Moreover, of election by the people at

Moreover, election by the legislature means election of party candidates. When party affinities intervene in the selection of judges, merit is discounted and independence of the judiciary disappears. Such party election encourages a type of judge far removed from the ideal of fairness and reasonableness which judicial decisions demand.

The system of popular election of judges was first introduced in France in conformity to the theories of popular sovereignty and the Separation of Powers. It now prevails in some of the Cantons of Switzerland, and in a few states of the United States of America. But popular election of judges is even more objectionable than election by the legislature. “ Of all the methods of appointment,” says Laski, “ that of election by the people at large is without exception the worst.” Popularly elected judges can never be impartial, honest, independent and dignified. Popular election means party election and judges so chosen become subject to popular passion and prejudice. It tends to lower the character of the judiciary.

The position becomes still worse when judges are elected for short periods. The desire to court popularity is a temptation few will be able to resist when their re-election is dependent on their popularity. This would create a strong temptation in judges to tailor their judicial decisions and, indeed, their whole judicial conduct in such a way as to meet the approval of those to whom they have to look for re-election. The voters, too, are not in a position to equitably weigh the qualities which a judge should necessarily possess. Moreover, candidates for judicial offices make frequently poor candidates. They cannot possibly put before the electorate either a programme or a personal plea concerning their judicial conduct.

The result is that a politician becomes a judge whose entire outlook is partisan, and there can be no independence of the judiciary. The appointment of judges by the executive is the most common and the best available method of choice and it is in practice in nearly all countries of the world. It is claimed that the executive is the most appropriate agency to judge the qualities necessary for a judicial office. Judges chosen by the executive are likely to be independent of popular influence and political or sectional considerations. The opponents of this method contend that personal favouritism and political consideration may determine the appointments and instances are cited from Britain, the United States and India. It is maintained that often the appointees are those who had an active political career than a judicial one before their appointment as was the case with Chief Justice Warren, former Governor of California. Laski did not consider simple nomination by the executive as an adequate system. He suggested that all judicial appointments should be made " on the recommendation of the Minister of Justice, with the consent of a standing committee of the judges, which would represent all sides of their work.

" This method, no doubt, represents the best guarantee we could have that appointments are made consistent with the qualities essential in a judicial officer. In Britain, and many countries in the Commonwealth of Nations, the judiciary is generally selected from among practicing lawyers. On the Continent of Europe, where court systems are unified under the Ministry of Justice, the judiciary is a career. The entrants are selected as a result of competitive examination and are promoted from court to court. In India, too, recruitment to the subordinate courts is through a competitive examination

whereas in the case of courts above, it is according to the method as prescribed in the Constitution, but the appointing authority is the executive.