

## **4 Characteristics of the Constitution**

The Constitution of the Fifth Republic of France—as approved at the referendum held on 28 September 1958 with the incorporation of subsequent amendments—exhibits the following distinctive fundamental features

### **1 Popular Sovereignty**

The first distinguishing feature of the 1958 French Constitution is that, like the American Constitution, it embodies the principle of popular sovereignty. This is clearly manifested in Article 2 which lays down : “National sovereignty resides in the people who exercise it through their representatives and by means of a referendum”. “Suffrage is always universal, equal and secret”. The French Constitution is thus an act of the people. The system of Government established and maintained under it is based upon popular consent.

### **2 A Democratic Republic**

An equal important feature of the Constitution is that “France is a Republic, indivisible, secular, democratic and social” (Article 2). The President is elected for seven years by direct universal suffrage and he appoints the Prime Minister and Government who are not allowed to be elected members of the French Parliament but are responsible to it. The French Parliament is elected on a democratic basis. All citizens, irrespective of race, origin or religion, are equal before the law and capable of exercising their civil and political rights. Article 2 proclaims that French Government is “Government of the people, by the people and for the people”.

Thus the Constitution reaffirms the principle of republican Government. However, the vast plenitude of powers (including the emergency powers) conferred on the President of the Republic, and de Gaulle’s personal leadership in the working of the Constitution for ten years, have undermined the French Republican tradition to a great extent. The Constitution has not laid down any precise limitations and boundaries of the sharing of executive powers by the President and the Prime Minister. During his long tenure as President of the Republic, Charles de Gaulle interpreted his position in



such a way as to subordinate the office of the Prime Minister to that of the President. His interpretation that the Constitution has put a greater emphasis upon the dignity of the office of the President, that power in the State lies with the President than with the Prime Minister, that the President is an arbitrator in governmental disputes and his control of foreign affairs—all have made a profound influence upon French politics in that Government must be under the control of the President.

This tendency towards what would seem to be a presidential system of government has been interpreted by some observers that there has been a complete break with the republican tradition in France. Other commentators admit that the constitution of the Fifth Republic has introduced certain changes : control of legislation has been taken from the National Assembly and given to the Government; the Senate's legislative powers are made coordinate with the Assembly's and the role of Parliament is much diminished. But these, in their opinion, "are reforms which may be described as a movement towards right-wing tendencies and a desire to stabilize the governmental system, to prevent the deadlocks that crippled the Fourth Republic".

*Yet it must be said that the Constitution of the Fifth Republic has made a break, if not completely, with the republican tradition in France.* Not until the coming of the Fifth Republic and not until de Gaulle, did a President attempt simultaneously to combine the symbolic function of representing national identity with the open and partisan political leadership of the nation.

Apart from this the Constitution also changes the emphasis in Government in that it imposes so many restrictions upon parliamentary sovereignty as to weaken the legislature and strengthen the executive.

As compared with the previous republican constitutions in France, the powers of the Parliament are drastically reduced not only in making and unmaking the Government but also in making laws. Parliament's lawmaking powers are categorically laid down, outside of which the Government has the power to act by decree. The Government has the power to raise and spend money if the Parliament does not pass the budget within a stated time. The National Assembly can be dissolved not by the Prime Minister, dissolution is the prerogative of the President himself. Thus the power of dissolution, the restricted opportunities for defeating the Government, the provisions for legislation by ordinance and passing the budget over the Parliament's head "give the executive", as one commentator has observed, "a stronger legal position than an English Tudor Monarch, and make more difficult any assertion by Parliament of its rights". This can be described as a very real break with the French republican tradition.



### 3 A Unitary State

The French Republic is a unitary state. According to the original Constitution it will comprise Metropolitan France and Overseas departments only. The overseas territories can choose for themselves whether to become completely independent and separate, or to join with the Republic in forming a Community of which the President of the Republic is the head. (The Metropolitan France is divided, for local Government, into municipalities (called Communes), grouped into several departments and regions.) The powers and the very existence of various local Government units depend upon the national Government decrees.

### 4 A Dual Executive

The French executive is not single, as in the United States, but dual. It consists of a President and a "Government headed by the Prime Minister". The President, elected by the people for seven years, appoints the Prime Minister and other ministers who, though not members of the Parliament, are responsible to it. The President presides over the Council of Ministers, while "the Government determines and conducts the policy of the nation" (Article 20) and "The Prime Minister leads the action of the Government" (Article 21). Thus the Constitution creates a dual executive. In reality, this two-headed executive has become a single-headed one because, since the introduction of the new Constitution, Presidents have made the major decisions and the Prime Ministers and their Cabinets have, in most cases, managed and carried out their decisions.

### 5 Quasi-Separation of Powers

The governmental system is based on the partial separation of powers. It stands "between the British system, in which Parliament and Cabinet merge, and the American, which is based on an almost complete severance of Congress and the President". The Constitution has endowed the President of the Republic, who is elected separately for seven years by all qualified adult voters, to appoint all ministers, including the Prime Minister. But neither the President nor the ministers are members of the Parliament. The President also presides over the meetings of the Cabinet. To this extent, the French executive resembles the presidential or non-parliamentary executive as it is found in the United States.

But the French executive may also be described as a parliamentary one insofar as the Council of Ministers headed by the Prime Minister, like the British Cabinet, is responsible to the National Assembly. The Prime Minister and his Cabinet members speak and sit in the Parliament and resign, when the National Assembly adopts a motion of censure or when it disapproves of the Government program or a general policy declaration.



Thus the French system represents, to quote Professor Wheare, "a curious hybrid of parliamentary and presidential executives".

## 6 Bill of Rights

Like the American and Indian Constitutions, the Constitution of the Fifth Republic of France provides for some basic rights of the Frenchmen. A statement of such rights is contained in the Preamble and Section 1 of the Constitution. The Preamble to the Constitution begins:

*"The French people solemnly proclaim its attachment to the Rights of Man and to the principles of national sovereignty as defined by the Declaration of 1789 and as confirmed and completed by the preamble to the Constitution of 1946".*

The Rights of Man refer to the historic Declaration of the Rights of Man and of the Citizen issued by the French Constituent Assembly in 1789, which asserted that the sovereignty resided in the nation and not in the Monarch or anybody else, that there should be no class distinction or privileges, and that all men were entitled to personal freedom and to equality before the law.

The Constitution of 1946 confirmed and completed the aforesaid Rights of Man by enlisting the following rights: (1) right to equality for women; (2) right to work; (3) right to belong to trade unions; (4) right to strike; (5) right to education; (6) right to social welfare; (7) right to racial equality; (8) right to conditions necessary for family development.

The Preamble to the Constitution of the Fifth Republic covers all these matters. Article 2 of the new Constitution "guarantees equality before the law of all citizens without distinction of birth, race or religion. Article 3 lays down that all adult French nationals, of either sex, are electors and are "capable of exercising their civil and political rights". Article 4 lays down that "political parties and groups take part in the expression of suffrage" and thus guarantees the right of forming political associations.

The basic rights are upheld by the courts in France, and by a Constitutional Council which keeps watch over the constitutional validity of laws passed by the Parliament. But its rulings are advisory and not binding as in the case of the rulings given by the Supreme Court of the United States and the Supreme Court of India. The French system, however, "is at its best", as Professors G. M. Carter and John H. Herz have observed, "in the protection it offers to individual liberties through its system of administrative jurisdiction, headed by the Council of State, which takes infinite care to protect and indemnify individuals injured by unjust or unfair acts committed by Government officials in the name of the state."



### *7 Constitutional Recognition of Political Parties*

A specific feature of the new Constitution is that, unlike the American Constitution or Indian Constitution, it recognises the role of political parties. Article 4 of the Constitution states that political parties "shall be formed freely and shall carry on their activities freely" but they "must respect the principles of national sovereignty and democracy".

### *8 Rigid Constitution*

The Constitution of the Fifth Republic is a rigid one for it may be amended only by a special procedure. The initiative for amending the Constitution belongs both to the President of the Republic on the proposal of the Prime Minister and to the members of Parliament. But an amendment must be submitted to a referendum unless it has been carried by a three-fifths' majority in a joint sitting of both Houses—the National Assembly and the Senate.