression and wrong, and embodies the very soul of freedom."

21. Refer to H. V. Evatt, *The King and his Dominion Governor*, Appendix, pp. 229-306.

22. "Inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it will be in accord with the *established constitutional position* (emphasis mine) of all members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well as of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."

23. "It is in accord with the *established constitutional position* (emphasis mine) that no law hereafter made by Parliament of the United Kingdom shall extend to any of the said Dominions as that of the law of that Dominion otherwise than at the request and with the consent of that Dominion."

ture would be destroyed. And yet neither the institution of Cabinet nor the office of the Prime Minister<sup>24</sup> were known to law before 1937. The Ministers of the Crown Act, 1937, provided for the payment of a salary of £ 10,000 a year "to the person who is the Prime Minister and the First Lord of the Treasury."

The same Act provided for the salaries of the Ministers who "are members of the Cabinet". It also recognised "Party", "Opposition" and "the Leader of the Opposition." It may, however, be noted that the provisions of the Ministers of the Crown Act do not validate or legalise these conventions. What it does is to recognise them that they exist. But once their existence is recognised by legislation, conventions do not really remain very different from laws. Jennings asserts that the "conventional system of the British Constitution is in fact much like the system of the common law."<sup>25</sup>

Conventions are essentially of three kinds. First, those which ensure harmony between Parliament and the Executive in the light of Parliamentary Sovereignty. The Glorious Revolution of 1688 settled once for all that Parliament had supreme power and it could control every aspect of national life. The powers of the King were limited and the constitutional development was the emergence of the Cabinet. Convention, therefore, alone provides for the essential rules of the Cabinet Government. It demands that the Ministers of the King must be the members of Parliament, they should belong to the majority party in the House of Commons, and function under the party leader designated as the Prime Minister. It further demands that the Cabinet is responsible to Parliament for its actions and it remains in office so long as it retains the confidence of the House of Commons. If the majority is reduced to minority and the Commons withdraw their support, the Cabinet either resigns or appeals to the electorate for mandate. The Ministry must resign if the verdict of the electorate is against it, allowing the Party in Opposition to form the government. If there are more opposing parties than one, and the result of the general election does not give clear majority to one single party, it may meet Parliament and allow a vote of the House of

Commons to decide its fate as the Conservative Ministry did in 1924. "But it cannot ask another dissolution, nor should the Crown concede it if it were asked."<sup>26</sup> Conventions insist on the collective responsibility of Cabinet to Parliament for all its public acts, and that its duty is to initiate legislation. Convention, again, determines that the Ministry should combat domestic crisis with all the authority at its disposal, but it must summon Parliament immediately to consult with it. Similarly, the Ministry shall have full regard to the will of the Commons in the conduct of foreign affairs and "shall not declare war, or neutrality or make peace, or enter into important treaties without securing as soon as possible endorsement by the Commons, which so far as possible should be taken into counsel before the Crown is committed to any definite course of action."<sup>27</sup>

Secondly, there are conventions which relate to legislative procedure and the relations between the two Houses of Parliament. That Parliament meets annually and that it consists of two Houses rest on custom. The essential principle of the initiative of the House of Commons in matters of finance, under the authority of the Cabinet, and the subordination of the Lords rested solely on convention until the Parliament Act of 1911. The Act of 1911, as amended in 1949, put definite limitations on the legislative powers of the House of Lords which had hitherto been regulated by convention only. The principle that no peer other than a Law Lord sits when the House of Lords is acting as a Court of Appeal is also customary. Then, there are many conventions regulating parliamentary procedure. It is a matter of convention that every Bill must have three readings before finally voted upon. It is, again, a convention which determines that a speech from the Government benches is to be followed by a speech from the Opposition. Indeed, the whole idea of His or Her Majesty's Opposition is a product of convention. Convention, too, demands that the Speaker of the House of Commons should become a no-party man and he must resign from the membership of the party to which he belonged on his election as Speaker. It was another convention till very recently that the retiring Speaker must be returned unopposed

24. In fact, the office of the Prime Minister came to be recognized by legislation in 1917 when the Chequers Estate Act enabled the official "popularly known as the Prime Minister" to occupy the Chequers Estate as a furnished country residence.

25. Jennings, W. I., *Cabinet Government*, p. 5.

26. Keith, A. B., *The British Cabinet System* (Second Edition by N. H. Gibbs), p. 2.

27. *Ibid.*, p. 3.

and he should be elected Speaker as many times as he pleases.

Finally, there are conventions which aim at securing harmony between government and legislative action, on the one hand, and the verdict of the electorate, on the other. One convention of this character is that government should not initiate legislation of a controversial nature unless they have a mandate from the electorate. The "mandate convention", as it has now come to be known, is vindication of the principle of popular sovereignty.<sup>28</sup> It makes necessary that any item of policy which involves radical changes must have been a part of the programme on which government fought the previous election, or, "if it was not, that the Opposition should show by its action or inaction that this is not a matter of keen controversy." The Conservative majority in the House of Lords in the years immediately following Labour victory in 1945, approved bills embracing such measures as nationalization on the ground that Labour had received a mandate from the electorate.<sup>29</sup> This convention does not apply only to legislation, but also to foreign policy. Another example of this nature is that when an appeal to the electors goes against the Ministry they are bound to retire from office and have no right to dissolve Parliament a second time. "Behind these conventions", according to Greaves, "there is something of a political sanction."<sup>30</sup>

Another type of conventions are those which determine the relations between the Dominions and the United Kingdom. As said before, the Statute of Westminster, 1931, embodies in a legal form the conventions which at one time regulated inter-Imperial relations thereby giving a constitutional sanction to the legislative independence of the Dominions. But the methods of

inter-Commonwealth co-operation are still essentially conventional. For example, in matters relating to the Dominions the King acts on the advice of the Ministers of the Dominion concerned and not on that of his Ministers constituting the Government in Britain. Then, the British Parliament does not pass any law for a Dominion unless it has been expressly authorised by the Dominion concerned to do so. The rules for making of treaties by any part of the Dominions are still to be found in the Reports of the Imperial Conferences in 1923, 1926 and 1930. Similarly, the position of the Dominion Governor-General was determined by agreements at the Conferences of 1926 and 1930. The co-operative link between the Commonwealth countries and their functioning as a single organism are matter of common understanding and mutual agreements.

It is generally asked why conventions are so scrupulously observed in Britain? This has been partly explained by Dicey.<sup>31</sup> His conclusion was that violation of conventions ultimately means breach of law. He takes the example of convening a session of Parliament every year and argues if no session of Parliament is summoned annually, it is only a breach of convention and not a violation of law. But if no session of Parliament is called annually, it is not possible to raise revenues and pass the Army and Air Force (Annual) Act. In that case it becomes illegal to maintain army and air force on money raised from unauthorised taxes. Any one doing so can be brought before a court for breach of law and punished accordingly. It, therefore, becomes essential rather imperative that Parliament should be summoned at least once a year. If it is not, it means indirect collision with the laws of the land. Similarly, the Ministry may come to grief, if it does not resign after it has lost the confidence of the House of Commons.<sup>32</sup>

28. In 1945 Labour Party's manifesto read, ".....we give clear notice that we will not tolerate obstruction of the people's will by the House of Lords."

29. Viscount Cranborne, the leader of the Conservative Party in the House of Lords, said, "Whatever our personal views, we should frankly recognise that these proposals were put before the country at the recent General Election and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may therefore, I think, fairly claim that they have a mandate to introduce these proposals. I think it would be constitutionally wrong, when the country has so recently expressed its views, for this House to oppose proposals which have been definitely put before the electorate." The idea of the electoral mandate is by no means new, although the concept of the mandate had been much more vague with the Liberals and the Conservatives. But the Labour had always believed since 1918, that a party should go to the electorate with a set of concrete proposals which, if successful, it is thereby mandated to put it into practice. Refer to A. H. Birch's *Representative and Responsible Government, An Essay on the British Constitution*, pp. 116-22.

30. Greaves, H. R. G., *The British Constitution*, p. 18.

31. Dicey, A. V., *The Law of the Constitution*, Ch. XV.

32. But a Ministry can continue to remain in office for a sufficiently long time even if it has lost the confidence of the House of Commons. When Parliament has passed the annual budget, and it is usually done by the beginning of July, the House of Commons does not exercise any control over the Ministry. For, no session of Parliament may be summoned until April next and the Ministry may continue to remain in office without breaking the law, though it no longer enjoy, the confidence of the House of Commons. There are other means, too, by which the Ministry can retain office. Cf. H. J. Laski, *Democracy in Crisis*, Ch. II.



But this does not cover the whole case. Lowell has correctly pointed out that Britain is not obliged for ever to hold annual sessions of Parliament. Being a sovereign body, Parliament can pass a permanent Army and Air Force Act and grant the existing annual taxes for a number of years. Moreover, there are some conventions the violation of which does not necessarily lead to breach of law. For example, no breach of law would follow if the Speaker does not resign from the membership of his party after his election to that office, or if the Government does not recognise His or Her Majesty's Opposition, or if all the conventions relating to the conduct of business in the House of Commons are not observed. Similarly, there is no breach of law if the Prime Minister is taken from the House of Lords. At the same time, precedents may be broken if the altered political conditions of the country demand that. The Labour Government violated convention of ministerial collective responsibility when members of the Cabinet in 1931 "agreed to differ". It was justified by Baldwin and he maintained that conventions were altered by circumstances. One of the merits of the conventions is the flexibility they impart in the governance of the country. Disraeli, in 1868, disregarded the well-established usage by resigning without meeting Parliament on defeat at the general election. In 1929, Baldwin reverted to the old convention and considered it wholly constitutional for him to meet Parliament and receive its verdict. The conventions, as Jennings points out, "do not exist for their own sake; they exist because there are good reasons for them."<sup>33</sup> And the good reason is that conventions are related to the idea of a constitutional government and democracy with which almost all Britishers find themselves in agreement. Neumann succinctly remarks: "This remarkable island race simply prefers to retain proven procedures when there is no particularly strong reason to adopt innovations, and has thereby produced a system of time-honoured customs and conventions which are observed because they are based not only on precedent but also on reasons."<sup>34</sup> The conclusions of Dicey, therefore, do not command

unqualified support.

Lowell believes that conventions are supported by something more than the realization that their violation might mean the violation of some law. Unlike the laws of the Constitution, conventions go to constitute a moral code for the guidance of public men in the field of practical politics. "In the main," he says, "the conventions are observed because they are a code of honour. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. Moreover, the very fact that one class rules, by the sufferance of the whole nation, as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held."<sup>35</sup> The additional sanction for conventions comes from public opinion. The power of government rests in the last resort on the consent of the electorate and the powers of different departments of government must be exercised in accordance with that principle. Any deviation therefrom will go to make the action of government 'unconstitutional'<sup>36</sup> though not illegal. Legally, there is nothing wrong if conventions are violated. But a legal truth in Britain may become a political untruth. Even a popular and dynamic personality like Edward VIII could not go against the wishes and advice of his Ministers in marrying the woman of his choice. The conventions are really obeyed because of the political difficulties which follow if they are violated. To raise the question of their violation is, therefore, in large measure, fruitless, for conventions are not violated. If one is at all violated, as it was done by the House of Lords in 1909, by rejecting the famous Lloyd George budget, there is an immediate demand to have this convention enacted into law. The electorate gave to the Liberal Party their unequivocal consent in defining the financial and legislative powers of the House of Lords and the result was the Parliament Act, 1911, which made it impossible for the Lords to delay Money Bills for more than one month. The same Act limited its legislative powers too.

33. Jennings, W. I., *Cabinet Government*, p. 7.

34. Neumann, R. G., *European Comparative Governments*, pp. 25-26.

35. Lowell, A. L., *Government of England*, Vol. I., pp. 12-13.

36. Robert G. Neumann writes: "But since there is no constitution in any formal sense, 'unconstitutional' means, in effect, only one thing namely, that it is not proper. This brings us to the core of the British system of government which is not a constitutional document, nor an elaborate system of checks and balances, but rather the generally held and clearly understood belief that certain things simply are not done by gentlemen." *European and Comparative Government*, pp. 4-5.

"Government," according to Jennings, "is a co-operative function, and rules of law alone cannot provide for common action."<sup>37</sup> It implies integration of the activities of many individuals. Each individual must follow certain rules if he is to play his part well, and rules are generally obeyed because of the habit to obey them, no matter whether they are laws or conventions.<sup>38</sup> Conventions are, therefore, rules of political behaviour, first established to solve some specific problems and subsequently they were followed as they seemed just and reasonable to follow. They established intelligent practices and continue their authority as such. Dicey's view is that the Crown shall be converted into the privileges of the people. "Our modern code of constitutional morality," he observed, "secures through in a roundabout way what is called abroad the 'sovereignty of the people,'"<sup>39</sup> It is in this context that Jennings wrote that "conventions are obeyed because of the political difficulties which follow if they are not." Marshall and Moodie give a more matter of fact explanation. They say, "conventions describe the way in which certain legal powers must be exercised if the powers are to be tolerated by those affected."<sup>40</sup> This fact has been clearly expressed by the Judicial Committee of the Privy Council in *British Coal Corporation v. Rex* (1935) when it interpreted the Statute of Westminster, 1931. The Committee declared: "The Imperial Parliament could as a matter of abstract law, repeal or disregard Section 4 of the Statute. But that is theory and has no relation of realities."<sup>41</sup> The Conventions have democratised the Executive by making Parliament the centre of gravity enabling thereby the democratic system operate in a unitary government. Parliamentary practices emerging out of this process of democratization enable the Government and the Opposition to sit together, discuss and work together for the development of national welfare. Conventions have also revolutionised the Judiciary by making the Law Lords to constitute the highest Court of

Civil Appeal in Britain. They have also enabled inter-Commonwealth relations and the collaboration of the member nations to the common advantage.

Conventions are not static like laws. They, "provide the flesh which clothes the dry bones of law" and, consequently, conventions have enabled a rigid legal framework of government to keep an organic pace with the changing political ideas and needs of the people. New needs demand a new emphasis and a new orientation even when the law remains fixed. Men have to work the old law in order to satisfy the new needs and conventions are the motive power of the British Constitution. They lubricate the machinery of government and keep the machine going more smoothly. In their absence the structure of government is sure to collapse and the nature of the British Constitution might well be very different from what it is now. The British system is the best example of democracy and especially of parliamentary democracy.

Something more is served by conventions. "No written constitution," remarks Herman Finer, "any more than the ordinary law, can express the fulness of life's meanings and demands, because the human imagination, even at its most talented, falls far short of reality." The real constitution is a living body of general prescriptions carried into effect by living persons. Conventions are flexible and growing and they can be easily adjusted to the future requirements without creating a political stir which an amendment of the constitution creates. They harmonise relations where a purely legal solution of practical problems is impossible. "In converting a monarchical into a democratic constitution, and in passing from the seventeenth to the twentieth century, the British eschewed writing the new articles: they preferred to rely on the growth and inheritance of customs—that is, conventions."<sup>42</sup>

### SALIENT FEATURES OF THE CONSTITUTION

From the nature of the Constitution flow

37. Jennings, I., *The Law and the Constitution*, pp. 12-13.

38. "A usage in constitutional matters, it will be found on investigation, is normally based on some definite convenience or utility in relation to the constitutional system of the day, and with the passing of the years it is followed under the influence of the normal psychological principle of limitation and willingness to follow precedent." Keith, A. B., *The British Cabinet System*, p.5.

39. Dicey, A. V., *The Law of the Constitution*, p. 431.

40. Marshall, Geoffrey, and Moodie, G. C., *Some Problems of Constitution*, pp. 16-18.

41. Section 4 of the Statute of Westminster stipulates that no law enacted by the United Kingdom Parliament shall extend to the Dominions without the consent of the latter.

42. Finer, H., *Governments of Greater European Powers*, pp. 49-50.

the following important features :

1. *It is Mostly Unwritten.* The British Constitution to a large extent is of an unwritten nature. It is not a pre-arranged pattern according to which government must be carried on. Nor is it the result of conscious creation. Its sources are several and the course of its development has been sometimes guided by accident and sometimes by high design. Being a "child of wisdom and of a chance," its growth has been piecemeal and gradual expressing itself in different Charters and Statutes, precedents, usages and traditions whatever the exigencies of time demanded. There is, accordingly, no single document which can be said to contain the general principles of political governance. In fact, no attempt has ever been made to embody these principles in a documentary form. They remain scattered. Some of these rules and principles have been reduced to writing and are embodied in the Acts of Parliament, but a greater part still remains unwritten and is "simply carried in men's minds as precedents, decisions, habits, and practices." The written elements taken by themselves do not comprise the Constitution, though they have considerably affected it.

2. *A Specimen of Development and Continuity.* The British Constitution has grown like an organism and developed from age to age. It fulfils Sir James McIntosh's dictum that constitutions grow instead of being made. It is the product of evolution and the result of slow and steady development and successive accretions spreading over a thousand years. And all through this period, Britain has never witnessed political upheavals of a revolutionary character. In fact, all political revolutions, if they may be described as revolutions, have been of conservative nature. Britain has all through moved along an essentially continuous constitutional pathway readjusting her institutions slowly and cautiously to the changing conditions and needs of the country and its people. The political changes, as Ogg says, "have as a rule been so gradual, deference to traditions so habitual, and the disposition to cling to accustomed names and forms even when the spirit has changed, so deep-seated, that the constitutional history of Britain displays a continuity hardly paralleled in any other land."<sup>43</sup> Lord Morrison is of the opinion that such a peaceful evolution of the British Constitution is "more per-

manent, more satisfactory and less painful, than if it were the result of the violent bloody revolution," and he thinks that his "country has been lucky in that respect."<sup>44</sup>

3. *Difference between Theory and Practice.* The gradualness of the constitutional evolution and the English habits of retaining traditional forms, despite radical changes in the position of power, have produced a marked difference in theory and practice. The government in the United Kingdom in ultimate theory is an absolute Monarchy, in form, a limited constitutional Monarchy, and in actual character, democratic republic. In theory, or, to be accurate, legally, the government of the United Kingdom is vested in the Monarch. All officers of the State, civil and military, are appointed and dismissed in Her Majesty's name. The Ministers are Her Majesty's Ministers and they remain in office during the Royal pleasure. The Monarch is the source of law and fountain of justice. Her Majesty summons, dissolves and prorogues Parliament. No parliamentary election can be held without the Royal writ. Laws made by Parliament are not valid and cannot be enforced without the Royal assent and, if the Monarch so wishes may veto any law passed by Parliament.

The Monarch is also the Commander-in-chief of all the British forces during peace and war. War is declared in Her Majesty's name, peace and treaties are negotiated and concluded in the name and on behalf of the Monarch. Government documents are published by Her Majesty's Stationary Office. All people in the United Kingdom are the loyal subjects of the Monarch and their national Anthem is : "God save the Queen." In short, there is no act of government which is not attributed to the Monarch's name and person. Her Majesty's powers, in terms of law, are uncontrolled, unrestricted and absolute.

But all this is in theory. In practice, the Monarch does nothing by doing everything. The Revolution of 1688 finally settled that in the last resort the King must give way to Parliament. Since then, the whole development of the British Constitution has been marked by a steady transfer of powers and prerogatives from the Monarch as a person to the Crown as an institution. The King has now long ceased to be a directing factor in government and he virtually performs no offi-

43. Ogg, F. A., *English Government and Politics*, p.68. Even the war and revolution of the seventeenth century have not been deemed a catastrophic change from the past. On the other hand, "closer examination reveals that what was really happening was only the winning of full and lasting triumph for principles and usages that had long been growing up." *Ibid.*

44. Morrison, Herbert, *British Parliamentary Democracy*, pp. 1-2.

cial act on his own initiative. If the King were to exercise any of the powers which he exercised in the past, and this he can legally do even now, he will be signing the warrant of his own abdication. The real power rests with the King's duly constituted Ministers and His Majesty remains only a symbol of authority, or to put it in the language of the British Constitution: "The King can do no wrong."

The Ministers of the Monarch are members of Parliament and they remain in office as long as Parliament wishes it. But the real power of Parliament rests with the House of Commons, a representative House of the People. The responsibility of the Ministers is to the House of Commons. The Prime Minister and other principal Ministers belong to it. All this means the supremacy of the House of Commons and ultimately that of the people, for the people decide the complexion of the House at a general election. It is the verdict of the people which determines the government. No government can remain oblivious of public opinion, if it is to continue in office, control and direct administration, and to maintain support for the future too. Such a government is a government by consent. "Government with us," says Jennings, "is government by opinion, and that is the only kind of 'self-government' that is possible."<sup>45</sup> Practice, thus outruns theory in Britain and she presents one of the most democratic systems of government in the world. The Webbs<sup>46</sup> used for the system of government as obtainable in the United Kingdom the phrase a "crowned republic". While defending British Monarchy, Lord Morrison succinctly observed, "But it takes good countries to run monarchies and it takes good monarchs to be the heads of States. And may I add that it takes a good Republic to appreciate a good monarch."<sup>47</sup>

4. *Sovereignty of Parliament.* The British Constitution establishes the supremacy of Parliament. It means that Parliament is supreme. It can make and unmake any kind of law and no court in the realm can question its validity. The authority of Parliament is transcendental and absolute, and it embraces both the enactments of ordinary

laws and the most profound changes in the government itself. There is no judicial review and no authority can declare that the laws made by Parliament are *ultra vires*. Even the veto power has become obsolete and the Monarch must signify his assent to all measures passed by Parliament. Whether Parliament is really sovereign or not, it is a separate question. So far as law, pure and simple, is concerned, it is.

5. *A Flexible Constitution.* As already pointed out, there is no codified and basic constitutional law having superior sanctity to statutory law. The power to make and amend the constitutional law is vested in Parliament and no special procedure is required than that attends the enactment of an ordinary bill. Furthermore, the popular ratification of constitutional amendments, required in countries like Switzerland and Australia in the nature of referendum, is unknown in Britain.<sup>48</sup> The Constitution of United Kingdom is flexible and responsive. It carries with it the advantage of centring public opinion according to the needs of the time. There is in it a facility of reform, an adaptability superior to written and more rigid constitutions. James Callaghan, the former Labour Prime Minister, expressed the opinion that constitutions "should not be lightly tampered with, but neither should they be rigid and inflexible. They must adjust to meet the real aspirations of a nation."

The supremacy of Parliament and the ordinary easy method of changing constitutional law have been the subject of some legal controversy. Supremacy of Parliament, it has been asserted, is a legal fiction, for it is exercised in the spirit of responsibility and responsibility in actual practice means the maintenance of majority in Parliament. As long as a Party can maintain its majority in Parliament, it can get anything done. But this is really not so. How easy it is to make constitutional changes depends on the general nature of the political system prevailing in a country and the attitude of the people towards constitutional amendments. Democratic principles and responsible institutions are the heritage of Englishmen and Parliament has never changed the law lightly

45. Jennings, I., *Cabinet Government*, p. 19. The Joint Select Committee on Indian Constitutional Reform (1934) observed that there "arise two familiar British conceptions, that good government is not acceptable substitute for self-government and that the only form of self-government worthy of the name is government through ministers responsible to an elected legislature." Vol. I, Part I, p. 5.

46. Sidney and Beatrice Webb.

47. Morrison, Herbert, *British Parliamentary Democracy*, p. 5.

48. Referenda had been recently sought on two occasions, but in no way connected with laws, constitutional or statutory. The first referendum was on the question of British joining the European Economic community and second over proposals to set up separate Assemblies in Scotland and Wales.

and casually. There are profound psychological checks and voluntary restraints on the exercise of its legal authority, whatever be the extent of majority the Party in power may command. "Parliament, after all," remarks Ogg, "is composed of men who with few exceptions, are respected members of a well-ordered society, endowed with sense, and alive to their responsibility for safeguarding the country's political heritage. They live and work under the restraint of powerful traditions and will no more run riot with the Constitution if it were weighed down with guarantees designed to put it beyond their control."<sup>49</sup> The "mandate convention" is indicative of the political temperament of the people. It enjoins that no far-reaching changes in the governmental system should be made until the voters have had a chance to express their opinion upon the proposals at a general election. Asquith's Liberal Government went to the country with the scheme of Second Chamber reform. In 1923, Stanley Baldwin appealed to the electorate on the issue of tariff. In 1931, general election was held to elicit support of the people for the National Government under Ramsay MacDonald. The Labour Party in 1945 fought general election on the issues of nationalization and granting self-government to India and other subject countries. Similarly, in the election of 1964 the Labour Party put before the electorate its programme of re-nationalization. Although the Party secured a precarious majority, yet Harold Wilson told the people immediately after forming the government: "Having been charged with the duties of Government we intend to carry out those duties. Over the whole field of Government there will be many changes which we have been given a mandate by you to carry out. We intend to fulfil that mandate."<sup>50</sup> Legally, therefore, the constitution of Britain is undeniably the most flexible in the world, but actually it is considerably less fluid than might be inferred from what the writers say. The flexibility of the Constitution does not depend wholly, or even largely, upon the simplicity of its amending process.

6. *A Unitary Constitution.* The British Constitution is unitary and not like that of the United States of America or India, federal. There is, of course, devolution, but all authority flows

from the Central Government centred at London. The local areas, as they exist in Britain, derive their powers from the Acts of Parliament which may be enlarged or restricted at its will. Parliament is constitutionally supreme, and the local government machine is merely an agent of the Central Government. The essence of a federation, on the other hand, is union and not unity and the powers and jurisdiction exercised by the units, which compose a federation, are original, clearly demarcated, and are derived from the constitution. Neither the Central Government nor governments of the federating units can encroach upon each other's sphere. If any change is desired to be brought about, it must be done by amending the constitution and the process of amendment is prescribed therein. This establishes the supremacy of the constitution. It means that the distribution of powers is maintained by a constitution-amending authority which is superior to both central and local governments. In Britain Parliament is supreme and the local areas are subordinate units with such powers as it chooses to bestow. It can, if it so wished, abolish the whole complex structure of local government by a simple enactment. The existence of a unitary form of government is one of the reasons why Britain is able to manage without a written constitution. A written and a rigid constitution are the pre-requisites of a federal polity. If the devolution referendum in Scotland and Wales had been accepted it would have moved the United Kingdom away from the highly centralized State that has characterised the British system over the past 250 years. The proposal envisaged to set up separate Assemblies in those areas with specified powers.

7. *A Parliamentary Government.* The British Constitution provides for a Parliamentary form of government as distinct from the Presidential type of government. The King, who is a legal sovereign, has been deprived of all his powers and authority. The real functionaries are the Ministers who belong to the majority party in Parliament and they remain in office so long as they can retain its confidence. The Ministers are both the executive heads and members of Parliament and they co-ordinate the Legislative and Executive departments of government. The Cabinet in Britain, as Bagehot defines it, is a

49. Ogg, F. A., *English Government and Politics*, p. 72. Munro in this connection maintains: "Legislators come from the people; they think and feel as the people do; they are saturated with the same hopes and fears; they are creatures of the same habits and when habits solidify into traditions or usages they are stronger than laws, stronger than the provisions of a written constitution." Munro, W. B., *The Governments of Europe*, p. 23.

50. *The Statesman*, New Delhi, October 19, 1964.

“hyphen that joins, the buckle that binds the executive and legislative departments together.” There can be no disagreement between the Executive and Legislature. They work in agreement and the dangers involved in deadlock between the law-making, tax-granting authority and the Executive are absent. If ever the House of Commons votes against the Executive and defeats its policy or if ever it should pass a legislation which has not the favour of the Cabinet, one of the two things would happen. The Cabinet must either resign and enable the Opposition to form government, or it should advise the King to dissolve Parliament and order new elections and thereby give an opportunity to the electorate to approve or disapprove the action of the Cabinet. There can be no continued conflict of policy between the Executive and the Legislature as it may happen in the United States, where there is separation between the Executive and Legislative departments. The right to govern in Britain, observes Greaves, “flows through the legislature to the Cabinet; is not separately conferred on a popularly elected Chief Executive and in a popularly elected Parliament; the right is not capable therefore of conflicting interpretation by two bodies having an equal moral claim to speak for the public. The risks of conflict or of inaction which result from such a separation of power are attested by a wide experience, whether it be the Weimar Constitution of Germany, the federal Constitution of America, or the 1848 Constitution of France.”

8. *Two-Party System.* Parliamentary government means party government as it provides the machinery to secure a stable government under a unified command of the politically homogeneous and disciplined leaders. The members of the government rise and fall in unison and they are individually and collectively responsible for the policy which the Cabinet initiates and they carry out. Since Parliamentary government is a party government, without political parties Parliamentary government is impossible. Such a system of government, which combines responsibility with representation, functions best when there are two parties, one forming the Government and the other forming the Opposition. Two-party system enables the views of the electors to have coherent expression and Britain provides the classical example of two party system. It originated in the seventeenth century and for two

hundred years thereafter only two parties functioned. With the emergence of the Labour Party as a major political force in 1921 brought three parties in the political field. With the collapse of the Liberal Party there were again two parties and the government alternated between the Conservatives and the Labour. There was a split in the Labour Party in 1981 and a Social Democratic Party came into existence. The Social Democrats in alliance with the Liberals gave an impressive performance in the early stages of their emergence. But they were not able to make a significant dent on the two major parties. The alliance was short-lived and the Liberals are at present unrepresented in the House of Commons. Many prominent Social Democrats, too, have shifted their loyalty to their parent Labour Party. In fact, the British Constitution has grown and evolved under the two party system and its working tends to maintain and perpetuate it.

9. *The Rule of Law and Civil Liberties.* One of the fundamental principles of the British Constitution is the Rule of Law. It is based on the Common Law of the land and is the product of centuries of struggle of the people for the recognition of their inherent rights and privileges. In Britain, unlike the United States of America, or the Republic of India, the Constitution does not confer specific rights on citizens. Nor is there any Parliamentary Act which lays down the Fundamental Rights of the people. Yet there is maximum liberty in Britain and according to Dicey, it is due to the existence of the Rule of Law.

The Rule of Law has never been enacted as a Statute. It is implicit in the various Acts of Parliament, judicial decisions and in the Common Law. According to Lord Hewart, the Rule of Law means “supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals”.<sup>51</sup> It is sufficient for the present to say, that when powers of government are exercised according to settled and binding rules and not arbitrarily, then, the subjects of that government are living under the Rule of Law. Such conditions of life can be possible only when there is equality of all before the law, its supremacy, uniformity, and universality. The citizens, the courts, the administrative officials, are all subject to it. In other words, under the Rule of Law, obligations may not be imposed by the State, nor property

51. Hewart, Lord, *The New Despotism*, p. 19.

interfered with, nor personal liberty curtailed except in accordance with the accepted principles of law and through the action of legally competent authorities. These principles are recognised by the courts and as a result judiciary is the unfailing guardian of the liberties of the people in Britain, though there is no Charter of rights to guarantee them.

Sovereignty of Parliament and the Rule of Law are closely connected. By its sovereign power, Parliament can curtail or suspend the liberties of the people and set aside the Rule of Law itself. Parliament has very often done it, but it always did it at times of national emergency. Drastic restrictions were imposed upon commonly recognised rights of the people during World War I. In 1934 and 1936, Incitement to Disaffection Act and Public Order Act were passed which imposed stringent restrictions on the rights to speech, assembly and press. Throughout World War II, drastic restraints were imposed under Emergency Powers (Defence) Act, 1939. But traditions of the country and political temperament of the people do not tolerate such infringement of their liberties when conditions of national emergency or danger are not prevailing. There is a sense in which Parliament itself is subject to the Rule of Law. It cannot, and in fact it does not, make laws which unnecessarily encroach upon the liberties of the people. Laws in Britain are passed to promote liberty and not to restrict liberty. "Freedom of speech is as truly a part of the British way of life as the responsibility of ministers. Neither rests upon written law; neither would be observed more consistently if it did so."

10. *Hereditary Character.* Another specially distinctive feature of the British Constitution is the recognition given to the hereditary principle, which has been, for so long, discarded by the great majority of other countries. Monarchy rests on the hereditary principle and the House of Lords is primarily composed of hereditary peers. It is true that neither the King nor the House of Lords play any effective role in the political set-up of the country, yet their continuance appears hardly reconcilable with the democratic ideals which Englishmen cherish so fondly. And still Englishmen had never been in a mood to abolish these historic institutions. Atlee observed, "I would claim that, despite the maintenance of monarchical and oligarchical ele-

ments, the British system is the best example of democracy and especially of parliamentary democracy."

### Development of the Constitution

We note from the above description one leading characteristic of the British Constitution that it is the result of continuous development. Freeman emphasised this feature with unquestionable accuracy. He said, "The continual national life of the people, notwithstanding foreign conquests and internal revolutions, has remained unbroken for fourteen hundred years. At no moment has the tie between the present and the past been wholly rent asunder, at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory. Each step in our growth has been the natural consequence of some earlier step; each change in our law and constitution has been, not the beginning in anything wholly new, but the development and improvement of something that was already old. Our progress has in some ages been faster, in others slower; at some moments we have seemed to stand still, or even to go back but the great mark of political development has never wholly stopped; it has never been permanently checked since the days when the coming in of the Teutonic conquerors first began to change Britain into England."<sup>52</sup> The starting point of the British Constitution and the principles which govern their working lie scattered into the past and the present mechanism of government can only be understood if we analyse the process of this growth; how the British Constitution came into being and how it assumed its present form and stature.

It is customary to divide this process of growth into six distinct periods, but we divide them into three as a matter of practical utility. The first period extends from the time of the Angles and Saxons through the Norman and Angevin dynasties to 1485. This period may be called the period in which were laid the foundations of the Constitution. The second period extends from 1485 to 1689 and covers the establishment of the Tudor dynasty through the early and later Stuart periods and embraces the Puritan Revolution and Commonwealth. This period is called the period of reconstruction of the Constitution. By the end of the fifteenth century Parliament had begun to show marks of its strength and the King's power had definitely eclipsed. The

52 Freeman, F. A., *Growth of the English Constitution*, p.19.

great institutional foundation of the modern English Constitution had been firmly laid. The years to come were in the nature of further growth and adjustment of these institutions leading to altered balances of power and mechanisms of control.

The third period extends from 1689 to the present and it is of more direct interest to the students of British Government today. In this period came the rounding out, or fructification of the Constitution. The Glorious Revolution of 1689 drew to a close, the great constitutional struggle of the seventeenth century. Kings in future held the throne by the grace of Parliament. Kings could be made and unmade by Parliament. Parliament was, therefore, Supreme. The Bill of Rights embodied the constitutional rules and principles which should guide the transactions of the King in his dealings with Parliament. It stated clearly and definitely the limitations on the powers of the king, and in one specific clause decreed that no future ruler of England could be a Roman Catholic or could marry a Roman Catholic.

The Bill of Rights marked the culminating

point in the evolution of the fundamentals. The centre of gravity had shifted from the King to Parliament. But it was many years before the change became clearly understood. It took time for seeds which had been sown in earlier periods to germinate to this and to grow into fully matured institutions of popular government. Following are the main lines of growth and development which complete our account in making the British Constitution what it stands for today: diminished powers of the King, emergence of the cabinet and consequently responsible Ministry; rise of political parties; leadership of the Prime Minister, shifting of power within Parliament; democratisation of the House of Commons as a result of enactment of a series of Reform Bills beginning from 1832; and the great constitutional changes which altered the character of the British Empire. The latest change was made by the Labour Government recently when it reduced the absolute number as well as the hereditary element in the composition of the House of Lords.

#### SUGGESTED READINGS

- Amery, L.S. : *Thoughts on the Constitution*  
 Amos, M. : *The English Constitution*, Chaps. I, II.  
 Anson, W.R. : *Law and Custom of the Constitution*, Vol. I, pp. 1-13.  
 Bagehot, Walter : *The English Constitution*.  
 Birch, A.H. : *Representative and Responsible Government, An Essay on British Constitution*, Chap. I, pp. 116-122.  
 Dicey, A.V. : *Law of the Constitution*, Chaps. I, II, XIV, XV.  
 Gooch, R.K. : *The Government of England*, Chaps. VI, VII.  
 Greaves, H.R.G. : *The British Constitution*, Chap. I.  
 Finer, H. : *Governments of Greater European Powers*, Chap. 2.  
 Jennings, W.I. : *Cabinet Government*, pp. 1 - 19.  
 Jennings, W.I. : *The Law and the Constitution*, Chaps. II, III.  
 Keith, A.B. : *The Constitution of England from Queen Victoria to George VI*, Vol. I, pp. 12 - 19.  
 Keith, A.B., and Gibbs, N.M. : *The British Cabinet System*, pp. 1-21.  
 Laski, H.J. : *Parliamentary Government in England*, Chaps. I & II.  
 Laski, H.J. : *Reflections on the Constitution*.  
 Low, S. : *The Governance of England*, pp. 1-14.  
 Lowell, A. L. : *Government of England*, Vol. I, pp. 1-15.  
 Morrison, Herbert : *British Parliamentary Democracy*.  
 Muir, Ramsay : *How Britain is Governed*.  
 Munro, W.B. : *The Governments of Europe*, Chap. II.  
 Ogg, F.A. : *English Government and Politics*, Chap. III.  
 Philips, O. Hood : *Constitutional and Administrative Law*.  
 Wheare, K.C. : *Modern Constitutions*.  
 Yardley, D.C. : *Introduction to British Constitutional Law*.



## CHAPTER II

# The British Political Tradition

### Liberal Political Tradition

The most important contribution to the growth of the liberal political tradition in the west has come from the people of England. The English political system is a product of a slow and gradual evolution. Unlike France, Russia and China, no successful violent revolution ever interrupted the steady development of a unique political system in Britain. Though we should not minimise the significance of the Republican revolution of 1649 under the leadership of Cromwell, yet the constitutional development of England is more intimately connected with the events of 1688. After this, the growth of the British political tradition was interrupted neither by any internal catastrophic armed uprising nor by a successful external invasion. The Industrial Revolution and colonial exploitation by building a worldwide empire enabled her to become the richest country in the world during the nineteenth century. As a result, economic contradictions of the British society never exploded into revolutionary political conflicts. By exploiting the wealth of the colonies, the capitalist ruling class of Britain was able to transfer a share of this wealth to the people as well. The British people, therefore, did not attempt to change the political structure of their country through a violent struggle directed against their ruling class.

Some writers on the British constitution have attributed the success of the British constitutional experiment to some special traits of the British national character. Laski, however, presents a dissenting note: "It is tempting to attribute it, as eulogists are wont to do, to some special British genius for the difficult art of self-government. That explanation, however, is an unsatisfactory one, since obviously, it is a deduction from the history rather than a principle informing it. A passion for simplicity usually works havoc with political philosophers; and it is rare indeed for a phenomenon so complex as the success of the British government to be

capable of explanation in terms of a single principle. Explanations which base themselves upon some supposed virtue in a national character rarely deceive any save those who are responsible for their making. Anyone who compares the impression produced by Englishmen upon Frenchmen in the seventeenth and eighteenth centuries respectively will recognize at once that judgments of national behaviour are always a dangerous enterprise. There is a presumption in them both of unity and objectivity which rarely coincide with the facts themselves.<sup>1</sup>

### Socio-Economic Conditions and Political Change

The social structure and economic system of a country largely determine its form of government and political institutions. The British political system and its parliamentary government are no exceptions to this general rule. They were the products of the middle class social revolution in Europe, which destroyed the power of the feudal class. A new social class, the urban bourgeoisie, emerged on the historical stage to claim a share in political power.

In medieval Europe, including Britain, political power was widely dispersed among the feudal barons. In a technical sense, the feudal chiefs were regarded as the king's vassals but actually the position of the monarch was no better than that of any his most powerful barons. The king asked for military assistance from his vassals at the time of foreign invasion or internal revolt. Thus, the very survival of a king depended on the support of his feudal chiefs. The peasants, who tilled their land, were their serfs and the other people who lived on their territory were their subjects. The traders, the craftsmen and the peasants were, in different ways, the victims of feudal exploitation. However, leadership in the anti-feudal revolts, came from the rising commercial and industrial classes in the cities.

1. Laski H.J., *Parliamentary Government in England*, p. 1

Some far-sighted monarchs recognised the emerging trends of political change, and laid the foundations of a new absolute monarchy by destroying the power of the feudal lords with the cooperation of the rising bourgeois class. In England, the Tudor dynasty represented an absolute monarchy of the new type where the king, though autocratic, sought the cooperation of Parliament in governing the country. To some extent, the emerging social strata of the bourgeois found representation in Parliament. When the Stuart monarchs challenged these class interests, the social classes adversely affected by this challenge put an end to their rule and instituted a Republic under Cromwell's leadership, with a written constitution to incorporate the new changes.

The Republican political system did not prove stable in England. After a short interval, the Stuart dynasty was restored to power. The Stuart monarchs made another attempt to regain their autocratic powers. But the Bloodless Revolution of 1688 abolished the system of absolute monarchy in Britain for ever. The Parliamentary leaders established a limited monarchy and put Mary and William jointly on the English throne. In place of James II who was ousted from power. Thus the first middle class political revolution was successfully accomplished in the history of the world. The revolution abolished the state power of British aristocracy along with the system based on monarchical absolutism.

However, this revolution did not undermine the economic and administrative privileges of the landowning aristocracy. Unlike the French Revolution, their estates were not confiscated and distributed among the peasants. The members of aristocracy participated in large number both in parliament and the government. But the British society and economy was increasingly dominated by the rising commercial and industrial classes of England during the eighteenth century. After the accomplishment of the Industrial Revolution, the industrial magnates and the big financiers of the City emerged as the new rulers of England. Parliament and the cabinet, though mainly aristocratic in composition, took orders from them. The aristocratic class had no independent role to play now. After the mechanisation of their farms and diversion of a part of their surplus capital to industry, the British aristocracy was assimilated in the capitalist class. According to Laski, it is this class

which still exercises a preponderant power in the working of the British political system precisely because it still owns the main instruments of production like land and capital.

### Stages in Political Development

(a) Tribal-Communal Society—In order to understand the political development of England in modern times, it is necessary to have some knowledge of its historical antecedents. The Iberian and the Alpine tribes were the first settlers of the British Islands, who owned their land and cattle in common and normally led a peaceful life. Celtic tribes invaded Britain in the 7th century B.C. and assimilated the original inhabitants into their own tribal structures, while reducing some of them to slavery. They also introduced agriculture and carried on some trade with the Gauls in France.

(b) Roman Colonial Rule—Julius Caesar, Roman Emperor, invaded England in 52 B.C. and converted the country into a colony of the Roman Empire. The English people suffered from colonial rule for about four centuries. The Romans developed commerce and transport and granted the municipal status to five English cities. The Imperial rulers also introduced the system of agricultural estates owned by landlords. The British upper classes became completely Romanised and were transformed from Celtic tribal chiefs into Roman landowners and officials. Thus the land which was formerly under collective ownerships of the tribal clans was converted into private property of a few British and Roman aristocrats. As the Roman economy depended on a large class of slaves, the tribal democracy and equality gave way to class rule and racial inequality and exploitation. The British slaves were recruited in the army, worked on the farms and carried to Italy and other parts of the empire to be sold in the open market. When the Celtic incursions put an end to Roman rule in 450, tribal-communal social structures partially reappeared and destroyed the Roman social and political innovations to a great extent. This implied revival of tribal democracy, collectivism and equality to a limited extent.

(c) The Anglo-Saxon Political System—The invasions of the Anglo-Saxon tribes began in the later half of the fifth century and continued till the end of the sixth century. Their social structure was partly tribal and partly feudal. After destroying the tribal communal democracy of the Celts, the Anglo-Saxon conquerors laid

of the Celts, the Anglo-Saxon conquerors laid the foundations of territorial kingdoms in Britain which were half-feudal and half tribal, a cross between tribalism and feudalism. These Teutonic tribes—Angles, Saxons, Jutes and Danes had come from Germany and Denmark. The present English language has evolved from the Anglo-Saxon dialects. The dialects of the defeated Celts are still represented in the spoken tongues of the Irish, Welsh and Scottish peoples, but have left no imprints on modern English.

As the Anglo-Saxon tribes, like the Celts, lived on agriculture, the urban and commercial civilization of the Romans vanished from Britain. Unlike the colonising Romans, the Anglo-Saxons did not create large agricultural estates to be worked with the help of a slave army. Britain again became a land of small villages and nomadic tribes. Slowly the social organisation of the Anglo-Saxon tribes was feudalized. The entry and propagation of Roman Catholicism in the 7th century expedited the process of feudalization in England.

The first important social division arose in England between the warriors and peasants. The bonds of kinship loosened and successful warriors put forward claims for territorial sovereignty. As a result of continuous warfare, the victorious tribal leaders emerged as territorial feudal rulers. In this way, seven kingdoms of Kent, Sussex, Wessex, Essex, Mercia, East Anglia and Northumbria were established. Land originally allotted to clans and families on a collective basis was seized as private property by the ambitious clan leaders. Big farmers were named thanes and small peasants were called the ceorls. Gradually, the social class of barons arose from the thanes and all other peasant cultivators were reduced to serfdom. However, feudal political rule in the real sense began in England with the Norman conquest in the 11th century.

Wales and Ireland had accepted Christianity earlier than England but this did not affect their tribal mode of living. The life of the Celtic Christian monks was simple and ascetic and the Celtic Church did not own any land or property. The Anglo-Saxon conquerors were polytheistic and regarded Celtic Christianity with contempt as a religion of their defeated subjects.

Therefore, the Roman Church, whose messenger Augustine entered England in 597, represented the rising social forces of European feudalism. The Queen of Kent had already

embraced Christianity and the King was converted to the new faith on the insistence of Augustine and his queen. Gradually all other royal households and Anglo-Saxon ruling chiefs were converted from paganism to the Roman religion. This was the second victory of Rome over England and thus a new social elite of the priests played a significant role in the feudalization of the British society and polity. The priests soon rose to the position of civil servants and ministers of their royal superiors. They explained to the king the value of Roman laws and written charters.

The king granted land to the Church by these charters and also used them to confirm the proprietary rights of the thanes over the land under their possessions. Thus the land collectively owned by the peasants became the private property of the bishops and feudal landlords. Free peasants living under a tribal democracy were converted into slaves, serfs or workers attached to the land of their masters. The feudalizing process, which had reached an advanced stage in Europe, was slowly maturing in England too. Scandinavians attacked Britain in the ninth century and later settled in the north-eastern parts of the country. They founded new towns and developed commerce with other European peoples. But they also collected huge tributes, which further impoverished the peasants.

In 1018, King Canute of Denmark, proclaimed himself as the Emperor of Norway and England. After his death, England became a free country again. But in 1066, William, who was the Duke of Normandy owing allegiance to the French King, invaded and conquered England. The Witan proclaimed William as the new king of England. According to Frederick Ogg, the Witan was an assembly of the most important men of the kingdom, lay and ecclesiastical. It had no fixed membership, but consisted of such persons as the king chose to summon to three or four meetings commonly held each year. According to some writers, the Witan could be regarded as the forerunner of the English Parliament.

#### Feudal Political System

George B. Adams says that the history of the English constitution upon English soil began with the Norman conquest. William, the founder of the Norman dynasty, had consolidated his sovereign power upon the whole of England by 1069. He confiscated the property of the Saxon

the members of the royal family and Norman nobles. He adopted the same pattern of feudal organisation as had already existed in France. A new aristocratic class was created in England based on the French descent, language and culture whose descendants still own large landed estates on the dawn of the 21st century and are proud of their noble origin.

The British constitution during the Norman rule operated on the basis of a balance of power between the king and his barons. The king governed in consultation with his barons. All power was based upon ownership of the land in this feudal polity and the essential political feature of feudalism was the downward delegation of power. The king was the sole and ultimate owner of all the land in his kingdom and granted it to his feudal vassals in return for military and political services and payment of customary dues and tribute.

The feudal lords administered the regions under their control and adjudicated the disputes of their subjects in their private courts. They also collected taxes and received services from their tenants. The main obligation of the barons was to support their king in war. Some of the prominent barons advised the king in running the administration. In England the conquerors had imposed feudalism on a defeated people from above. Therefore, the feudal system reached a higher regularity and completeness than in most other countries. In Europe, the king's ownership of all the land was a legal fiction and the feudal lords obtained rights over their land by force. William himself was technically the feudal vassal of the French king in Normandy but Paris had no control over the actions of the Duke of Normandy. In England, he owned the land effectively and allocated it to barons on very harsh terms. No baron was allotted such amount of land as to make him a contender for the king's power.

The king retained a very large estate for himself so that he could successfully compete against the combined power of all the barons. Therefore, the British monarch, through dependent on the barons in certain ways, could exercise autocratic powers from the beginning of Norman rule. But despite the absolutist character of the king's authority, the Saxon peasantry regarded

the Norman King as their protector from the oppression of their barons and sided with their king in his conflict with a baron. The king recruited the Saxon soldiers in his army and could rely on their perfect loyalty. England, therefore, had a constitutional development that was unique in European history. From the start the power of the state was greater and the power of the feudal aristocracy was less.

The supremacy of the king was evident from the fact that William could hold a national census of the families and evaluate their property just twenty years after coming to power. The commissioners were sent to each town and village to measure the land. This was not possible in Saxon England and equally impossible in any other feudal country of Europe. The survey revealed that 91% of the English people were agriculturist who could be divided into the following social classes : slaves : 9%; serfs -70%; freemen -12%; and others, living in towns, about 9% only. This showed that about 80% of England's total population of two million consisted of slaves or serfs at the close of the eleventh century.<sup>2</sup>

The Normans introduced in England a body of written and rigid rules, which tended to force all cultivators into a uniform class of serfs with no legal rights against the lord of the manor. The Pope Innocent III, a contemporary of King John, narrated the miserable condition of the serfs as follows : "The serf serves; he is terrified with threats, wearied by corvees (forced services), afflicted with blows, despoiled of his possessions; for if he possesses naught he is compelled to earn; and if he possesses anything he is compelled to have it not; the lord's fault is the serf's punishment; the serf's fault is the lord's excuse for preying on him.....O extreme condition of bondage! Nature brought freemen to birth but fortune hath made bondmen. The serf must needs suffer, and no man is suffered to feel for him, he is compelled to mourn, and no man is permitted to mourn with him. He is not his own man, but no man is his."<sup>3</sup>

Such was the law of feudalism. It was very harsh for the peasants and some lords enforced it strictly. But the serf could retain a certain amount of personal freedom basing it

2. Morton, A.L., *A People's History of England*, p. 64.

3. *Ibid.* p. 67

certain amount of personal freedom basing it on custom and ancient tradition. After doing the lord's work, he could claim a little time for himself. The lord could not sell his serf or a member of his family. He could even appeal against his lord in the king's court. The lord could not take his life without proving him guilty for an offence which required a death sentence. The serf of medieval England was different from the slave of the Roman empire. He was a person and human being who could claim for himself certain customary rights. The English serf enjoyed a better social status than his counterpart in contemporary feudalised Europe. The absolute monarchy placed certain limits on the tyrannical power of the English barons.

### Revolt of the Barons and Magna Carta

When Queen Matilda ascended the English throne after the death of Henry I, a section of the English barons raised their banner of revolt. The civil war of the barons continued for two decades. They built their fortresses and followed the example of the European feudal lords in exploiting and oppressing the peasants. But Matilda's son, Henry II, succeeded in suppressing this rebellion, destroyed their fortresses and prohibited the barons from fortifying their manors. He dismissed a large number of the sheriffs and prohibited all illegal exactions from the peasants.

The fiefs of the English Crown never became rival sovereignties to be absorbed one by one in the process of national unification as in France, until all were gone and only royal absolutism was left. The English barons were administrative subordinates of the Crown, dangerous to weak kings through casual combinations, but never able to act in opposition to the Crown save by joining their forces and appealing for general support, a process which involved terms and conditions, the setting forth of which produced constitutional documents.

The power of the Church increased during the Norman rule. Competition began between the King's Courts and the tribunals set up by the Church. The bishops claimed exclusive jurisdiction over the cases involving the priests and awarded them lighter punishments as compared to those awarded to other citizens in the king's courts. The laws enforced by the Church were based on the Roman system of jurisprudence. The royal courts enforced the Common

Law based on usages and customs followed by the Saxon people of England. The Pope not only intervened in the appointment of the bishops but also claimed a share of the revenues and income of the Church.

Henry succeeded in claiming jurisdiction over the civil cases involving the priests who could now be tried in the King's Courts. He also started the convention of the Circuit Courts trying cases in different manors as mobile representatives of the King's authority.

This practice brought down the influence of the courts set up by the barons. The trial by jury began but members of the jury were not as yet impartial adjudicators. Their object was to assist the court in punishing the accused and presumed from the start that he was guilty and acted as the King's witnesses.

French continued as the language of the royal court and Norman aristocracy till the end of the thirteenth century. The Norman lords also participated in the feudal wars of France on the continent. Thus London emerged as a great centre of trade for the English and French merchants. Foreign traders arrived to settle in London from all parts of Europe. When the third Crusade began, England was trading with commercial centres as far as Italy.

When King Richard demanded money from the rich bankers and merchants to raise an army to fight in the third crusade, they asked for the charters granting them civic autonomy in return for the financial contribution. The merchants in small towns demanded similar charters of civic autonomy from the local barons. Traders' Guilds came into existence in several English cities and towns. Free cities thus emerged in a feudal environment. The brief reign of Richard has acquired great constitutional significance due to the adoption of those charters for civic freedom. Richard's departure to Europe further proved that the King's administration could be successfully carried on by other persons in his absence exploding the myth of the monarch's indispensability.

Magna Carta or the great charter is regarded as the greatest event of the Norman era. Some writers like Keith regard it as one of the basic documents of the British Constitution. But the contemporary significance of the great charter was very limited. It does not mention the democratic rights of the people at all but merely reiterates the customary privileges of the barons

or feudal lords. King John, who was an efficient and strict ruler, violated thereby some customary privileges of the English barons. He raised a few new taxes, deprived some barons of the ownership of their manors and compelled others to pay higher rents for the land they possessed. The merchants, who had grown accustomed to civic autonomy were asked to pay higher taxes on their increasing profits. John refused to recognise the appointment of Archbishop Langton by the Pope. France deprived John of his dukedom in Normandy and confiscated the land of the Norman barons settled in England.

King John, thus, antagonised the barons and bishops of England, the Pope and the French monarch simultaneously. Even the merchants of London and the Saxon militia refused to cooperate with the king. John, therefore, had to accept the terms of the Magna Carta reluctantly, presented to him by the barons on 15 June, 1215. The historical value of the Magna Carta is that the feudal lords of England united with the merchants of London to place certain limits on the autocratic powers of the Norman monarchy. But reduction in the authority and jurisdiction of the King's courts was a reactionary step. A committee of 25 barons was formed to safeguard the terms of the great charter. The Magna Carta, thus, was a mutual contract confirming the rival claims and privileges of various sectors in the feudal establishment such as the monarch, the barons and the church hierarchy. How could it safeguard the liberty of the English people? The majority of the British nation still consisted of the serfs oppressed by this feudal establishment.

### Growth of Parliamentary Power

When the powers of Parliament increased in England during the succeeding centuries, the importance of the Magna Carta was also enhanced. The process of the decline of feudalism started during the thirteenth century. New social classes emerged in the British society. They saw new meanings in the words used in the Magna Carta and pleaded for the recognition of their new rights disguised as ancient customs. The evolution of Parliament began, which was used first by the British aristocracy and later by the bourgeoisie to achieve its own political supremacy in the state. Nobody remembered the Magna Carta during the Tudor rule. Shakespeare did not even allude to the great Charter in his play entitled **King John**. The long for-

gotten document however, was dug out of the government archives and Parliament, then, used it in support of certain new rights claimed by it. In course of time, the Magna Carta was converted by bourgeois liberal mythology into a symbol of the struggle between Royal Absolutism and Democratic Freedom.

Professor Adams claims that there were two fundamental doctrines proclaimed by the Magna Carta. The first doctrine asserted that there are certain essential laws forming the basis of every political system which ought to be adhered to by a king or his government. The second doctrine stipulated that if these basic laws are violated, the nation will either compel the government to recognise them or overthrow it and set up a new regime in its place.

The evolution of Parliament began in the thirteenth century. The Norman kings abolished the Saxon Witan, which was a council of their tribal chiefs and created in its place two new councils of the Norman barons. They were known as Great and Small Councils. Parliament arose from the great Council and the Privy Council and Cabinet emerged from the small Council at a much later stage in British constitutional history. To begin with, the Great council was an assembly of the barons, who owned large estates. Small landlords, merchants and priests were added to it during the thirteenth century. Originally, the barons, knights, burgesses and clergymen sat together in the same assembly. Later the king asked them to deliberate separately asking them to divide into two or three separate groups on the basis of their status and wealth.

The king summoned the Council according to his own needs. Its most important act was to approve the taxes proposed by the monarch. Parliament normally obeyed the king's orders. Its power, therefore, was very limited. But the fact that the merchants and small landowners were represented in Parliament was in itself a revolutionary change. It signified the declining prestige and power of the English feudal class.

Gradually Parliament was divided into two chambers on a definite basis. The representatives of nobility constituted the House of Lords. The traders and small landowners formed the House of Commons. Some priests were also included in the House of Lords but the majority of them lost contact with Parliament. If we compare these changes with the development of the

medieval councils in Europe, we note two significant differences between them. In Europe, the medieval council was divided into three segments i.e., (1) the big and small landowners, (2) the clergymen, and (3) the merchants or burgesses.

In England, on the other hand, Parliament had only two segments from which the priestly class was almost excluded and the small landlords, escaping the tutelage of their aristocratic superiors, rubbed their shoulders with their socially inferior burgesses or traders. In Europe, the monarchy, the aristocracy and the Church hierarchy remained closely united and created a common reactionary front against the rising bourgeois. In England the city bourgeois and small landlords combined together under the leadership of their monarch to destroy the political sovereignty of the feudal aristocracy and the allied Church hierarchy.

#### Decline of Feudal Government

The feudal political system declined and disintegrated in England owing to the following reasons :

(1) In England a section of the landlords realized that the productive capacity of a free agricultural worker was greater than the enslaved serf. Thus arose a new social class of enterprising landowners and a class of liberated peasants working together to enhance agricultural productivity.

(2) Some serfs migrated to towns and became industrial workers. Commercial agriculture and growing trade created a prosperous middle class of merchants manufacturers and bankers exerting greater influence on politics.

(3) The Hundred years' War in France weakened the feudal system, awakened a sense of English nationhood, and anglicised the French-speaking Norman nobility and monarchy. Joan of Arc became the symbol of French resistance to English invasion of France.

(4) Peasant uprisings grew in number and intensity during the fourteenth and fifteenth centuries in England. They developed political consciousness and inspired the struggle for basic human rights. The feudal class became frightened of the potentialities of a peasant revolution.

(5) Instead of looking after their estates, the English nobles became more interested in the politics of London, participating in palace intrigues and provoking internal factional struggles. In 1455 the Wars of Roses began in which

the nobles fought on both sides either supporting the cause of the House of York or that of the House of Lancaster. The victory for the House of York signified the strengthening of the monarchy and further weakening of the baronial power.

(6) Although leadership of both the warring factions was provided by the aristocrats only, the sympathy of merchants and landowning agriculturists lay with the House of York exclusively. The supporters of the House of Lancaster came from the nobles of frontier regions who wanted to restore rigid feudalism on English territory. Therefore, the victory of the House of York represented the first political success of the new rising social classes of England. Edward IV ascended the throne who followed policies which were later carried forward by the Tudor rulers. He confiscated the land of hostile nobles and concluded new agreements with the merchants of London, thus increasing the income of the kings' treasury.

(7) The monarch thus secured financial independence as he was no longer dependent exclusively on Parliamentary grants. His rule, therefore, may be regarded as a preamble to the new chapter of Tudor rule in British constitutional history. The Tudor administration, though still autocratic in substance, sought legitimacy by seeking and obtaining the support of the middle class, especially the commercial bourgeoisie.

#### Middle Class Revolution in England

The modern age began in England with the foundation of the Tudor dynasty and the beginning of a middle class social revolution. To fix a definite date for the closure of the middle ages may arouse controversy for any other country, but is now universally agreed that the inauguration of the reign of Henry VII marked the end of the medieval period in England. The military and political power of the nobles was destroyed. The king confiscated the lands of the old aristocracy, expanded the royal estates and created a new social class of landowners drawn from the upper middle classes. The Tudor monarchs used Parliament for ratifying the policies which were in essence formulated by them. According to A.L. Morton, the Tudor monarchy "rested on the fact that the bourgeoisie were strong enough in the sixteenth century to keep in power any government that promised them elbow room to grow rich,

but not yet strong enough to desire direct political power as they did in the seventeenth."<sup>4</sup>

Henry VII married a princess of the House of York and persuaded Parliament to approve the Tudor dynastic succession. Henry VIII laid the foundations of the National Church of England and liberated England from the international control of the Roman Catholic Church. When the king wanted separation from his Spanish queen Catherine, the Pope disallowed it. As a result, Henry VIII himself led the Protestant movement in England. He confiscated the estates of the Church and resold them to small landowners. Thus a new social class of the landowning squires was created. The squires worked as Justices of the Peace and constituted honorary officials of the new regime. Parliament approved Henry's reforms about the Church supporting them enthusiastically. All those, who got a share in the confiscated lands of the monasteries, became ardent admirers of the Tudor monarchy and loyal followers of the Anglican Church.

The King was recognised not only as the Chief of the English State but also as the Head of the Anglican Church. When Queen Mary ascended the throne, she tried to revive Catholicism in England but failed to restore the confiscated estates of the monasteries. During the long reign of Queen Elizabeth I, England became a Protestant nation irreversibly. Like her predecessors, Elizabeth was an absolute ruler but she was very efficient and talented as a Queen. With minor exceptions, she too received, like other Tudors, the support of Parliament for her policies.

The sixteenth century is regarded as a period of transition in European history. In England also important changes took place in agriculture, industry and commerce. The landlords enclosed the public lands and claimed them as their private property. Some landlords took possession of the lands belonging to free peasants. The medieval trade guilds were replaced by a new type of capitalist traders. The craftsmen's guilds also came to an end. The owners of small workshops reorganised production by employing wage workers. A large number of peasants, craftsmen and unemployed retainers of the old nobility became beggars, thieves and vagabonds belonging to the lum-

pen-proletariat. While capital was accumulating in the hands of the favoured few, the majority was facing starvation and unemployment. The law provided that a citizen could arrest a vagabond, force him to work as his slave and could even whip him.

#### Absolute Monarchy of the Tudor Period

During the reign of Elizabeth, absolute monarchy was modified partially and socio-economic conditions also improved to some extent. However, the rapid increase in the circulation of bullion and the Tudor policy of debasing the coinage brought about a galloping inflation in the country which enabled the landlords, farmers and traders to earn huge profits. Elizabeth and her merchant subjects showed great interest in building ships and establishing chartered companies for trade and piracy. The Queen had regular shares in the booty looted by the English pirates who regularly attacked Spanish ships on the high seas.

It was the age of commercialism. Spain was the chief rival of England. The victory of the English sailors over the Spanish armada during Elizabeth's reign signified the beginning of a new era. It was the triumph of a bourgeois mercantile England over the reactionary pro-feudal elements in Europe. The Spanish monarchy was the patron of Roman Catholicism and feudal forces of the European society. After destroying the Maya and Aztec civilizations of Central and South America, a corrupt, oppressive and luxury-loving Spanish aristocracy, in alliance with the church hierarchy, was ruling over Spain and her trans-Atlantic colonies, reducing the Spanish and colonial peasantry to a position of near serfdom. As compared to Spain, Elizabeth's England was a progressive, national monarchy where commerce and industry flourished and the peasantry had been liberated from its medieval bondage.

Queen Elizabeth was a popular ruler. She neither needed a standing army for her security nor a salaried bureaucracy to carry on her administration unlike contemporary European monarchs and the future Stuart kings of England. She neither claimed divine sanction for her rule nor showed any disrespect to Parliament. She followed the Tudor tradition in supporting the progressive elements of the state and also in using state power in accordance with laws as

4. Morton, A.L. *A People's History of England*, p. 169.



well as in seeking and obtaining Parliament's approval for her policies and actions. For this reason, the rising social classes as represented in Parliament also gave their consistent support to all Tudor monarchs. Like her foresighted predecessors, she knew that the unruly horse, she was riding, could not be controlled by the crack of a whip but only by loving persuasion. This alone unravels the mystery of Parliament's obedience to the sovereign and success of absolute monarchy during the Tudor period.

### Parliament's Struggle Against Monarchy

With the start of the Stuart reign in England, the conflict between the king and Parliament began for a division of state power between them. Such tendencies had manifested even during the last stage of Elizabethian reign. It was obvious that the rising English middle class was not prepared to suffer indefinitely the monopoly of political powers in the hands of an autocratic monarch governing in the interest of nobility. The Queen often granted exclusive rights in trade or production of a particular commodity to her own favourites. When Parliament opposed this in 1601, the Government adopted a policy of accommodation.

James I ascended the throne in 1603. He did not possess Elizabeth's cleverness or tolerance. Earlier he had ruled Scotland where Parliament did not exist. He claimed a divine basis for his autocratic rule. He displeased the merchants of London by his financial policies. Elizabeth's annual budget amounted to £ 400,000 only. James thought this amount was too small for his needs. Parliament always opposed the raising of new taxes and invariably reduced the demands made by the king. It was also dissatisfied with the king's foreign policy and opposed the alliance proposed by him with Catholic Spain or equally Catholic France.

When Charles I became the king of England in 1625, Parliament's conflict with monarchy grew more intense. When it decided to impeach the king's favourite minister, the Duke of Buckingham, Charles dissolved the House of Commons. He imposed new taxes without the approval of Parliament. The merchants and landlords, who loved their property, did not want to pay these taxes raised by the king without the consent of their representatives.

Liberty for the bourgeoisie meant safeguards for their private property. In 1628 the Commons presented the Petition of Rights to

the king protecting against the tyranny of the martial law, illegal detention of citizens and forcible collection of new taxes and loans. Forcibly keeping the Speaker in his chair, the House of Commons also adopted three resolutions. It was resolved that anyone trying to restore property in England, or advising the king to impose taxes without the consent of Parliament, or paying these illegal taxes to the Government will be deemed an enemy of the state, nation and England's freedom. Charles dissolved Parliament and refused to summon it for eleven years.

In the absence of Parliament, Charles sold monopoly rights in trade and production, increased duties on imports and exports and imposed a new tax on ships. Though these policies were opposed by a few courageous individuals, yet no political crisis or popular discontent developed for another decade. However, the policies of Charles and Laud as leader of the Anglican Church displeased the Presbyterians of Scotland, who characterized one Anglican Church under Laud as a disguised form of the Catholic Church.

The Presbyterians felt that the king, bishops and ritual ceremonies had no place in true religion. Their religion was based on austerity, pious life, private prayer and thrift. They called themselves as Puritans and condemned music, drinking and luxuries. Such ideas were gradually affecting the English middle class as well. When Charles wanted to bring Scotland under the Anglican Church, the people of Scotland revolted against him.

Charles asked the London merchants for a loan to conduct war against the rebels. This was refused. Seeing no other way out, he summoned a meeting of the Commons in 1640. The Commons led by Pym sent a petition opposing the war against Scotland. Charles had no further hope of his demands being approved by the Commons. Parliament was dissolved again giving rise to direct confrontation between the king and the Commons.

When it was summoned again, an organised opposition party had come into existence in Parliament. Pym and Hampden toured the country to organise a powerful Presbyterian party and London emerged as their stronghold. The Commons impeached the king's favourite minister Strafford for treason but the Lords did not agree. The next step on the part of the

Commons was to demand his death sentence through a bill of attainder. Frightened by the revolutionary atmosphere in London, Charles acceded to this demand. About two hundred thousand residents of London watched the hanging with obvious glee.

### Republican Interlude and Monarchical Restoration

This led to new political developments in England culminating in the downfall of monarchy and establishment of a Republic. But this Republic was short-lived and lasted just for twelve years. Republican rule in a way broke the chain of constitutional growth in England for some years.

When Charles asked for monetary grants for crushing the Irish revolt, a group of members defected to the monarch's camp. Differences arose in Parliament on the issue of reforming the Anglican Church. The civil war alone could now resolve the disputes between the Royalists and the Republicans. The king was supported by a reactionary coalition of big landowners, Anglican bishops and Catholic nobles. He was opposed by the bankers and merchants of London, the urban middle class, small landowners and free peasants of East Anglia. The English sailors were on the side of Parliament. The workers and poor peasants were not involved on either side. For them it was a war of two ruling classes. On the whole, the cause of Parliament was progressive, in a relative sense, and its victory proved beneficial to the English people on a long-term view.

Gradually, Cromwell seized the leadership of the revolution. As a leader of the Independents, he represented the interests of the peasants and the lower middle class. The Levellers constituted a branch of the Independents who advocated a radical version of Republicanism. The Diggers formed the extreme left-wing of the Independent Party demanding equal distribution of land among the peasants. Cromwell disapproved the programme of the Levellers as well as the Diggers as impractical. Charles was defeated in the civil war and sentenced to death. England was proclaimed a Republic in 1649. This happened one hundred forty years before the French Revolution of 1789 when France was declared a Republic for the first time.

The House of Lords, the citadel of British

feudalism, was abolished by a new revolutionary constitution. The House of Commons was to be re-elected on the basis of a revised, and broader-based franchise. Cromwell and the revolutionary leaders failed to secure the necessary support from the Commons for their progressive policies as the House was still entrenched with feudal elements. Cromwell, therefore, was obliged to transform his government into a military dictatorship. He squandered public funds in the repression of the Irish people and in a war with Holland. As a result, even the forces which had supported him earlier turned against his dictatorial rule. Cromwell's death jeopardized the survival of the Republic. Although this experiment in Republican government proved short-lived but the flames of revolution succeeded in destroying the evil of monarchical absolutism in England for ever. Frederick Ogg says, "Like revolutionists everywhere, seventeenth century Englishmen found it easier to destroy than to build."<sup>5</sup>

If this revolution had failed in 1649 leading to the victory of counter-revolutionary monarchist forces in the civil war, England would have been saddled with an absolute monarchy, on the pattern of continental states like Spain or France, based on military power and governed by a centralized bureaucracy drawn from an aristocratic class. It would have changed the direction constitutional growth in England. The Bloodless Revolution of 1688 would have been impossible without the violent overthrow of absolute monarchy in a Republican Revolution in 1649.

In 1661 the heir of the Stuart line was restored to the English throne. The loyalists won the election to the next Parliament. The squires and merchants, who had supported the Republic earlier, switched their allegiance towards the new monarchy and formed the backbone of the Tory Party in future. After some time, the Whig Party was organised to function as an opposition faction in the Commons. The Tory Party consisted mainly of the rural landowners and the Anglican priests who were both devout royalists now. Catholic nobles were not allowed to participate in politics but in a crisis their sympathies lay with the monarch. The Whig Party was led by the aristocrats and supported by the city merchants and intellectuals

5. Misra, K.K., Quoted in Contemporary Political Theory, p. 343

belonging to the dissenting sects. Charles II ruled with the support of a loyal Tory Parliament. However, James II had to confront the opposition from a powerful Whig Party.

James put an end to the disabilities imposed upon them earlier and gave them equal political rights. This displeased the Tory supporters of the king. James tried to become independent of Parliament by obtaining financial aid from France. He raised an army led by Catholic officers. The majority of the Tory statesmen then realized that the king was determined to revive his autocratic rule.

### Establishment of Constitutional Monarchy

The Tory and Whig statesmen of England jointly invited King William of Holland to invade England in order to put an end to the autocratic rule of James and establish a constitutional monarchy in its place. The supporters of James deserted him and so he fled from England to save his life. Parliament offered the British Crown jointly to Mary and William and proclaimed a Bill of Rights depriving the monarch of his/her control over the armed forces and the courts.

The monarch, after the Revolution of 1688, could neither veto any particular law passed by Parliament nor delay its enforcement. He could not raise any tax without the approval of Parliament. It was made obligatory to summon at least one session of Parliament in three years. The term of the Commons was three years. On these conditions, the Whigs also turned royalists like the Tories. The Revolution brought the Central Government and the Local Administration of London and other cities under the control of the Whigs for about a century.

However, the Tory squires and landlords continued to rule over the rural counties and districts. Karl Marx observes: "The Glorious Revolution brought into power, along with William of Orange, the landlord and capitalist appropriators of surplus value. They inaugurated the new era by practising on a colossal scale thefts of state lands that had hitherto been managed estates, were given away, sold at a ridiculous figure or even more modestly. These annexed to private estates by direct seizure. All this happened without the slightest observation of legal etiquette. The Crown Lands thus fraudulently appropriated, together with the Church

estates, so far as these had not been lost again during the republican revolution, form the basis of the today's princely domains of the English oligarchy. The bourgeois capitalists favoured the operation with the view, among others, to promoting free trade in land, to extending the domain of modern agriculture on the large farm system, and to increasing their supply of agricultural proletarians ready to hand. Besides, new landed aristocracy was the natural ally of the bureaucracy, the new-hatched *haute finance* and of the large manufacture, then depending on protective duties."<sup>6</sup>

The Glorious Revolution of 1688 demonstrated the supremacy of Parliament over the king but the actual responsibility of government still remained with the monarch. A big assembly like Parliament was not suitable to function as a governing agency. During the succeeding centuries, the responsibilities of governance were gradually transferred from the king to the cabinet which was in its origin and status a Committee of Parliament.

Another significant change took place in the position of the House of Lords. Its powers gradually declined in relation to those of the House of Commons. The change took place on the basis of conventions, which were later ratified by an act of Parliament. Another change, which ought to be mentioned, related to franchise which was gradually broadened to give representation to new social classes of the British society. Lastly, an important change occurred in the character and role of British political parties in the working of the parliamentary system of government in England.

During the reign of Mary and William, the Whig Ministers formed the government. However, Queen Anne appointed Tory or coalition ministries which were not responsible to Parliament. William also could appoint his ministers in his discretion and was not bound by their advice but he treated them with some consideration as they had the support of the majority faction in Parliament. Queen Anne regarded the ministers as her servants and claimed the right to hire and fire them at her sweet will. She was not prepared to change her ministers merely because a certain party lost or won a particular Parliamentary election. The ministers were mere subordinate administrators

6. Morton, A.L. *A People's History of England*, pp. 277-278.

of their particular departments under the Queen's leadership and control. She presided over the meetings of her Council of Ministers and took a lead in decision-making.

In 1714 George I of the Hanover dynasty was crowned as the king of England. He was the ruler of a small German principality and was ignorant of political conditions prevailing in England. He could not speak English. He, therefore, took no interest in the affairs of the state. The ministers were consequently deprived of monarchical leadership in government. They developed the convention of appointing the most senior minister as their chairman to preside over the meetings of the Council of Ministers. This Chairman was later known as the Prime Minister of England.

During the eighteenth century, the Whigs were able to maintain their majority in Parliament. Robert Walpole, who was an efficient administrator and a senior leader of the Whig Party for a long time, may be regarded as the first working Prime Minister of England without any formal recognition of his status. Actually, his contemporaries did not visualize him in this role. Walpole's colleagues did not function as a collective body and did not regard themselves as responsible to Parliament. This implied that the cabinet system had not developed as yet in its true sense.

### Oligarchical Nature of Government

The form of government in the eighteenth century England was oligarchical. Not even 10% of the adult population could vote. The constituencies were irrational and contained grossly unequal number of voters. The ruling party employed corrupt methods to secure its majority in Parliament. The Whigs retained power by practising corruption from 1714 to 1761. This was the age of great advances in commerce and agriculture. The military technology was undergoing rapid change and to satisfy the growing demands of the armed forces became a profitable business. A new social group of contractors flourished. London emerged as the centre of international trade and finance. The Tory squires had no share in running the central government but they continued to administer counties and districts and lived affluently on the incomes derived from their farms.

The foreign policy of England was also meeting with success. England won the Seven Years' War (1756-1763) against France and

acquired French Canada (Quebec) as war booty. The defeat of the French in this war paved the way for the British conquest of India. Scotland was now part of Britain and the colonial hold over Ireland was being consolidated.

The necessary conditions for the coming Industrial Revolution were maturing in England. The British emigrants were colonising North America. The Whig leaders of the British government and the Directors of the East India Company were mutual friends. Accumulation of capital from trade and colonial tribute was laying the foundation of England's rapid industrialisation. All social classes, which were politically conscious and possessed economic power, were quite happy with the policies pursued by the Whig Party. It was inevitable under these circumstances that the dictatorship of the Whig oligarchy continued without interruption for half a century.

When George III was crowned, he tried to overthrow the Whig rule. He was an ambitious monarch. The cabinet system had not yet fully developed. Factionalism brought dissensions in the Whig ranks. The character of the Tory Party was also changing. A section of the city merchants entered the Tory Party. With the help of the Tories and by using his personal influence, the monarch succeeded in winning the support of a majority in the Commons. Thus he formed a new cabinet entirely consisting of his friends and supporters, who allowed him to intervene directly in the affairs of government.

However, the positions taken by George III and the former Stuart monarchs were not identical. While the Stuart kings believed in autocratic government, George III played the same political game to which the Whig aristocrats had grown accustomed during the last fifty years. The method was to give jobs, licenses and contracts to the voters and ensure the election of the favourite candidates to Parliament through these acts of patronage. The members of Parliament could also be suitably bribed and benefited so that they voted in support of ministerial policies out of a sense of personal gratitude. George III learnt this art from the Whig leaders and succeeded in appointing his cabinets drawn from his loyal servants.

To begin with, he appointed Lord Bute, his former teacher, as a minister. He obeyed the king as his loyal servant and formed a pro-monarchical faction in Parliament. This enabled George III to instal cabinets of his choice

for a decade. On an adverse vote of the House of Lords, he dismissed all ministers who had been opposing him. He appointed the younger Pitt, a young man of twentyfive, as the new Prime Minister. The House of Commons expressed lack of confidence in the new Council of Ministers on several occasions. The king, in a mood of indignation, dissolved the House of Commons and ordered a general election. He used his patronage and influence openly. The new House of Commons endorsed the king's choice of the younger Pitt as the Prime Minister.

The Tory Party was strengthened by the king's patronage. The merchants, manufacturers and landowners, who had supported the Whigs in the past, turned their allegiance towards the Tory Party. The independence of the American colonies and the success of the French Revolution made England a more conservative and reactionary state. By establishing colonial rule in Ireland, Canada and India, Great Britain became an Imperial Power, *par excellence*. The Industrial Revolution created a new network of industrial workshops and factories in England. In them arose a new social class of factory workers destined to play a new role in world history.

In capitalist Britain at this time, the members of this growing labour force were not granted any political rights. How could the Whig and Tory elites agree to grant them suffrage? They viewed the working class as a slave army which should toil in the coal-mines, steel mills, textile factories or agricultural farms so that their affluent Whig and Tory masters could maintain their monopoly rights over the nation's wealth, politics and culture. In fact, Tories and Whigs did not constitute two different political parties in terms of their basic ideology and fundamental policies. They were just two different designations adopted by an identical, dominant class clique ruling the United Kingdom of Great Britain in the eighteenth century.

### Burke and the British Condition

A section of the British ruling class supported the cause of American independence. Burke said that the Americans were fighting for the achievement of these aims which are recognised as the basic principles of the English Constitution. It was commonly agreed that no tax should be imposed without the consent of the tax payers or their elected representatives. The British Parliament, therefore, could not

justifiably impose any tax on the American taxpayers without first giving them representation in Parliament. As this representation was denied them, the American people were justified in waging their struggle for independence.

However, the British dominant classes with one voice opposed the French Revolution. Only a small liberal group among the remnant Whigs expressed sympathy towards this democratic revolution. Burke condemned it outright in his *Reflections on the French Revolution* — a treatise that proved popular among the Tory rulers of England. The French Revolution was led by the bourgeoisie in France and so the bourgeois classes of the European Continent were sympathetic towards it. Consequently, the bourgeois parties and the people in general in South Germany as well as in Italy welcomed the revolutionary armies of France as instruments of their liberation from feudal oppression.

Why did, then, the English bourgeois rulers oppose this Revolution? The reason was obvious. The European bourgeois class was still denied a share in political power. Its class interests, therefore, coincided with those of the peasants and the common people. The European bourgeoisie wanted to put an end to the oppressive rule of the monarch and the nobility, allied to him, by leading a democratic revolutionary upsurge against them. The English bourgeoisie, on the other hand, had already become a ruling class and had formed an alliance both with the aristocracy and monarchy. Any democratic revolution could endanger their vested interests and therefore, the oligarchical constitution of England satisfied them fully. In Parliament franchise was limited to the members of the bourgeoisie and the aristocracy. This led Burke to sing panegyrics of the British constitution.

The slogan of the French Revolution was *Liberty, Equality and Fraternity*. How could Tory England accept equality and fraternity between the capitalist and the worker or the landlord and his tenant? The French revolutionaries confiscated the estates of the nobles and distributed them among the peasants. How could the Tory landowners approve this act of sacrilege? The Constituent Assembly of France proclaimed manhood suffrage with no property restrictions. The English ruling class was puzzled. Even revolutionary Cromwell did not commit this outrage. This was, according to the

dominant class perception, no liberty but a license to anarchy and chaos.

### Violation of Human Rights

In order to crush the Revolutionary France, the Tory England imposed repressive practices on the progressive popular movement, which was demanding human rights for the English people, and simultaneously entered into a military alliance with reactionary monarchist powers like Austria, Prussia and Spain. The revolution in France was not only a political menace to British social structure, a bourgeois France ruled by the capitalists could develop into a serious colonial and commercial rival of an imperialistic England. The war against the French Republic and later against Napoleon continued till 1815 and ended in the restoration of the reactionary Bourbon regime in Paris. This inaugurated a period of political repression and large scale violation of civil liberties in England.

In 1794 Pitt began the persecution of persons professing radical republican views by suspending the *Habeus Corpus* rule. Thomas Paine's popular treatise *Rights of Man* was banned. The author sought political asylum in France and lived there or in the United States of America for the rest of his life. Democratic associations were also banned. The strikes, bread-riots and sabotage occurred in factories on a large scale. When soldiers expressed sympathy for the agitators, a mounted police corps was organised which was recruited from members of the upper class. The police and the army were instructed to guard the factories. Every radical citizen was regarded as a Jacobin or a French agent.

Even after the end of the war in 1815, the civil liberties remained suspended. When six thousand citizens of Manchester started on hunger-march to London, the police resorted to violence and dispersed the marchers. In August 1819, eighty thousand people assembled in Manchester at Peterloo to listen to the speech of a Radical leader Hunt. As soon as Hunt stood up to begin his speech, the mounted police arrested him and attacked the peaceful assembly with pointed spears killing eleven people on the spot and injuring four hundred people including one hundred women. It was probably a rehearsal of the Amritsar massacre perpetrated on British territory itself by the forefathers of Brigadier-general Dyer. The British working-class still commemorates the grim tragedy of

the Peterloo massacre even today. This was the naked dance of capitalist dictatorship prevailing at that time in England. In Tory England then the rule of law had given way to the rule of the sword.

Parliament passed laws to suppress civil liberties. The magistrates were empowered to prohibit any assembly of fifty people and could order the search of any house on the suspicion that the arms were concealed there. Flags and bands could not be used in a procession. Mass physical exercise and drills were declared unlawful. Additional tax was imposed on political newspapers and publications to make them costlier for the common people. Several publishers of radical literature were arrested and prosecuted for spreading disaffection. Some of them were exiled. Popular movement was thus crushed by the British ruling class.

### Extension of Representative Government

The Industrial Revolution in England created a new social class of industrial capitalists, who demanded that all social classes should be represented in Parliament, which ought to instal a government of people's representatives. The Tory Party was under the influence of big landowners, big bankers and big merchants. The industrial class was discontented with the Tory administration and, therefore, the members of that class started a reformist liberal movement under the leadership of a small group of liberal Whig leaders. The new Liberal Party was very critical of the electoral system for the House of Commons. Industrialisation brought about significant changes in the distribution of population. The population of cities like London, Manchester, Birmingham, Sheffield, Leeds etc. multiplied rapidly.

However, there was no corresponding increase in the representation of cities in Parliament. Several cities did not send, even one member to Parliament. Many constituencies known as the pocket boroughs, controlled by the Tory landlords, consisted of depopulated rural areas. The emerging class of industrial capitalists scarcely had any representation in Parliament. As the industrial workshops were small, the employers maintained personal contact with the workers under their employment. The Trade Unions were still unlawful. The workers at that moment looked upon their employers as their well-wishers and leaders.

Thus the united front of the British indus-

trialists and the workers challenged the oligarchical rule of the Tory reactionaries. In 1831 the Liberal Party, supported by a powerful mass movement, succeeded in reforming the electoral system for the House of Commons despite the obstruction of the Tory Party aided by the House of Lords. The pocket boroughs were abolished, forty two new constituencies were created for London and other cities and sixty five counties with new urban settlements.

The franchise was extended from 220,000 voters before the reform to 670,000 citizens entitled to vote after the reform. Even this number was quite small in view of the fact that England's population at that time was estimated as 14,000,000. However, the political significance of the change should not be underestimated. The industrial bourgeoisie of England, riding on the shoulders of a loyal working class, had by this measure successfully challenged the aristocratic Tory patrons of finance capital. This was the secret of the rise and success of the Liberal Party in the later half of the nineteenth century. The franchise was not extended to the English working-class by the Reform Act of 1832. However, by actively participating in a mass movement led by the Liberal Party, the working-class established itself as a force to be reckoned with in the subsequent political history of the United Kingdom.

#### Constitutional and Political Reforms

The nineteenth century was an era of reforms in England. These included central administration, local government, the electoral system, civil liberties, free trade, rapid industrialisation, reduction in the monarch's powers, growth of cabinet system, decline in the privileges of the House of Lords etc. The century also witnessed the Liberal-Tory political dialogue and competition, failure of the Chartist Movement, progressive development of the labour movement and organisation of the trade unions.

In 1867, the Tories passed a new Reform Bill about elections to the House of Commons. The Radical Associations led by Bright and Cobden and the British workers now organised in trade unions struggled for voting rights and held large suffrage rallies. Though both parties opposed their demands in the beginning, Disraeli finally agreed to enfranchise the workers and

petty-bourgeois sections as he wanted to project a new image for his Tory Party of which he was the leader. The agricultural workers and industrial labourers living outside municipal limits got the right to vote by the Act of 1885.

The Dissenters, Catholics and Jews were also granted civil and political rights on an equal basis. Thus the privileges of the Anglican church were discontinued. The capitalist oligarchy that existed in the eighteenth century was gradually transformed into a bourgeois democracy. Although workers voted in elections to the House of Commons, yet no member of the working class or any trade union activist had a chance of being elected to Parliament at that historical juncture. The Labour Party was not yet in existence. Politically the working class was still a subject class.

#### Imperialism and British Democracy

Laski has rightly pointed out that there was a symbiotic relationship between the growth of imperialism abroad and British democracy at home. Along with constitutional reforms in England, the nineteenth century also witnessed complete colonisation of India the cruel opium wars in China, brutal colonial wars all over the globe, violent suppression of freedom struggle in Ireland etc. France, Germany and Russia emerged as commercial and colonial rivals of great Britain in different parts of the world.

In 1880 a new era commenced in world history. This was the age of global imperialism expansion and domination of finance capital. Great Britain and other capitalist powers joined hands in the colonial partition of Africa, in dividing China into spheres of influence, in consolidating the chain of Colonial exploitation in western and southern Asia, in the construction of the Suez Canal and in extending economic imperialism to Latin America in conjunction with the United States. Imperialist rivalry led the British and German capitalists to fight the first world war. British democracy like the Athenian democracy of ancient Greece was founded on a restrictive concept of democracy which denied freedom and equal rights to the slaves in one case and colonial subjects in the other. Race and or class fixed the boundaries of democratic rights in both the cases.

#### Party System and Responsible Government

During the phase of the rise of Imperialism, the two-party system in England was consoli-

dated. The British ruling class, first divided between the Whigs and Tories, later adopted the Liberal and Conservative designations. The existence of two major parties facilitated the growth of parliamentary government in England. To begin with, Parliament did not represent the British people. While the upper house was constituted on a hereditary basis, the lower house was elected on severely restricted franchise and under a thoroughly corrupt electoral system. The British political system was oligarchical in its essence. With the extension of suffrage, new social classes found representation in the House of Commons but the government remained under the effective control of the two bourgeois parties.

The Conservative and Liberal Parties could later be regarded as two wings of the same ideological party, in fact just two factions of the quarrelling bourgeoisie. Industrial capital eventually joined hands with the finance capital. Consequently, the industrialists supporting the Liberal Party turned Conservative. Radical intellectuals and manual workers thought in terms of creating a separate political association. Thus the organised Trade Unions and radical petty-bourgeois individuals jointly laid the foundation of the British Labour Party at the beginning of the twentieth century. With the rise of large-scale mechanized production, the size of factories and trade unions went on growing bigger and thus giant trade union organisations came into existence.

When the working-class got vote, the Labour Party based on the organised power of trade unions was bound to emerge sooner or later as a third political grouping. Manhood suffrage was first demanded by the Chartists but the ruling class delayed its grant for another fifty years. Capitalism not only denied franchise to the workers, it also refused to grant it to women for a century. Adult franchise was ultimately won in the United Kingdom as a result of the working class agitation and the suffragist movement of the British women.

The Liberal Party was gradually absorbed by the new Conservative Party. The Labour Party finally emerged as the main rival of the Conservatives in the British parliamentary politics. Between the two world wars, the state power mostly remained with the Conservative Party. The minority Labour Governments of 1924 and 1929 were short-lived, which could

not implement their programme. Thus the Conservatives were able to maintain their status as the chief ruling party of the United Kingdom as well as the British Empire for a long time.

After the second world war, the Labour Party got an opportunity to form its government by securing a majority in the House of Commons for the first time. This time the Party did get a chance to carry out its programme. However, the Conservatives were voted to power again in 1952, continued to rule till 1964 and undid some of the measures of the previous Labour administration. The Labour Party got another chance to govern in 1964 but was replaced by the Conservatives in 1970, who ruled till 1974. Between 1974 and 1979, Labour Party exercised power again. Then Thatcher and Major ruled England on behalf of the Conservatives for eighteen uninterrupted years. In 1998, Labour has been reelected to power under Tony Blair. It turns out that while the Tory or Tory-led governments ruled Britain for 66 years after the first world war, Labour Party was in power for about eighteen years only. That shows that the British two-party system is heavily loaded in favour of the Conservatives and against the Labourites.

### Theory and Practice of British Democracy

In theory, it can be claimed that despite the presence of the monarchy and a predominantly hereditary House of Lords, Britain has established political democracy. The people elect the House of Commons directly and the leader of the majority party there is automatically chosen as the Prime Minister by the monarch. The elected popular leader forms his own cabinet, which is collectively responsible to the House of Commons.

In practice, the class which owns the means of production in the United Kingdom governs the country through its direct agents in the Conservative Party or its indirect spokesmen in the rightwing leadership of the Labour Party. However, Great Britain, unlike a fascist regime, cannot be described as a naked and vulgar dictatorship of the bourgeoisie. The existence of the Labour Party, recognition of civil liberties in normal times, highly organised trade unions, the right to criticise the government in Parliament, relatively independent judiciary, Labour control over some municipal governments, the formation of Labour ministries occasionally at the Centre etc. demonstrate the fact that Great



Britain has developed a political system which ought to be described as essentially bourgeois-democratic.

The twentieth century, like the sixteenth is an age of transition in world history. During the sixteenth century, the bourgeois revolution commenced in feudalist Europe. During the last five centuries, the capitalist Powers of Europe, the U.S.A. and Japan brought the whole world under capitalist influence and domination.

Political systems based on Socialism and led by Communist and Workers' Parties emerged in the Soviet Union, Eastern Europe, China, North Korea, Viet Nam and Cuba during the twentieth century. It is true that counter-revolutionary regimes have now replaced the formerly socialist governments in Europe, that does not mean that the agenda for socialism has disappeared from the world for ever. The working-class continues its allegiance to Labour, Socialist or even Communist Parties in many countries. Socialist and Labour Parties are ruling at present in eleven West European countries including the United Kingdom. In Russia also, the Communists and their allies have obtained a majority in the Duma i.e. Russian Parliament and their candidate lost narrowly in the Presidential election against Yeltsin.

The national liberation movements in Asia, Africa and Latin America were increasingly attracted by socialist ideals. Decolonization of the British Empire had put socialist-inclined regimes in power in several of the new nation-states, emerging in the former British colonies. Britain is also passing through this transitional phase in her history, while the Conservative and Right-wing Labour leaders have joined in an unholy alliance to defend capitalism, the organised power of the working class is challenging the *status quo* in various ways.

#### Laski's Interpretation of British Democracy

According to Laski, the real rulers of Britain are those who own the movable and immovable wealth of the country. The British constitution, from a political point of view, is an expression of a democratic form of government but it does not reflect an egalitarian or democratic social order. The reasons for this contradiction between the political philosophy of the constitution and the character of the socio-economic system of the United Kingdom are: recognition of the right of private property,

capitalistic economic system, unequal distribution of wealth in society, the aristocratic tradition, class orientation in education, racial chauvinism of the ruling class based on its colonial heritage, colour prejudices of the elites and masses, feudal pomp of the royal household eulogies by the mass media and films of the affluent style of living practised by the upper classes, support that the Church gives to the sentiments of class hierarchy and propaganda by the media and other fora controlled by the upper strata of society that all radical and socialist associations are either atheistic or anti-national etc. In spite of these limits, the democratic form of government in Britain has proved relatively more successful than in some other countries.

Not only Harold Laski but H.R.G. Greaves, James Harvey and Katherine Hood have argued that an economic oligarchy is still entrenched in the Conservative Party, which mostly occupies the seats of government, and operates as an agent of this oligarchy. Democracy, according to Laski, has been married to capitalism in the United Kingdom and its state institutions, therefore, have to function within a narrow capitalistic framework. The industrial workers have constituted a majority of the British electorate and the nation for more than a century and the Labour Party has also been active in British politics for about a hundred years. Yet this party secured absolute majority only in four general elections and its rightwing leaders occupied the seats of authority for less than twenty years. Leaving aside a few exceptions the Tory establishment has been continuously ruling Great Britain after World War I. Laski has rightly observed that political power is the handmaiden of economic power. Those who own the wealth and capital of the country, also thereby govern the British people through the instrumentality of the Conservative Party. Those, who direct and manage its banks and industries, create public opinion by controlling the mass media and finance the propagandist and organisational activities of the Conservative Party.

#### Conservative and Colonial Heritage

The majority of the British people belongs to the Anglican Church, which invariably supports the Conservative Party. Educational institutions are managed by the members of the upper class and special schools are maintained for the students belonging to higher social strata.

of the armed forces, the majority of the judges, the highly placed bureaucrats, the bishops and archbishops, the citizens of aristocratic origin, big industrialists and bankers, the editors of the large national newspapers, the university professors, the eminent doctors and lawyers, retired civil servants etc. remain stable supporters of the Conservative Party.

It is not very easy for any political party to confront these vested interests. It has been estimated that about ten per cent people of Britain, who constitute the upper strata of the British social hierarchy, consistently vote for the Conservative Party in all general elections. This explains the relatively weaker position of the Labour Party in the British political system. When the British people use their votes to defeat the party of the vested interests and enable the Labour Party to form its Ministry, the Labour Government soon discovers that it cannot govern without entering into a humiliating compromise with these powerful forces of the British social-economic system. The right wing leadership of the Labour Party then tries to bring some reforms in the living conditions of the working class within the bounds of the capitalistic system. In order to attract the labour votes, the Party has occasionally raised socialist slogans and some ordinary members and intellectuals of this Party have genuinely believed in socialist ideals, but the policy of its mainstream leadership has always been that of a compromise and 'constructive' criticism of the vested interests. Actually the Labour Party is the twentieth century version of a Liberal Party.

During the hey-day of the British Empire, there was no place for political equality between the British people, who formed the ruling nationality, and the people of the colonies, who were treated as subject, therefore inferior, nationalities. The right of national self-determination was denied to Asian and African nations for a long time. England's Parliament, whose sovereignty extended to millions of subjects living in several continents, did not include a single representative of the colonised areas, and therefore, they could not regard it as a democratic assembly. It was rather an Imperialist Parliament used by the British capitalists for exploiting the people of India, Africa and other colonies. As pointed out earlier, democracy in the United Kingdom had a narrow social base just like its predecessor in classical Greek cities

like Athens because the majority was denied equal rights of citizenship in both political systems.

After the loss of colonies, Great Britain has become worried about her political and economic prospects as a small nation. It has finally decided to join the European Community and is represented in the European Parliament, though it has opted out, for the time being, of the common European currency called euro, preserving the pound as its national currency. Britain is also a member of the U.S.-led military alliance, N.A.T.O and unlike France, continues as a staunch American ally. Margaret Thatcher demonstrated her imperial concerns in the Falklands' war gains Argentina. Tony Blair shows his solidarity with Bill Clinton by participating in aerial bombardments of Iraqi people. Colonial heritage has been lost but colonial temperament survives in post-Imperialist British democracy.

#### Tony Blair's Reform Projects

The present Labour Prime Minister of Great Britain has introduced some significant constitutional changes in the first half of his term in office. Tony Blair's plan of granting devolution to Scotland and Wales and the planned abolition of the rights of hereditary peers have probably produced the greatest shake up in the British political system in centuries. A change in the voting system for the House of Commons, which seeks to introduce proportional representation, is also under active consideration. Great Britain has so far followed the relative majority rule in single-member constituencies. If Tony Blair's plan of changing the electoral system bears fruit, it would alter the nature of British politics beyond recognition. At the heart of all these reforms, There has been a desire to bring the government in close conformity with public opinion and achieve modernisation and democratisation of the political process.

In fact, Tony Blair intends to sever the trend of the centralisation of power that had occurred during the years of Margaret Thatcher, The Labour Party has a majority of over 400 members in Parliament and most party MPs are loyal to their leader. William Hague, Conservative Party leader at present, has failed to make much of an impact so far and so the Tories are languishing in the opinion polls. Tony Blair has successfully co-opted the Liberal Democrats, Britain's third Party, on his side. In fact, he is

trying to build up a grand left-centre coalition that may present the Conservatives from coming to power for several generations. For this purpose, he is attempting to create an informal alliance with the Liberal Democrats.

As the initial step, Tony Blair has asked Paddy Ashdown, leader of the Liberal Democrats, and his senior colleagues to join a Cabinet committee dealing with constitutional reforms. This is the first instance in recent history when

opposition members have been invited to join a Cabinet committee. The Blair governmental has a challenging task ahead. Apart from formulating and implementing constitutional changes, there are a series of elections to be fought to the European Parliament, to the Scottish and Welsh Assemblies and to various municipal bodies. His electoral success will determine the fate of his reforms.

#### SUGGESTED READINGS

Adams, W.B. : *Constitutional History of England*.  
Greaves, H.R.G. : *The British Constitution*  
Harvey, J. & Hood, K. : *The British State*  
Laski, H.J. : *Democracy in Crisis*  
Laski, H.J. : *Parliamentary Government in England*

Moore Jr., B. : *Social Origins of Dictatorship and Democracy*, Chapter I  
Morton, A.L. : *A People's History of England*  
Ogg, F.A. : *English Government and Politics*

## The King and the Crown

### The King and the Crown

In early days all powers of the government were centred in the man who wore the crown—the state cap of royalty. In the course of history those powers have been almost entirely transferred from the King<sup>1</sup> as a person to a complicated impersonal organisation called the “Crown.” It does not mean the exit of the monarch from the body politic of the country. The King is still there as head of the State and he wears, as before, the diadem or the crown. Now, as then, the King is the Chief Executive and the supreme legislative power rests with the King-in-Parliament. His Majesty is, as ever, the ‘fountain of honour.’ He is the commander of the military forces of the realm by land, sea and air. Even postmen deliver His/Her Majesty’s mails. The King, in short, is still the source of all authority, the ‘Great Leviathan’ embodying in his own person the sovereignty, the dignity and the unity of the State.

Such are the legal powers of the monarch. But a legal truth is very often a political untruth in Britain. Down to 1688, the King was an efficient factor in the Constitution. He ruled as well as reigned. Thenceforward it became otherwise. The King/Queen still reigns, but he/she has gradually ceased to rule. And the fact of the Constitution today is that the King/Queen personally has nothing to do with any affairs of Government. The actual exercise of powers and rights connected with the office of the King/Queen belong to the Crown.

The Crown is not a living tangible person. It is an artificial contrivance; an abstract concept. Sir Sidney Low calls it “a convenient working hypothesis.”<sup>2</sup> Sir Maurice Amos says, “The crown is a bundle of sovereign powers, prerogatives and rights—a legal idea.”<sup>3</sup> Historically the rights and powers of the Crown are the rights and

powers of the King/Queen. Legally this is still in general the case. But Parliament has now enchaind the King/Queen and the Constitution requires these powers and rights to be exercised, in substance, not by the King/Queen personally. They are exercised in the King’s/Queen’s name, as the personal bearer of the powers and rights comprised in the Crown, by Ministers who derive their authority from Parliament and are solely responsible to Parliament. This somewhat intangible synthesis of authority is what we call the Crown. The Crown is, thus, a “subtle association” of King or Queen, Ministers and Parliament and all three combined make an abstract concept of supreme authority. The King/Queen is its physical embodiment whereas Ministry, a creature of Parliament, is its most concrete visible embodiment.

There are two main stages which stand conspicuous in the transfer of powers from the King/Queen as a person to the Crown as an institution. The first is what we may call the “institutionalising” of the King. Kingship in Anglo-Saxon days was elective. Succession to the throne was not determined by hereditary principle. Every monarch reigned personally and independently of his predecessors and, consequently, when a King died there was an “interregnum” or break in government till another was established as a new King. After William, the Duke of Normandy came to the English throne in 1066, but essentially in the twelfth and thirteenth centuries title to the throne became hereditary and the next in line succeeded to the rights and privileges connected with royalty.<sup>4</sup> The result was the emergence of the institution of the kingship or the monarchy; a continuous political system which remained uninterrupted by the coming and going of individual monarchs.

1. The word “King” is here used as a term common to either sex. The Head of the State is now a Queen, Queen Elizabeth II.
2. Sidney Low, *Government of England*, p. 255.
3. Maurice Amos, *The English Constitution*, p. 88.
4. King John was the English King, who styled himself *Rex Angliae* (King of England) and not, *Rex Anglorum* (King of the English) and it so happened that he was the first English King to be succeeded by his eldest son when that son was still a boy.

A vital distinction was, in this way, made between the person and the office of the monarch. The distinction is now reflected in the maxim of the British Constitution: "The King is dead; long live the King." This announcement, made at the time of the Royal demise, means in the words of Blackstone, "Henry, Edward or George may die, but the King survives them all", that is, the King as a natural person may die, but long live the office (the Crown) which one monarch passes on to another. The Crown, as an institution, never dies; it is permanent. There is no interregnum between the death of one Sovereign and the accession of another. Immediately on the death of his or her predecessor the new Sovereign is proclaimed at an Accession Council.

The distinction between the monarch as an individual and the King/Queen as an institution paved the way for the transfer of political functions from a personality to an institution and as the chance would have it, it began with King John. The pace was slow and the process was not fully complete till the middle of the nineteenth century. But the constitutional struggles of the seventeenth century transferred final authority from the King to Parliament and thereafter led by logical evolution to government by Ministers responsible to Parliament. The whole of this process has been beautifully explained in a fairy tale and it runs: "once upon a time there was a king who was very important and who did very big and very important things. He owned a nice shiny Crown, which he would wear on specially grand occasion, but most of the time he kept it on a red velvet cushion. Then somebody made a Magic. The Crown was carefully stored in the Tower; the King moved over to the cushion and was transformed into a special kind of Crown with a capital letter....The name given to the Magic is the Constitutional Development." And the course of the Constitutional development, during the past nine centuries, had been that most of the functions which were at one time performed by the monarch are now exercised on the advice of Ministers, though still in the King's name. George

Ponsonby, speaking in the House of Commons (June 11, 1812), said that it is an essential principle of the Constitution "that the servants of the Crown shall be alone responsible." When a King speaks on political questions, he always speaks as the mouthpiece of his Ministry. The Duke of Windsor, the former King Edward VIII, began the radio address on the day after his abdication with these words: "At long last I am able to say a few words of my own. I have never wanted to withhold anything, but until now it has not constitutionally been possible for me to speak."<sup>5</sup>

To sum up, the King is a natural person and he wears the crown, the state-cap of royalty. But when we use a capital letter in writing the word Crown, it stands for the Kingship as an institution. The distinction between the King and the Crown, thus, becomes obvious. Broadly speaking, it is two-fold. First, the King is a person, the Crown is an institution. The King as a person dies or may abdicate or may even be dethroned whereas the Crown as an institution is permanent; it is neither subject to death nor abdication nor dethronement. This has been succinctly explained by Kerr. He says, "Nobody toasts the Crown or prays God to save it,"<sup>6</sup> people pray to God to save the King. Secondly, the King does not exercise the powers which belong to the Crown on his own initiative and authority. They are exercised by the King at the behest of those who exercise the will of the people, that is, Ministers and Parliament make a synthesis of supreme authority and it is called the Crown. The Crown is the key-stone of the country's constitutional structure.

*Title and Succession.* The events of 1688-89 finally established the supremacy of Parliament and determined that the Sovereign's right to rule rested upon the consent of the governed as expressed through Parliament. The basic Act in the matter of title to the Crown is the Act of Settlement passed by Parliament in 1701. It provided that the Crown shall be hereditary in the line of the Princess Sophia of Hanover,<sup>7</sup> so long as it remained Protestant<sup>8</sup>. The succession is now

5. The Duke of Windsor, *A King's Story* (1951), p. 411.

6. Kerr, W.G. *European Governments and their Backgrounds*.

7. Sophia, the grand-daughter of James I, was the widow of the ruler of one of the smaller German States, the Electorate of Hanover.

8. The Act was passed in the reign of William III after the death of his wife, Queen Mary. It anticipated that neither William nor his cousin and sister-in-law, who became Queen Anne, might have children. The Act, accordingly, provided that in the event of such default of issue, "the Crown and regal government ....., with the royal state and dignity ....., and all honours, styles, royalties, prerogatives, powers, jurisdiction and authorities to the same belonging and appertaining, shall be, remain and continue to the .... most excellent princess Sophia and the heirs of her body, being Protestants ..." On the death of Queen Anne in 1714, Sophia's son, the King of Hanover, became King of Great Britain with the name of George I.

vested in the House in Windsor, a name adopted during World War I to relieve the House of Hanover of any suggestion of German connections. The principle of hereditary is determined by the rule of primogeniture at Common Law. The basic rules are that an elder line is preferred to a younger and that, in the same line, a male is preferred to a female. If there are no sons, the daughters in order of their seniority succeed to the Throne. In any event the heirs must be Protestants. If all Protestant heirs are extinct or if there be no heir within the prescribed degrees of relationship to succeed, Parliament is competent to bestow the Crown on another family and thereby start a new dynasty. But succession cannot now be altered, under a provision of the Statute of Westminster, 1931, except by common consent of the member nations of the Commonwealth which owe allegiance to the Crown.<sup>9</sup>

The Royal Marriages Act of 1872 provides that until the age of twenty-five, the consent of the King is necessary to a marriage that might affect the succession to the Throne. After twenty-five no consent is required, except a year's notice of Privy Council. But Parliament may disapprove such a marriage. The issue arose with respect to the possibility of a marriage between Princess Margaret, sister of Queen Elizabeth, and a commoner, Peter Townsend, who had divorced his wife. The Princess finally gave up the idea of marriage. When the heir to the throne is a minor (under 18 years of age) or whenever the reigning sovereign becomes physically or mentally incapacitated a regency is set up in conformity with the terms of Regency Acts passed by Parliament. The latest of these Acts, the Regency Act, 1953, laid down that the first potential regent should be the Prince Philip, the Duke of Edinburgh and thereafter the Princess Margaret and then those in succession to the Throne who are of age. In the event of the Sovereign's partial incapacity or

absence abroad, provision is made for the appointment of Counsellors of State (generally speaking, the wife or husband of the Sovereign, and the four adult persons next in succession to the Sovereign)<sup>10</sup> to whom the Sovereign may delegate by Letters Patent certain royal function. But Counsellors of State may not, for instance, dissolve Parliament, except on the express instructions of the Sovereign, nor create peers.

The title of Her Majesty Queen Elizabeth II depends on the Abdication Act, 1936. King Edward VIII abdicated in 1936 on the issue of His Majesty's marriage with Mrs. Simpson.<sup>11</sup> The Duke of York, then, next in succession to the throne, succeeded thereto as George VI<sup>12</sup>. George VI had no son and his elder daughter, Princess Elizabeth, became Queen in 1952 upon the death of her father.

*Royal privileges and immunities.* The sovereign enjoys numerous personal privileges and immunities. He may acquire, hold and dispose of property of all kind<sup>13</sup> precisely in the same manner as any private citizen. But the King is above law. He cannot be called to account for his private conduct in any court of law or by any legal process, not even, as Dicey humorously observed, if he were to shoot his own Prime-Minister. He is exempt from arrest. He cannot be made a defendant in a law-suit, his goods cannot be seized by officers of law in default of any kind of payment, and no judicial processes can be served against him so long as a palace remains a royal residence.

The monarch receives a large annual grant from the State treasury. This grant is made available by Parliament in the form of an appropriation for the Civil List. The Civil List is granted by an Act of Parliament to the Sovereign for the duration of his or her reign and for a period of six months afterwards. On March 9, 1982 the Chancellor of the Exchequer announced an increase

9. The Preamble to the Statute of Westminster, 1931, provides that "it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the throne of the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of Parliament of the United Kingdom."
10. The Regency Act, 1953, provided that Queen Elizabeth, the Queen Mother, should be added to the persons to whom royal functions may be delegated as Counsellors of State.
11. Mrs. Simpson, a lady of United States origin, became a British subject by a second marriage after she had obtained a divorce from her American husband, Edward VIII, who was a bachelor till then, desired to marry Mrs. Simpson and the lady lodged a petition for divorce from her second husband. The Cabinet took exception to this marriage and eventually on December 10, 1936 the King executed an instrument of abdication renouncing the throne for himself and his descendants.
12. The Abdication Act was duly assented to by Parliaments of the Commonwealth countries, thus, fulfilling the requirements of the Statute of Westminster 1931.
13. Queen Victoria handed down more than £ 2,000,000 and the personal fortune of the Royal Family is not diminished by death duties. In addition there are valuable Royal collections of jewellery, stamps and pictures. Estimates as to the total value of the Royal Family's personal wealth vary from £ 10,000,000 to £ 600,000,000. Anthony Simpson, *The Anatomy of Britain Today*, p. 22. Also refer to Martin, K. *The Crown and the Establishment* p. 134.

of 8.1 per cent pay rise of the Royal family. Queen Elizabeth's income from public funds to cover her expenses as monarch, thus, rose from £ 3.26 million to £ 5.54 million. The first rise of £ 3.26 million was made by the Conservative Government in 1980. On both the occasions the rise angered some members of the Opposition Labour Party in the House of Commons.

In 1971 the Queen asked Parliament for an increase in her annual grant. It evoked public criticism and Richard Crossman, an influential Minister in the last Labour Government, described the Queen's request for more money as impertinent. He voiced his opinion, as Editor of *The New Statesman* weekly in an article, denouncing the Queen as a "tax dodger." Crossman's principal target of attack were the Queen's private wealth and tax exemptions. He observed that the Queen inherited assets conservatively valued at more than £ 50 million. "But on the top of all this and unlike any other multi-millionaire, the expansion of her private fortune has been accelerated by public tax-privileges granted to her precisely because she is not a private person, yet she still asks for more."<sup>14</sup> The *Daily Mirror* reported in its issue of June 1, 1971 that its readers had voted overwhelmingly against giving Queen Elizabeth a pay increase.

#### POWERS OF THE CROWN

The powers of the Crown are those which belong to the office of the King or to the Kingship as an impersonal institution. These powers are never exercised by the Monarch himself. They are exercised in the King's name by Ministers who derive their authority from Parliament and are responsible to Parliament for the use they make of these powers. As the Crown powers are not the King's personal powers, they may be described as nominal powers of the King as distinct from his actual powers. So extensive is the authority of the Crown that it embraces all fields and functions of Government and yet it is still growing. The province of the State, during recent years, has increased considerably and keeping pace with these political developments, the activities and functions of Government, too, have enormously expanded. This means fresh duties of direction and control by the Government and consequently augmentation of powers of the

Crown. Lowell, writing in the first decade of the present century, observed, "All told the executive authority of the Crown is in the eye of law, very wide, far wider than that of a Chief Magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government, not an absolute despotism; and although the Crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute, very large powers of subordinate legislation."<sup>15</sup> The powers of the Executive, under any system of government, cannot be rigidly divided into watertight compartments. Under the Parliamentary system of government Ministers of the Crown are the real functionaries. There is no divorce between the Executive and the Legislature. The Crown has as much to do with legislation as with the executive and administrative matters. It has, also, to do something with justice. The Crown, thus, forms a part of the Executive, Legislative and Judicial mechanism. It is the keystone of the country's constitutional structure. It may apparently seem paradoxical, although it is logical to the nature of the British Constitution "that the powers of the Crown have expanded as democracy has grown."<sup>16</sup>

The powers possessed by the Crown are derived from two sources: prerogative and statutes. Statutory powers of the Crown refer to those duties which have been assigned to the Executive authorities by Acts of Parliament. They include not only the greater part of powers under which the different departments of the Government function, but also the powers by which Whitehall exercises control over the local government authorities and other bodies distinct from the Crown. The powers of the Crown under this category are various, wide, and growing. Acts of Parliament have, really, become a prolific source of Crown power, particularly with the development of the practice of delegating legislative powers to the Executive.

The powers and privileges which the Crown derives from the Common Law constitute the prerogative. Dicey defines it as "the residue of discretionary or arbitrary authority which at any time, is legally left in the hands of the Crown."<sup>17</sup> The prerogative was, in origin, the sum of the rights ascribed to the King as a feudal

14. As reported in *The Times of India*, Bombay, 29, 1971.

15. Lowell, A.L., *The Government of England*, Vol. 1, p. 26.

16. Ogg and Zink, *Modern Foreign Governments*, p. 51.

17. Dicey, A.V., *Law of the Constitution*, p. 424.

overlord and it continued to be the basis of authority till parliamentary control of public affairs became an established fact. The seventeenth century was one continuous struggle between the use of prerogative power by the person of the King and the determined attempt of Parliament to control such powers either by statute or by Ministers responsible to Parliament. Parliament emerged victorious out of this struggle and the King, to the most part, was deprived of the prerogative powers which inhered in his person. Some were abrogated by statutes,<sup>18</sup> some have been lost by disuse, and the residue which remain have been inherited by the Crown. It is impossible to draw a list of the prerogatives of the Crown. The existence and limits of some raise difficulties of constitutional law. But the undoubted prerogatives include the summoning of Parliament, declaration of war or neutrality, ratification of treaties, appointment to offices, to dismiss the servants of the Crown, and to regulate the conditions of their service, and the power to pardon offenders.

The expression prerogative is, then, used to refer to Crown's discretionary authority, that is, what the King or his servants can do without the authority of an Act of Parliament. It provides a convenient mechanism of various important activities of Government. Although the prerogative has no statutory authority yet it is acknowledged by courts. Most of the prerogative powers derive authority from the Common Law and the rules of Common Law form part of the law of the Constitution in Britain. It may, also, be added that some prerogative powers have been conferred upon the Crown by statute<sup>19</sup> and it is within the competence of the courts to determine whether an Act of Parliament is within the prerogative or to what extent royal power has been abridged or abolished by Statute.<sup>20</sup> In brief, the Crown possesses the prerogative powers that still inhere in the Monarch, and those powers conferred by parliamentary legislation in total constitute a vast reservoir of authority.

### Executive Powers

The Executive powers of the Crown are

so numerous that only some of the most important can be mentioned here. They have increased in the past, are increasing in our own time and must continue to increase so long as the functions of the modern governments continue to expand. The Crown is the supreme Executive head and it must, as such, see that all national laws are duly observed and enforced. It directs the work of the administrative branch and national service; collects and expends, according to law, national revenues; appoints all higher executive and administrative officers, judges, bishops and the officers of the army, navy and air force, regulates the conditions of services; and suspends and removes these officers, except judges<sup>21</sup> and other employes of government from service. The Crown holds the supreme command over the armed establishments. The Crown supervises, and in some instances directs, the work of local government, especially that of boroughs and counties. The officers of local government and other bodies, like the British Broadcasting Corporation, are not the officers of the Crown. No doubt, these bodies are created by the Acts of Parliament, but they do not represent the Crown. The Crown simply exercises supervisory functions over them. Its right to control and direction is limited to certain specified matters.

The modern tendency is to assign powers to Ministers, or to civil servants, "without any necessity of royal intervention."<sup>22</sup> The exercise of the prerogative of mercy, for example, is now primarily a matter for the Home Secretary, and the Royal share is mainly formal. In the same way, the practice of delegated legislation vests powers in the Ministers, rather than in the King-in-Council as originally the practice was, to make rules, regulations, and orders.

### Conduct of Foreign Relations

The Crown conducts the foreign relations of Britain with other countries; sends and receives ambassadors or other diplomatic agents, and all foreign negotiations are carried on in the name of the Crown. The declaration of war and making of peace are prerogative of the Crown. The Crown is also the treaty-making authority and all international agreements are made in its

- 
18. Refer to the clauses of the Bill of Rights forbidding, suspending or dispensing with laws; the Act of Settlement and various other Acts of Parliament of the like nature.
  19. For example, in 1876, the Appellate Jurisdiction Act gave the Crown the power to create four judicial life peerages, the number has since been increased.
  20. Refer, for example, to the case of *Wilts United Dairies* (1921).
  21. Judges can be removed only on joint address by the two Houses of Parliament. See *Infra*.
  22. Keith, A.B., *The Constitution of England from Queen Victoria to George VI*, Vol. I, pp. 49-50.



name. Treaties concluded by the Crown are not subject to ratification by Parliament unless it is specifically conditioned upon parliamentary approval, or anything else is involved in it, like the cession of territory, payment of money, changes in the laws of the land, that require the assent of Parliament in order to make it valid. But "any treaty of high moral import," as the Locarno Treaty of 1925, is essentially laid before the two Houses of Parliament.

When the Treaty of Versailles was submitted to Parliament in 1919, for its approval, a section of the people, who were strongly wedded to the principle of democratic control over foreign relations, had hoped that in future no treaty would be made without parliamentary assent. Labour leaders, too, had long pleaded for it. But the Labour Governments of Ramsay MacDonald and C.R. Attlee never attempted it. Perhaps, they did not find such a policy feasible and treaties continued to be negotiated and ratified by action of the Crown alone.

It is true that no government can venture to declare a war unless there is assurance that Parliament will supply the funds to carry it to a successful end. But Parliament itself has no authority to declare a war. This power belongs exclusively to the Crown. Both in 1914 and 1939, the Ministers made the decisions and in the name of the Crown they led the country to war. And both the times the declaration of war took the form of a Royal Proclamation authorised by Order-in-Council. The question of Parliament's expressing disapproval of the Government's policy, or its refusal to grant supplies does not at all arise. So long as the Ministry can command a stable majority in Parliament, its support is *ipso facto* there.

### Legislative Powers

The powers of the Crown are mainly, though not exclusively, Executive. In the United States of America, the Executive, Legislative and Judicial functions are clearly defined among three separate departments, although the framers of the Constitution could not maintain the purity of the doctrine of the Separation of Powers when they came to details. In the United Kingdom little or no distinction is given to this doctrine of Separation of Powers. The law-making function is vested in the King-in-Parliament. Every Statute declares itself to have been enacted "by the King's Most Excellent Majesty, by and with the

advice and consent of Lords Spiritual and Temporal and Commons in Parliament assembled and by the authority of the same," and here, as everywhere else, the King has yielded his power to the Crown. The Crown is, therefore, an integral part of the national Legislature and its assent is essential to the enactment of laws.

The Ministers of the Crown, who constitute the country's real Executive, are members of Parliament. They control and guide the work of Parliament and determine how conveniently it can be transacted. The Crown, accordingly, summons, prorogues, and dissolves Parliament. When a new Parliament meets it is usually greeted by the Monarch in a Speech from the Throne, which is usually delivered by the King or Queen in person from the Throne in the House of Lords with the Commons present. The Speech from the Throne outlines the legislative programme of the Crown and expresses the views and opinions of Government on various matters of national and international importance. But the Speech from the Throne is not the King's or Queen's speech. It is the Government's speech. It is put in the hand of the Monarch to be read. "The Monarch can, however, talk to the Prime Minister about it and sometimes minor amendments are suggested because it may be felt that the revised language suits the Monarch better than the official language which is set out. But alterations about policy are not made. That is for the Government responsible to Parliament, and everybody knows it."<sup>23</sup>

As has just been said, the Royal assent is essential to the validity of laws passed by Parliament. It means that the King may refuse assent to, or veto, any law passed by Parliament. But the veto power has never been exercised since 1707. It has become obsolete. Disraeli in 1852, however, considered that the King's right to refuse assent to legislation still existed and was not an "empty form." But no Monarch exercised this power. The passing of the Parliament Act, 1911, revived the issue and suggestions were made in 1913 that the King could refuse his assent to the Irish Home Rule Bill. Bonar Law asserted that the King's veto was "dead" only so long as the House of Lords was not liable to be overridden by the House of Commons, and as the Home Rule Bill was being put through Parliament under the Parliament Act of 1911, the King could exercise his "right of refusing assent to matters not suffi-

23. Lord Morrison, *British Parliamentary Democracy*, pp. 60-61.

ciently considered by the people which the Lords had been supposed to exercise."<sup>24</sup>

George V, as Jennings points out, was "himself inclined to accept the same idea," and insisted upon an appeal to the country.<sup>25</sup> Lord Esher, who was advising the King, did not agree with this viewpoint and insisted that it would be dangerous for the Monarch to refuse to accept the advice of Ministers. Sir William Harcourt, too, was of the same opinion and in a personal interview with the King insisted that if there were to be general election, an appeal to the electorate would not be made on the issue of Home Rule. The sole question would be—"Is the country governed by the King or by the people? and that would mean an attack on the person of the King."<sup>26</sup>

If some headstrong King refuses assent to a Bill passed by Parliament ignoring the advice tendered by his Ministers, then, what would happen? There is no reason to believe that such a situation is ever likely to arise, but if it does, the Ministry would forthwith resign. In that case, there would be two alternatives before the King. One, to summon the Leader of the Opposition and commission him to form the Ministry. The House of Commons would refuse to support such a Ministry, because it would be tantamount to approving the action of the King as the Government ousted formed the majority in the House. So there would be no other option for the King, but to dissolve Parliament and order new elections. "That would be a dangerous step," as Munro says, "for any King to take, because an "adverse decision at the polls would inevitably suggest his abdication."<sup>27</sup> This is the verdict of British history. As long as the Ministry has a majority in Parliament, and so long as Parliament remains representative of the people, it carries with it the verdict of the people. There is, under the circumstances, no need for the exercise of the veto. This is exactly what Asquith submitted to George V in a Memorandum on the controversy of 1913. The Prime Minister asserted, "We have now a well established tradition of 200 years, that, in the last resort, the occupant of the Throne

accepts and acts upon the advice of his ministers ....."<sup>28</sup> This point was abundantly clarified by the Duke of Windsor, the former King Edward VIII. He said, "whenever the Prime Minister 'advises' the King he is using a respectful form of words to express the will and decision of the Government. The King is virtually bound to accept such 'advice.' Furthermore, he cannot seek 'advice' elsewhere. However, if, in the exercise of his undoubted powers, he chooses not to accept the 'advice' thus formally tendered, then his Ministers resign, and he must try to form a new Government from the Opposition."<sup>29</sup> Asquith also pointed out to the King in 1913 that "the veto could be exercised only by the dismissal of the Ministry, for no Government would accept a refusal to assent to a Bill without resigning."<sup>30</sup>

The King has now ceased to give assent to Bills personally. The assent is given by a Royal Commission appointed by the Crown under the Royal Sign Manual. The Lord Chancellor or Senior Commissioner simply says that His Majesty not having seen fit to be personally present upon this occasion, has appointed a Royal Commission and that they shall indicate the Royal Assent has been given to the Bills as good and proper Acts of Parliament. The assent to Bills, is, therefore, only a picturesque formality.

The Crown, acting alone, has the power to issue measures authorising certain executive actions. The Orders-in-Council, as they are known, are issued by the King and Privy Council. There are two varieties of Orders-in-Council. First, those which are merely administrative rules and govern the various branches of government in their routine business. Others are promulgated only by virtue of authority expressly granted by Parliament and are frequently called statutory orders. Such orders have actually the force of law, because they are based upon the authority of Parliament. This kind of "subordinate legislation" is now of steadily increasing importance and the subject is dealt with more fully at its appropriate place.<sup>31</sup>

#### Judicial Powers

The King is still described as the 'fountain

24. Keith, A.B., *The Government of England from Queen Victoria to George VI*, Vol. I, p. 358.

25. Jennings, W.I., *Cabinet Government*, p. 369.

26. Esher Papers III, p. 132. As quoted in Jennings's *Cabinet Government*, p. 370.

27. Munro, W.B., *The Governments of Europe*, p. 63.

28. Spender, J.A., *Life of Lord Oxford and Asquith*, Vol. II, pp. 29-31.

29. A King's Story, *op. cit.*, p. 343.

30. Spender, J.A., *Life of Lord Oxford and Asquith*, Vol. II, pp. 29-31. Asquith's memorandum.

31. See Chap. VII *infra*.

of justice' and this historic expression reflects that the King's conscience spoke the last word in the administration of justice. This is not the case now. The principle of the independence of Judiciary has freed for all practical purposes, the judges and courts from control at the hands of the Executive. And yet the courts are not entirely outside the Crown's widesweeping orbit. Judges, including the Justices of Peace in the counties and boroughs, are appointed by the Crown. The Lord Chancellor, a member of the Cabinet, exercises general judicial supervision. All issues which come before the Judicial Committee of the Privy Council are decided by the Crown. Finally, the Crown exercises the prerogative of mercy and may grant pardon to persons convicted of criminal offences. This is done by the Home Secretary. **'King Can Do No Wrong'**

Such, in brief, are the powers of the Crown. The Crown, no doubt, is closely associated with the person of the King, but the King in person is for the most part the principal formal element of the State and its Executive. The actual or potential element is the Crown. The position of the King has been cogently summed up by Lowell. He says: "According to the early theory of the Constitution the ministers were the counsellors of the King. It was for them to advise and for him to decide. Now the parts are almost reversed. The King is consulted, but the ministers decide." In many cases the Monarch may personally know little what they decide or even if he knows, he may have little liking for them, although the Crown powers are exercised in his name. His Majesty's servants have become His Majesty's masters.

There are two important principles on which the constitutional structure rests in Britain. First, the Monarch may not perform any public act involving the exercise of discretionary powers, except on advice of the Ministers. Second, for every act performed in the name of the Monarch the Ministers are responsible to Parliament, and hence the meaning of the phrase: "The King

can do no wrong." That is to say, the King can do nothing right or wrong, of a discretionary nature and having legal effect. Whatever may be the personal views of the Monarch, he must, as a constitutional Monarch, give way to his Ministers, feeling that they have behind them a majority of the people's representatives and they can be called upon to account for their acts, singly or collectively, by Parliament.<sup>32</sup> This is now a well established tradition of nearly three hundred years. Conventions are an integral part of the Constitution and every King of Britain at the time of coronation swears to maintain the Constitution and uphold constitutional Monarchy.

Nor can any Minister plead the orders of the King in defence of the wrongful act or for an error of omission and commission. Thomas Osborne, Earl of Danby,<sup>33</sup> was impeached in 1679 of "high treason, and diverse high crimes and misdemeanours." Danby's plea was that whatever he had done was by order of the King, and the King could do no wrong. He even produced, at the time of his impeachment, the Royal pardon. Parliament held Danby's plea illegal and void.<sup>34</sup> It was definitely laid down that the Ministers can not plead the command of the King to justify an illegal and unconstitutional act, and thereby shield themselves behind the legal immunities of the occupant of the Throne.

## JUSTIFICATION OF MONARCHY

### Can Royalty Survive?

The almost wholly formal position of the Monarch in the British system of government and the fact that conventions prevent him from exercising the powers that he legally possessed, raises the question why kingship in Britain should not be abolished? To some people Monarchy does not appear to be worth it costs the nation. To a few more it appears a political anachronism. But the real fact is that the great mass of the British people are not willing to see Kingship disappear. The seventies of the last century witnessed a

32. Back in the days of Charles II one of the courtiers wrote on the door of the Royal bedchamber:

"Here lies a Great and Mighty King,  
Whose Promise none relies on;  
He never says a foolish thing,  
Nor ever does a wise one".

"Very true," retorted the King, "because while my words are my own, my acts are my minister's".

33. Danby succeeded Clifford as Lord High Treasurer and consequently he had become virtually the first minister of the Crown.

34. Resolution concerning the Royal Pardon in Bar of Danby's Impeachment. Admas, G.B., and Stephens, H.M., *Select Documents of English Constitutional History*, p. 439.

strong republican movement.<sup>35</sup> It even caused sensation, when persons like Sir Charles Dilke joined its ranks<sup>36</sup> and Chamberlain could predict that the "Republic must come and at the rate at which we are now moving it will come in our generation."<sup>37</sup> Yet a few years later the movement collapsed, "and Queen Victoria was able to impose a public recantation upon Dilke before accepting him as a Cabinet minister."

Since then, Monarchy in Britain had been more popularly acclaimed and it was generally accepted by all political views without discussion.<sup>38</sup> "Monarchy, to put it bluntly," wrote Laski, "has been sold to democracy as the symbol of itself, and so nearly universal has been the chorus of eulogy which has accompanied the process of the sale that the rare voices of dissent have hardly been heard. It is not without significance that the official daily newspaper of the Trade Union Congress devotes more space, of news and pictures, to the royal family than does any of its rivals."<sup>39</sup> Although the cost of the Crown in Britain and elsewhere reveals a glaring disparity,<sup>40</sup> yet a little suggestion is made that the people fail to get "their money's worth." Ceremony, pomp, and ritual connected with royalty involve, no doubt, a certain amount of lavishness and many people contrast this display with the poverty and distress of a great mass of the people. But to raise such a question, says Gooch, is not necessarily to resolve it against Kingship.<sup>41</sup> "Democratic Government", according to Jennings, "is not merely a matter of cold reason and prosaic policies. There must be some display of colour, and there is nothing more vivid than royal purple and imperial scarlet."<sup>42</sup> Ernest Barker says that to think of politics in terms of pure

reason and cold utility is to think wrongly. "There is a world of unbought and uncalculated sentiments which matters vitally in politics. Emotions, loyalties, feelings, chivalries—these are things that count, and count profoundly. The man who releases, the man who attracts, the man who expresses, this world of unbought and uncalculated sentiments is doing an incalculable service to the community. Reason has her sphere and victories. Sentiment has also her triumphs; and they are not the least notable of triumphs."<sup>43</sup> The Monarch is the symbol of unity, a magnet of loyalty, and an apparatus of ceremony and the King or Queen serves to attract every Britisher's feelings and sentiments into the service of the community. The Kingship, in the words of Winston Churchill, "is most deeply founded and dearly cherished by the whole association of our people."<sup>44</sup> Clement Attlee, who had been active in the socialist movement in Britain for more than half a century, claimed that during the period he had taken part in bringing about a number of changes in British society by helping to abolish some old things, such as Poor Laws, "there is one feature of it which I have never felt any urge to abolish and that is the monarchy. I have never been a republican even in theory, and certainly not in practice."<sup>45</sup>

This patriotic admiration of the mass of the Sovereign's subjects for Monarchy is due to somewhat complex considerations of history, of human motives and sentiments, and of utility. Event Lord Altrincham, the Conservative Peer who criticised the Queen and the Court in an article published in *The National and English Review*, the magazine he edited, said on television on August 6, 1957, that he regretted any

35. A Republican demonstration was held in Trafalgar Square in September 1870 and early in 1871 and a Republican Club was formed in London with Charles Bradlaugh as its first President. While speaking at its inauguration, Bradlaugh said that "the heir-apparent to the throne has neither the intelligence, nor the virtue, nor the sobriety, nor the high sense of honour, which might entitle him to take a front rank in this Great Nation."

36. At a crowded meeting at Newcastle, Dilke attacked on the excessive cost of the Crown. He asserted, "If you can show me a fair chance that a republic here will be free from the political corruption that hangs about the monarchy, I say, for my part, and I believe that the middle classes in general will say—let it come."

37. Among other sympathisers of the movement the notable were Bright, Odger the Trade Unionist, Mundella, M.P. for Sheffield, and John Morley.

38. There are even now some people who would prefer in principle that Britain were a republic. A few members of Parliament desired its substitution after the abdication of Edward VIII. "Had Edward VIII not abdicated in 1936," writes R.M. Pannett, "there might have been an evolution of Monarchy into a form akin to the Scandinavian model but George VI and Elizabeth II have sought to preserve much of the Monarchy's remoteness and mystique." *British Government and Politics*, p. 254. A recent prediction is that Monarchy at the most can survive during the life-time of Elizabeth II.

39. Laski, H.J., *Parliamentary Government in England*, p. 392.

40. Refer to Graves, H.R.G., *The British Constitution*, pp. 83-84. See also Pannett, R.M., *British Government and Politics*, pp. 255-57.

41. *The Government of England*, p. 10.

42. Jennings, W.L., *The British Constitution*, p. 113.

43. Barker, E., *Essays in Government*, p. 1.

44. Bradlaugh Speech at Newcastle in 1870, in early 1871.

45. Queen's Speech, 1957, in *Parliament*.

impression that he "was hostile to the Queen or trying to attack her in a personal way or be beastly about it." Lord Altrincham's criticism of Queen Elizabeth aroused nation-wide controversy. He had described the Queen's speaking as a "pain in the neck" and her utterances as those of "priggish schoolgirl," and called for a "truly classless Commonwealth Court" to replace her present entourage of "people of the tweedy sort." *The Reynold News*, a Left-wing Sunday newspaper, supported the criticism of the young Peer because he "has said aloud what many people are thinking: Buckingham Palace is not in tune with the Britain of 1957."<sup>46</sup> The general mass of the people were angry with Lord Altrincham and many suggested that he should be shot. Lord Altrincham was actually slapped as he left the television studio. The man, who struck him, said, "That's for insulting the Queen."<sup>47</sup> Herbert Morrison said, "You get funny people breaking out now and again like Lord Altrincham, but nobody would know him if he was not a Lord; he is a Lord only because he is the son of his father. But he says funny things. They got him headlines in newspapers and even get him on television, which no doubt pleases him no end. But don't worry about these jokers."<sup>48</sup> The general body of the British people support the British Monarchy and Morrison cited an instance which he said he could never forget. "I shall never forget," wrote Morrison, "seeing, at the time of the Coronation of King George VI, a banner going right across the street of an East End slum in London which said: 'Lousy but loyal.' And I think that was one of the greatest compliments that has ever been paid to the British Royal Family."<sup>49</sup> As long as the Monarch "behaves constitutionally," concludes Morrison, the Labour Peer, "as I have every expectation, I think it will remain a popular institution in my country."<sup>50</sup>

It is more than true. The British Monarchs for the last more than three hundred years—ever since the Revolution of 1688—have been wise enough to forget past pretensions, to learn new lessons, to change their position with the changing time, and to join with their subjects in bringing about changes in other institutions. They acted in obedience to the unwritten rule of the British national life which prescribes that the

power of the King shall be used in accordance with the will of the people. "They stood above party; they watched the nation; and they joined with their subjects in bringing about change when the will of the nation was set for change—and only when it was so set."<sup>51</sup> They changed their position with the growth of a cabinet system and the rise of the office of Prime Minister. In the nineteenth and twentieth centuries they helped in the passage of the Reform Bill of 1832 and the Parliament Act of 1911; the former made the House of Commons more democratic and the latter made the House of Lords less able to thwart or check the purposes of the House of Commons. The Parliament Act of 1911 was amended in 1949 to reduce the delaying action of the Lords on ordinary Bills to one year only. Attlee's Labour Government carried through substantial nationalisation of industry in its period of office, 1945 to 1951, and fiscal reforms of an equalitarian nature. The Life Peerage Act, 1958 and the Peerage Act, 1963, aimed to change the complexion of the House of Lords and both these Acts came from the Conservative Governments. The Monarchs joined with their subjects in effecting all these changes.

1977 Britain saw the year long celebrations of Queen Elizabeth's Silver Jubilee of her accession to the throne in 1952. It was a year of crowded pageantry and of cultural, sporting, dramatic and musical events. The Queen and her husband Prince Philip visited every region of Britain, including the terrorist-ridden Ulster and the Commonwealth countries in the Pacific, including Australia and New Zealand. The Government spared no expenditure, in a year of severe economy cuts, and it became a festival of nostalgia and an emotional hinge for things past for the British people. But there were many politicians, who looked at the Jubilee as a sort of Royal farewell since they claimed to see portents of the end of monarchical system in Britain. One of the British astrologers actually put the disappearance of British royalty within just fifteen years.

What is the necessary background of this political or astrological speculation? Queen Elizabeth was crowned as an Empress on June 2,

46. As reported in *The Tribune*, Ambala Cantt., August 6, 1957.

47. As reported in the *Hindustan Times*, New Delhi, August 9, 1957.

48. Herbert Morrison, *British Parliamentary Democracy*, p. 5.

49. *Ibid.*

50. *Ibid.*

51. Barker, E., *Essays on Government*, p. 2.

1953 when the British Empire, even after the freedom of Indian sub-continent, still straddled much of the world and was a world power economically and politically. In her nearly five decades long reign Britain has lost her world status and is economically near the bottom of European Economic Community table. The British Sovereign was an essential props and focus of loyalty in the Imperial era and a symbolic tie of Commonwealth. With the Empire gone and the Commonwealth fading, the international need or justification of Britain to have a sovereign has eroded, it is claimed.

The portents are even more evident in Britain itself. There is no doubt, however, that Queen Elizabeth is held in high esteem if not affection by a majority of the British people today. She has during her long reign performed her duties conscientiously and with grace. Talking about the popularity of the monarchy Sir Harold Wilson suggested that it is partly because of the remarkable character of the Queen and her close interest in ordinary people. "I think the monarchy and she herself personally and her family are much more popular now than 25 years ago." In a survey conducted by the *Mirror*, London, it was reported that 89 per cent, of those questioned expressed support for monarchy. Those queried were asked to rank members of the royal family according to "best impression." The Queen led by 78 per cent, followed by 83 year—old Queen Mother Elizabeth, with 73 per cent, and Prince Charles, 66 per cent. Princesses Anne and Margaret were at the bottom of the list. Strangely enough the two sections of the population that regard the Royal family most warmly are the aristocracy and the less privileged class, the former whose future is inevitably tied with the royalty and the latter "to whom the glamour and romance of royalty is a form of escapism." In between the middle classes, skilled workers and trade unionists, are either indifferent or they seriously question the need of maintaining the royal house and the pageantry surrounding it at such high national expense.

Perhaps, the biggest cloud in the royal horizon was the Home Rule Plan for Scotland and Wales. In December, 1976 the Labour Government published its proposals to give Home Rule to Scotland and Wales. Earlier, the Queen in her traditional address to Parliament had announced that a Bill would be introduced immediately "for the establishment of Assemblies to give the Scottish and Welsh people direct and wide ranging

responsibilities for the domestic affairs within the economic and political framework of the United Kingdom." The Bill introduced in Parliament was so complex that it tied down Wales and Scotland with thousands of threads and hundreds of straps that the Welsh and Scottish nationalists, especially the latter, gave it a hostile reception. The Bill was certainly provocative.

The Bill provided for referenda, both in Wales and Scotland, to seek the approval of both nationalities to set up separate assemblies in their areas. In Wales, the proposal was rejected by a majority of four to one and possibly the main cause was fear of Welsh linguistic nationalism comparable to the French linguistic nationalism in Quebec. In Wales there are fairly well-defined English and Welsh-speaking areas, with a tendency among local authorities of the latter to impose their language on the former. In a subsequent referendum the people of Wales have accepted the creation of an Assembly for their region. The Scottish Nationalist Party and their allies supporting devolution gained a majority of little more than 2 per cent over their opponents. But as the total turnout at the referendum was 64 per cent of voters eligible, this was short of 40 per cent electorate required under the Bill to endorse the devolution. The Scottish National Party resented the fact that a bare majority was not permitted to prevail and they avenged their defeat by withdrawing their support to the Callaghan's minority Government resulting into the exit from office of the Labour on a vote of no confidence. In a subsequent referendum, Scotland won the people's approval for a Scottish Parliament and regional autonomy.

The Scottish Nationalist Party is committed to winning eventual independence, including control of the rich North Sea oil field lying off the east coast of Scotland. It supported devolution only as stepping stone to complete separation from the "auld (old) enemy England." One of the Scottish Members of Parliament provoked by the devolution Bill declared, "very soon we shall have our own independence day in Edinburgh." Earlier, Queen Elizabeth's personal anxiety about the danger of the break up of the United Kingdom through separatist movements had upset leaders of the Scottish Party and they called her comments "ill advised" and "unfortunate." In an address on May 4 to Parliament on the start of the Jubilee celebrations, Queen Elizabeth said: "I number Kings and Queens of England and

Scotland, and Princes of Wales among my ancestors and so I can readily understand these aspirations." But, "I cannot forget", the Queen added with some emotion, "that I was crowned Queen of the United Kingdom of Great Britain and Northern Ireland. Perhaps this Jubilee is a time to remind ourselves of the benefits which union has conferred at home and in our international dealings, on the habitants of all parts of the United Kingdom." Donald Stewart, leader of the 11 Scottish Nationalist Party MPs, declared the same day the Queen addressed Parliament, "if it comes to a choice between independence and the monarchy, we would choose independence."

This potential danger to the British union and the Sovereign at its head was demonstrated by the most royalist of British parties, the Conservatives opposing the Home Rule Bill. Even if the plan for independence is eschewed, the devolution plan, which is in line with the policy of the Labour Party, is sure to ultimately change the geographical and political structure of the United Kingdom and to have an impact on royalty too. The emotions and loyalties engendered by the Queen's Silver Jubilee in 1977 and Prince Charles' wedding celebrated in July, 1981, in full blaze of pomp and publicity, may stop the trend against royalty and towards breaking the union of Britain for sometime, probably during the life of Queen Elizabeth, but the Throne cannot be said to be secure for her successors. The economic cost to the nation for the upkeep of royalty would have been justifiable in an era of Empire and world status, but now these expenditures palpably intrude on a weaker and poorer Britain with more than two million unemployed, falling standards of living and a stupendous expenditure, averaging 5 million pounds a day, incurred for regaining Falkland islands and that, too, when the country was battling its way out of recession.<sup>52</sup> The March 1982, pay rise of the Queen by more than 8 per cent was widely resented and the people questioned the need to continue with royalty. Not less importantly, there is an exemplary moral rectitude that the British people traditionally expect from the Royal family and that expectation has been fulfilled in the case of the Queen. But prevailing social commotion cannot be kept out of palaces and the recent affairs of Princess Margaret with a youngman and her separation from her husband as also the much publicised goings on of Prince Charles before his marriage

and Prince Andrew's mysterious "affair" for a week with an American actress have tarnished this tradition, just as they have made royalty look more human and common.

### FUNCTIONS OF THE MONARCHY

According to Jennings the functions of the Monarchy may be said to be four. First, appearing in an impersonal fashion as the Crown, the Monarch's name is the cement that binds the Constitution. Secondly, the Monarch similarly binds the units of Commonwealth. Thirdly, there are political functions of the highest importance which the Monarch performs personally. Fourthly, the Monarch is a social figure exercising important functions outside the political sphere. We begin the elaboration of these functions first taking the personal functions of the Monarch, though it upsets the order in which Jennings enumerates them.

#### Personal Authority of the King

In the actual conduct of the work of government the Monarch still personally performs certain specific acts and the most important of these is that the King must make certain that he/she has a Government in the United Kingdom. The Government is headed by the Prime Minister and the Prime Minister selects his own team to make a Government. The King, thus, chooses a Prime Minister and the latter then prepares a list of Ministers and submits it to the King for his approval. But when choosing the Prime Minister, the King must remember that a Ministry must have the support of a majority of the House of Commons otherwise it will be unable to govern.

Now-a-days, the choice of such a person who is to be the Prime Minister and can lead the majority in the House of Commons is obvious. The leader of the majority party in the House of Commons is summoned and commissioned to form government. "The essential point", writes Herbert Morrison, "is that the new Prime Minister should be able to command a majority in the House of Commons, and not merely be able to form a government, for the government cannot live without a parliamentary majority." If the Government is defeated on a hostile vote in the House of Commons, the Sovereign summons the Leader of the Opposition and commissions him to form a new government. Even if the Prime Minister dies in office the choice of his successor

52. Bhatte, V.R., "Can Royalty Survive in U.K.? *The Hindustan Times*, New Delhi January 18, 1977.

can be reasonably obvious, though careful consideration would be given to the likelihood of the person appointed being acceptable to a majority in the House of Commons. Since Churchill's War Government has emerged the office of the Deputy Prime Minister, though it has not been constitutionally recognized. "When the Prime Minister dies in office" says Morrison, "the Deputy Prime Minister might be specially considered by the Sovereign, though there would be no obligation to do so especially as I gather, that the Sovereign does not recognise such an office."<sup>53</sup> In 1951, when Winston Churchill again returned to office, he submitted to George VI the name of Anthony Eden as Secretary of State for Foreign Affairs and Deputy Prime Minister. The King "pointed out that the latter office was unknown to the Constitution, and on his instructions it was deleted from the new Foreign Secretary's appointment."<sup>54</sup>

But if no party commands a real majority, or when a Prime Minister retires and when the majority party has not yet designated its leader, the choice of the Prime Minister is not easy. The Sovereign makes, in such a case, a personal decision to whom to send for, although he is always careful to follow that course which is least likely to arouse criticism. "The Sovereign's choice in these conditions," writes Morrison, "has much constitutional significance. The choice may be a very delicate one and involve embarrassing complications. The Sovereign would, of course, take all relevant considerations into account, and be at great pains not only to be constitutionally correct, but make every effort to see that the correctness is likely to be generally recognised."<sup>55</sup> It is the Sovereign's undoubted right to seek or not to seek the advice of the outgoing Prime Minister and is also free to receive counsel and advice from such Privy Counsellors whom the Monarch may wish to consult. When the Conservative Prime Minister, Bonar Law, resigned because of ill-health on May 20,

1923 King George V passed over the claims to succession of Sir Austen Chamberlain and Lord Curzon and sent for Stanley Baldwin to form the government.<sup>56</sup> In 1924, no party had a clear majority in the House of Commons. George V sent for Ramsay MacDonald, and not Asquith, to form the Government, although the Labour Party had behind it only about one-third of the members of the House. A minority Labour Government under MacDonald, dependent on Liberal votes, took office again in 1929. The events of 1931 or "the crisis of 1931" as Herbert Morrison described, "were more complicated" and the act of George V in commissioning Ramsay MacDonald to head the National Government was characterised by Professor Laski "as much the personal choice of George V as Lord Bute was the personal choice of George III."<sup>57</sup> King George V "was, I feel sure," wrote Herbert Morrison, "actuated by sincere motives. And certainly the financial and economic situation of the country was serious. Nevertheless I think his judgment was at fault."<sup>58</sup> The King would "have been wise", he adds, "to have ascertained what was likely to happen by inquiry of one or more Labour Privy councillors likely to know. He might have asked the Prime Minister to ascertain the view of the Labour Cabinet; but no action was taken to ascertain the general Labour view."<sup>59</sup> Morrison even questioned the need of the National Government and was of the opinion "that a Conservative-Liberal coalition could have done all that the so-called National Government did."<sup>60</sup>

Whenever the Labour Party secured a majority it insisted on the right of the Labour members of Parliament to choose their own leader and the Sovereign's choice of the Prime Minister was, accordingly, obvious. But the Conservative Party did not follow this practice and the Sovereign had, thus, a choice when the Conservative Party had a majority but no leader. Baldwin became leader in 1923 and Chamberlain in 1937, because they were Prime Ministers. This practice of the

53. A major reconstruction by Harold Macmillan was announced on 13th, 16th and 18th July 1962. The new post of first Secretary of State was specially created for Mr. R.A. Butler, who would, according to the announcement, "act as Deputy Prime Minister." But Butler did not step into office of the Prime Minister when Macmillan resigned.

54. Petrie, C., *The Modern British Monarchy*, p. 193.

55. Herbert Morrison, *Government and Parliament*, p. 77.

56. Lord Curzon's peerage was advanced as a disqualification in his case. But according to L.S. Amery, a Minister of the time, "the final decision was, to the best of my belief, made mainly on the issue of ..... personal acceptability ..... If a constitutional precedent was created, it was largely as the ex-post facto cover for a decision taken on other grounds." L.S. Amery, *Thought on the Constitution*, p. 22.

57. Laski, H., *Parliamentary Government in England*, p. 403.

58. Herbert Morrison, *Government and Parliament*, p. 79.

59. *Ibid.*

60. *Ibid.*, p. 78. Also refer to H.J. Laski, *Parliamentary Government in England*, pp. 402-408.



Conservative Party evoked a severe criticism from the Labour Party when Sir Anthony Eden resigned on January 9, 1957 and the Queen appointed Harold Macmillan as the new Prime Minister. Until the moment Macmillan went to the Palace the nation was left guessing whether he or R.A. Butler, the Lord Privy Seal, would become Sir Anthony Eden's successor. The Queen sought the advice of Sir Winston Churchill and the Marquess of Salisbury and it was believed that the advice of Churchill was a powerful factor in deciding the issue. The *Times* in an editorial said that ultimate responsibility for the choice of Harold Macmillan was the Queen's alone and that time and events would show how wisely she had judged. Labour Party chiefs at a specially called meeting of their 'shadow cabinet' Parliamentary committee, expressed the fear that the Crown had been brought into party politics in a most undesirable way. James Griffiths, Labour Deputy Leader, in the absence of the leader Hugh Gaitskell, said in a radio interview, on January 11, 1957: "We do not question that the Crown acted with due constitutional propriety," but, he added, "we do believe it is important that parties themselves should decide on their leaders and that the Crown should not be put in the embarrassing position of having to make a choice between rival claimants for the Premiership from the same party." Griffiths further asserted that if this position was to recur often there would be a full case for examining the procedure, because "this is bringing the Crown into internecine party warfare which is very bad for the Constitution."

The historical method of choosing a leader by the Conservative Party underwent a considerable strain when Sir Alec Douglas-Home was asked to take over from Harold Macmillan in 1963 and eventually led to the retirement from politics of R.A. Butler. In 1965, the party changed its method of selecting a leader. Today, a ballot is held of all Conservative MPs, and to be elected a leader on the first ballot a candidate has to receive an overall majority of votes, and also he has to receive 15 per cent more votes than his nearest rival. If he/she does not achieve this, as

Mrs Margaret Thatcher could not, a second ballot is held two or three days later, for which the contestants have to be renominated and for which new candidates can also be nominated. To be successful in the second ballot a candidate merely has to secure an overall majority of votes. If this is not still achieved, a third ballot is held. The third ballot is restricted to the three leading candidates of the second ballot and the voters indicate their first and second preferences on the ballot paper. After the votes have been counted, the third candidate is eliminated, and the votes secured by him are redistributed, according to the second preferences, between the two remaining candidates. The successful candidate is then presented to a party meeting consisting of Conservative MPs, Peers, prospective candidates, and members of the National Union Executive Committee.<sup>61</sup> This process was first used in July 1965, when Sir Alec Douglas-Home resigned as party leader. The new democratic method, thus, ended the hoary tradition of evolving a sort of consensus after private soundings of Conservative members of Parliament, prospective MPs, Peers and the party executive. In past when the Conservatives would be in power the retiring Prime Minister had always a big say about his successor. All this led to intrigue and wire-pulling in the party. Thus ended the monarch's conventional privilege of selecting a conservative Prime Minister through informal consultations.

The new method of selecting the Conservative party leader was in line with the method followed by the Labour Party till 1980, and it mitigated the possibility of the monarch's intervention in active politics. Till 1980, for the selection of a Labour Party leader, a ballot of the Parliamentary party was held in which a candidate for the post was required to receive an absolute majority. If no candidate received the requisite majority, a second ballot was held, dropping out the candidates at the bottom in the first ballot, a week later and this process was repeated until a candidate secured a majority<sup>62</sup>. Since 1980, the party leader elected by the Parliamentary party is to be approved by an electoral college

61. When Sir Alec Douglas-Home resigned in July 1965, as party leader, Edward Heath, Reginald Maudling, and Enoch Powell were nominated to contest to succeed him. In the first ballot Heath got 150 votes, Maudling 133 votes and Powell 15 votes. Heath, thus, did not have the required 15 per cent more votes than Maudling. Before the second ballot was held Maudling and Powell withdrew from the contest and Heath was left the only choice to be duly approved by the party meeting.

62. In February 1963, in the election to choose a successor to Hugh Gaitskell, in the first ballot Harold Wilson received 115 votes, George Brown 888 votes, and James Callaghan 41 votes. As Wilson could not secure an absolute majority, Callaghan dropped out, and in the second ballot, a week later, Wilson was elected with 104 votes to George Brown's 103.

consisting of members of Parliament, constituency delegates and trade union representatives.

When the monarch exercises a choice in selecting the Prime Minister he or she is no mere figurehead. The monarch, as Jennings says, "does not steer the ship, but she (Queen) has to make certain that there is a man at the wheel. Nor is it always easy to know when the problem will arise. Neville Chamberlain in 1937 had a large majority, but by 1940 George VI was looking forward for a Conservative Prime Minister who could secure Labour as well as Conservative support and found him in Mr. Churchill."<sup>63</sup> It is, however true, Jennings, admits, that these cases are exceptional. Normally the machine runs efficiently, because the Government has a majority and if it loses at an election, the Opposition steps in to form the Government. The existence today, of the Labour and Conservative Parties' procedures for electing their leaders does not in itself effect the constitutional prerogative of the Monarch, in that the Monarch remains free to choose whoever may be regarded as suitable. Nevertheless, in practice it seems inconceivable that the Monarch would choose as Prime Minister anyone who had not first been elected party leader, provided that in a crisis time was allowed for the election to take place. It is possible, however, that the Monarch could still play an effective role in selecting a Prime Minister if it was not clear which party could form a government.

It is sometimes asserted that the dismissal of Ministers and the dissolution of Parliament may be undertaken by the King without the consent of Government. No Government has been dismissed by the Sovereign since 1783, although it is still maintained by many constitutional experts that the King has the right to dismiss Ministers, if he has reason to believe that their policy though approved by the House of Commons has not the approval of the people.<sup>64</sup> But, as Jennings correctly points out, such an argument "is an argument for dissolution and not a dismissal of Ministers."<sup>65</sup> Ministerial dismissal by the Head

of the State is not the essence of the Parliamentary system of Government and no King would venture it, whatever be the legal opinion, unless he is determined to gamble in the most dangerous manner.

The duration of Parliament in ordinary circumstances is for five years, but conditions may arise in which a dissolution of Parliament may be desired before the expiry of its full term of life. There might, for example, be an important divergence of opinion within the Cabinet which would make it impossible for the Government to carry on, or a Government may desire to take the verdict of the electorate on an important matter of policy on which it had no mandate, or there might be revolt within the ranks of the Government Party which caused the Government to be defeated in the House of Commons on some matter of importance. In circumstances such as these the Prime Minister might request the Sovereign to exercise his Royal prerogative of dissolving Parliament and direct new elections to be held.

The Sovereign's right to dissolve Parliament has been a subject of deep controversy. It has been maintained that the Sovereign is not bound to accept ministerial advice on this matter. This, indeed, seems to have been the view of Queen Victoria and some of her contemporaries. Even Keith held similar opinion. "The prerogative of the Crown to dissolve Parliament," he wrote, "is undoubted. The manner of dissolution does not, as often said, strictly speaking, involve the aid of ministers, for the King could still present himself in the House of Lords, and by word of mouth, dissolve the Parliament."<sup>66</sup> But in practice dissolution takes place by a proclamation under the Great Seal, which is based on the advice of the Privy Council for whose summons the Lord President accepts responsibility. Consequently, the King cannot secure a dissolution without advice. If the Ministers refuse to give such advice, he can do no more than dismiss them and we know how hazardous it is for the Sover-

63. Jennings, Ivor, *The Queen's Government*, p. 43.

Also refer to N.H. Brasher's *Studies in British Government*, p. 12.

64. Gladstone appears to have thought in 1878 that the right to dismiss still existed. Disraeli also held the same view. In 1886, Queen Victoria had made efforts to overthrow the Liberal Government because to her mind the Government was not governing with integrity for the welfare of the country. Decey, too, was of the opinion that the King could dismiss Ministers in order to ascertain the will of the nation. Asquith, on the other hand, rebutted Dicey's arguments and maintained that "a practice so long established, and so well justified by experience should remain unimpaired."

65. Jennings, W.I. *Cabinet Government*, p. 380.

Also refer to N.H. Brasher's *Studies in British Government*, p. 12.

66. "There was no doubt of the power and prerogative of the Sovereign to refuse a Dissolution—it was one of the very few acts which the Queen of England could do without responsible advice." *Letters of Queen Victoria*, Edited by Bensor and Esher Vol. VIII, pp. 314-465.

eign to dismiss Ministers who command the confidence of the House of Commons. A forced dissolution, therefore, is impossible, "though one induced by royal pressure is perfectly in order."<sup>67</sup> There have been two definite occasions during the last eighty years when dissolution took place at the express desire of the King. The first was over the budget in 1910 at the desire of Edward VII and, the second, over the power of the Lords in the same year, at the desire of George V. In each case, maintained Laski, "the ministers, however, reluctantly, acquiesced in the King's desire and the dissolution was, accordingly amply surrounded by the cloak of ministerial responsibility; though the King took the initiative in pressing a dissolution upon the government. In each case, also, the government accepted the advice."<sup>68</sup> But there are many instances as well, for example, in 1866, 1873, 1885, 1895, and 1905 when the Cabinet did not wish to dissolve, in spite of the royal sanction.<sup>69</sup>

The right of the King to dissolve Parliament without advice became a matter of practical discussion in 1913 over the Home Rule Bill. The Home Rule Bill had been passed by the House of Commons in two successive sessions but rejected by the House of Lords in each of these sessions. The Unionists claimed that the Government had received no mandate from the electorate at General Election for such a measure in 1910, and, thus, demanded a dissolution before the Bill was submitted to the House of Commons the third time and passed under the Parliament Act, 1911. The Unionists realised that Asquith was unlikely to advise dissolution and they discussed the power of the King to dissolve without advice. George Cave argued that the King had an undoubted right to dissolve Parliament and that he should exercise the right on this occasion to satisfy himself that the House "does indeed represent the democracy of today." Sir William Anson admitted that the advice of the Ministers was constitutionally necessary, and that if the Government was not willing to give such an advice, the King would have to ascertain, presumably from the Opposition, whether the alternative Ministry could take office and to accept the responsibility for a dissolution. Dicey agreed with Anson, but Professor Morgan insisted that

such independent action on the part of the King "would almost inevitably be equivalent to dismissal of his ministers," and that if once a dissolution was effected by the King's choice, "no dissolution would be free from ambiguity, and speculation as to the degree of responsibility of the Sovereign would be a feature of every election." Commenting on this issue Jennings comes to the conclusion that "there cannot be the least doubt that Professor Morgan was wholly in the right. Either the King 'persuades' the ministers to 'advise' a dissolution or ministers resign." In other words, the King cannot exercise his prerogative of dissolution without advice.

During the last more than a hundred years there is no instance of a refusal of a dissolution when advised. Nevertheless, opinion has always prevailed, and there exists a persistent tradition that it could be refused, if the necessary circumstances arose. Summing up the discussion of the right of the King to refuse dissolution, Keith says, "It appears that there is some divergence of view among the authorities on the question whether the King can refuse a dissolution to a Prime Minister who asks for it, the better opinion is that the power still exists, but that it could be properly exercised only in exceptional circumstances."<sup>70</sup> What those exceptional circumstances can be Stannard gives one specific instance. The contingency for refusal was there, he says, if Neville Chamberlain had advised a dissolution in May, 1940 when the Germans were crossing the Albert Canal. At such critical moments, he says, "the limits of the convention that keeps the Crown out of politics are reached, and the reigning Sovereign must himself decide, in the last resort, where his duty lies."<sup>71</sup> Similarly, the right to a dissolution, as Keith says, "is not a right to a series of dissolution." The King would not give the Ministry, which had obtained dissolution and lost an election, another dissolution. The circumstances are which should enforce the retirement of the Ministry, although it is also true that a defeated Ministry would not ask for a second dissolution.

The conclusion is that dissolution is normally ordered by the Sovereign on the advice of the Prime Minister, but it is quite wrong to infer that the personal opinion of the Monarch is never

67. Keith, A.B., *The British Cabinet System*, p. 297.

68. Laski, H.J., *Parliamentary Government in England*, p. 412.

69. Keith, A.B., *The British Cabinet System*, p. 297.

70. Keith, A.B., *The British Cabinet System*, p. 302.

71. Stannard, H., *The Two Constitutions*, p. 17.

of any account in matters affecting the dissolution of Parliament. In his biography of George VI, Sir John Wheeler Bennett has vividly described the attitude of the King during the 1950-51 Labour Government when the stability of the Government was severely hampered by the precarious majority of eight votes it held in the House of Commons.<sup>72</sup> The Opposition, failing to bring down the administration by a series of adverse motions, adopted a system of guerrilla warfare. "It was not pleasant", wrote the Prime Minister, "to have Members coming from hospital at the risk of their lives to prevent a defeat in the House."<sup>73</sup> This instable equilibrium was a source of anxiety to the King and on June 24, 1951, he raised question of dissolution with the Prime Minister, who replied that he would ask for one in autumn. Parliament was dissolved on October 24. Attlee denied that he was pushed into asking for a dissolution by some pressure from the King. "There is no substance in this, but, the position of the King was one which I personally had to take into account."<sup>74</sup> Attlee, speaking on B.B.C. television in February 1963, stated that the strain on the health of Labour Members of the House of Commons to maintain the Government's slender majority was his predominant motive in seeking a dissolution. He was no doubt also influenced by the desire to secure the most politically opportune moment for the election. Commenting upon this issue Brasher says, "Yet if royal wishes were not decisive in 1951 neither were they negligible. Implicit in Lord Attlee's attitude is an acceptance of the fact that the monarch still retains a measure of responsibility for the maintenance of political stability."<sup>75</sup> It cannot be merely accidental that the King's pressures to dissolve Parliament in 1924, 1931 and 1951 have come only to dislodge Labour governments.

The King summons and prorogues Parliament. On the opening of Parliament, the King

reads the Speech from the Throne.<sup>76</sup> But the Speech which the Sovereign reads is not his own work and may be read for the King by the Lord Chancellor. The King assents to the election of the Speaker of the House of Commons and here too, he may act by proxy. Orders-in-Council cannot be passed except for the presence of the King. Similarly, the appointment of the Lord Chancellor and the Secretaries of State are the personal acts of the King, consisting in actual handing of the seals of office to the designated ministers. The Monarch receives ambassadors in person, though this too is a sheer formality.<sup>77</sup> The King may convoke a conference of party leaders, as did George V in 1914, with a view to avoid a constitutional crisis, though such a step the King can take only upon advice received from his ministers.<sup>78</sup>

The Sovereign is the 'fountain of honours'. "It is the essence of honours of any kind" says Keith, "that they should appear to be the personal gift of the Sovereign, and for this reason all honours are submitted to and formally approved by the Sovereign, and whenever possible the investiture with the insignia or other act in connection with its bestowal is performed by King in person or at least the royal signature is attached to the instrument conferring it." But the principle in the great majority of cases of the conferment of honours is that the recommendation to the Sovereign goes from a Minister, and normally the Prime Minister. The grant, however, is not entirely on advice. The Sovereign is able to resist the grant of honours of which he does not approve. In 1859, Queen Victoria refused to consent to a Privy Councillorship for John Bright. In 1869, she refused to sanction a peerage for Sir L. de Rothschild; and in 1881, she firmly resisted Gladstone's advice to make Sir Garnet-Wolseley a Peer. In 1906, Edward VII objected to several peerages and Privy Councillorships, although on

72. Wheeler Bennet, J. W., *King George VI: His Life and Reign*, pp. 791-96.

73. Attlee, C., *As It Happened*, p. 206.

74. *Observer*, August 23, 1959.

75. Brasher, N.H., *Studies in British Government*, p. 13.

76. It has been accepted since 1841, that the Speech from the Throne is a statement of ministerial policy for which the Sovereign accepts no responsibility. In 1881, Queen Victoria objected to a paragraph in the Queen's Speech on the proposal of withdrawal of troops from Kandhar. Lord Spencer and Sir William Harcourt, who were Ministers-in-Attendance, "impressed upon Sir H. Ponson by that Speech from the Throne was in no sense an expression of Her Majesty's individual sentiments but a declaration of policy made on the responsibility of her Ministers". As cited in Jennings, W.I. *Cabinet Government*, p. 373. Also refer to Herbert Morrison's *Government and Parliament*, p. 75

77. In 1929, George V raised objections to receiving an ambassador from the Soviet Union. The Foreign Secretary, politely but firmly, told the King that there was a Cabinet decision to that effect. The King then received the ambassador.

78. The King summoned the Home Rule Conference of July 1914, on the advice of Asquith, the Prime Minister. The speech which George V delivered to the Conference was sent to and approved by the Prime Minister, Jennings, W.I., *Cabinet Government*, pp. 361-62.

pressure he ultimately gave way. A few honours, that is, the Order of Merit, the Order of Companions of Honour, the Royal Victorian Order, the Most Noble Order of the Garter, and the Most Noble and Most Ancient Order of the Thistle, are in the Sovereign's personal gift.

### The King as Adviser

Far more important is the Monarch's role as a critic, adviser and friend of the Ministers. In the oft-quoted phrase of Bagehot,<sup>79</sup> the Sovereign has "three rights—the right to be consulted, the right to encourage, the right to warn." And "a King of great sense and sagacity," he further added, "would want no others. He would find that his having no others would enable him to use these with singular effect." Or, as stated by Winston Churchill, "under the British constitutional system the Sovereign has a right to be made acquainted with everything for which his Ministers are responsible, and has an unlimited right of giving counsel to his government."<sup>80</sup> Since the time of George I, the Sovereign has not attended a Cabinet meeting, but the King is better informed than the average Cabinet Minister on all matters which are brought before the Cabinet. He sees all Cabinet papers, whether they are circulated by the Cabinet office or by the Departments. He receives the Cabinet agenda in advance and can discuss memoranda with the Ministers responsible for them. If he requires information from a Department he can ask for it. He also receives a copy of the Cabinet minutes, reports of Cabinet Committees, including the Defence Committee and the Chiefs of Staff Committee and the "daily print" of dispatches circulated by the Foreign Office.<sup>81</sup> He follows debates in Parliament by means of the "Official Report". If other information would be helpful, he can ask his Private Secretary to obtain it. Moreover, he has a staff to keep him informed of the development of political events. In short, the Prime Minister must keep the King abreast of what happens within and without the country, always tell him of Cabinet decision and he must be ready to explain the reasons for any policy. "In some respects," says

Jennings, "notably on foreign affairs and on matters dealing with the Commonwealth, he may be better informed than the Prime Minister."

The King would, thus, acquire some knowledge and experience which no other statesman in control of governmental machine can claim, Bagehot rightly showed that the King has two advantages over the Prime Minister. One, while Prime Ministers and Ministers change, the King, goes on until he dies. Cabinet business, therefore, is continuous for him and a change of government "is merely a change of personnel." All this makes the King a mentor whom a wise Minister is not only obliged, but positively desires, to consult. "In a word, the King knows the mistakes made by a Premier's predecessors, and probably why they made them." Writing about the advantages of Monarchy, just after the death of George VI, Clement Attlee said, "Yet another advantage is that the Monarchy continuously in touch with public affairs, acquires great experience," whereas the Prime Minister might have been out of office for some years. "He (Prime Minister) has no doubt kept himself as fully informed as possible and, on coming into office, can avail himself of the experience of the civil service, but this is not the same thing as having access, year after year, to all the secret papers..... King George VI was a very hard worker and read with great care all the state papers that came before him..... A Prime Minister discussing affairs of state with him was talking to one who had a wider and more continuous knowledge than any one else."<sup>82</sup> Since the Prime Minister must discuss his policies with the Monarch, speak of new developments, and listen to what he has to say; and what the Monarch says is the result of his perennial knowledge and experience, he is in an excellent position to influence the man who has the power to decide on policy. "To express a doubt," as Jennings says, "is often more helpful than to formulate a criticism; to throw in a casual remark is often more helpful than to write a memorandum. The easy personal relationship that George VI maintained with his Ministers

79. Bagehot, W., *The British Constitution* (The World Classics ed.), p. 69.

80. Churchill, Winston, S., *The Finest Hour*, p. 379.

81. Herry Hopkins wrote after lunching with Their Majesties on 30th January 1941: "The King discussed the Navy and the Fleet at some length and showed an intimate knowledge of all the high-ranking officers of the Navy, and for that matter, of the army and the air force. It was perfectly clear from his remarks that he reads very carefully all the important dispatches and among other things, was quite familiar with a dispatch which I had sent Sunday night through the Foreign Office." Sherwood, Robert E., *Roosevelt and Hopkins*, p. 251.

82. *Life*, February 18, 1952.

probably had more influence than the letters which Queen Victoria wrote in profusion.<sup>83</sup> John Wheeler-Bennet, in his biography of George VI points out that the King believed, as did his father, that the Crown "must of necessity represent all that was most straightforward in the national character, that the Sovereign must set an example to his people of devotion to duty and service to the State, and that, in relation to his Ministers, he must closely adhere to—and never abandon—the three inalienable rights of the King in a constitutional monarchy; the right to be consulted, the right to encourage, and the right to warn."<sup>84</sup>

The views of the King are particularly valuable, because they are not clouded by political controversy. He has no party objective at all, nor is he concerned with intra-party intrigues. He is in the words of Lord Attlee, "the general representative of all the people and stands aloof from the party political battle."<sup>85</sup> The former Conservative Prime Minister Sir Alec Douglas-Home was of the opinion that the "Queen has a constitutional role of great importance, because after all everything is done in the name of the Queen and Parliament so they are one.....So I think her power lies in her influence, and the authority which she naturally carries after 25 years of the most intimate experience of national and international affairs. I think she is influential. Nor that she would take a political part, not at all but obviously the Prime Minister discusses with her political issues of the first importance both to our country and overseas. And on all of those the Queen will have a point of view which is her own, born of very considerable experience. Her influence is important and accepted. I think, because people realise, in this country, that she puts public service above everything, and far above, of course politics in which she does not herself intervene." On the same point Sir Harold Wilson, another former Prime Minister, said, "Her role is important, not in terms of power but in terms of, for example, the weekly audience the Prime Minister has with her. These are very useful for the Prime Minister, because, for instance, he is talking in absolute confidence to some one with lot of experience and a lot of understanding, sometimes a lot of sympathy. He has to collect in his mind all the things he wants

to talk about which have happened over the past week, and she will put a lot of questions, always friendly and helpful. It is a very pleasant oasis in a Prime Minister's life and constructive one." Then, there is the traditional reverence for the Monarch's office which must add weight to his opinions. Asquith, wrote in his Memorandum on the Rights and Obligations of the King, that "He is entitled and bound to give his ministers all relevant information which comes to him; to point out objections which seem to him valid against the course which they advise; to suggest (if he thinks fit) an alternative policy. Such intimations are always received with the utmost respect and considered with more respect and deference than if, they proceeded from any other quarter."<sup>86</sup>

Jennings gives a matter of fact summing up. He says, "Thus, the King may be said to be almost a member of the Cabinet, and the only non-party member. He is, too, the best informed member and the only one who cannot be forced to keep silent. His status gives him power to press his view upon the Minister making a proposal and (what is sometimes even more important) to press them on the minister who is not making proposals. He can do more, he can press those views on the Prime Minister the weight of whose authority may in the end produce the Cabinet decision. He can, if he likes to press his point, insist that his views be laid before the Cabinet and considered by them. In other words, he can be as helpful or as obstreperous as he pleases.....in the end, of course, he is bound by a Cabinet decision, but he may play a considerable part in the process by which it is reached."<sup>87</sup>

The King's function is advisory only. He can press his opinions as forcefully as he likes. He may resist the advice given to him by his Ministers, but he must not persist and in the last resort give way if Ministers refuse to accept his opinion. He cannot carry his point so far as to threaten the stability of his Government. There are two reasons for it. In the first place, the King cannot act unconstitutionally so long as he acts on the advice of a Minister supported by a majority in the House of Commons. Ministerial responsibility is the safeguard of the Monarchy. The saying that the 'King can do no wrong'

83. Jennings, I., *The Queen's Government*, p. 46.

84. Wheeler-Bennet, J.W., *King George VI: His Life and Reign*, p. 132.

85. Attlee on Monarchy, Observer, *op. cit.*

86. Spencer, J. A., *Life of Lord Oxford and Asquith*, Vol. II, pp. 29-31.

87. Jennings, I., *Cabinet Government*, pp. 327-28.

precisely illustrates that the Monarch cannot make decisions of a political or controversial character. The price of his popularity and position is in the abstention from politics. In the second place, if the King forces his opinion which the Ministers are not willing to accept the Cabinet must resign. The King's action, then, immediately enters into political controversy. But the real power of the King depends upon "his willingness to keep respectable and to keep off politics." The Throne cannot stand for long amid the gusts of political conflict and the storm of political opinion. "The road of least criticism is the road for the King." Lord Esher, who was advising George V on the dispute over the Home Rule Bill controversy, most correctly summed up the position of the King. He wrote in a memorandum: "Every constitutional monarch possesses a dual personality. He may hold and express opinions upon the conduct of his ministers and their measures. He may endeavour to influence their actions. He may delay decisions in order to give more time for reflection. He may refuse assent to their advice up to the point where he is obliged to choose between accepting it and losing their services."<sup>88</sup>

#### The King as Mediator

The King very often acts as a mediator and uses his prestige to settle political conflict or "diminish the virulence of Opposition." As he wields no political power and makes no political enemies his advice is deemed valuable and is generally accepted. In 1872, Queen Victoria wrote to Lord Russel, without Gladstone's knowledge, and urged upon him not to move for papers on the Alabama question so that the Government should not be embarrassed. In 1881, the Queen asked General Ponsonby to see Sir Stafford Northcote and Lord Beaconsfield to secure agreement about the Government's proposals to meet Irish obstruction. The Queen's mediation was again very useful in resolving differences between the two Houses of Parliament. In 1913 and 1914 George V made efforts to secure agreement on the Home Rule Bill. The leaders of the Parties did not reach agreement, but he did bring them together. In his address at the Buckingham Palace Conference on July 21, 1914, the King said, "My intervention at this moment may be regarded as a new departure, but the exceptional circumstances under which you are

brought together justify my action." There is also some evidence available that in 1916, Lord Stamfordham, as the King's Private Secretary, endeavoured to settle the dispute between Asquith and Lloyd George which led to the resignation of Asquith. George V had much conspicuous part to play in 1921 over the Irish Home Rule tangle. "A King is," as Attlee says, "a kind of referee, although the occasions when he has to blow the whistle are now-a-days very few." But even then, they do happen. *The Financial Times* reported that Queen Elizabeth II, as Head of the Commonwealth, intervened to end the Commonwealth crisis over the question of imposing sanctions against South Africa, to ward off a clash between Prime Minister Margaret Thatcher and other heads of the Commonwealth. The occasion was necessitated by Mrs. Thatcher's reiteration of outright opposition to sanctions in the House of Commons. The Queen's anxiety was to prevent a break-up of the Commonwealth and her mediation had a little cooling effect on the rigid attitude adopted by the Prime Minister.

#### A Symbol of Unity

The King of Britain is at once the King of Canada and other Dominions. In his welcome speech on the visit of George VI to Canada in 1939, Prime Minister Mackenzie King said: "Here you will be in the heart of the family that is your own. We would have your Majesties feel that in coming from the old land to the new, you left one home for another." The constitutional developments of 1911 to 1931, ending with the Statute of Westminster, have given the Dominions complete independence both in matters of legislation and in matters of policy. But the King is still, in the language of the Preamble to Statute of Westminster, a symbol of the free association of the members of the British Commonwealth of Nations. Subordination to the Government at Westminster is inconsistent with Dominion Status, but common "allegiance to the King" is not. The King, therefore, provides an indispensable symbol of unity of the far-flung Commonwealth countries.<sup>89</sup> It is "the last link of the Empire that is left," as Baldwin reminded Edward VIII. Break this link which is furnished by Royalty and nothing remains in common among the autonomous partners in the Commonwealth. With a view to stabilize the bonds of unity the Statute of Westminster provides that any change

88. *Ibid.*, p. 329.

89. Attlee on Monarchy, *Observer*, *op. cit.*

made in the order of succession to the throne must have the consent of the members of the Commonwealth. "Queen Elizabeth is the Queen of all territories that admit allegiance to her. She is one Queen and not a score of Queens. The Queen is a person and not an institution, and so she is one Queen." The essential factor in this scheme of governance was, and still is, the Monarchy. The person of the King moves as a single animating force through the whole of that Commonwealth.

Then, the Sovereign is the symbol of the free association of the members of the Commonwealth including the Republic of India and some fifty other Sovereign and independent States. The position of the Sovereign as head of the Commonwealth countries, who do not owe allegiance to the King, was best explained by Prime Minister Jawaharlal Nehru. In a broadcast speech on May 10, 1949, Nehru said, "It must be remembered that the Commonwealth is not super-state in any sense of the term. We have agreed to consider the King as a symbolic head of the free association. But the King has no function attached to that status in the Commonwealth. So far as the Constitution of India is concerned the King has no place and we shall owe no allegiance to him." This is the correct position, yet the King provides the link which brings about the free association of sovereign nations which meet and think over problems of common interests and derive means of mutual amity. The King is, in the words of Winston Churchill<sup>90</sup> "a mysterious link, indeed, I may say, the magic link, which united our loosely bound but strongly inter-woven Commonwealth of nations, states and races." The King may be a symbol for India and other countries like her, but he is also in that capacity "the Head—the one and single Head—the Head of the body which is all the more united because it now has, and henceforth acknowledges, a Head."<sup>91</sup>

#### The King as Chief of the Nation

British Kingship, wrote Earl of Balfour, "like most other parts of our Constitution, has a very modern side to it. Our King, in virtue of his descent and of his office, is the living representative of our national history. So far from concealing the popular character of our institu-

tions .....he brings it into prominence. He is not the leader of a party nor the representative of a class; he is the chief of the nation.....He is everybody's King."<sup>92</sup> He is really everybody's King and that is precisely the feeling of all British people. The accession of the King, his coronation, his jubilee, are the occasions for unparalleled demonstration of popular and patriotic devotion. Enthusiastic and loyal subjects throng the route to watch and cheer the King when he drives in State to open a new session of Parliament. In fact, every item of royal activity is newsworthy and it is flashed through by every device that modern publicity can utilize. "Some of the tributes," said Laski, "devoted to the person of the Monarch since the war would certainly have been more suited to the description of a demi-god than to the actual occupants of the throne in the last sixty years."<sup>93</sup>

Monarchy, therefore, provides a useful focus for patriotism particularly where it has a long and glorious history. "We can damn the Government," says Jennings, "and cheer the King."<sup>94</sup> A person can be loyal to his King and yet oppose the Government. The Conservatives "served the King" in 1914, although they opposed some aspects of the Liberal Government's policy. The patriotic fervour of the people is more easily stimulated when the "King" declares war and asks for recruits for the "royal forces." The national appeal: "Your King and country need you" is sufficient to remind them that they are one nation. The King is the most concrete symbol of this oneness and unity. According to Lloyd George, "the King in 1917 enormously assisted in allaying industrial unrest by his visits to munition works and other places when suspicion of war motives was being aroused."<sup>95</sup> The visit of George VI to various theatres of War and the bombed areas in England imbued the soldiers and the civilian population alike with a new spirit of patriotism. They made a heroic bid to win the war and the loyal subjects of the King ultimately won it. "God save the Queen" is their National Anthem, and they do and die for the Sovereign who for them personifies the State. Or to put it in the words of Amery, "Human nature not only

90. Broadcast Speech on the death of George VI.

91. Barker, E., *Essays on Government*, p. 19.

92. Introduction to Bagehot's *English Constitution* p. XXV.

93. Laski, H., *Parliamentary Government in England*, p. 389

94. Jennings, W.I., *The English Constitution*, p. 111.

95. As cited in Jennings, W.I., *Cabinet Government*, p. 364.



craves for symbols but prefers them to be personal and human."<sup>96</sup> The Monarch is, thus, a more personalised and attractive symbol of national unity "than a vague concept of the state, the flag, or even a President, and the hereditary system at least solves the problem of succession."<sup>97</sup>

Queen Elizabeth's plea for unity in an address to Parliament, on May 4, 1977 at the start of Jubilee celebrations, stirred up unprecedented political controversy as it was a departure from the tradition that the Monarch did not intervene in political affairs. But it did indicate her personal anxiety about the danger of break up of the United Kingdom through separatist movements in Scotland and Wales. It was reported that the speech was written in Buckingham Palace and that the Queen wanted to speak her mind about separation. Prime Minister James Callaghan had seen a copy of the speech earlier but had not offered advice and had not been asked about this passage.

#### King as a Social Figure

The King is not merely a part of the political machine, he is also an important part of the social structure and wields a great social influence. He is the leader of society by general precedence dating back from the fourteenth century and sustained until the present day by Royal Ordinances, ancient usage, established custom and the public will. The Royal family sets morality, fashion<sup>98</sup> and aptitude even in art and literature. The Royal patronage is an enormous asset to any cause and ensures for it popular support. Such a national appeal no other person, however eminent, could give. His presence at ceremonies such as the laying of the foundation stones, the launching of ships, and the opening of new works, enables people of opposing views to associate without suppressing their mutual opposition. Government is a collective concern and it requires the willing co-operation of all sections of people. The presence of the King adds personal touch to the individuals feeling a personal responsibility for the collective action. No government is averse to use the personal popularity and social influence of the Sovereign to strengthen its own popu-

lar appeal. The Jubilee and Diamond Jubilee celebrations of 1887 and 1897 strengthened popular support for the imperialistic ideas of the Conservative Governments then in office. It is certain, too, that the Silver Jubilee of 1935 strengthened the "National Government, whose popular support had until then been rapidly diminishing." The Silver Jubilee celebrations of Queen Elizabeth II in 1977 were intended to regenerate emotions and loyalties of the nation to stop the trend against Royalty which several forces combined to demonstrate recently.

Thus, these "dignified" functions, as Bagehot called them, are far more important than the King's Government functions. If democracy means the government by the people as well as for the people, the presence of the King helps to make it so. When the people cheer the Queen and sing her praises, "wrote Herbert Morrison, "they are also cheering our free democracy."<sup>99</sup> The proper part of the Monarch, as Laski emphasised, "has been that of a dignified emollient rather than of an active umpire between conflicting interests."<sup>100</sup>

#### The King and Parliamentary System

The Cabinet system of government has nowhere proved a workable plan without the presence of some titular Head of the State, whether he be a King, as in Britain, or a President, as in India. But from the political point of view a person who is free of party ties and stands above party considerations is the most desirable adjunct of the Parliamentary system of government. An elected Head of the State is a promoted politician and howsoever sincerely he may endeavour to forget his past party associations, he cannot do it. Even if he can, others cannot. But the Sovereign, unlike an elected President, has no party associations or partisan leanings. His august position, as the occupant of the throne, puts him in an altogether different atmosphere. He is everybody's King and he does not form party loyalties. As a result, not only is he in a position to act more impartially, but also, what is of more importance, he is believed by others to be impartial. If Parliamentary government in

96. Amery, L.S., *Thoughts on the Constitution*, p. 139.

97. Punnett, R.M., *British Government and Politics*, p. 257.

98. Princess Rose, now Queen Elizabeth II, and her sister Princess Margaret, began going out for their evening walks, in the spring of 1939, without hats, and this set a fashion for children in London causing a considerable diminished sale in children hats. A deputation of children-hat dealers waited upon the Queen and explained to Her Majesty how hard they had been hit. The Queen asked her daughters to use hats for their evening walks and it set a fashion for children to follow.

99. Morrison Herbert, *Government and Parliament*, p. 92.

100. Laski, H. J., *Parliamentary Government in England*, p. 395.

Britain is to be retained in the classic form in which it has been developed, then, the best representation of such a "dignified and detached" figure is the King. "Thus far, beyond doubt, the system of limited Monarchy has been an unquestionable success in Great Britain. It has, so far, trodden its way with remarkable skill amid the changing habits of the time. Its success has been the outcome of the fact that it has exchanged power for influence; the blame for errors in policy has been laid at the door of ministers who have paid penalty by loss of the office." Monarchy has been no bar to the progressive democratization of the Government otherwise it would have been thrown overboard long ere this. "The security and popularity of the British Monarchy today," wrote Herbert Morrison, "are largely the result of the fact that it does not govern and that government is the task of ministers responsible to a House of Commons elected by the people. The Monarchy as it exists now facilitates the process of parliamentary democracy and functions as an upholder of freedom and representative government."<sup>101</sup>

The popularity of the British King and the role which he plays in the British politics is now an undisputed fact. In Britain, there had been moves to end or mend the House of Lords; even to reform the House of Commons and the Cabinet, but Monarchy has withstood the test of time. People realise and appreciate its "unifying, and stabilising influence." If it were to be abolished the substitute would be either like the type of Indian Presidency or the American Presidency. The former is not a good substitute, because the President of India neither rules nor reigns; and if he rules it is the negation of Parliamentary government. The limited period of office of a President has disadvantages as compared with the continuing reign of a hereditary Monarch. The type of American Presidency would entail revolutionary changes in the existing political set-up of the country. An Englishman will never agree to it. The institution of Monarchy is something with which all Britons have grown up; it is a part of their heritage and their political culture. They have shaped it so that it does not interfere with their social and political development and they see no reason to substitute some other institution for this venerable institution. Lowell has aptly said, "If the King is no longer the motive power of the state, it is the spar on which the sail is bent,

and as such it is not only a useful but an essential part of the vessel." So despite its anachronism in a democracy, the Kingship is impregnably entrenched in the British constitutional system. Ernest Barker has aptly said, "When a nation has preserved continuity with its past, and continues to feel some piety towards its past, it will naturally fly the flag of monarchy which it has inherited from its past. But the monarchy which it preserves will be a changing and moving monarchy—changing and moving with the times and actively helping the times to change and move. That, for the last 300 years, has been nature of the British monarchy. That is the secret of its survival, and that is the source of its strength." Even the present strains on Monarchy, with the liquidation of the Empire, the economic cost to the nation on the upkeep of royalty, and Scotland's determination to win independence, are not likely to liquidate this venerable institution. It will continue to command respect, loyalty and affection for no other reason than that it works. And for a nation with a long history, it gives a sense of continuity, of stability. So the crowds hoping for a view of the Queen, will continue to stand outside the Buckingham Palace, where the guards will also continue their time-honoured ritual. And the Monarch perhaps typified by Elizabeth II and her son Prince Charles, will survive.

### The Ruling Elite

The ruling class of the United Kingdom today uses the monarchy in three ways : firstly, as an ideological weapon for maintaining the equilibrium of the political system; secondly, as a direct or indirect means of intervention in political events at critical junctures; and thirdly, because of its constitutional rights, the monarchy is potentially a reserve weapon to be used in crisis. That is why Bagehot had felt that "without the queen in England, the present English government would fail and pass away." Baldwin regarded it as "The guarantee in this country...against many evils that have affected and afflicted other countries." The great value of the monarchy to the ruling class has been, as we have seen, its facade of neutrality, its pretence of representing the nation as a whole. Once the monarch showed partisanship openly on a controversial question, the pretences of impartiality would be undermined and the great merit of a

101. Morrison, Herbert, *Government and Parliament*, P. 92.

troversial question, the pretences of impartiality would be undermined and the great merit of a monarchy would vanish from the point of view of the ruling elites. The crown would then become "the football of contending factions."

Recently, the institution of monarchy has been subjected to adverse criticism due to scan-

dalous conduct of some members of the royal household, including Prince Charles. Some critics have argued that monarchy has outlined its utility and should be abolished after the reign of the present reigning Queen. However, this still remains a minority opinion.

#### SUGGESTED READINGS

- Amery, L. : *Thoughts on Constitution*.
- Anthony Sampson : *The Anatomy of Britain Today*.
- Bagehot, E. : *English Constitution*.
- Barker, E. : *Essays on Government*, Chap. I.
- Benemy, F. W. G. : *The Queen Reigns: She does not Rule*.
- Blake, R. : *The Unknown Prime Minister*.
- Brasher, N. H. : *Studies in British Government*, Chap. I.
- Campion, Lord and others : *British Government Since 1918*
- Cathcart, Helen : *Her Majesty*.
- Dorothy Laird : *How the Queen Reigns*.
- Finer, H. : *Governments of Greater European Powers*, Chap. 9.
- Greaves, H. R. G. : *The British Constitution*, Chap. IV.
- Grigg, John : *Is the Monarchy Perfect ?*
- Hardie, F. : *The Political Influence of British Monarchy*.
- Jennings, W. I. : *The British Constitution*, Chap. V.
- Jennings, W. I. : *The Queen's Government*, Chap. 2.
- Keith, A. B. : *The Constitution of England from Queen Victoria to George VI*, Vol. I, Chaps. II, III.
- Keith, A. B. : *The King and the Imperial Crown..*
- Laski, H. J. : *Parliamentary Government in England*, Chap. VIII.
- Lowell, A. L. : *The Government of England* (1908), Vol. I, Chap. I.
- Marriot, J. A. R. : *Mechanism of the Modern State* (1927), Vol. II, Chaps. XXIII, XXIV.
- Martin, Kingsley : *The Magic of Monarchy*.
- Martin, Kingsley : *The Crown and the Establishment*.
- Morrison, Herbert : *Government and Parliament*, Chap. V.
- Morraha, Dermot : *The Work of the Queen*.
- Munro, W. B. : *The Governments of Europe*, Chap. IV.
- Nicolson, Sir H. : *George V*.
- Ogg, F. A. : *English Government and Politics* (1936), Chaps. IV, V.
- Ogg, and Zink, H. : *Modern Foreign Governments*, Chap. III.
- Pterie, Sir Charles : *The Modern British Monarchy*.
- Stannard, H. : *The Two Constitutions*, Chap. I.
- Wheeler Bennett, Sir J. W. : *George VI : His Life and Reign*.
- William, E. N. : *The 18th Century Constitution, 1688-1815*
- Windsor, Duke of : *Crown and Public, 1920-53*.