

## **7 Structure and Organisation of Government**

Government is structured into three main organs namely, the legislature, executive and judiciary. This is to ensure division of labour, specialisation of function, separation of powers and efficient performance of government function. These three organs operate interdependently and cooperatively to achieve the corporate objectives of government. These main organs of government are examined in detail below.

### **7.1 The Legislature**

This is a body of representatives of the people charged with the responsibilities of making laws and policies, representing the interests of their people, and serving as a check on the executive organ of government. It is an indispensable political institution of modern democratic government. In ancient societies like the Greek city-states, direct democracy was possible because the geographical area and population of city-states were very small. But in modern large-scale States, direct democracy is quite impossible. Democracy in modern societies made possible through representative assemblies. The legislature is a source of popular opinion on various aspects of public policies. Thus, it is the embodiment of popular will. The legislature represents a broad spectrum of knowledge and experience within the society reflecting a diversity of interest, opinions and values. Legislatures bear different names in different countries. In Britain, it is called the Parliament, in USA, it is known as the Congress, in the Soviet Union, it is called the Supreme Soviet, while in Nigeria, it is the National Assembly.

#### **Structure and Types of the Legislature**

The legislature may be unicameral or bicameral in structure. By unicameral legislature, we mean legislature which consists of only one chamber. Examples are legislature of Greece, Turkey, Yugoslavia, Bulgaria, Sierra Leone, Israel, Spain, and the states' legislatures in Nigeria's second republic. Bicameral legislature is legislature composed of two chambers - the lower and upper chambers. Examples are the legislatures of Great Britain, USA, USSR, Canada, India, South Africa, France and Nigeria's federal legislature.



*Figure 7. 1: The National Assembly*

In bicameral legislature, the Upper Chamber, generally, is differently composed from the Lower Chamber giving each chamber a different character. The difference in composition can be brought about by a difference in the method of selection for members of each chamber. While the Lower Chamber is

generally a body which is directly elected, the Upper Chamber is, in some countries, a hereditary body as in Britain; a nominated body as in Canada; or indirectly elected as in France, in Nigeria's first republic and India. However, in the Soviet Union, USA, Nigeria's second republic, Australia, etc., the Upper Chamber is directly elected as the Lower Chamber, but differentiation is still achieved through provisions of different qualifications for membership and different tenures for membership.

In Nigeria's second republic, for membership of the Upper Chamber the Senate, the age qualification is 30 years. The age qualification for membership into USA Senate is 30 years while that of the House of Representatives is 25 years. An example of different tenures of membership is the United States of America where members of the Upper House - the Senate, are elected for 6 years; while members of the Lower House - the House of Representatives, are elected for only 2 years. The Upper Chamber generally is composed of relatively more experienced, older and more conservative legislators. The Lower Chamber is generally composed of directly elected, and relatively younger, more progressive, radical politicians.

The general trend in most bicameral legislatures is that the Lower Chamber, otherwise known as popular chamber, is greater in size of membership. For instance, in Nigeria's second republic, the membership of the Senate (the Upper Chamber) was 95 while that of the House of Representatives was 436; in the Soviet Union, the Soviet of Nationalities (the Upper Chamber) has 640 members while the Soviet of the Union (the Lower Chamber) has 738 members.

### **Merits of Unicameral Legislature**

- (i) Unicameralism saves public revenue, as the cost for maintaining a second chamber is saved. The heavy amount of money which would have been spent in the payment of salaries and allowances to legislators and on administrative costs for the second chamber is saved for more useful purposes.
- (ii) Unicameral legislature lends itself to quick legislative decisions as legislations are passed by only one legislative chamber. With unicameralism, swift decisions are possible especially when dealing with urgent matters.
- (iii) Struggle for power which often results in conflicts and tension, a characteristic of bicameralism, is avoided. This power struggle may result in deadlocks between the two chambers, especially where they are co-equal in powers and where the Upper Chamber is ultra-conservative.
- (iv) As unicameral legislature is always an elected House, it is often dominated by progressive politicians who champion progressive measures.
- (v) It promotes the practice of democracy, as all members are elected. In a two-chamber legislature, the second chamber is not democratically composed, especially where the membership is hereditary or through nomination; and in federal legislatures where membership in the Upper Chamber is based on 'equality of states' (component units) and not 'equality of individuals' in the nation.

### **Demerits of Unicameral Legislature**

- (i) In unicameral legislature, there is no check against possible hasty rash and ill-considered legislation. Delays which are encountered in legislation by a two-chamber legislature help in securing more information and devoting more time and thought for better judgement. In unicameral legislature, there are more chances for error of judgement in legislation, as its decision is not subject to review by another chamber.
- (ii) It is easier for a dominant party in unicameral legislature to manipulate the legislature, using its whims and caprices. It is easier for its government to turn into dictatorship as the strength of one chamber in unicameral legislature checking the executive cannot be compared with the strength of two chambers in bicameral legislature.
- (iii) Unicameral legislature is not suitable for federal system of government, as there is no second chamber to represent state or local interests.
- (iv) Unicameralism does not always cater for the interest of minority areas as more representatives are elected from the majority areas.

- (v) Unicameral legislature is not likely to provide adequate representation for all classes and interests within the society.

### **Merits of Bicameral Legislature**

Bicameral legislature is adopted by most modern States for the following reasons :

- (i) Bicameralism is essential for a federal state as it is used as a means of representing local interests (states' interests) in the Upper Chamber and national interests in the Lower Chamber, and thus achieving a balance between these interests.
- (ii) It ensures thorough and careful consideration for legislation as the second Chamber checks against hasty, rash and ill-considered legislation. The pressure of legislative business on the Lower chamber is always so great that the House is often unable to discuss thoroughly all bills before their passage. A revision by the second chamber often introduces substantial improvements in legislation. It applies a brake to the Lower House whenever it rushes or hurries over a bill.
- (iii) Bicameralism produces a balance or compromise between the radicalism of the younger elements in the Lower House and the conservatism of the older ones in the Upper House.
- (iv) It increases the incidence of political participation as more people are involved in legislative business.
- (v) Bicameralism checks undue concentration of political power in a single body which, if not checked, could lead to dictatorship and despotism. Such concentration for political power could threaten the rights of individuals and minority groups. Bicameralism provides a liable safeguard against possible tyranny and despotism of a single chamber.
- (vi) It provides a more effective check on the executive than a single - chamber legislature and makes the domination of the two chambers by the party in power less likely.
- (vii) It helps to provide adequate representation of all classes and interests within the state. Consequently, the legislature in such a situation becomes a true reflection of the people's interests, attitudes and values. This helps to ensure that legislative decisions are in accord with the will of the general public.

### **Demerits of Bicameral Legislature**

- (i) Bicameralism is more expensive to operate than unicameralism. The additional second chamber involves extra administrative costs, extra salaries and allowances paid to the members of the second chamber. Consequently, bicameralism is very wasteful in resources.
- (ii) It causes unnecessary delays in legislation. This is more serious in legislations which require urgent action or in emergency situations. It is argued that the rigorous stages which a bill normally undergoes before it is passed into law in a single chamber legislature provide adequate checks against hasty and ill-considered legislation. A bill, in a single-chamber legislature, normally is subjected to a protracted journey of five stages including the committee in which the bill is critically and exhaustively examined. Thus, the argument of ill-considered and hasty legislation in a one - chamber legislature is not valid.
- (iii) Bicameralism breeds struggle for power and competition where the chambers are equal in powers. This can result in occasional deadlocks.
- (iv) Bicameralism breeds conservatism in the Upper Chamber which is dominated by older politicians and statesmen who often oppose progressive and radical measures and reforms.
- (v) Bicameralism gives effect to undemocratic composition of the Upper Chamber. In some bicameral legislatures, the membership of the Upper Chamber is hereditary as in the British House of Lords; while in some, the membership is nominated; and in others, the membership is based on equality of the component units of the federation ('equality of states'), as in USA or Nigerian Senate, instead of on the democratic principle of 'equality of individuals' within the nation.

### **Functions of the Legislature**

The functions of the legislature are examined as follows:

- (a) **Enactment of Laws:** The primary function of the legislature is to make laws for the state. The legislature makes laws through the legislative process. Under the legislative process, a bill undergoes a rigorous and protracted journey before it can be enacted into law. The crucial stage in the protracted journey is the committee stage where the bill is given very detailed and thorough examination. Most bills are delayed while many are killed at this committee stage. Bills that survive this stage have chances of being enacted into law by the legislature. In all democratic states, no bill can become law until approved by the legislature either directly through direct legislation or indirectly through delegated powers. A lot of influences impinge on the legislature during legislative process. The legislators get influences from the chief executive and his ministers through their proposals. Pressure also comes from administrative officials. Legislators are always influenced by programmes of political parties, the force of traditions and culture, interest groups and views expressed by the press and other communication media. Sometimes, the legislature is influenced by foreign governments.
- (b) **Control of Public Funds:** It is the responsibility of the legislature to impose taxes and approve government appropriations. Through the power of taxation, the legislature can influence the standard of living and can limit or prohibit certain types of consumption. It is the responsibility of the executive organ of government to prepare the annual budget which should embody comprehensive proposals of monetary needs of various ministries, departments, agencies and services, and balance them with projected or required revenue. However, fundamental principle of representative democracy demands that these financial proposals initiated by the executive must be presented to the legislature for approval. The legislature has the power to increase or reduce the financial proposals. In other words, the legislature possesses the ultimate power to authorise taxation and grant appropriations. The Constitution of the Federal Republic of Nigeria 1979, Section 74 (4) puts it succinctly thus:

*No monies shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the federation, except in the manner prescribed by the National Assembly.*

The legislature ensures that the funds which are provided are spent in accordance with the legislative will. This is achieved through various means.

Audited accounts of government are submitted by the auditor-general to the legislature annually for thorough examination. The legislature performs this function with its Committee on Public Accounts.

The legislature also has the power to set up or direct any investigation into the conduct of affairs of any person, ministry or government agency charged with the responsibility of executing laws and disbursing and administering public funds. The purpose of the investigation is to expose corruption, inefficiency or waste in the execution of law and disbursement or administration of public funds.

- (c) **Supervision of the Executive:** Supervision and control of the executive is a central function of the legislature in a democracy. It receives the greatest attention in a parliamentary system where the executive (the cabinet) is directly responsible to the legislature which has the power to oust it from power when it becomes unpopular. In modern government, both in presidential and parliamentary systems of government, the powers of the executive are increasing at a fast rate. It is the responsibility of the legislature to ensure that the executive is held to a continuous accountability for the exercise of its enormous powers in order to prevent possible abuse and dictatorship.

Supervision and control of the executive is achieved through a number of means. The first is that the legislature has the power to order the executive to furnish required information to the legislature. Thus, government departments and agencies are obliged to issue regular and special reports to account for their activities. The day-to-day supervision of the executive is secure through

Question Time in parliamentary system like that of Britain in which legislators ask specific questions from ministers on the activities of their respective ministries. The legislature controls the executive through the practice of regular discussion and criticism of executive actions on the floor of the legislative House. It is the primary duty of the legislature to review executive policies and actions in order to expose ineffective and corrupt performances, oppressions, arbitrariness and victimisation.

- (d) **Removal of the Executive:** In a parliamentary system, this power is very enormous, as the executive depends on the continuous support of the legislature in order to be in power. Whenever the executive becomes unpopular, the legislature possesses the absolute power to remove it from power by a censure motion. In a presidential system, the executive is not removed by mere 'vote of no confidence' but through the constitutional instrument of impeachment which is a more rigorous and rather difficult process. The 'vote of censure' and impeachment are powerful weapons for the control of the executive.
- (e) **Approval of Executive Appointments:** In a parliamentary system, the legislature plays a crucial role in the selection of the Prime Minister and his ministers. Although this selection is not formally and directly made, as the Prime Minister is appointed by the Head of State on the recommendation of the majority party, and the ministers are appointed by the Prime Minister, nevertheless, these appointments are usually made with an eye on legislature's interests and values so that they can easily receive their necessary approval and continued support. In a presidential system like USA, or Nigeria's second republic, the executive's appointments of ministers, ambassadors, auditor-general, certain top judges, chairmen and members of established executive bodies like the Federal Electoral Commission, the Federal Civil Service Commission, etc., can be made only with the confirmation of the Upper Chamber.
- (f) **Representation of Opinions and Interests:** Members of the legislature are representatives of other constituencies, thereby representing their constituents' interests in the legislature. Consequently, the legislature serves as a national forum for the ventilation of the grievances of the people. The legislators, through this national forum, inform those exercising political authority of what their constituents think, want and need to be done. They also send feedbacks to the people on what the government has done, is doing and intends to do.
- (g) **Public Education:** The legislature, through its debates which are extensively publicised by radio, television, newspapers and magazines, gives valuable political education to the people. Their debates elicit wide public discussions and enhance the rate of political participation by the people.
- (h) **Amendment of the Constitution:** The legislature is the only existing authority in the state that can amend the constitution. Even in a state where referendum or plebiscite is required, the legislature still plays a central role in the amendment process.
- (i) **Declaration of War and State of Emergency:** Declaration of war and state of emergency requires the approval of the legislature. The armed forces of a state cannot be sent out to war with other nations without the approval of the legislature.
- (j) **Ratification of Treaties:** The legislature participates in treaty making. In other words, the legislature must ratify proposed treaties with other nations before they can have effect. For instance, in Nigeria's Second Republic and USA, proposed treaties must be approved by the Senate with a vote of two-thirds majority of the senators present.
- (k) **Judicial Functions:** The legislature performs certain judicial functions. These functions include expelling its members from the House, ratification of certain top judicial appointments and its involvement in the ultimate decision of their possible removal, and its power to investigate, through investigative panels, into the activities of government ministries and establishments. The legislature, in some countries, also decides on contested elections.

## Criticisms of the Legislature

The modern legislature is criticised for the reasons outlined below:

- (i) The modern legislature is generally dominated by the executive. Modern executives have grown tremendously in power that they often exert too much influence on the legislators and dominate their legislative behaviours.
- (ii) The legislature is also dominated by the political party. This results in extreme partisanship by the legislature in the performance of its functions.
- (iii) The legislature is incapable of coping with the ever-increasing scope, complexity and technical nature of the programmes of modern government. There is always great pressure upon legislative time which has given way to delegated legislation. Delegated legislation is a body of legislation made by extra legislative bodies created by the Act of the Legislature. It is highly criticised as it works against representative government, the rule of law and true democracy.
- (iv) The legislative procedures are very cumbersome, slow and outdated. They are not suited for modern legislative business. This results in low output. The legislature is also criticised for being unresponsive to public opinion, sometimes corrupt; and easily manipulated by powerful groups and individuals.
- (v) The legislature has inadequate means for effective supervision and control of the executive which possesses overwhelming powers.
- (vi) The legislature is unrepresentative in character and unwieldy in organisation.
- (vii) The introduction of referendum has tended to weaken the power and responsibility of the modern legislature. Referendum is the direct vote of all qualified citizens for the purpose of deciding upon a political question referred to them. By this device, the electorates are brought into participation in the legislature process.

## Key Concepts in Legislative Process

- (i) **Lobbying** is a political technique of influencing members of the legislature in order to support or oppose a proposed legislation, policy or measure.
- (ii) **Adjournment** is the postponement of the sitting of the legislative assembly when it has concluded a day's business. Adjournment may be made either *sine die* (indefinitely) without fixing a specific date or made with a fixture of a date for next sitting.
- (iii) **Prorogation** is an official termination of a session of legislative Assembly which is usually marked by a proclamation of the Head of State. The life of a House is divided into session and each session is normally a period of one year.
- (iv) **The Life of a Legislative House** is the duration of the tenure of the House starting from the day of its inauguration or first sitting, to the time of its dissolution.
- (v) **Dissolution** is the official end of the life of the legislature which is normally proclaimed by the Head of State. After the proclamation of the dissolution of the House, all members vacate their seats and go in for another election. The legislature may be dissolved before the expiration of its life.
- (vi) **Summon** is an order calling on the members of the legislature to re-assemble after a period of vacation. At the end of each session, there is a vacation, while summon marks the beginning of a new session.
- (vii) **Closure** is a political device which is applied to limit discussion in the legislative assembly and save time for the House. There are two (2) types of closure - **kangaroo** which is employed at the report stage of a bill during which the Speaker limits discussions to only few amendments out of a lot, and **guillotine** which is a closure used to limit endless controversial debates.
- (viii) **Sitting** is a period during which a legislative assembly is in legislative business, the end of which is marked by adjournment. A number of sittings make up a session and a number of sessions make up the life of the legislative House.

## 7.2 THE EXECUTIVE

The executive is the organ of government which is responsible for executive and enforcement of laws. In a broad sense, the term means the entire public personnel responsible for the execution, administration and enforcement of laws. Thus, Garner in his book, *Political Science and Government*, defines the term as

*...the aggregate or totality of all the functionaries and agencies  
which are concerned with the execution of the will of the state,  
as that will has been formulated and expressed in terms of law.*

In this sense, it includes the Head of State and Head of Government, ministers and political advisers, all civil servants, armed forces and the police, and public servants in the independent establishments. However, the term is often strictly used to indicate those whose primary duty is seeing that laws are executed and enforced as distinct from those who actually do the things which the laws prescribe. In this sense, the executive refers, in presidential system like in Nigeria's second republic or American context, to the President; while in parliamentary system like in Nigeria's first republic or Britain, to the cabinet (Prime Minister and ministers).

It actually means those who take ultimate responsibility for the execution and enforcement of laws. Even in this strict sense, the entire administration which includes the civil service, the police, the armed forces and independent establishments are considered indispensable agents of the executive as no executive can function without them. The executive controls the coercive powers of government and keeps custody of its funds. It is, therefore, the very essence of government.

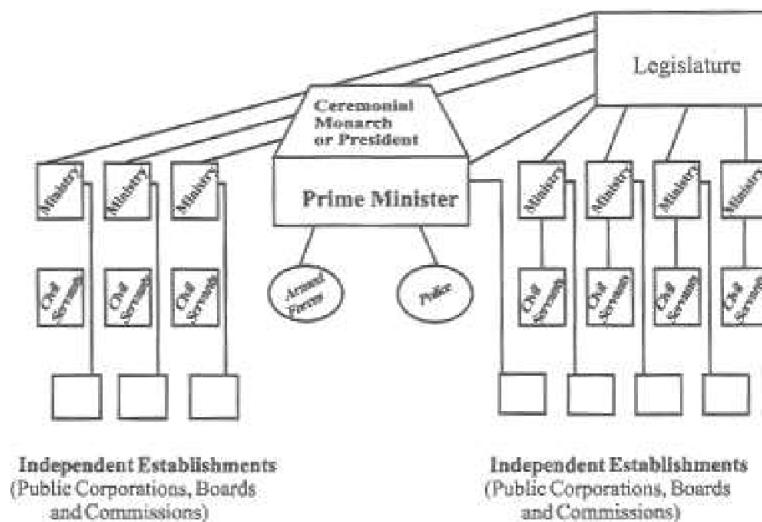
### Structure and Types of the Executive

The structure of the executive depends on its type. There are three main types of the executive namely, the *parliamentary*, the *presidential* and the *military* executive.

(a) **Parliamentary Executive:** This is the most widely adopted system of representative government. It is a system in which the executive is an integral part of the legislature. The parliamentary executive generally is plural in form in the sense that the executive powers of government are vested with the members of the cabinet collectively. Hence, the parliamentary executive is sometimes described as a *plural* or *cabinet* type. Examples of countries that practise parliamentary system are Britain, Nigeria during the first republic, Sweden, Belgium and Italy.

The essential features of parliamentary executive are outlined as follows:

- (i) There is the fusion of the executive with the legislature. The Prime Minister and his ministers must be members of the legislature.
- (ii) There exists a titular Head of State - a ceremonial Head of State. He may be a constitutional and hereditary monarch as we have in Britain, or a chosen ceremonial President holding office for a fixed term as in Finland and Italy.
- (iii) The ceremonial executive, the monarch or president, exercises the powers of the executive jointly with the political executive, the Prime Minister, the Premier or Chancellor, and his ministers.
- (iv) The prime minister and ministers are all elected by their respective parliamentary constituencies. They are chosen from the political party which commands majority in the legislature. Where no single party commands a majority in the legislature, they are chosen from a coalition of parties that command majority in the legislative Assembly.



**Figure 7.2: The parliamentary executive**

In a Parliamentary system, all executive powers are nominally vested in the ceremonial monarch or president who is the Head of State. However, in practice, *all* these powers are exercised by the cabinet (Prime Minister and his ministers) in the name of the monarch or president. Consequently, the monarch or president is the head of state while the prime minister is the head of government. Although the prime minister appoints the ministers, they are not constitutionally his subordinates. They are his political equals or colleagues. The diagram above clearly shows this fact, as the prime minister and ministers fall along the same horizontal line. The prime minister is merely a *primus inter pares* (first among equals). The prime minister and his ministers (cabinet) operate under the principle of collective responsibility. Collective responsibility is a principle of cabinet government which states that the cabinet must stand or fall together with respect to major issues of government. The cabinet is collectively responsible and accountable to the legislature.

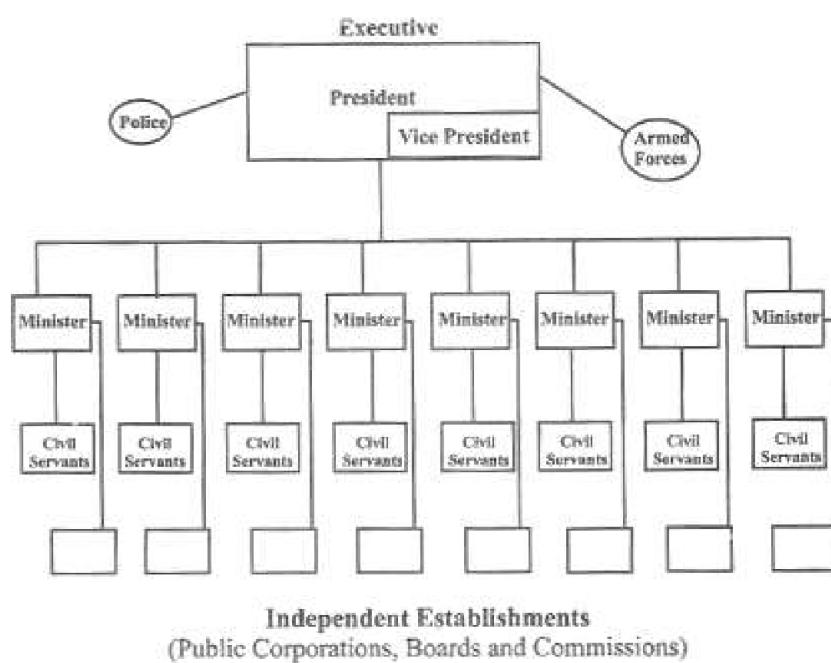
(b) **Presidential Executive:** This type of executive was innovated by USA. It originated from the United States of America's Constitution of 1789. Presidential executive is a system in which there is a single executive who is generally independent of the legislature. In presidential executive, all executive powers of government are vested in the president. The president is the head of state, head of government and the commander-in-chief of the armed forces. The president does not share political authority with anyone, nor does he require a majority support of the legislature in order to be in power. Examples of states that practise the presidential system are Nigeria of the second republic, Cote d'Ivoire, Tanzania, Liberia, Brazil, Chile and Mexico.

The essential features of presidential executive are as follows:

- (i) All executive powers are centralised in one individual known as the president who is the head of state, head of government and commander-in-chief of the armed forces.
- (ii) The executive is not a member of the legislature. The executive does not require majority support of the legislature in order to be in power. There is, therefore, the principle of separation of powers.
- (iii) He is elected by the electorate of the whole nation which is his constituency. He, therefore, holds a wide and popular mandate. The executive is *directly* responsible and accountable to the people.
- (iv) The ministers who constitute the cabinet are selected by the president at his own discretion and they are merely his own 'political servants' or advisers. They assist the president in the executive functions of government. They are individually responsible for their political and administrative actions.

The president in presidential executive monopolises the state power and so secures the unity and promptness of government decisions. In fact, the president symbolises the state. The system provides a strong and stable centre of power within the state necessary for rapid socio-economic development.

The structure of the presidential executive is illustrated below.



**Figure 7.3: The presidential executive**

**(c) Military Executive:** Military government is not a constitutional government. The military executive is an executive which monopolises the power of the state through coercion. Its powers are absolute and are not based on any constitution. It holds power as long as it wishes and has the capacity and might to sustain it. Examples of states that have had or still have military executive are Nigeria, Ghana, Liberia, Ethiopia, Togo, Sudan and Uganda. This has gained an upper hand in Africa and Latin America. In other words, it is a feature in 'new states'.



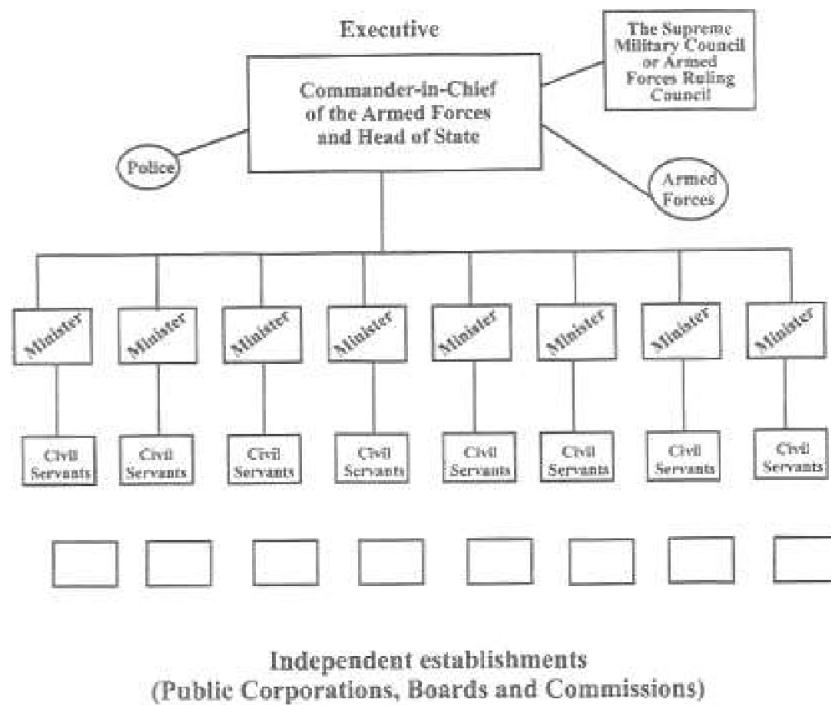
**Figure 7.4: A Military Head of State**

The features of military executive are as follows:

- (i) The military executive gains political power through the means of violence usually through a military coup d'état. Consequently, its emergence to power is marked by a total breakdown of the existing political order.
- (ii) The head of the executive imposes a great measure of personal political force in the place of conventional political institutions and his governmental powers rest on his ability to assert them,

- having no claim to any legitimacy.
- (iii) The military executive combines both the legislative and executive powers of government and rules by decrees.
  - (iv) The military executive is not an established constitutional authority and consequently, not governed by any constitution. There are no constitutional or institutional checks to its power.
  - (v) It is not responsible to the people as it is not an elected executive. It sustains its political power through the use of the gun.
  - (vi) There is centralisation of state power in one person who is the head of state, head of government, and commander-in-chief of the armed forces, thus, making it a dictatorial form of government and not a democratic one.
  - (vii) The military executive is generally a transitional form of government.
  - (viii) It is a single executive. The ministers in military executive are merely political servants of the chief executive on whose behalf they exercise executive authority and to whom they are responsible and accountable.

The structure of the military executive is illustrated in this diagram.



**Figure 7.5: The military executive**

### Functions of the Executive

The primary function of the executive is the execution of public laws and policies. However, in theory and practice, that is not the sole function of the executive. The executive performs diverse functions in the political system.

These are summarised below.

- (a) **Symbolic and Ceremonial Functions:** The executive is the symbol of the state. It personifies the abstract state. By this fact, the executive symbolises the unity of the nation. It is the embodiment of national values and aspirations and state prestige and dignity. The executive represents the state during national ceremonies.
- (b) **Execution of Laws and Policies:** The executive has the ultimate responsibility for the implementation of laws and policies. In the performances of this function, the executive uses a galaxy of civil servants, armed forces, police and independent established bodies - boards,

commissions and corporations. It gives political leadership and direction. It assumes positive initiative in the process of decision making.

- (c) **Formulation of Policies and Legislative Leadership:** The theory of separation of powers states that the legislature makes laws and policies while the executive implements them faithfully. This is not a realistic picture of the operation of modern government. The executive plays a dominant role in the determination of government policies. On the other hand, most of the bills which are handled by the legislature are initiated by the executive. The executive formulates policies and bills which are submitted to the legislature for consideration and modification, rejection or acceptance. There are many reasons for this practice. Firstly, the executive is the reservoir of government information which is needed in law and policy formulation. Most matters of modern government are highly technical and complex requiring expert knowledge. Secondly, the executive possesses highly trained and experienced professionals from all fields of government capable of formulating complex and technical laws and policies. Thirdly, the legislators are pressured with time that they cannot initiate all the laws and policies of government which they have the duty to discuss and approve.
- (d) **Delegated Legislation:** This is related to formulation of policies and laws which are sent to the legislature for examination and approval. As a result of the increasing scope and diversity of government programmes and their complex and technical nature, there is tendency for the legislature to delegate some of its legislative powers to the executive. Thus, the legislature enacts its laws in broad and general terms and empowers the executive to make rules and regulations which have the force of law as individual cases and circumstances demand.
- (e) **Financial Functions:** The executive is responsible for the collection, safe custody, accounting and auditing of public funds. The executive performs this function through the accountant-general, auditor-general and their staff. The executive is responsible for the initiation of the annual budget of government which under democracy must be submitted to the legislature for approval.
- (f) **Supervision of Administration:** The administration is the instrument through which the executive performs its functions. The competence and effectiveness of any administration depends to a great extent on the quality of political leadership supplied by the executive. The executive gives inspiration, motivation and direction to the administration. It monitors and co-ordinates the activities of various ministries, departments and independent establishments. It receives regular reports, makes on-the-spot visits to see things for itself. From its observations, it corrects, directs and imposes appropriate sanctions where necessary. The supervision of the executive which is aimed at ensuring efficient government stems from the fact that it carries the ultimate responsibility of ensuring that policies and programmes are effectively implemented.
- (g) **Diplomatic and Military Functions:** The executive is responsible for sending and receiving diplomatic representatives. It is the responsibility of the executive to determine foreign policies for the nation, negotiate and enter into international agreements and treaties. In relation to military functions, the executive is the commander-in-chief of the armed forces. He declares and wages war against aggressors with the approval of the legislature. He also proclaims martial law whenever the situation arises.
- (h) **Judicial Functions:** The executive is generally empowered to appoint judges and remove them for gross misconduct with the approval of the legislature. It is usually empowered to exercise clemency to punished offenders. It grants pardons and reprieves. This is aimed at mitigating severity of judicial punishments. It also seeks to rectify judicial errors where such are observed. The executive has the responsibility for the supply of financial needs to the judiciary. By this function, the executive can influence the administration of justice.

The executive has enormous functions to perform in modern government. This has led to tremendous growth of its powers. In order to ensure efficient performance of its function, check possible abuse of power, corruption and encroachment on individual liberty, the executive is subjected to the following control measures:

- (a) **Legislative Control:** The legislature in a democracy has continuous control over and supervision of the executive. The legislature approves appropriations to executive ministries, departments and agencies and monitors the activities of the executive, to ensure that money approved by the legislature is applied for the purpose which it is allocated. The audited accounts of government are submitted to the legislature for scrutiny and sanctions imposed on erring officials. The executive is criticised on the floor of the House for maladministration. Sometimes, a member of the executive is summoned before the legislative assembly to answer questions on the activities of his ministry. In a parliamentary system, the Question Time and Motion for Adjournment are utilised to question and criticise the activities of the executive.
- (b) **Removal of the Executive:** Removal of the executive is a form of legislative control. In a parliamentary system, when the chief executive proves unpopular as a result of his policies and actions, he can be removed from office through a censure vote. In a presidential system, the president cannot be removed by an ordinary ‘vote of no confidence’. However, he can be removed through impeachment by the legislature for a definite offence of gross misconduct. In some countries, the executive can be removed through ‘recall’ by the electorate.
- (c) **Public Complaints Commission or Ombudsman:** Public Complaints Commission or Ombudsman is established by some countries to check the arbitrary exercise of executive powers. This commission functions to check possible encroachment of the executive on the fundamental rights of the individual.
- (d) **Judicial Control:** The judiciary is charged with the responsibility of reviewing the policies and actions of the executive to ensure that they are in accord with the law and constitution. Where the executive’s action or policy is contrary to the law or constitution, the court declares it *ultra vires*, that is, null and void. For instance, the deportation of Alhaji Shugaba, the majority leader of the Borno State Assembly by the then President of the Republic, Alhaji Shehu Shagari in the early 80’s was declared unconstitutional, null and void.
- (e) **Code of Conduct Bureau and Tribunal:** In some states of the world, public officers are provided with a code of conduct which includes declaration of assets. The Code of Conduct Bureau is established to receive complaints about non-compliance with, or breach of, the code of conduct including offences arising from the declaration of assets. Such complaints against public officials are sent to the Code of Conduct Tribunal which has the power to try public officers and where a public officer is found guilty of contravention of any provision of the code of conduct which includes declaration of assets, he will be imposed appropriate sanctions.
- (f) **Free Press:** In a democracy where there is freedom of the press, the press plays a very crucial role in the control of the executive. It investigates, examines and criticises the policies and actions of the executive. This keeps the executive alive to its responsibilities and helps to check abuse of power, corruption and despotism.
- (g) **The Opposition Party:** The opposition is a powerful means of controlling the executive. In a parliamentary system, the opposition is institutionalised through the opposition party, and its role is more pronounced. Generally, the opposition party gives continuous criticisms against the executive’s policies and actions and offers concrete suggestions.

### 7.3 The Judiciary

The judiciary is the third organ of government which occupies an eminent position within the state. It can be defined as a system of courts or a body of judges created to provide equal justice under the law to citizens of the state. The judiciary is, therefore, the source and symbol of justice and the defender of the oppressed. It is the watchdog of democracy and the real safeguard of civil liberties.



**Figure 7.6: A law court in session**

### **Characteristics of the Judicial Process**

There are three fundamental principles of judicial process namely, *justice*, *impartiality* and *law*.

- (a) **Justice:** This is defined as the quality of being right and fair in the treatment of people. It is giving everyone what is due to him. Justice is characterised by rightfulness, virtuousness and lawfulness. The maintenance of justice is a fundamental function of government and the primary purpose for the creation of the judiciary.
- (b) **Impartiality:** It is the second characteristic of judicial process. Impartiality can be produced by impartial judges. To ensure impartiality, judges must be men and women of highest integrity who operate without any form of interference either from government or from powerful groups or individuals. Judges should exhibit good character. Accordingly, Lord Heward observed ‘Justice should not only be done, it should also be seen as to be done.’ Impartiality is the pillar of justice.
- (c) **Law:** This is central in the judicial process. It is an essential requirement of judicial process that all cases should be determined according to law. Law is a set of commands and prohibitions with appropriate sanctions made by competent political authorities to control and regulate social conduct.

### **Judicial Organisation**

The judicial organisation is a hierarchical system. In other words, the courts are graded and ranked in an hierarchical order of ordinary, intermediate, and highest courts. Generally, courts can be classified into courts of original jurisdiction and courts of appeal. Magistrates’ and High Courts are courts of original jurisdiction. Such courts usually sit each with a single judge on the bench. A court of first instance considers facts, takes evidence, applies the law and finally delivers the court decisions in the form of judgment.

Courts of appeal exist to review the decisions of the lower courts whenever necessary to correct possible judicial error and ensure justice. An appeal court is a multimember bench and reaches its decision by majority votes. The Federal Court of Appeal of Nigeria and the Supreme Court are appellate courts. The highest court in a state is generally called the Supreme Court.

In Nigeria, the judicial organisation reflects the federal system of government in which governmental powers are shared between states and the federation. Thus, we have a dual system of States’ and Federal

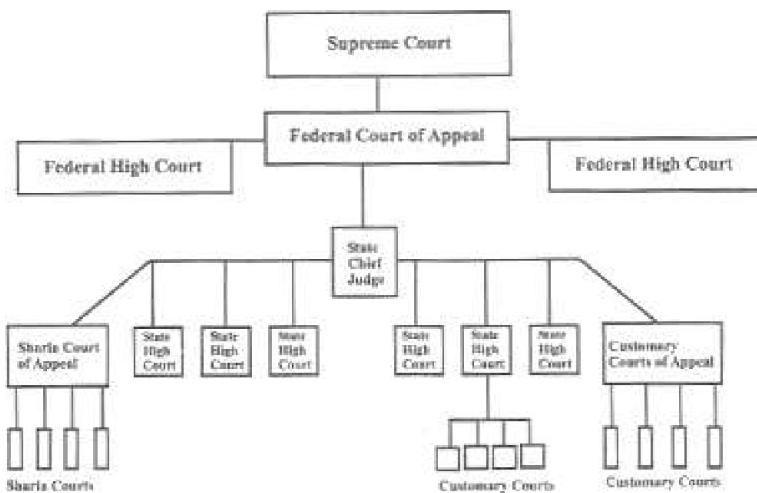
Courts. At the state level, there are two broad categories - Customary/Sharia Courts and common law courts i.e. Magistrates' and High Courts.

The Customary Courts which are established in Southern states have jurisdiction only on cases based on customs and traditions of the people such as marriage, succession to title, inheritance, etc. Court proceedings and processes are governed by customary rules and principles. The Customary Court judges are generally experienced personalities who possess wide knowledge in customary laws and traditions. They are not required to be lawyers. The Sharia Courts are courts based on Islamic laws. They are established in the Islamic states of Northern Nigeria to settle disputes involving Muslim law, such as inheritance, marriage, succession to title and religious matters.

Judges in Sharia Courts are people versed in Sharia. Customary Courts are organised into customary court of original jurisdiction and customary courts of appeal. In the same way, Sharia Courts are categorised into sharia court of original jurisdiction and sharia court of appeal.

The common law courts at the state level are Magistrates' and High Courts. These courts have jurisdiction over the general body of civil and criminal law as provided for by the Constitution and the Statutes of the Federal Republic of Nigeria. In short, the state courts handle most of the cases in the country.

The Federal Courts are all common law courts. They are the Federal High Court, the Federal Court of Appeal and the Supreme Court. The Federal Courts have much more limited jurisdiction as determined by the constitution and the statutes. The Supreme Court is the highest court in Nigeria beyond which there is no further appeal. The Supreme Court of the Federation is composed of the Chief Justice of the Federation of Nigeria and 15 associate judges. It has original jurisdiction only in disputes between the federal and state governments, between states or in other disputes as conferred upon it by an Act of the defunct National Assembly. Apart from these, the Supreme Court hears cases only on appeal.



**Figure 7.7: The Judicial Organisation of the Federal Republic of Nigeria**

The judiciary is composed of the Supreme Court Judges, the Federal Court of Appeal judges, Federal High Court judges, States' High Court judges, Magistrates, Sharia Court judges and Customary Court judges. The members of the Bar (lawyers) who defend their clients in courts are not members of the judiciary even though they play a crucial role in the maintenance of justice. In fact, they are not public servants; judges, however, are public servants. On the other hand, the Attorney-General and Minister of Justice is not a member of the judiciary but a member of the executive. He is not a judge but government's lawyer. He advises the executive on all legal matters, defends the government whenever it has cases in court and serves as a link between the executive and the judicial branch of government.

## Judicial Appointments

The position of judges requires a high standard of discipline, prestige and dignity. It also requires high academic and professional qualification and experience. Consequently, judges, unlike members of the other arms of government - the legislature and the executive-require a certain minimum education and professional qualification and experience. For a person to qualify for an appointment as a magistrate or judge, he must have gone to a university and acquired a degree in law; in addition, he must have gone to the law school and have been called to the Bar. Judges should also be men and women of probity, integrity and impartiality. This professional experience, and character qualification requirement determines the method of their appointment.

Three methods in appointing judges are in practice. The first is **nomination** by the executive as in Nigeria, Britain, USA, Canada, Australia and India. The second is **election** by the legislature as in Switzerland and USSR. The third is by **popular election** as in some Swiss cantons and American states.

The third method, that is, popular election is in accord with the principles of democracy and separation of powers, and guarantees true independence of the judiciary. However, it is strongly objected to, as most able and competent candidates for the bench would not be willing to subject themselves to campaign for election. Furthermore, the electorate are not in a position to make the best judgement on the most qualified judges. Above all, popular election would result in the politicisation of judges with the consequence of producing partisan judges. Election by the legislature is equally criticised for the same reasons. It leads to political consideration in the appointment of judges, thereby sacrificing professional competence. The current practice in most democratic states is the establishment of the Judicial Service Commission - an independent body established by the constitution, charged with the responsibility of the appointment, promotion and discipline of judges. Under such a system, the executive nominates the Chief Justice and other Justices of the Supreme Court and the members of the Judicial Service Commission subject to ratification by the legislature.

In Nigeria, the appointments of the Chief Justice of Nigeria, Justices of the Supreme Court, and the President of the Federal Court of Appeal are made by the federal executive subject to approval by a simple majority of the Senate. The appointment of other federal judges is made with the recommendations of the Federal Judicial Service Commission. At the state level, the Chief Judge of the State, the Grand Kadi of the Sharia court of Appeal and the President of the Customary Court of Appeal for a state are appointed by the state executive subject to approval by a simple majority of the State assembly concerned. The appointments of other state judges are made with the recommendations of the State Judicial Service Commission concerned.

## Judicial Functions

The primary function of the judicial organ of government is to interpret the law and punish offenders. The judiciary does more than this. Its functions within the political system are hereby outlined below.

- (a) **Establishment of Facts:** The crucial function of the judicial organ of government is the establishment of facts. Settlement of disputes depends on accurate identification of the facts in the disputes. This is not an easy task. Courts of law employ elaborate procedural rules in receiving evidences from which they determine the facts of cases before them. Evidences may be in form of public records, documents, material objects and oral statements from witnesses. Evidences are very indispensable to judges in the establishment of facts.
- (b) **Finding and Interpreting the Law:** The second function of the judiciary is to find and interpret the law which is applicable to a given set of facts in a dispute or case. The relevant law can be found in the constitution, statute or common law rules. These are always ambiguous. Sometimes, there are conflicting clauses in a single statute. Often, statutes enacted at different times may contradict each other.

This situation calls for painstaking search and interpretation of the relevant law by the judiciary if justice is to be given. Judges, in this onerous task, have to consider among other things the original intention of the legislators, the reasonable meaning of words used in framing the law, judicial precedents, and the practical consequences of each alternative interpretation.

- (c) **Judicial Law-making:** In the process of interpreting the law in very difficult cases, judges commonly give reasons for their decisions. These explanations embellish, expand, and shape the law, and they have very far-reaching legal import. Eventually, they are introduced as important legal principles which have force of law and guide future determination of cases. Accordingly, Chief Justice Marshall of the USA Supreme Court in *Marbury v. Madison* (1803) declared:

*Those who apply the rule to particular cases, must of necessity expound and interpret that rule.*

These new elements and principles established during the process of law interpretation in difficult cases which have important legal value are called judicial precedents or case-laws. The judicial precedents form part of the law of the state.

- (d) **Judicial Review:** During civil rule in some democratic states like the USA and Nigeria, the judicial organ of government checks the executive by reviewing its policies and actions. The judiciary also checks the legislature by reviewing legislative Acts to determine their constitutionality. If any Act of the legislature or the executive is in conflict with the constitution or statutes, the courts would declare such Act null and void and of no consequence. The court's interpretation of the constitution is final and unquestionable. Consequently, judicial review is a very important control mechanism on the growing power of the court to review legislative and executive actions and declare any law or official action considered contrary to the constitution, unconstitutional, null and void, and thus, unenforceable. For instance, the Supreme Court of Nigeria declared the Revenue Allocation Act 1981 unconstitutional, that is, null and void.

- (e) **Preservation of Fundamental Human Rights:** The judiciary in a democratic state has the central responsibility for the preservation of every citizen's fundamental rights against encroachment by the government, powerful groups and individuals. It is the instrument with which the principle of the rule of law is realised. Oppressed individuals seek redress through the court. It is the last hope of the common man. To perform its duties effectively, the court is invested with great powers to maintain its dignity and enforce orders in its proceedings. To ensure compliance to the court's orders, the court developed a number of writs. The most important, with particular reference to personal liberty, is the writ of habeas corpus. *Writ of habeas corpus* is an order by the court which directs a person detaining a citizen to produce him in court, dead or alive, in order to allow the judge to determine whether he is being legally detained. Where the writ is applied and the individual is unlawfully detained, the judge sets him free. Thus, the writ of habeas corpus is a means of removing arbitrary and illegal detention.

- (f) **Compelling the Executive to Perform its Duties:** The judiciary compels the executive or its agency to perform its duties which it fails to do. The court does this through the writ of mandamus. The **writ of mandamus** is an order which commands a public officer, an interior court, or a public corporation to perform some duties imposed on it by the constitution or statutes.

- (g) **Administrative Functions:** The judiciary performs certain administrative functions which are not judicial in nature. The courts, in most countries, are assigned the duties of probating wills and the management of estates of deceased persons. Courts also grant and revoke licences, grant admission to bar and disbarment. They perform marriages, grant divorces and administer oaths/affidavits. Courts also issue injunctions and other writs to prevent or compel certain actions.

### **Independence of the Judiciary**

The judiciary is the fountain of justice. However, justice can only be dispensed by the judiciary if it is impartial. Thus, impartiality is an indispensable requirement of the judiciary. If judges are to be impartial, the judiciary must be independent. Independence of the judiciary means that the judiciary must be impartial and free from control and interference by the government, powerful groups and individuals who might wish to influence the course of justice. This independence of the judiciary is

necessary in the administration of justice in order to give the judiciary a free hand to give impartial judicial decisions without fear or favour. It gives the judiciary the power and courage to check the executive and the legislature in the performance of their functions. It checks unnecessary influences from creeping into the administration of justice. The independence of the judiciary enables judges to preserve individual liberties and check tyranny and dictatorship. Independence of the judiciary is secure through four major ways.

The first is that the appointment of judges should be free from executive or legislative domination. In a situation where the executive has exclusive power of appointment of judges, judges would then be the apron strings of the executive tied firmly to the executive. Consequently, there is the idea of popular election of judges in order to give them the required independence. However, the general practice adopted by most nations is the establishment of an independent body, the Judicial Service Commission, responsible for the appointment, promotion and discipline of judges.

The second way of securing independence of the judiciary is through secured tenure. In a democratic State, judges usually hold office having good behaviour. This is interpreted to mean life tenure, but can be removed only for serious offences and through difficult procedures. Judicial independence does not require that judges should be absolutely irremovable. Judges are usually removed for gross misconduct. In such a case, a judge can be removed for serious offences only by a joint resolution passed by both Houses of Parliament as in Britain, or by a resolution passed by two-thirds of the Senate as in the case of the Chief Justice of the Federation of Nigeria in the second republic. In Nigeria, other federal judges can be removed only by the recommendations of the Federal Judicial Service Commission. The Chief Judge of the High Court of a State, Grand Kadi of a Sharia court of appeal or President of a Customary Court of Appeal of a state in Nigeria's second republic could be removed for gross misconduct only by a resolution passed by two-thirds of the members of the state Assembly concerned. Other judges of the state government could be removed for a specific serious offence by recommendations of the State Judicial Service Commission.

The third way is through the judiciary's freedom from financial control by the executive or legislature. Financial self-accounting by the judiciary is a very essential means of securing the independence of the judiciary. An important safeguard against judges' financial reprisals is the usual practice of providing in the constitution that judges' compensation 'shall not be diminished during their continuance in office'. It is further provided by most countries that judges' salaries are the first charge on the Consolidated Revenue Fund.

The fourth way which is employed to secure independence of the judiciary is through better conditions of work. Judges enjoy better and adequate salaries and allowances, social prestige which gives them immunity against economic and social temptations which are prevalent in human society.

## KEY POINTS

### ***The Legislature***

This is a body of representatives of the people charged with the responsibility of making laws, representing the interests of their constituents and serving as a check on the executive.

**(a) Structure and Types of Legislature:** Types of legislature are unicameral and bicameral.

- (i) *Unicameral legislature* is legislature of one chamber e.g. as in Spain.
- (ii) *Bicameral legislature* is legislature of two chambers e.g. as in Britain.

**(b) Functions of the Legislature**

- (i) It enacts laws.
- (ii) It controls public funds.
- (iii) It supervises the executive.
- (iv) It has the power to remove the executive.

- (v) It represents the opinions and interests of the people.
- (vi) It gives public education.
- (vii) It amends the constitution when the need arises.
- (viii) It declares war and state of emergency.
- (ix) It ratifies treaties.
- (x) It performs certain functions which are judicial in nature.

### ***The Executive***

This is the organ of government responsible for the execution of policies and enforcement of laws.

- (a) *Structure and Types of Executive:*** Types of executive include parliamentary, presidential and military.

- (i) *Parliamentary executive* is a system in which the executive is an integral part of the legislature.
- (ii) *Presidential executive* is a system in which there is a single executive that is independent of the legislature.
- (iii) *Military executive* is a system in which the military monopolises the powers of the State through coercion and its absolute powers are not based on the constitution but on the force of arms.

**(b) *Functions of the Executive***

- (i) It is the symbol of the state.
- (ii) It executes laws and policies.
- (iii) It formulates policies and laws.
- (iv) It legislates under delegated powers.
- (v) It is responsible for the collection, accounting and preparation of government budget.
- (vi) It supervises the administration.
- (vii) It performs diplomatic and military functions.
- (viii) It performs judicial functions.

### ***The Judiciary***

This is a system of courts or a body of judges created to provide justice in the State.

**(a) *Characteristics of Judicial Process***

- (i) Justice
- (ii) Impartiality
- (iii) Law

- (b) *Judicial Appointments:*** Judicial appointments are made by various methods used in various countries. The main methods are

- (i) election by the legislature;
- (ii) election by the electorate;
- (iii) nomination by the executive with the approval of the legislature; and
- (iv) selection by the Judicial Service Commission.

**(c) *Functions of the Judiciary***

- (i) It establishes facts.
- (ii) It interprets the laws.
- (iii) It makes case-laws or judicial precedents.

- (iv) It reviews executive and legislative actions.
  - (v) It preserves human rights.
  - (vi) It compels the executive to perform its functions.
  - (vii) It performs administrative functions.
- (d) ***Independence of the Judiciary:*** Independence of the judiciary means that the judiciary must be impartial and free from control and interference by the government, powerful groups and individuals.
- (e) ***Means for Securing Independence of the Judiciary***
- (i) Appointment of judges should be free from executive or legislative domination.
  - (ii) There should be secured tenure for judicial officers.
  - (iii) They should be free from financial control by the executive and legislature.
  - (iv) They should enjoy adequate salaries and allowances, and social prestige.

## SAMPLE EXAMINATION QUESTIONS

### **Essay Questions**

1. What are the merits and demerits of a bicameral legislature?
2. What is meant by the independence of the judiciary? Outline its merits and describe the means through which it can be achieved.
3. What are the main functions of the executive?
4. What are means through which the executive can be controlled?

### **Objective Questions**

1. An important merit of unicameral legislature is that
  - (a) it is suitable for a federal system of government.
  - (b) it is more appropriate for a presidential system.
  - (c) it saves public funds.
  - (d) it ensures a more thorough and careful legislation.
2. Which one of the following is a member of the judiciary?
  - (a) Customary Court President.
  - (b) Minister of Justice.
  - (c) A Prison Warder.
  - (d) The Police.
3. In all parliamentary systems of government, there is
  - (a) separation of powers between the executive and the legislature.
  - (b) fusion of executive and legislative powers.
  - (c) no independence of the judiciary.
  - (d) no ceremonial president.
4. The termination of each session of a House of Assembly is called
  - (a) prorogation.
  - (b) dissolution.
  - (c) adjournment.

- (d) closure.
5. Case-laws are made by
- (a) the executive.
  - (b) the legislature
  - (c) the judiciary.
  - (d) local government councils.

**Answers to Objective Questions**

- 1. c
- 2. a
- 3. b
- 4. a
- 5. c