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Notes

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The Cabinet, as an institution of politics and law was yet to evolve and take its shape. This made Walter Bagehot to remark in 1867. 'The most curious point about the cabinet is that so very little is known about it".

It was only after an extension of franchise and emergence of political parties in parliamentary elections that the cabinet took its present position of ruling the nation according to the mandate of people given at the time of an election.

"The English Constitution has made a circuit of the Globe and has become a common possession of civilized man".

G.B Adams

2- GENERAL FEATURES

De Tocqueville remarked that the English people had no constitution. This saying of a great political and constitutional expert is quoted very often, but only to be refuted. England has a constitution, although it is not written in a single document. The British Constitution is found in statutes, customs and conventions. De Tocqueville probably understood that a constitution meant only a written, precise and one comprehensive document. If that be really the definition of a comprehensive document. If that be really the definition of a constitution, the England has no constitution. A constitution means certain principles on which the Government in a state is organized and which determines the relation between the people and the government. England not only has its own constitution, but it has also provided inspiration and motif for a number of other constitutions in the world. England is the homeland of parliamentary democracy. Other countries have borrowed many of its institutions and principles. We in India have also provided for a parliamentary democracy on the model of the British Constitution.

Q.1 Discuss and analyze the salient features of the British Constitution.

Ans: The salient features of the British Constitution may be analyzed as follows--

1. Mostly Unwritten and Partly Written: By far the most important feature of the British Constitution is its unwritten character. There is no such thing as written, precise and compact document, which may be called the British Constitution. It was really this aspect of the British Constitution that led De Tocqueville to remark that England has no Constitution. The English Constitution has evolved through the ages, and is largely found in judicial decisions, customs and convention. Conventions are political usages which have developed during its working and have come to stay as a vital part of the Constitution. They are now deep-rooted in the political system of Great Britain. Though these conventions have not been enacted in a statute and thus have no legal sanctions behind them, yet the governments and the people scrupulously follow these. They have even replaced law. This is in contrast with the system in India, U.S.A., France, Switzerland, the USSR and other countries, which have precisely written constitutions in the form of proper legal document duly enacted by some Constituent Assembly especially elected by the people for the purpose of framing the constitution. The British Constitution does not consist of any such single legal document, as it was never passed by any Constituent Assembly as such. At the same time although the British Constitution is mostly based on conventions and traditions yet it contains certain regularly enacted laws as its part and parcel. There are a number of historic Charters and Statutes laying some of the fundamental principles of the British constitutional system such as Magna Carta (1215), the Petition of Rights (1628); the Bill of Rights (1689); the People's Representation Act (1918); the Equal Franchise Act (1928); the statute of Westminster (1931); the Parliamentary. Acts, of 1911 and 1949 and various other statutes concerning local government and organization.

2. A Specimen of Development and Continuity: The English Constitution is a child of evolution. It can be traced back to the remote past. It was never enacted in the form of laws by

any constitution – framing body duly elected by English people at any stage of history. It has grown like an organism and developed from age to age. As Munro points out, "the British Constitution is not a completed thing but a process of growth. It is a child of wisdom and chance whose course has sometimes been guided by accident and sometimes by high design. England has essentially moved along on her constitutional pathway readjusting her institutions slowly and cautiously to the changing conditions of the time and mood of her people".

In the words of Ogg, "the political changes as a rule have been so gradual, defence to the tradition so habitual and the disposition to cling to accustomed names and forms even when the spirit had changed so deep rooted, that constitutional history of Britain displays a continuity hardly paralleled in any other land." As for example the ancient institution of Kingship with the same name and style still continues although in the long course of history of England, its spirit has entirely changed from absolute monarchy to constitutional. So is the case of every other political institution. Moreover, this evolution of British constitutional system has been peaceful and there have been no serious political or revolutions for bringing about a change.

3. Flexible: The British Constitution is a classic example of flexible constitution. It can be passed, amended and replaced by simple majority of Parliament since no distinction is made between a constitutional law and a ordinary law. Both are treated alike. The element of flexibility has lent the value of adaptability and adjustability to the British Constitution. This quality has enabled it to grow with the needs of time.

4. Unitary: The British Constitution has unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. The Executive organs of state are subordinate to it and exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not political autonomous units as in a Federation like those of U.S.A. or India.

5. Parliamentary Executive: England has a parliamentary form of government. The King who is sovereign has been deprived of all his powers and authority. The real functions are Ministers who are chosen representatives of the people. They belong to the majority party in Parliament and remain in office so long as they can retain its confidence. They are, so far as law is concerned, Ministers of the King and are summoned and dismissed at the royal discretion. But in actual practice, the choice of summoning the ministers is limited to the parliamentary majority party only, and no King dare dismiss his ministry so long as it enjoys the confidence of Parliament. Whenever they lose the confidence of Parliament, they must resign and give place to the party, which commands majority and therefore its confidence. No King can retain them in office at his pleasure. It is the pleasure of Parliament, which can keep a Ministry in saddle.

This relationship of Ministers and Parliament binds the executive and the legislature together and it is the most important feature of parliamentary government.

6. Sovereignty of Parliament: The Pattern of government in Britain is not only parliamentary, but it also stipulates the sovereignty of Parliament. Legally, Parliament can make, amend, and repeal any law whether ordinary or Constitutional. Its command is law and it is final. Neither it requires ratification nor it subject to judicial review. No court in the country can challenge the validity of laws passed by Parliament. The Executive is subordinate to it. This fact led De Lolme to remark; "The British Parliament can do anything but make a man a woman and a woman a man." The position of the British Parliament is in sharp contrast to the position of the Indian Parliament or the American congress. The Constitutions of these countries define the powers of these legislatures and then their respective Supreme Courts may declare laws passed by them unconstitutional if the same go against the spirit of the constitution.

7. Rule of Law: Another most important feature of the British Constitution is the Rule of law. It implies equality of all before law, its supremacy, uniformity and universality. It has three implications, viz.,

1. All persons are equal before law irrespective of their position or rank.
2. This doctrine emphasizes the supremacy of the law and not of any individual.
3. No one can be detained or imprisoned without a fair and proper trial by a competent court of law. Nor can a person be punished or deprived of his life, liberty or property except for a specific breach of law proved in an ordinary Court of Law by an ordinary procedure. A corollary to this principle is the doctrine that, "the King or Queen can do no wrong". That means that the King or Queen cannot be tried or punished by a court of law. It further implies that the ministers are legally responsible for the actions taken by them in the name of the sovereign. They cannot seek shelter in the legal immunity of the King or Queen.

8. Gap between theory and Practice: Unlike other constitutions there is a great gap between theory and practice in the English political system. This fact results largely from the unwritten character of the constitution, which is mainly based on conventions and customs. As for instance, in theory it is the King or Queen who is sovereign, but in practice it is the Parliament, which is sovereign. The King or Queen cannot veto any Bill passed by the Parliament, although he or she has the right to do so in theory. The Convention is that the King or Queen shall sign even his or her death warrant if passed by the two Houses of the Parliament. The King or Queen is only a figurehead. He or she must accept the advice of the Cabinet, which is responsible to the Parliament. The Queen in theory is the fountainhead of patronage but in practical all honours and titles are conferred by the Prime Minister. In theory the King or Queen has unlimited powers, but in practice he or she does little. A Cabinet Minster countersigns every action of the King or Queen. Prof. Munro rightly remarks, "The Queen retains the symbolism of absolute power although she has completely lost the substance of it. This also justifies the remarks of Lords Sankay that "Theory has no relation to realities in British Constitution.

9. Mixed Constitution: The British Constitution is a queer mixture of the monarchical, aristocratic and democratic principles. The institution of Kingship shows that there is Monarchy in England. The existence of House of Lords, the Upper House of the British Parliament gives an idea that England has an aristocratic type of government. The House of Commons, which is the lower and popular House of the Parliament, reflects actual working of a full-fledged democracy in this country. But all these diverse political elements have been beautifully welded together to produce the final effect of perfect representative democracy, in which the House of Commons exercise the ultimate supremacy. The House of Lords has ceased to be effective and the King or Queen has become a titular head only. Hence in the words of Ogg, 'the Government of U.K. is in ultimate theory monarchy, in form a constitutional and limited monarchy and in actual character a democratic republic.

10. Role of Convention: A necessary corollary to the unwritten character of the Constitution is that the Conventions play a vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure, passed by parliament, by convention, she cannot do so and the same has become a rigid principle of the constitution itself. By convention, again the Queen cannot go against the advice of the Cabinet, though in strict legal sense she can do so.

Likewise, there are dozens of conventions, which do not have any force of law yet they are scrupulously adhered to and constitute the very blood and flesh of the Constitution.

11. Independence of Judiciary: Independence of Judiciary in the British Constitutional system is highly commendable. Although the British Constitution is not based on the theory of

strict separation of powers yet by convention and tradition, lot of independence has been allowed to the Judiciary. The British Judiciary is considered to be the most highly impartial, upright and unamenable to any political influence. It is rather on account of efficiency and impartiality of the Judiciary that all civil liberties of people are perfectly safe and the celebrated principle of Rule of Law prevails in its real and effective form.

12. Paradoxes and Anomalies: The British constitution is full of paradoxes and anomalies. In the first place, England is now a first rate democracy but hereditary political institutions like Kingship and the House of Lords still exist. It is a clear contradiction in terms. Democracy has no place for hereditary Kings or Queens or hereditary legislatures. It goes to the genius of the Britishers that even in such paradoxical situations, they have found a golden mean without disturbing their institutions and at the same time fitting them in a democratic structure. Moreover, the British constitution is not systematic and symmetrical in form. In the words of Bounty, "Britishers have simply left the different parts of their Constitution where the waves of history have deposited them". The Britishers have not worried themselves to correlate various pieces of the constitution and blend into a single whole and remove anomalies, which are so very apparent.

POINTS TO REMEMBER

The British Constitution is unwritten. It is a specimen of development and continuity. It has grown instead of being made. It is flexible in nature. It is Parliamentary in form. The Parliament is sovereign. The Rule of Law forms an important principle of the British Constitution. There is a gap between theory and practice. A vital role is played by the conventions.

Q.2. What are the sources of the British Constitution? Is it correct to say that the British Constitution does not exist? Is it "a child of accident and design"?

Ans: In every country of the world except Great Britain, Constitution means a body of legal rules, which prescribe the organization of government of that country and regulate relations between the individuals and the government. All such rules are embodied in one or several documents bearing either the same data or different dates. Such a document may have been drawn up either by a Constitution Assembly, specially converted for that purpose, or may be formulated by the Legislature or it may have been granted by the King through have proclamation. The Constitution, as such means a written, precise and systematic document containing the general principles under which the government functions. These principles constitute the constitutional law of the country and it is quite distinct from the ordinary law. All acknowledges its sanctity and it speaks of the supremacy of the Constitution. It is amended and altered by a procedure different from that required for amending the statutory law. If the statutory law is at variance with the letter and spirit of the Constitution, the same is held unconstitutional.

In this sense there is no document to which a student of the British Constitution may turn for reference. The English-men never drew out their political system in the shape of formal document. It is the child of chance and result of the necessities of the time and consequently remains undefined and uncodified. There are some enactments of Parliament, which form part of the British Constitution, but they do not bear the same date. They were made as and when they were needed. Such enactments remain scattered and constitute a very small portion of the British Constitution. The most important part of the British Constitution is the result of customs, usages and precedents and consequently it is unwritten in nature. Nor is there any law in Britain, which may be altered by a procedure different from the one required for altering the ordinary law. Both the constitutional law and the statutory law originate from the same source and undergo the same

ordinary law

procedure in passing and amending them. There is the supremacy of Parliament rather that of the Constitution.

The British Constitution is not contained in any single written document. A representative body duly elected by the British people for the purpose never enacted it. It was never promulgated on a specific date in history. It consists of various elements lying scattered all over the British history. According to Lord Bryce it is "a mass of precedents carried in men's minds or recorded in writing, dicta of lawyers and statements, customs, usages, understandings and beliefs, a number of statutes mixed up with customs, and all covered with a parasitic growth of legal decisions and political habits." The sources of the Constitution are party written and partly unwritten. They may be broadly brought out as fellows:

1. Great Charters, Petitions and Statues: One of the main sources of the British Political System lies in great charters, petitions and statutes enacted at different times in the historical evolution of political institutions. The Magna Carta 1215,the Petition of Rights 1621, the Bill of Rights 1689, the Act of Settlement 1701 as modified by the Abdication Act 1936, the Act of Union with Scotland 1707, the Parliament Act 1911 as amended in 1949, the Government of Ireland Act 1920, the Ministers of Crown Act 1937, have been great landmarks in the evolution of the British Constitution. Through these measures the British secured their democratic rights and gradually left the Monarch absolutely helpless in the hands of a democratic Parliament. But all these form a very little portion of the body of the British Constitution. They do not, as Munro points out, make a comprehensive code. Most of them have been the results of the need of the hour and are of historical value only today. In addition of some of the majority statutes mentioned above, there have been various ordinary statutes, which have also contributed much to the growth of the British Constitution. These laws are not marked by much constitutional enthusiasm, but all the same they are very important. To this category belong the various parliamentary enactments extending the right to vote to the British people like the Reform Acts of 1832, 1867, 1884, 1918, 1928, 1948 and even in 2010.

2. Conventions: Another most important source of the British Constitution lies in its conventions. These conventions not a part of written law, nor can they be enforced through the courts. But the people obey them because they are helpful in the smooth working of the government. For example if the Queen refuses assent to a parliamentary enactment, she would perfectly be within her rights. But this would bring a constitutional crisis, and thus by convention she must not refuse assent to a Bill duly passed by parliament. Another fundamental Convention is that the cabinet resigns when it ceases to enjoy the confidence of the majority of the Parliament. By another Convention, the Prime Minister must belong to the House of Commons. There are many other Conventions, which form the very soul of the British Constitution.

3. Judicial Decisions: The Judicial decisions form another source of the Constitution. The judges interpret all the statutes and charters etc., and lay down their scope and limitations. Some of these judicial decisions have established important constitutional rights of the people. For example independence of juries was firmly established by the judicial decision in the famous Bushel's case in 1670. To some extent the British judges develop the Constitution much in the same was as is done by the judiciary in federal Constitutions like that of India or the U.S.A.

4. The Common Law: Another source of the Constitution may be traced in the institution of Common Law. This law embodies principles not laid down by Parliament ordained by the monarch, but which have developed in England independent of both and slowly gained recognition throughout the realm. The common law developed out of customs and usages. The judges recognized some customs of the realm, applied them to individual cases and set precedents for decisions in later cases. As for example, in other countries the rights and liberties of the people are expressly guaranteed in the Constitutions in the form of fundamental rights, but in

England they are guaranteed by the common law. For instance nobody can be denied his liberty except for the violation of law, proved in a court of law.

5. Commentaries of Eminent Jurists: Legal authorities and eminent jurists have written comments on Constitutional law of England. Although these comments are mere legal arguments, yet their opinions cannot be easily ignored since they throw a flood of light on the spirit in which a particular law should be interpreted. Arson's law and Customs of Constitution, May's Parliamentary Practice and Dicey's Law of Constitution are regarded to be authoritative comments on law and practice of English Constitution.

EXISTENCE OF THE BRITISH CONSTITUTION

It was De Tocqueville who remarked that English had no Constitution. He was led into this belief by the absence of any written document, which might be called the British Constitution. However, in practice this argument does not hold water. It is true that in England there has never been a written Constitution except for the short-lived experiments of the Cromwellian era.

But what makes a Constitution is not a formal document; but the actual observance of fundamental rules relating to the government of the country. As Bryce remarks such rules do exist in England in the form of a host of conventions, customs, usage and judicial decisions that have been generally recognized together with certain number of character and statutes. If we mean by the term constitution only a written constitution, with some definite and precise rules embodied in black and white, then of course, England does not possess a constitution. But if we mean by constitution a body of fundamental rules and usages, written or unwritten, accepted as the basis of the government then England certainly possesses a Constitution. The British Constitution is not to be found in a definite and precise document. It is as Munro points out, a complex amalgam of institutions. It is a compendium of charters, statutes, decisions, precedents, usages and traditions, some of them are definitely set down in writing but are changeable at any moment, while others are living only in the understanding of the people. British Constitution is not entirely unwritten. Substantial portions of it have been embodied in great Constitutional charters like Magna Carta, Bill of Rights, Act of Settlement, Act of Unions with Scotland and Ireland, through they sum up only a small portion of the total. We may also include all the Reform Acts and the Parliamentary Acts of 1911 etc. But these are conventions, which are the very centre and soul of the British Constitution, since major portion of the Constitution rests upon conventions rather than on laws.

With this understanding one would agree that Britain has a constitution much in the same manner as other countries have. Rather, the British Constitution is the oldest in the world and the British people are fully aware of its existence. Not only do they respect it but also guard it very zealously. De Tocqueville assertion, therefore, was based on a wrong assumption. What Tocqueville resented namely the absence of any written document is in reality the glory and strength of the British Constitution. The special virtue of the British Constitution is its extreme flexibility, which enables it to adapt itself to the changing times without any difficulty.

A CHILD OF ACCIDENT AND DESIGN

Any representative body never framed the British Constitution at a specific time in the history of Britain. It has grown and evolved during the course of centuries. It has, therefore, been aptly described as a child of accident and design. This estimate of the British Constitution is quite correct. Much of the growth of the Constitution is accidental It is the product of a slow process of growth whose course has been guided partly by design and partly by chance. It has not been framed or adopted by any constituent body consisting of British people's representatives, at any particular time. This is in contrast with the Constitution of India, U.S.A. and France, which are

the result of deliberate efforts of their people. Also it was not ordained or enforced by any monarch. It has gradually evolved itself from the feudal days to suit the modern machine age.

Almost all-important political institutions in England like Bicameralism, Cabinet System, and Constitutional Monarchy were born out of chance and expediency. Even the office of Prime Minister grew up instead of being created. There are numerous instances like that. Strachey is thus justified in saying that the British Constitution is 'the child of wisdom and chance'.

POINTS TO REMEMBER

The sources of the constitution are charters, conventions, judicial decisions, common law and commentaries of eminent jurists. The British Constitution does not exist in real sense, as there is no set political system. The only thing is that the Constitution is largely unwritten. It has gradually evolved during the courses of centuries and as such is a child of accident and design. It was never framed or adapted by a body of people's representatives at anytime, nor did any monarch enforce it. It just grew up out of expediency and chance.

Q.3. What is meant by the phrase 'conventions of the constitution'? How do they different from laws? Give some examples from the British Constitution. How and why are they enforced? (B)

Ans: Two sets of rules are required for the successful working of the constitution of a country. One type of rules is those, which are enforced by the courts of law and are known as conventions. Dicey makes a clear distinction between laws and conventions. The laws are rules made by a legislative authority, enforced by the executive and applied by the courts. Conventions, on the other hand, are neither made by any legislative authority nor enforced and applied by the executive and the judiciary. They are merely some understandings, habits and practices, which regulate the working and day-to-day activities of the government and fore an unwritten part of the Constitution. The distinction between law and convention is more formal than real. Laws are found in statute books while conventions are not. But the real difference between law and convention is that the former is written and latter is not. Another difference is that while the courts recognize laws, the conventions are not. As for example, if a law is violated, the offender is liable to legal action and court sentence. On the other land, if somebody violates a certain convention, he is not liable to be hauled up by the police, and punished by the courts. In fact the conventions have the sanction of public opinion.

Human nature is conservative and it always delights in following the experience of the past, making necessary adjustments to suit the new requirements. Rules once evolved and subsequently followed become customary and binding. All rules evolved in such a manner, followed and considered binding by the people in the matter of government are characterized by Dicey as the convections of the Constitution.

The line of demarcation between laws and conventions is however, very thin. A convention of today may become a law tomorrow. As for example, the office of Prime Minister owed its existence to a long established convention but it was given legal recognition with the passage of Ministers of Crown Act, 1937. The same Act legally recognized 'Party', 'Opposition' and the 'Leader of the Opposition'. (C)

In England the importance of conventions cannot be exaggerated because the whole working of the Constitution rests upon them. The conventions secure continuous co-operation between the various organs of government. Conventions are necessary for the proper working of the Constitution. If the British Constitution is stripped of its conventions and displayed in its legal nakedness, it would be unrecognizable.

A complete list of the conventions may not be given. The following, however, are some of the important conventions, which are recognized and acted upon.

(A) IN RELATION TO THE KING OR QUEEN

1. The King or Queen must summon the leader of the majority party in the House of Commons to form the government after the general elections are over. He is designated as Prime Minister. The Prime Minister is then given a free hand in the selection of his colleagues and formation of his ministry.
2. The King or Queen must accept the advice of cabinet whatever and whenever tendered.
3. The King or Queen must given his or her assent to a Bill passed by the two Houses of Parliament, even if it refers to death warrants of the King or Queen himself or herself.
4. On the resignation of a Ministry, the King or Queen has to summon the leader of the opposition to form an alternative Ministry.

(B) IN RELATION TO THE CABINET:

1. The Cabinet holds office only as long as it retains the confidence of the majority in the House of Commons. The Cabinet must resign if it loses the confidence of the majority in the House. As an alternative, the Prime Minister of the defeated Ministry has the right to ask the King or Queen to dissolve the House. By way of another convention, the King or Queen must accede to such a request of the Prime Minister and must order fresh elections. If the defeated Ministry gains majority in the House again, it will continue in office and if it fails to win at the polls, it must resign before facing the new House. It cannot request the King or Queen to dissolve the House for the second time.

All the ministers are collectively responsible to the Parliament. Even if one minister is censured or defeated in the House, the whole ministry must resign en-bloc.

3. The cabinet cannot declare war or conclude peace without the approval of the House of Commons.
4. The Cabinet is an extra-legal committee of the legal executive called the Privy Council and exercises all the powers of that body in practice. All members of the Cabinet become automatically members of the Privy Council.
5. The Prime Minister of England must belong to the House of Commons. The conventions were established in 1922, when Lord Curzon was not chosen as Prime Minister because he belonged to the House of Lords.

depart - seperate

(C) IN RELATION TO PARLIAMENT

1. The Speaker of the House of Commons must keep himself aloof from party politics. He must behave as an impartial judge and should not commit to any political opinion inside or outside the House. He is to lead the life of political exile.
2. Once a Speaker always the Speaker' is another significant convention regarding the office of the Speaker. The Speaker of the outgoing House is returned unopposed from his constituency in parliamentary election. The House as Speaker then unanimously elects him. Thus he is allowed to continue as Speaker as long as he desires.
3. Parliament must meet at least once a year.

4. The lay peers do not take part in the working of the House of Lords when it sits as the Highest Court of Appeal. Only Law Lords especially nominated to the House of Lords are to perform its judicial functions.
5. It is a matter of convention, that every Bill must have three readings before being finally voted upon in each House of Parliament.
6. Again there is a convention that a speech from government benches must be followed by a speech from the opposition.
7. Peers are appointed on the advice of the Prime Minister.
8. All Money Bills must originate in the House of Commons.
9. Her Majesty's Opposition, as a representative of the largest minority in the nation, has a rightful status to be upheld by parliamentary procedure.

SANCTION BEHIND CONVENTIONS

Conventions are political usages, which have grown in the course of the working of the Constitution. They have not been enacted both by the Parliament and hence have no physical sanction behind them as Law of the Parliament has. Yet these conventions are obeyed both by the people and the government. Prof. Dicey was of the opinion that these conventions are obeyed because their breach shall ultimately bring the offender in conflict with some established law and then it will entail legal punishment. As for instance, if the King does not summon Parliament for more than a year, serious consequences would follow. The Army Act would lapse; consequently the maintenance of armed forces will become illegal. The Finance Act will also lapse and the Cabinet shall not be legally entitled to raise taxes and spend money.

Prof. Dicey's view is only partially correct. Not all conventions are bound up with law. As Dr. Jennings has pointed out, the violations of every convention does not necessarily lead to the breach of a law. For example, if the Cabinet refuses to resign when the House of Commons pass a vote of no confidence, no legal consequences will follow. Lowell while endorsing the opinion of Jennings points out that England is not obliged for ever to hold annual sessions of Parliament. Being a sovereign body, it can pass a permanent Army Act and grant taxes for a number of years.

Lowell points out that conventions are supported by something more than the mere realization that their violation may bring about breach of law. According to him, public opinion is the real sanction behind conventions of the Constitution. It is a convention that Parliament must be convened every year and that the Cabinet defeated in the House of Commons over a vital issue will resign or appeal to the electorate. If these things do not happen, there is bound to be resentment in the public. This fear of annoying the public compels the political party to obey the conventions. If the conventions were not obeyed, there would be numerous complications in the working of the government, which no statesman with any interest in the future of his party can for a moment over look. The conventions are rules of Constitutional morality and code of honour. They reflect the political needs of the people. Any deviation from the established conventions will terribly offend public opinion. No party or politician can forget that he is to face the people, in general elections. The fear of public opinion is therefore a positive check on the politicians in England to follow the conventions most scrupulously. The conventions are honoured in Britain because these are the motivating force of the Constitution. They have indeed oiled the wheels of democracy. These are, in fact, the most vital parts of the Constitution and have determined its growth and transformed absolute monarchy into a crowned republic.

POINTS TO REMEMBER

The conventions constitute a vital part of the British Constitution. These may be defined as those understandings, habits and practices, which regulate day-to-day working of the

government. There are conventions relating to the King, the Parliament and the Cabinet. There is controversy among the constitutionalists as to why conventions are obeyed. Prof. Dicey is of the opinion that conventions are obeyed because their breach would bring about a clash which existing laws. But this is not a satisfactory explanation because breach of every convention does not necessarily bring about a clash with existing laws. But this is not a satisfactory explanation because breach of every convention does not necessarily bring about a conflict with some law. In the opinion of Lowell, public opinion is an effective sanction behind the conventions. No statesman with any interest in the future of his party can violate a convention.

Q.4. Discuss the nature of sovereignty of Parliament in England.

Ans: Sovereignty of the British Parliament is an important feature of the British Constitutional System. The struggle between the King and the Parliament was finally decided by the Glorious Revolution of 1688, which was further reinforced by the Act of Settlement. The British Parliament became a sovereign body. In its legal sense the Parliament consists of the House of Commons, House of Lords and the Monarch. Sovereignty of the Parliament means its supremacy. There is neither any other authority above it nor any authority above it nor any authority beyond its control.

Sovereignty of Parliament has two aspects positive and negative. Looked at from the positive angle, it means that there is no law, which the Parliament cannot make. It is competent to pass, amend and repeal both ordinary and constitutional laws. It is both a legislative body and constituent assembly. Parliament gained sovereign powers after a long struggle for supremacy with the kings at various stages of British History. The Parliament controls the Ministry. The latter remains in office as long as it retains confidence of Parliament. So Parliament is sovereign. The Parliament can also make laws regulating private rights and public rights. It controls army, executive and judiciary. It can make laws annulling a decision of a court of law. It can establish an absolute monarchy or a Communist society by an ordinary law. The laws passed by it, ordinary or constitutional, do not require any ratification. Its word is law and a final law. The Parliament can extend its own life; can legislate for abdication of a monarch or restoration of a king. In 1660, it restored Charles II to the throne; in 1936 it passed Abdication Act of Edward VIII. It passed septennial Act fixing its life at 7 years and then reduced it 5 years by an act passed in 1912. It can adjudge a minor of full age, naturalize an alien or legitimize a bastard. De Lolme has well said, ... "Parliament can do everything except making a woman a man and changing a man into a woman". When the Parliament legislates, the whole nation legislates. It personifies the British people.

The Parliament has not only passed Constitutional laws for Britain but for so many other countries of the Commonwealth.

Lastly, it may be noted that unlimited authority of Parliament regarding law making resides in Parliament alone and not in any executive organ. Executive in England does not enjoy the authority to issue decrees having the force of law unless the power is conferred upon the executive by Parliament itself.

Looked at from the negative angle, sovereignty of Parliament means that there is no authority in the country, which can question the legality of the laws, passed by the Parliament. There is no system of judicial review. The courts of England have no right to question the authority of the Parliament though they can interpret the law passed by it. The judges do not and cannot declare any parliamentary legislation invalid.

Dicey some up the unlimited authority of the Parliament as follows:

1. Firstly, there is no law touching the United Kingdom, which the parliament cannot make.

2. Secondly, there is no law already in force, which the Parliament cannot amend or repeal.
3. Thirdly, there is no constitutional law, which the Parliament cannot make, amend or repeal.
4. Fourthly, there is no judicial authority in the United Kingdom, which can set aside laws passed by the Parliament.

LIMITATIONS

Dicey's analysis is a legal truth, but what is legally true may be politically wrong. Dicey's conception of sovereignty of Parliament is therefore, subject to serious limitations.

1. Dicey and others belonging to the analytical school dealt with only legal aspect of sovereignty ignoring altogether hard facts and realities of life. Legally, the Parliament may make any kind of law but it cannot pass laws, which are against the established ode of morality. If the Parliament ever ventures such a legislation public opinion is sure to revolt against its authority. Nor will Englishmen tolerate such an action of the Parliamentarians: Even sovereignty of Parliament is the result of a long established custom and the same custom itself is a bar on the sovereignty of Parliament.
2. The Rule of Law and sovereignty of Parliament go together. Sovereignty of Parliament is tolerated in Britain because there is Rule of Law. Rule of Law establishes the equality of all before law and there is nothing arbitrary in Britain. If the Parliament passes a legislation, which violates the Rule of Law, it endangers its own supremacy. The principles involved in the Rule of Law are the result of the struggle of the people extending over centuries. So is the sovereignty of the Parliament. The liberties and freedoms of the people depend upon the Rule of Law as there is nothing like Fundamental Rights in Britain. Sovereignty of Parliament and the Rule of Law are, therefore, inter-connected and mutually inter-dependent.
3. Parliament is itself a fiction because it not an institution. Parliament consists of the King, the House of Lords and the House of Commons all the three parts join together to complete the actions of Parliament. Burt the competence of the House of Lords, with the passage of the Act of 1911 as amended in 1949, has become limited and if today the King and the House of Commons were to pass a law abolishing the House of Lords-within the requirements of the act there is nothing to obstruct. Therefore the conception of the sovereign power today, stands fundamentally changed. Under the present circumstances Parliament is the House of Commons and in the broader sense it means the majority party in the House of Commons, which, in its turn, is the Cabinet.
4. Though the Parliament may legally legislate for the Dominions, yet its powers are rigidly limited by certain conventions. There is a convention that any change touching the succession to the throne, the royalties of titles shall require the assent of Dominion legislatures apart from the Parliament of the United Kingdom. Again, no Law passed by the British Parliament can be applicable to any of the Dominions. This is a serious limitation on the sovereignty of the British Parliament now.
5. The jurisdiction of Parliament is further curtailed by the International Law. It is now a recognized principle of the British Constitution that International Law is a

part of the Municipal Law of the land. Any legislation, which is likely to violate International law, is beyond the jurisdiction of the British Parliament.

Further, the Judge-made laws, the delegated legislation and a new form of administrative law, which are finding an important place in the British Constitution, are important limitations over the sovereignty of the parliament. There are not laws made by Parliament, yet they are as much part of the laws of the land and those made by Parliament.

As a matter of convention, no Parliament can pass a law, which is likely to affect the interest of trade unions, chambers of commerce and like without consulting these bodies.

8. No Parliament can make laws, which affect fundamentally the general policy of the State unless it has been an issue at General Elections. For example, the Parliamentary Act of 1911, which substantially curtailed the powers of the House of Lords, was passed after electing public opinion at General Elections.

Prof. Dicey himself feels that there are two kinds of limitations on the parliamentary sovereignty: one being external and the other being internal. Externally, Parliament is bound by the public opinion. It cannot pass any law or laws, which may enrage the masses. The fear of public revolt puts a definite limit to the powers of parliament. Internally, its sovereign power is bound by its nature. It shall pass only these measures, which are likely to be approved and liked by the members who compose the Parliament. Thus the internal limitations arise from the composition and character of the Parliament itself. Further one Parliament cannot bind the other. Every parliament is supreme and can amend or repeal all laws passed by its predecessors. This is, however, not a limitation but an incident of sovereignty.

It should be noted however, that the Parliament is supreme in theory alone. In actual practice, it has never been so supreme. The powers of the monarch have decreased but the powers of the Cabinet have steadily increased. The Cabinet backed by strong majority in the House of Commons controls all legislation. Parliament in practice does little more than register the wishes of the Cabinet.

POINTS TO REMEMBER

The Parliamentary sovereignty is an outstanding feature of the Constitution. It has two implications. Positively, Parliament can amend and repeal both ordinary and Constitutional laws. Negatively, no one in the reform can challenge the validity of the laws passed by the Parliament. Although legally Parliament is supreme in all respects, in practice it is not so. Its authority suffers from various limitations. The public opinion is an external limitation. The composition and character of Parliament is its internal limitation. International law is still another restriction. The Parliament by way of practice cannot pass legislation in respect of various public bodies like the Trade Unions. It cannot introduce a fundamental change in public policy without the consent of an electorate.

Q.5. The Rule of Law is an essential guarantee of the liberty of the English people'. Elucidate.

OR

Q. Discuss the nature of the Rule of Law in England. Are there any exceptions to it?

Ans: The Rule of Law is a unique feature of the British Constitution. Ordinarily it means that there is government of laws and not of men in England. Law is supreme over all. None can claim exemption from law. According to Dicey it has the following implication.

1. No one can be punished except for breach of law: Firstly, it means that 'no man is punishable, or can be lawfully made to suffer in body or goods, except for a district breach of

law, established in the ordinary legal manner before the ordinary courts of the land." In simple words, it means that no citizen of Great Britain can be arrested, detained or imprisoned without a fair and proper trail in a court of law. The principle further implies that there should be an absence of arbitrary power in the hands of the executive. Cases are tried in open courts to which the public has free access. The accused has right of being defended by a council of his own choice and in all serious cases a jury must try him. No person should be deprived of his life, liberty and property arbitrarily. It establishes the supremacy or predominance of regular law as opposed to the influence of arbitrary power.

2. Equality before Law: Second implication of Rule of law lies in the fact that 'no person is above law and every person whatever his rank, or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals." In this sense, the government officials are bound to obey the ordinary laws, which govern the private citizens and are subject to the jurisdiction of the ordinary tribunals. This is in contrast to the system of the administrative law prevailing in France and other continental countries where dispute involving the government or its officials are beyond the ordinary courts and must be dealt with the special courts known as administrative courts. In England, such is not the case "With us, says Dicey "every official, from the Prime Minister down to constable or a collector of taxes is under the same responsibility for every act done without legal purification, as any other citizen."

This aspect of the Rule of Law is of great importance. As Maitland points out, it ensures ministerial responsibility in legal sense. The ministers are not only politically responsible to the Parliament, but they are also responsible before the ordinary courts of law. They can be sued or prosecuted for any illegal action taken by them in their official capacity.

3. Fundamental rights of the People are guaranteed by the ordinary law. In the third place, the Rule of Law implies that various rights of the people like the right to personal liberty, the right to public meeting etc., are in England a part of common law or the result of judicial decisions determining the right of private persons in particular cases brought before the courts. In other countries like India or USA these fundamental rights are embodied in their written constitutions. The judiciary is the zealous guardian of rights and liberties of the people. It is an interesting fact to note that in England people enjoy much more freedom than in any other country of the world although their rights have never been reduced to writing in any formal Constitutional document.

EXCEPTIONS TO THE RULE OF LAW

There are certain limitations, which the principle of the Rule of Law suffers from. These limitations may be brought out as follows.

1. The Crown is not liable for the wrong done by its officers. A government official is personally responsible for his mistakes made in his official capacity. But since the government cannot be held responsible. The wronged may go without an adequate compensation or relief because the wrongdoer may not have sufficient resources to pay the damages. In France where system of administered law prevails the wronged can secure proper relief from the government for damages done by its officials.
2. England is fast developing into a welfare state and the activities of the executive are extending to various fields such as education, public health, town-planning etc. As a result of extension of functions, it has become customary to entrust the executive authorities with judicial powers. As a consequence, the distinctions between the rule of Law and the Administrative Law, so sharply drawn by Dicey, are fading away. Thus the Roads Act 1920 authorities Minister of Transport to

decide appeals about the refusal of licenses to run omnibuses. The Board of Education decides appeals about the opening of new schools. An appeal against an order of a Country Council lies with the Minister of Health. This is a kind of administrative law. Under it the administrative agencies exercise the jurisdiction of a judicial nature over the rights and property of citizens.

3. Judges cannot be held responsible for anything done by them in the official course of their business.

4. Foreign rulers and diplomatic representatives cannot be tried by any court in England for any wrong committed by them.

5. The servants of the Crown have practically no protection against the Crown even though they are dismissed without a just cause.

6. Till the passage of the Reform Act, 1947, peers could only be tried by peers, which was clearly a violation of the Rule of law.

The Crown alone has the power to grant or refuse passport to travel in any country and such orders cannot be challenged in a court of law.

8. The action of the Home Minister regarding naturalization of aliens cannot be challenged in a court of law. Likewise cancellation of citizenship cannot be challenged.

9. Trade Unions enjoy a lot of immunity from law.

10. It is essential that proceedings against a public official must be started within a period of six months from date of the cause of action regarding any excess, neglect or default of public authority. The right of action lapses after six months. Moreover, hearing penalty is to be paid if a citizen's lawsuit against an official of the Government fails. These facts discourage any action on the part of private citizens against a government official even if he has done a serious damage in his official capacity.

11. The King or Queen is not amenable to the jurisdiction of civil or criminal law.

In fact, today it is the 'Rule of law of Parliament.' It can pass any new laws and repeal old laws. It can establish administrative courts or restrain liberty of the people. It may order arrest and detention without judicial trial of any person and arm the government with wide discretionary powers as under the Emergency Act. All these facts clearly indicate that the Rule of Law in England suffers from various limitations. Even Dicey himself admitted in 1915 and remarked that "the ancient veneration for the Rule of Law has suffered during the last 30 years a marked decline." That might be so, but the rule of law is the rich heritage of the British people to the world. It remains the protector of democracy and human rights not only in Great Britain but also in other democracies of the world.

POINTS TO REMEMBER

The Rule of Law is an essential requisite of the British Constitution. According to Dicey, it has three implications. In the first place, it implies that no person in England can be arrested, detained and imprisoned without a fair and proper trial in a court of law. In the second place, it means that every person in England from the Prime Minister to a peon is amenable to the jurisdiction of ordinary courts administering the ordinary law. Lastly, rights and liberties of the people are inherent in ordinary laws of the land. The Rule of Law suffers from limitations as well. Under the Rule of law as enunciated above, a person wronged by a government official may not have adequate compensation. England is fast developing into a welfare state resulting in an

extension in the functions of the executive. The various administrative organs are, therefore, entrusted with semi-judicial functions. Administrative law is automatically coming into existence. Rulers of foreign states and diplomatic representatives are not subject to the jurisdiction of the British Courts.

"There are many subtle distinctions in the vernacular of the British Government but none is more vital than the distinction between the King and the Crown". **Gladstone**

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3- THE MONARCHY – THE NOMINAL EXECUTIVE

Except for a decade of Puritan Commonwealth, the institution of monarchy has existed in England sine Roman times. During the past ten centuries, England had fifty-three monarchs. With the exception of five women, all have been men. The longest reign was that of Queen Victoria extending over sixty-four years and the shortest period of reign was that of Edward V who ruled for a few months in 1483. It was only for eleven years (1649 – 1660) that England remained without a monarch.

The British Monarchy is a hereditary institution, which is regulated according to laws of succession passed by Parliament from time to time. The succession to the throne in present time is regulated according to the Act of Settlement, 1701 as amended from time to time. The Act provided that the throne of England should pass over to the heirs of the princess Sophia of Hanover. Till 1914 the Royal Family was designated as the House of Hanover, but after that it passed on to the House of Windsor. According to a provision in the Act, only Protestants are eligible to succeed to the throne. Besides by usages the throne descends according to the principle of primogeniture, which means that the elder son is to be preferred to the younger. Male heirs are preferred to female heirs of the same degree. In case no direct heir to the throne is available.

Parliament would have to provide for a new dynasty by amending the rules of succession. The eldest son of the King, if any, is bestowed with the title of Prince of Wales. The Queen Elizabeth II succeeded to the throne after the death of her father King George VI, she being the eldest daughter, and they're being no male issue. There is a great distinction between a Queen who succeeds to the Crown in her own right and a Queen who gains her title by being the wife of a King. The former exercises the functions of the Crown but the latter does not.

The British Monarchs receive an annual grant from the national treasury. It is called Civil List. Parliament determines by law an annual Civil List to be paid from the national treasury for the maintenance of the Monarch and his family.

Q.6. State clearly what you understand by the term 'Crown' in the English Constitution. Bring out the distinction between the King and the Crown. Discuss in brief the powers of the Crown.

OR

Q. 'The King or Queen of England reigns but does not rule'. Examine the nature of British Monarchy in the light of the statement.

Ans: The Constitutional history of England begins with an absolute monarchy. The king h the supreme authority. He was the source of laws, head of executive authority and fountainhe of justice and honour. But with the growth of democratic ideas, the powers of the King a person began to be transferred to the Crown as an institution. By and by, he was reduced to position of a nominal or constitutional head and his powers began to be exercised by the Crow which is a strange combination of the King, the Privy Council, Cabinet and Parliament to so extent. The distinction between the King and Crown is the distinction between the monarch a person and monarchy as an institution. The King is a person whereas the Crown is the name of institution. The King is a human being, is born gets crowned and ultimately dies. The Crown an institution is perpetual. The distinction is clear from the following oft-quoted maxim of t British Constitution. 'The King is dead, long live the King'. The word King used in the first p of the sentence refers to the King as a person and the same word used in the second part of t sentence refers to the Crown as an institution. This shows that the King as a person can die b Kingship or Crown as an institution cannot die. It is immortal. It is only an abstraction. In t words of Sydney Low it is only a myth. Begehot calls it, 'a convenient working hypothesi Munro regards the Crown as 'an artificial juristic persons', Ogg defines the Crown as 'th supreme executive and policy framing agency which means practically a subtle combination King, Minister and to a degree Parliament'. This shows that the King is only a part of the Crow The King as an individual does not exercise the powers of the Crown; he exercises them on th advice of his ministers who are responsible to Parliament, which represents the people. A minist must countersign every act of the King.

The distinction has arisen because of the peculiar manner in which the British peopl have fought against the powers of the King. They did not abolish monarchy but forced the King from time to time to surrender their powers and prerogatives and used them according to set rule Gradually, the Kings surrendered their powers to the Cabinet and Parliament. The monarchy ha been retained but it has been fitted in the Parliament. The monarchy has been retained but it ha been fitted in the framework of democracy. The Queen in Great Britain today is not a demi goddess but a nominal and constitutional head of a Parliamentary democracy. The laws an customs of the country bind her. No doubt, she wears the crown and enjoys great prestige but sh no powers. The powers once exercised by a monarch have now been transferred to the Crown a an institution. It is very strange that the distinction between the King and the Crown is only conventional. Law does not recognize it. In legal theory the King is still the source of al authority. This distinction between the King as a person and Kingship as an institution thus explains the gap between the theory and practice that exists in the British Constitution and which is one of its main characteristics.

POWERS OF THE CROWN

In the early days, the man or woman who wore the royal crown enjoyed all the powers and authority of government. As explained above by gradual process of democratization the powers instead of being used by the King or Queen in personal capacity began to be used by a body known as Crown, which is a combination of King or Queen, Cabinet, Privy Council and Parliament to some extent. The King or Queen is still there. He or she wears the royal cap on all ceremonial occasions. In strict legal sense, he or she still enjoys absolute power in the executive, legislative and judicial sphere. But these powers are a legal fiction, since the Crown as a separate political institution now exercises these in the name of the King or Queen. Although the Crown

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enjoys extensive and far-reaching powers, with the growth of a positive state in England, the powers of the Crown are progressively increasing. The powers may be grouped under the following heads.

EXECUTIVE

The Crown is the Chief executive head of the State. The whole administration is run in the name of His Majesty or Her Majesty. It looks to the enforcement of all national law. It makes appointments of all high officials of the government. It can dismiss them at will except the judges who can be removed only on the resolution of both the Houses of the Parliament. The King or Queen is the Supreme Commander of the armed forces. In this capacity, he or she makes all appointments in army, navy and air force. The Crown conducts the foreign relations of the country and deals with the dominions and other dependencies. It appoints and receives ambassadors, ministers, consuls and diplomatic representatives. It can declare war, conclude peace and make treaties with foreign powers.

LEGISLATIVE

The Crown summons, prorogues and dissolves the Parliament. The British Parliament consists of the King and the two houses of Parliament. All Bills passed by the Parliament are required to be approved by the King or queen though this assent has never been refused since the reign of Queen Anne. The Crown, of course, influences legislation through its power to appoint new peers in the House of Lords, although how this privilege of the Crown has little significance because the powers of the House of Lords have been drastically reduced and it cannot stand in the way of a legislation passed by the House of Commons. Every session of Parliament opens with a speech from the throne, which outlines the general policy and legislative programme of the government, although the cabinet outing its own policy prepares the speech. The King or Queen has thus to deliver the prepared speech even though he or she may differ from the same. It can issue ordinances in relation to Crown colonies. The legislative powers of the Crown are steadily increasing due to 'Delegated Legislation'. The Bills are passed by the Parliament in broad outlines and the crown through 'Orders-in-Council' thereof completes details.

JUDICIAL

The Crown is the fountain of justice. The whole judicial system operates in the name of the King or Queen. It appoints all the judges but it cannot dismiss them unless both Houses of Parliament present a joint address. It enjoys the powers of pardon, reprieve, and resolute and general amnesty.

ECCLESIASTICAL

The Crown is the head of the Church of England. It is the defender of the Faith. It makes appointments of archbishops, bishops and other church dignitaries. It summons church conventions.

MISCELLANEOUS

The Crown is the fountain of all honours. It confers titles and honours on such British subjects as distinguish themselves in different spheres of activity. It directly controls the colonies. It makes laws in the form of Orders-in-Council. The King has now no powers with regard to Dominions, as allegiance of the Dominions to the British Crown is absolutely ceremonial.

UNREALITY OF QUEEN'S OR KING'S POWERS

Though all the powers mentioned above are used in the name of the monarch yet these are powers of the Crown, which is a subtle combination of the King or Queen, the Privy Council,

the Cabinet and to a degree the Parliament. The King as a person is only a part of the Crown. The Cabinet as a whole exercises some of these powers, some by the Prime Minister alone, some by individual ministers and some by the King on the advice of the Cabinet. It is very rare that the King can do anything on his own initiative and responsibility. The King himself is only a rubber stamp, which is affixed on orders issued by responsible ministers. For all practical purposes, his position is that of a harmless figurehead. He cannot even refuse to agree with the ministers if they were to present him his own death warrant to which Parliament has given approval. In the Honours List issued on the New Year Day or on his birthday, he may have to honour a man whom he not only does not know but also detests. As early as the times of Charles II, one of his countries after an evening party wrote on the door of the royal bedchamber the following words.

"Here lies our sovereign Lord the King.
Whose words no one relies on.
Who never says foolish thing.
Nor ever does a wise one.

This is still a correct estimate about the position of a British monarch. The King or Queen cannot do any wrong because they are not supposed to do anything on their own responsibility. In early days, the ministers were the counselors of the Kings. It was for them to advise and for the monarch to decide. Now the parts are almost reversed. The King or Queen is simply consulted but the ministers decide and act. All this proves that the King is merely a 'dignified appendage to a veiled republic and does nothing wroth the name." This fact also justifies the remarks that the Queen reigns but does not rule.

PERSONAL POWERS OF THE KING OR QUEEN

As said before the King or Queen is just the formal element in the exercise of these powers. The actual or potential element is the Crown. Yet, in the actual conduct of the Government, the King or Queen still personally performs certain specific functions. These may be described as the personal powers of the King or Queen. He or she receives foreign ambassadors in person. He or she gives assent to the election of the Speaker and Orders-in-Council cannot be passed except in the presence of the Monarch. Similarly, the appointment of the Lord Chancellor and the Secretaries of the State are the personal acts of the Monarch. The King may convene a Conference of Party Leaders, as was done by George V in 1914.

But the most important political act of the Sovereign is appointing the Prime Minister and commissioning him to form the government. Generally the choice is usually obvious and he summons the leader of the majority party in the House of Commons and asks him to form the government. But if no party commands a real majority or when a Prime Minister retires or when the majority party has not designated a leader, the Sovereign has a choice, although he is always careful to follow that course which is least likely to arouse criticism. The Queen appointed Sir Alec Douglas Home when Harold Macmillan resigned. Similarly, the King has the right to dissolve the Parliament without advice of the Prime Minister or refuse dissolution in exceptional cases.

Finally, the Sovereign is the fountain of honour as they are deemed to be the personal gift of the King. The principle is that in majority of cases the honour's are granted by the King or Queen on the advice of the minister but in rare cases he or she can exercise discretion as for example, the King or Queen himself decides the cases of the Order of the Merit, the Garter, and the Thistle as well as the Royal Victorian order.

POINTS TO REMEMBER

There is a very subtle distinction between the King and the Crown. In the Middle Ages kings had absolute powers. But with the growth of democratic ideas powers of the King as a person have been transferred to the Crown as an institution. The King is only a part of the Crown as it consists of the King, the Privy Council, the Cabinet and the Parliament to some extent. The King is only a powerless part of the Crown. The Crown enjoys extensive powers in the executive, judicial, legislative, ecclesiastical and miscellaneous spheres. But these are not the powers of the King. The Cabinet, the Privy Council and Parliament mostly exercise these. The King is only a harmless figurehead. In earlier days, whereas the King acted and his ministers advised, now the ministers act and the King simply advises. There is thus a great justification in the remark that the King or Queen reigns but does not rule.

Q.7. If the Crown is no longer the motive power of the ship of the State, it is the spar on which the sail is bent and as such is not only useful but an essential part of the vessel. 'Discuss the importance of monarchy in the light of this statement.

OR

Q. 'One of the most remarkable phenomenon of modern political development has been the security of the British Kingship'. In the light of this statement explain why the institution of Kingship still persists in England.

Ans: To many foreigners brought up under republican atmosphere, the institution of monarchy appears to be a misfit, an anachronism, in modern democracy. They feel amazed at the survival of monarchy in the 'Mother Democracy' like that of England. Twentieth century has seen the fall of many monarchies in the world, when thousands of Kings have been disinherited. In our own country some five hundred Kings and princes have been dethroned and their States have been integrated with the rest of the country; so is the case in various other parts of world. Kingship is now regarded to be a hateful institution and nobody in this age of democracy likes it. But strangely enough the hold of the British monarchy over the British people is constantly increasing. It is true that the King is no more the absolute supreme authority. He has lost most of his powers to the Parliament and the Cabinet. He is left only with a shadow of his original powers. That is, in fact, one main reason why Kingship survives in England to this day. Whenever there is a Constitutional crisis, he exchanges, existence for powers. He always surrenders real powers.

The King has become merely a figurehead. The absolute monarchy of olden days has been transformed into a Crowned Republic. The Cabinet 'representing the people has become the working instrument of State. The King is no longer the directing force in the political and administrative machine of the British State. That is one reason why the monarchy survives in Britain. Among others, following are the reasons of its survival.

1. Conservatism: The British people are highly conservative people, not at all given to doing things in a radical or revolutionary manner. They are in favour of presenting and conserving ancient ideas and institutions with the modifications and reforms. Monarch is one of the oldest political institutions and British people on account of their conservative nature would not do away with it.

2. Lack of Republican Sentiment: The modern age has seen the fall of monarchies in the world. But the monarchy in England is becoming more and more popular because there is very little republican sentiment in England. The British people did not abolish the institution of monarchy when they could have done it easily. In 1689, King James II left the throne of England and fled away to France. The British people had a golden opportunity to establish republican form

of government but this was not done. Instead they called upon William of Orange and his wife Mary to occupy the vacant throne. Only once in the history of England the republican government was established under Cromwell from 1649 to 1660. But that too was replaced by monarchy. Even at present, there is very little opposition to this institution. Except the Communists, no section of British public wants to abolish the institution of monarchy, not even the Labour Party that highly criticizes the aristocratic House of Lords.

3. Symbol of Commonwealth Unity: The inherent conservatism of British people would not have saved this institution from destruction, had it not been useful to the nation in many other ways. The King has proved to be a symbol of unity and has thus kept bound together the various peoples with different religious, economic and political development and social systems. Abolition of monarchy will involve the dissolution of the British Empire.

Now the monarch is the symbol of Commonwealth unity. The Commonwealth declaration of 1949 recognized the King as the symbol of the free association of the independent member nations of the Commonwealth nations of the Commonwealth and as such the head of Commonwealth. He or she is the golden chain, which binds the Commonwealth nations together. The Commonwealth countries are sovereign states. The Queen is a symbolic head of the organization. It gives a sense of superiority to the British nation, though legally she enjoys no superior status to that of the head of other member states. It is difficult to believe that in case England were to transform herself into a Republic with an elected President, the people in the Commonwealth countries would recognize him and would owe the same allegiance as they owe to a non-partisan King or queen of royal blood. These countries may claim chairmanship of the Commonwealth by rotation. Removal of Kingship would involve many difficulties in the relations of the UK with fellow members of the Commonwealth. They would then, elect their own independent heads of State. The Common racial allegiance between Britain and the Dominions that the Queen provides would be lost and it will lead to fissiparous tendencies in their economic and political relations too.

4. He is Mediator in Politics: He is a mediator who reconciles the conflicting and hostile planks of different political parties. Since he belongs to no party, his sole object is the welfare and the solidarity of the nation, and so his advice is considered valuable and is generally accepted. History abounds in examples when monarch had reconciled the difference of the political leaders and brought them together on the national front.

5. Titular Head of Parliamentary Government: England is having a parliamentary form of government, which presupposes the existence of a chief executive with nominal powers. If the British were to abolish monarchy, they would require a certain constitutional head of the State, the only alternative is an elected President with a definite term as is the case in India and France. But this would not be a change for the better. The elected President can be either strong or titular. If a strong President is appointed it will subvert the parliamentary system. If a weak and titular President is preferred, the King already is. Why to make the change? The King is non-political titular head but it would not be possible in case there were an elected President. Moreover, permanent tenure of the King or Queen brings about stability in the government. "Being the legal executive head of the State, all authority temporarily reverts to him when a Ministry resigns. During the brief interval of the resignation of one Prime Minister and the appointment of the other, he is the sole repository of powers and, being a person who stands aloof, from party strives, he can be depended upon for honesty and impartiality in his acts. He is the umpire who sees that the game of politics is played according to the rules." Moreover, monarchy provides a useful focus for patriotism. In the words of Earl of Belfour he is not the leader of a party, nor the representative of class, he is the chief of a nation. He is everybody's

King. He is thus a useful focus for patriotism. As Jennings points out, "British people can damn the government but cheer the King. They are always loyal to the King even though they oppose the government". 'Royalty' according to Bagehot, "is a government in which the attention of the nation is concentrated on one person doing interesting things, but a Republic is a government in which that attention is divided between many, who are all doing uninteresting things." Thus the King as the head of parliamentary democracy as it exists in England is decidedly preferable to a President as the head of the State.

6. Head of Social Life: The King is the head of social life in England. He is the leader of the British nobility and gentry. The social and moral standards set by the royal family become a sort of ethical code for the English nation. All styles and fashions in British society emanate from the Royalty. "In an age of lightning change, King or Queen lends a comfortable, even if merely psychological, sense of anchorage and stability. With the King or Queen in Buckingham Palace, the people sleep more quietly in their beds." People lay down their lives to the call of the monarch, in any type of crisis. The royal family keeps the imagination of the people tied to what they are doing in the field of non-governmental functions. Many movements for improving the conditions of the masses have been patronized by the royal family. The members of the royal family inspire many schemes for providing better housing, medical aid and relief in distress.

7. Influence in Politics: No doubt, the king has lost all his powers, but he is not without influence. He has the right, in the words of Bagehot, to be consulted, to encourage and to warn. There are instances in the history of England when monarchs rendered signal service to the nation by giving proper encouragement and timely warning to their ministers. The letters of Queen Victoria make it abundantly clear that she was an active agent in the conduct of government. She played a considerable part in the selection of her ministers. She secured the appointment of the one and prevented the appointment of the other. Her son, Edward VII, had also a powerful influence. Similarly, George V is believed to have played a notable part during Irish crisis of 1911-14. The visit of George VI to France and USA in 1939, went a long way in strengthening the bonds of friendship with these countries. The degree of influence, which a British monarch wields, depends upon the personality of the monarch. Anyway, there is no denying the fact that British monarchs have rendered valuable service to the British people.

8. Royal Connections: Till the Second World War, the reason for maintenance of monarchy lies in the fact that it is not a very expensive affair. Queen Elizabeth's Civil List is about $470,000 besides $240,000 paid to the members of the royal family. Decidedly it is not much. It is only about 1% of the total revenues of England. An elected President too cannot be paid less than that.

The popularity of the institution of monarchy and the role, which it plays, is an undisputed fact. According to Anthony H Birch the existence of royal prerogative gives the British government a substantial degree of independence of parliament in some fields as well as the institution of monarchy provides a symbol of unity and identity of the nation. Thus although there have been moves to end or mend the House of Lords, even to reform the House of Commons and the cabinet but monarchy has stood the test of time. People appreciate and realise the unifying, dignify and stabilizing influence of monarchy. They do not want to have an elected person as head of the state, which is a commoner without any hallow around his personality. There appears to be full justification in the remark that the Crown is no longer the motive power of the ship of the State it is the spar on which the sail is bent and as such is not only useful but also an essential part of the vessel and this is why that despite its anachronism in democracy, the British monarchy is becoming more and more popular. As Ogg, points out the country will and should continue as how a 'Crowned Republic'.

POINTS TO REMEMBER

The existence of British monarchy is justified on the following grounds.

(a) *The British are inherently conservative and would not end monarchy, which is an ancient institution.*

(b) *There is complete absence of any republican sentiment among the English people. They had two chances once in 1649 and then in 1689, but they did not avail of them.*

(c) *The monarchy, in England, has proved to be a symbol of Imperial and Commonwealth unity.*

(d) *England has a parliamentary democracy, which necessitates the existence of a titular head. The monarch is the most suitable non-partisan executive head.*

(e) *The King or Queen is the leader of the social life of English gentry and nobility.*

(f) *The Kings exercise and have exercised a notable influence in politics. Like umpires they see that the game of politics is played according to the rule of the game.*

(g) *Its royal connections are an asset.*

(h) *It is not costly. The institution of monarchy is becoming rather more popular than before.*

Q.8. Discuss the proposition that the King can do no wrong.

Ans: The statement that the King can do no wrong illustrates the actual position of the King or Queen in the English Constitution. It means that the King can do nothing, right or wrong, of a discretionary nature and having legal effect. The proposition has the following two implications.

(a) The King is not responsible to any court of law in the country for any act of omission and commission. The fact of the matter is that the King or Queen does not take any action or make any political or governmental decision on their own initiative and responsibility. They invariably act on the advice of their ministers. Naturally responsibility of any wrong or illegal action does not and cannot fall on them. He is above the law of the land and cannot be arrested and tried in any courts of law for any time committed by him. This is a special privilege of the King.

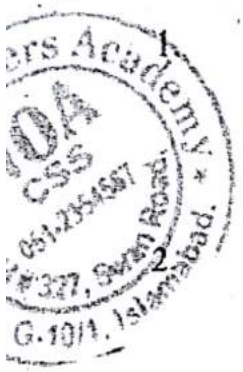
(b) Since the King can do no wrong, it follows that he cannot authorize a person to do any wrong. No one can plead the authority of the King in defence of an illegal act done by him. The Danby case of 1679 established this fact clearly. Danby as Foreign Minister had some secret deal with France without any consultation with his colleagues in the Cabinet. Danby was accused of indulging in an anti-State activity but he pleaded innocence on the ground that all that he did was done under the instructions of the King. In his opinion, the King and not he should have been held guilty. The courts refuted this opinion of his and he was impeached by the Parliament for his crime. The Danby case unmistakably established the truth that ministers alone are responsible for their actions taken in the name of the King or Queen. As a result of this convention, a minister who is politically responsible to the Parliament and legally responsible to the courts of law in the country countersigns all acts in the name of the King or Queen. In no

case a minister can seek justification of his illegal action in the fact that action was taken by him in the name of the King. Thus the doctrine of ministerial responsibility, which is the bedrock of British Parliamentary system, is the logical outcome of this constitutional maxim. It has reduced the King to merely a figurehead and deposited all real powers in the Cabinet.

POINTS TO REMEMBER

The statement that the King can do no wrong is an important maxim of the English Constitution. It has a double implication. In the first place, it means that the King or Queen cannot be used in any court of law for any illegal action. In the second place, it implies that every action of the King or even is to be countersigned by some minister. No minister can seek shelter in the legal immunity of the King.

PROBABLE QUESTIONS OF (CSS, L.LB - I)



1. "If the Crown is no longer the motive power of the ship of the State, it is the spar upon which the sail is bent and as such it is not only useful but an essential part in the vessel also."

(Lowell) Elucidate

2. "The Government of the United Kingdom is in ultimate theory an absolute monarchy, inform a limited monarchy and in actual character a democratic republic."

(Ogg) Discuss

"The British Cabinet is the most curious formation in the political world of modern times.

Gladstone

"It is easier to know what the cabinet was than what it is now." **Colin Seymour-ure**

"On the performance of the twenty-two men and women round the cabinet depends directly the security and well-being of 56 millions people in the United Kingdom."

Peter Hennessy

4- CABINET – THE REAL EXECUTIVE

The Cabinet is the real as distinguished from the nominal executive in Britain. Though every action of the government is taken in the name of the King yet real and effective the Cabinet exercises powers. The Cabinet has been aptly described as "the steering wheel of the State".

The Cabinet must be distinguished from the Privy Council and the Ministry. The Privy Council is a defunct body consisting of 359 members. All Cabinet Ministers are the members of the Privy Council because till recently law did not recognize the Cabinet. Hence no one is ever officially appointed as Cabinet Minister. He is appointed a Privy Councillor and then summoned to Cabinet meeting. The Privy Council is thus a bigger body and the Cabinet is a small body of ministers who take all decisions regarding the policy of the government. The work of the Privy Council is mainly of formal character. The meetings of the Privy Council as a whole are convened only when there is the Coronation of the King or Queen or some other solemn ceremony is to be performed. Ordinarily 4 or 5 Cabinet Ministers (who are also Privy Councilors) meet at Buckingham Palace and act in the name of the Privy Council.

A distinction is also made between Cabinet and Ministry. The Ministry is a body, which includes all the Cabinet Ministers. The Ministry consists of all Ministers who are members of either House of Parliament and are responsible to it for their policies. They hold office so long as they enjoy the confidence of the majority in the House of Commons. The Cabinet is a smaller body consisting of important ministers selected by the Prime Minister. There are more than sixty ministers in the Ministry but only about sixteen to twenty-five Ministers enjoy Cabinet rank. The Ministry does not meet as a body for the transaction of governmental business. It has no collective function. It is only the Cabinet, which meets as a body and formulates the policies of the government. A minister is only the head of a certain department and is not concerned with the determination of the government policy. All the decisions taken by a Cabinet are communicated to the ministers. The following ministers are invariably taken in the Cabinet - the First Lord of Treasury, who is the Prime Minister himself, the Chancellor of Exchequer, the Minister of Defence, the Secretary of State for Foreign Office, the Secretary of Sate for Home Office, the Secretary of State for Commonwealth Relations, the Secretary of State for Colonial Office, the Lord President of the Council and the Lord Privy Seal.

Q.9. Trace the Growth of Cabinet System in England.

Ans: Laski says, "The Cabinet is essentially a committee of that party or Coalition of parties which can command a minority in the House of Commons." In England, every act of the State is done in the name of the Crown. But the Crown is the nominal executive only. The real executive is the Cabinet. On Cabinet's shoulders rests the responsibility of carrying on the administration.

The Cabinet system has been regarded as the greatest contribution of the English people to the art of government. Gladstone called it the most curious formation in the political world of modern times. In Bagehot's opinion it is a hyphen, which joint a bucket that fastens the legislative part of the state to the executive part. Its importance in the British political system is great. Lowell regards it as 'the key stone of political arch' and Muir calls it 'the steering wheel of the ship of the State.

The Cabinet has been defined as a body of royal advisers, chosen by the Prime Minister in the name of the Crown. The members of the Cabinet must invariably be members of either house of Parliament and belong to the party in power in the Lower House. They must acknowledge the supremacy of the Prime Minister and follow the policy laid down by the Prime Minister. They must resign from their offices as soon as they lose the confidence of the House of Commons. All these features of the Cabinet system are the result of a long process of evolution, which took several centuries. Its story is narrated below—

1. During the Norman rule in England, the body of King's advisers and administrations was known as 'Curia Regis' or 'Royal Council'. It performed miscellaneous functions. It advised the King and administered justice. It was consulted by the King in times of need and also looked after his finances. During the reign of Edward VI its name was changed and it came to be known as Privy Council. Up to the reign of Charles I, the Cabinet was only a small body of King's advisers informally and irregularly chosen by the King. In the reign of Charles II the Cabinet acquired a formal shape. He appointed body of advisers and councillors which was known as 'cabal' a word formed by taking the first letters from the names of his five ministers, i.e., Clifford, Arlington, Buchingham, Ashley and Lauderdale. But it was not a Cabinet in any sense of the term. The Cabinet later grew out of the Privy Council as a special committee. Several times its members were impeached for the wrongs committed. Several times its members were impeached for the wrongs committed by them. Their

impeachment established the principle of ministerial responsibility. At the same, party system, which is essential for the proper working of the Cabinet system, developed in the period of Charles II. Thus the two essential features of the Cabinet system-the principle of ministerial responsibility and party system came into existence during the reign of Charles II.

2. The Cabinet system further developed during the period of William III and Queen Anne. The Glorious Revolution had firmly established the principle of the sovereignty of Parliament. The Whigs and the Tories were two parties where policies and forms acquired a clear shape. Both these factors helped in the growth of the Cabinet system. In the beginning William III chose his ministers from both the parties. But the practice failed to bring about homogeneity in the Cabinet, which is very essential for the purpose of proper administration. William III was compelled, in 1695, to call upon the Whig Party to form the Cabinet. The Whigs were at the time in power in the House of Commons. Thus was established the convention that the members of the Cabinet should belong to the party having majority in the House of Commons.

3. The Cabinet system in England received its final shape during the Hanoverian rule. George I was a German by nationality. He was quite ignorant of English customs, language and politics. So he could not take part in the deliberations of the Cabinet. Another man required taking his place to preside over the meetings of the Cabinet. Thus the post of Prime Minister came into existence. A person from among the members of the Cabinet took the chair. He cam to be called the Prime Minister. Sir Robert Walpole, in 1742, by resigning from his office after his defeat in the House of Commons, established the convention that the Cabinet should resign as soon as it lost the confidence of the House. This convention got firmly established gradually and with it the growth of the Cabinet system became complete.

POINTS TO REMEMBER

The Cabinet is the real executive as against the King or Queen who is only a nominal head. The Cabinet has been defined in colourful phrases by various constitutionalists. The Cabinet came into existence as a result of historical evolution conversing a period of centuries. During Norman rule in England, Curia Regis or Royal Council came into existence. During the reign of Edward VI, its name was changed and it came to be known as Privy Council. The Cabinet is the child of the Privy Council. The Cabinet system further developed during the reign of William III and Queen Anne. The principle of party government was established during this period. During the reign of George I, the office of Prime Minister came into existence.

Q.10. How is the Cabinet formed in England? Discuss its functions and importance.

OR

Q. 'The Cabinet is the keystone of the political arch *(Lowell)* Discuss.

OR

Q. The Cabinet is the steering wheel of the ship of the State *(Ramsay Muir)* Discuss.

Ans: Formation of Cabinet: A new Cabinet is formed after general election to the House of Commons or when the Cabinet-in-Power is defeated by an adverse vote of the House.

A minister must be a member of either House of Parliament. A non-member may also be appointed minister but he has to become the Member of Parliament either by being made a peer or by a 'safe constituency' being made available for him in the House of Commons. The King or Queen appoints all the ministers although it is just a ceremonial affair. The King must send for the leader of the party controlling a majority in the House of Commons and he is asked to form the Ministry. The leader is designated as Prime Minister. In case a cabinet resigns the king must call the leader of opposition and appoint him as Prime Minister without any further consultation. The Prime Minister, then, puts up a list of his colleagues who are appointed ministers by the King without any hesitation. Although Prime Minister enjoys a good deal of freedom of choice in the selection of his colleagues yet he cannot ignore important members of his party. A Anthony H. Birch puts it, Harold Macmillan had to give senior posts to R.A. Butler and Selwyin Lloyd, Lord Home had to appoint R.A. Butler, Edward Heath and Reginald Mandling. Hard Wilson had to appoint George Brown, James Callaghan and Patrick Gordon Walker." He must keep into account the need for maintaining party solidarity and claims of the senior men in the party. The selection of ministers is not an easy job. Disraeli called it the work of greater time, great labour and great responsibility. Prime Minister is central to the formation, continuance and dismissal of the Cabinet. If a minister differs with his policy, he resigns from the Cabinet.

As is clear from above, the King has little freedom of choice in the formation of the Cabinet but the King many have freedom of choice when no single party in the House of Commons wins an absolute majority or when the Prime Minister resigns or dies. Queen Victoria exercised this freedom at various occasions. In 1894 Gladstone resigned. Queen Victoria appointed Lord Rosebery although he did not have a sound claim to the leadership of his party.

Another important factor, which is noteworthy, is that the Prime Minister must belong to the House of Commons. This convention was established in 1923 when the King had a choice between Mr. Baldwin and Lord Curzon. The King appointed Mr. Baldwin and set aside the claim of Lord Curzon because the latter was a member of the House of Lords and the former was a member of the House of Commons. Similarly in 1940 Mr. Churchill was selected in preference to Lord Halifax. Jennings supports this convention on the plea that 'the Prime Minister should have his finger on the pulse of the Parliament which is the House of Commons

HOW TO THROW A CABINET OUT OF OFFICE

The Cabinet may be thrown out of office by an adverse vote in the House of Commons by any of the following methods:

(a) A token cut may be made in the salary of a minister during budget discussion by a majority vote in the House of Commons.

(b) The House may reject a Bill initiated by the minister and declared vital by the Cabinet.

(c) The House may pass a certain Bill opposed by the government.

(d) The House may pass a vote of censure against a certain minister.

(e) Lastly, the House may pass a straight vote of no confidence regarding the general policy of the government.

Although the Cabinet can be ousted from office in a variety of ways yet it is now seldom possible for the House of Commons to throw a Cabinet out of office. A Cabinet continues in office through a subservient majority in the House and if there is an imminent danger of defeat of the government in the House on a particular issue, the Prime Minister seeks earlier dissolution of the House from the King which request must be acceded to by way of a convention.

FUNCTION OF THE CABINET

The Cabinet enjoys a pivotal position in the machinery of government. Philosophers in colourful phrases have described the position of the Cabinet. Ramsay Muir calls it the steering wheel of State. Lowell calls it the keystone of the political arch. It controls both administration and legislation. Some of its functions may be briefly described as follows:

1. Policy-determining Functions: The Cabinet is a deliberative and policy-formulating body. It discusses and decides all sorts of national and international problems and attempts to reach unanimous agreement. The Cabinet must present to parliament and to the world a single united policy and if an individual member finds it's impossible to agree with the conclusions of the Cabinet he must resign.

When the Cabinet has determined on a policy, an appropriate Department of government carries it out by administrative action, if the existing law permits it or by submitting a new one to Parliament. Legislation is, thus, the handmaid of administration and Cabinet is the instrument, as Bagehot has said, that links the executive branch of government to the legislative. Cabinet decides the measures, which are to receive priority, and Ministers initiate them in Parliament, defend them there and see they are enacted.

2. Executive Functions: The Cabinet is the real executive as against the nominal executive represented by the King or Queen. Although according to the Constitutional Law all executive authority is wielded in the King yet in actual practice, the Cabinet wields the effective and real executive authority. The Cabinet formulates the general policy of the government. It determines the foreign policy of the government and decides questions regarding war and peace. The minister in charge of foreign affairs negotiates treaties and agreements of all sorts with foreign states on behalf of the Cabinet. He ratifies the treaties without any formal approval of Parliament.

The ministers make all-important appointments. Each minister is in charge of a particular department and conducts the administration thereof. The Cabinet co-ordinates the activities of the various departments of the government and decides inter-departmental disputes.

3. Legislative Functions: Not only does the Cabinet control the executive branch of the government but also it controls legislation. The Parliament is summoned and prorogued by the King on the advice of the Cabinet. The King on the advice of the Prime Minister may dissolve the House of Commons before expiry of its normal term. The speech of the King in Parliament in the beginning of each session is prepared by it. In fact, the general policy of the Cabinet and its legislative programme are outlined in this speech. All-important Bills passed by the Parliament are introduced, explained and defended on the floor of the House by members of the Cabinet. A Bill that does not enjoy the support of the Cabinet has little chance of success in Parliament. Some eighty-five per cent of all Bills introduced in Parliament are those, which are initiated by the ministers.

4. Financial Functions: The budget is prepared by the Chancellor of Exchequer, an important member of the Cabinet. It is introduced by him in the House of Commons. The budget before its introduction in the House is not disclosed in the Cabinet meetings, although disputes regarding climates for various departments are settled in the Cabinet..

Invariably, the budget is passed as it is with the support of a loyal majority in the House of Commons. No demand for grant can be cut down without the willing consent of the Cabinet.

5. Judicial Functions: The judges of the important courts are appointed by the King on the advice of the Lord Chancellor, a member of the Cabinet. The power of pardon, reprieve and respite is exercised by the King on the advice of the Secretary of State for Home Affairs.

THE CABINET AS A COORDINATOR

The essential function of the Cabinet is to co-ordinate and guides the functions of the government. The Government is a complicated machine and all its components must work in perfect harmony and unison. No department of the Government can work in isolation from other department. It is the Cabinet which co-ordinates all inter-departmental functions. The Departments themselves try to resolve all differences but when they fail to arrive at an agreed decision, the matter comes before the Cabinet, which thrashes out the issues involved and strikes out a firm decision.

The powers and functions of the Cabinet show that it dominates and controls almost every activity of the government. It is the most vital part of the government machinery. It is the engine of the ship of state. It controls the King, the Parliament and through that the electorate.

POINTS TO REMEMBER

A Cabinet is formed after general election of the House of Commons or when the Cabinet-in-Power is defeated by an adverse vote of the House. A minister must be a member of either House of Parliament. The King or Queen has little discretion in appointments of ministers. A ministry may be thrown out of office by an adverse vote in the House of Commons. Lack of confidence in the Ministry can be indicated in a number of ways. The Cabinet enjoys a pivotal position in the administration of the country. It performs all the executive functions of the Crown. It makes appointments of all civil and military officials. It can declare war and peace. It initiates and pilots some 90% of all the Bills in the House of Commons. No Bill has a chance of success if it does not enjoy the support of the Cabinet. The budget is prepared by the Chancellor of Exchequer and is passed as it is. The cabinet enjoys the judicial powers of the King or Queen.

Q.11. Discuss the salient features of the Cabinet System of Government as it obtains in Great Britain.

Ans: The Cabinet system of Great Britain works on the basis of some rigid principles, which are mainly the outcome of various conventions. Although these principles do not form a part of the law of the land yet these are scrupulously observed and followed. These principles present a typical model of a parliamentary democracy. Success of this system serves as an inspiration to other nations of the world and they aspire to follow the same principles in their system of government. The Cabinet system of government is, thus, a valuable contribution of the British people to Political [illegible]. The features of the Cabinet system as it obtains in Great Britain may be summed up as follows:

1. Exclusion of the King: The King, under Cabinet form of government, is no longer the determining and deciding factor in the conduct of government authority. The Cabinet in the name of the King exercises entire executive power. As the King takes no part in politics, he is not supposed to preside over the meetings of the Cabinet wherein decisions regarding the executive policy of the government are taken. The exclusion of the King form Cabinet meetings was originally a matter of sheer accident during the reign of the King George I, who would not preside over the meetings of the Cabinet since he was German by nationality and would not understand English language. But now it is a fundamental convention of British parliamentary democracy.

2. Political Homogeneity: Member of the Cabinet usually belongs to the same political party and have similar political views. For over two hundred years prior to 1915 every Ministry was constituted on the basis of this principle. But during critical days of World War I, a composite government representing all three parties of Great Britain was constituted. Since 1931, this practice has been followed many a time. There have been such national governments under Ramsay Macdonald, Baldwin, Chamberlain and Churchill.

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3. Close Relationship between the Executive and the Legislature: All the members of the Cabinet must be members of either House of Parliament. A non-member of Parliament may also be appointed minister but if he is not made a peer, he must become the member of the House of Commons within six months. Since the ministers belong to the majority party of the House, a close contact is established between the executive and the legislature. This is in sharp contrast with the American political system which is based on the principle of separation of powers and which seeks to keep the executive and the legislature separate from each other.

4. Unity of the Cabinet: The Cabinet always acts as a unit. The members of the Cabinet may have differences in the Cabinet meetings but once a decision is taken, the dissenting members cannot express their dissenting opinions before Parliament or the people. They are supposed to face the House and the people with one voice. Lord Melbourne is stated to have remarked to his Cabinet colleagues. It does not in the least matter what we say in the Cabinet meetings but we must all say the same in the public.

5. Ministerial Responsibility: The responsibility of ministers is two-fold. It is legal and political. Legally every minister is responsible for the advice that he may give to the King. That is why a minister, who will be responsible before the court of the law for the legality of his actions, must countersign every act of the King. This is illustrated by the saying: "The King can do no wrong." Political responsibility implies that the ministers are responsible to the House of Commons and must resign whenever a vote of no confidence is passed against them. But in actual practice the Cabinet seldom goes out of office on losing the confidence of the House. It dissolves the House of Commons before its own removal. It resigns only after the general election if it fails to win majority at the polls again. Thus it does not consider itself to be responsible to the House, instead it feels its responsibility to the electorate.

The responsibility to the Parliament is also collective. The Cabinet always acts as a unit. A vote of no confidence against one Cabinet minister is considered to be a vote of no confidence against the whole Cabinet. The Cabinet must sink or swim together. But there have been occasions when a blundering minister, whose policy the House of Commons or the public does not approve, is asked to resign alone while the rest of the Cabinet continues.

6. Leadership of the Prime Minister: The Prime Minister is the leader of Cabinet. He forms the Cabinet and allots portfolios to ministers. The Cabinet ministers work under his guidance and direction. He presides over the meetings of the Cabinet. Other ministers regarding the major problems of their departments consult him. He co-ordinates the activities of the ministers and settles disputes among them. He can call for the resignation of any minister if he does not approve of his policy. It happen so a number of times. In 1922 Mr. Montague the Secretary of State for India was dismissed. In 1935 Sir Samuel Hoare resigned for he had differences with Baldwin, the then Prime Minister. In 1938, Mr. Anthony Eden had to resign because he differed with the Prime Minister Mr. Cambodian. Moreover life of the Cabinet revolves round the Prime Minister. If the Prime Minister resigns, the whole Cabinet is supposed to have resigned. In 1931, Ramsay Macdonald resigned without informing his colleagues. With his resignation all the ministers were automatically removed from office. Laski has therefore aptly remarked it, "with the announcement of the Prime Minister's decision to resign the Ministers came to know of their sad demise." The Prime Minister, hence, central to life and central to death of the Cabinet.

7. Secrecy of Cabinet Proceedings: All the members of the Cabinet are supposed to observe secrecy in connection with the proceeding of the Cabinet meetings. They are not supposed to divulge secrets before the people of the Parliament. The Cabinet is thus a secret body collectively responsible for its decisions. It deliberates in secret and its proceedings are highly confidential. The Privy Councillor's oath imposes an obligation not to disclose Cabinet secrets.

Unit Lloyd George Established the Cabinet Secretariat in 1917, no records were kept and only the Prime minister could take notes of the points discussed. Now, however, there is a separate full-fledged secretariat and the proceedings are recorded but kept secret. No formal reports of proceedings are ever published. All members are under strict oath of secrecy. However, the secrecy is violated when a minister who differs with Cabinet policy resigns and makes a statement giving reasons of his resignation. It is also violated when memoirs of a minister are published. The King gets a summary of the minutes of proceedings of the Cabinet and also all the dispatches received or sent out by the Cabinet.

8. King or Queen as a Titular Head: A Cabinet Government must have a titular head of the State in whose name the country is administered. This head is the Queen or king. The real authority of governing the people belongs to the responsible Ministers. The principle is in conformity to and exploration of Sir Henry Maine's often quoted maxim that 'the King of Britain resigns but does not rule".

9. Government by Majority in the House of Commons: The second principle of Cabinet Government is that the King summons the leader of the parliamentary majority party to form the Government. So Jennings writes. "The Queen has one and only one function of primary importance. It is to points a Prime Minister. In this, her choice is limited. It is necessary; rather essential that the person commissioned to form the government should be a party leader that commands majority in Parliament. It was an easy task so long as there were only two political parties. With the emergence of the Labour party as third political party sometimes it happens, as it did in 1924 and 1929, that no single party could command the majority. In these circumstances the King exercises his discretion to summoning a leader who can command the support of majority with the Commons. Twice, in 1924 and 1929, Ramsay MacDonald, the leader of the party, was summoned to form a Ministry though his party was not in majority although on both the occasions MacDonald had the admitted support of Liberal party and thus he was in a position to command a district majority. In times of grave crisis and national emergency like the Economic Depression of 1931 and the Second World War, Britain experimented with coalition Ministers. But it is a feature of the British Constitution. Party solidarity demands political homogeneity, which can be secured only when the Ministry is formed from one single majority party.

10. Cabinet Committees: The Cabinet acts through various sub-committees. For example, the Defence Committee is the most important. It is presided over by the Prime Minister and includes ministers concerned with defence, the Chancellor of Exchequer, the supply minister, the labour minister, the three Chiefs of Staff, etc. Then there is a Foreign Affairs, Committee presided over by the Prime Minister. It includes Secretary of State for Foreign Affairs. Chancellor of Exchequer, Defence Minister, Minister for Trade etc. Deputy Prime Minister or another important minister presides over the Economic Committee generally. It deals with economic policy. Prime Minister Thatcher had four main committees in 1983.

(a) Home and social Affairs.
(b) Legislation Committee
(c) Economic strategy Committee
(d) Overseas and Defence Policy Committee.

The decisions of these committees are generally accepted by the Cabinet.

POINTS TO REMEMBER

The Cabinet system of England is based on some rigid principles to which no exception is ordinarily made. The first feature is political homogeneity, which means that normally all the ministers should belong to a single political party. Close relationship between the executive and the legislature is the second important principle. The members of the Cabinet are not supposed to

(16)

express their dissenting opinions before Parliament or the people. They must speak with one voice. Ministerial responsibility is another outstanding feature of the Cabinet system. This responsibility is both political and legal. The Prime Minister is the leader of the Cabinet. The ministers are supposed to maintain strict secrecy about decisions and proceedings of the Cabinet meetings.

Q.12. 'The Cabinet in England has become virtual dictator'. Discuss.

OR

Q. 'The control exercised by the House of Commons over Cabinet has become weak and ineffectual." Comment and examine the relation between the House of Commons and the Cabinet as it has developed in the 20th century.

OR

Q. The House of Commons acts in accordance with Cabinet's Examine the truth or otherwise of the statement.

Ans: In Great Britain, Parliament was sovereign in theory as also in practice till the close of the 19th century. But in the 20th century Parliament, which in practice means the House of Commons, has lost much of its powers to the Cabinet, which is in structure a committee of the House of Commons. In theory the ministers are responsible to Parliament. The tenure of their office depends upon the will of he House of Commons. It can remove the Cabinet by a vote of no confidence. The Cabinet is under the general control and supervision of the House of Commons. But in actual practice, the boot is on the other leg. The Cabinet has become the master of its own master. It controls the House of Commons so much so that it has become merely the registry office of the Cabinet. The Cabinet has become almost a dictator.

The Cabinet enjoys the support of majority in the House of Commons. Once a Cabinet comes into power, it cannot be ousted by an adverse vote in the House. The last Cabinet which was thrown out of office by a vote of no-confidence was the Liberal Government of 1895. Thus the powers of House to remove Cabinet has fallen in disuse.

The Cabinet controls legislative policy. It formulates, initiates, and defends legislative measures in the House. The House has to accept them. The House has become a rubber stamp to be affixed to give legal sanction to the political decisions of the Cabinet. There is every truth in the remarks that it is the Cabinet, which legislates with the passive approval of the House of Commons. This approval of the House of Commons is never refused. About 85% of all the Bills are introduced and piloted by the Cabinet. Private members of the House of Commons may introduce. Bills but these have very little change of success if the Cabinet does not support these. Some seven-eight of the time of the House is consumed by government measures and very little time is left for the private members of the House to put forward and defend their own proposals. It is the Cabinet, which decides what legislative business the House shall take up and what time shall be allotted to it. The Cabinet summons, adjourns, and prorogues the Parliament at will.

Not only does the Cabinet control ordinary legislation but also it enjoys full control over State finance. The Chancellor of Exchequer prepares the budget and it is passed as it is. The private members of the House may put up proposals for reduction of expenditure but usually are ineffective because their proposals are rarely carried. The members do not understand the complexities and technicalities of the budget and they can recommend little change except holding general discussions. In fact, the private members of the House do not have any access to the government accounts. The result is that they are never in a position to criticize the budget properly. What they do is that they only attack the policy of the department of the government for

which financial sanction is sought. They only beat about the bush and can never assert themselves on facts and figures.

The Cabinet makes treaties with other States without previous consultation of the Parliament. Once the Cabinet signs a treaty, it becomes valid because no previous ratification by the Parliament is required. The Cabinet may make secret commitment with other governments and may face the Parliament with fait accompli. It may take even military action as the Eden government did in case of attack on Suez without consulting the Parliament.

In short, it is the Cabinet, which has taken over all the functions of the House. The latter has become only a registering body. Its authority has suffered almost in all directions. Ramsay Muir refers to this phenomenon as the growing dictatorship of the Cabinet. The following are the reasons of the growing strength of the Cabinet at the cost of the House of Commons.

1. Party Discipline: The main reason of Cabinet dictatorship lies in the growth of rigid party discipline. In the 19the century, the parties were not so well organized as these are today. The number of voters used to be very small on account of restricted franchise. Most of the candidates would contrast election independently. They would go to their constituencies, preach their own doctrines and meet their own expenses. They were not thus pledged to the support of any party government. There was, therefore, a good deal of free voting in the House of Commons. The ministers were considered to be hired functionaries, and could be dismissed whenever the House did not like their policy. This position has changed altogether now on account of the introduction of universal franchise. The number of voters has increased immensely. The constituencies have become big. The cost of electioneering has increased. Now it is not within the means of an independent candidate to approach the voters and canvass for himself. Independent electioneering has thus become difficult. In order to be successful, it is, therefore, essential that one should be the member of one party or another. On account of the increased dependence of a person on party, party discipline and organization have become very rigid. The members of a party are pledged to its support under all circumstances. Inside the House, they are bound by discipline to vote in favour of the party. Voting against the party is regarded as breach of discipline for which a person is liable to be expelled from the party. Expulsion from the party is considered to be political death. The fear of disciplinary action keeps the members tongue-tied and they do not have the guts to oppose the party leadership even if they do not see eye to eye with them. All this means that once a certain party wins majority of seats in the House of Commons and it forms its Cabinet, it will continue in office without any fear and fright. The members of the party will blindly support the ministers even if some of them differ. Loyalty to the party makes a person a part of the party machine. Thus the party, by virtue of its majority, gets the powers, which technically belong to the whole Parliament. A private member of the House is more or less an imposing cypher. If he is an independent member, his views, however fine and true, cut no ice, if he belongs to a party, he votes it whether he like its policies or not.

2. Power of Dissolution: The second factor, which has strengthened the Cabinet, is its power to get the House of Commons dissolved before the expiry of its normal term. The Prime Minister can request the King for dissolution of the House. As a matter of convention, the King always accedes to such a request. The Cabinet can thus easily dampen the enthusiasm of the members who want to revolt against it by threatening them with the dissolution of the House of Commons. Dissolution means a new general election. The sitting members do not want it. They would like to enjoy the membership of the House for its full term. In case of an earlier dissolution, they will have to seek re-election which involves a lot of expenditure, and botheration. Above all, one may not be certain of being re-elected. Threat of an earlier dissolution not only binds the majority party but also it cools down the zeal of the opposition. Thus according

to Keith "apart from party loyalty, the Cabinet possesses over its followers and to some extent over the opposition, a powerful weapon in the possibility of securing a dissolution of parliament.

3. Two-party System: Another factor, which has contributed to the strength of the Cabinet, is the two-party system, which prevails in England. The parties dominating the political life of England at present are the Labour Party and the Conservative Party. These two parties are poles apart so far as their ideals and objectives are concerned. As a matter of principle it is difficult for a member of the party-in-power to cross the floor and join the opposition even if he has certain differences with Cabinet on a particular issue. After all, the Cabinet of his own party is nearer to him than the opposition. It is, therefore rare that a government supporter may vote against it.

4. Delegated Legislation: The House of Commons has to deal with very heavy work. Being hard pressed for time; it has little opportunity or leisure to scrutinize every detail of administration. So it is forced to leave a good deal of work to the cabinet, through delegated legislation and Orders-in-Council. It simply passes various Bills in broad outlines and leaves the rest to be filled in by the executive. The new tendency has resulted in the enormous increase in the powers of the Cabinet and Civil servants. Bureaucracy now makes All sorts of laws by way of Orders in-Council. There is justification in the remarks of Ramsey Muir that an omnipotent Cabinet with the immense but concealed power of bureaucracy sheltered behind it is the dominating fact of the British system of government as it exists today".

5. Committee System: Most of the controversial matters are thrashed out in the committees and very little scope is left for discussion in the House.

6. Control of the Cabinet over the Business of the House: The rules of procedure in the House of Commons especially favor the Cabinet. Some seven-eighth of the time of the House is given over to Government Bills. Under standing orders of the House time allowed for the discussion of a private member's Bill can be given over to a government measure.

7. Enhanced Importance of the Electorate: The spread of general education and political consciousness among the people are factors, which are also responsible for transfer of power from Parliament to the electorate. Before the beginning of 20th century, public opinion had very little opportunity for functioning. Now with the development of press and other rapid means of communication and publicity the public attention is at once focused on any problem facing the country. Millions read a speech of member in the Parliament. Political organizations and associations at once meet and pass resolutions holding out a threat or reward. Under the consent gaze of the electorate, the members of Parliament have lost that freedom of action, which they once enjoyed.

8. National Emergencies: A series of national emergencies in England have also been responsible for strengthening the hands of the government in order to enable them to meet to situation and save the country. During the World War 1914-18, huge powers were delegated to the then government. The period between the two wars (1918-39) was also characterized by various problems like industrial, labour unrest and the like. The National Government (1931-35) was given almost dictatorial powers. It could even impose duties without the consent of Parliament. During World War II again, the House had to concede a lot to the government in the interest of Public safety and security and for the purpose of prosecuting war successfully. Thus we find that modern situation itself goes in favour of enhancing the powers of the executive. Parliamentary sovereignty is, therefore, passing through a crisis and has lost its sharp teeth.

CONCLUSION

There is no doubt that the British Cabinet has acquired vast powers and its powers are still on the increase. We cannot, however, accuse it of being dictatorial like Hitler or Mussolini.

Although the Cabinet enjoys autocratic powers yet it is an autocracy with consent and is exercised under a constant fire of criticism of the Parliament, press and platform. The Cabinet is fully aware of the fact that it cannot go beyond certain limits because British public opinion is highly assertive and enlightened. It can exercise vast powers only as long as it is able to maintain the support of a majority in the House of Commons. The Cabinet knows that if it uses the threat of dissolution so very frequently, there may be split in the ranks of the party. The discipline of a private member is not like the obedience of a solider to the commander. The House of Commons influences Cabinet policies vitally. It is the mirror of public opinion. No Cabinet can ignore it. It is the pulse of the people and cabinet learns of their reaction to its policies from discussion in the House. The Cabinet adjusts policies accordingly. The House exerts influence through discussion, debate, questions, adjournment motions, resolutions and discussion on the budget. There is the opposition party in the House, which is always ready to magnify every mistake of the Cabinet. It keeps the government always on its tenterhooks. It has to explain its policies every time. Thus the Cabinet can become dictator only by bringing success and assuring the House and the electorate outside that it is governing best under the circumstances. Its dictatorship is dictatorship by consent. It has to yield many a time to the House of Commons. At least it cannot be insensitive to public opinion outside. There are many examples of Cabinet, which yielded when faced with unyielding Parliament.

POINTS TO REMEMBER

In Great Britain, Parliament was sovereign in theory as well as in practice. It had complete control over legislation. Cabinet was responsible to it and could be ousted by a vote of no confidence. But in the twentieth century, the position has changed altogether. Now it is not the Parliament, which controls the executive, instead it is the executive, which controls the Parliament. This phenomenon is known as the rise of Cabinet Dictatorship. Several reasons are attributed to the growth of this phenomenon.

(a) Growth of rigid party discipline has been responsible to a very great extent for the subordination of the members of the House of Commons to the party. They are bound by the discipline to the party machine and cannot act independently.

(b) Power of earlier dissolution of the House of Commons is a potent weapon in the hands of the Cabinet, which may be used at any time to cool down the recalcitrant House.

(c) Existence of two-party system in England is also responsible for the rise of Cabinet Dictatorship.

(d) The Cabinet has acquired great powers by way of delegated legislation.

(e) The rules of procedure of the House also favour the Cabinet

(f) Consciousness of the general masses too is responsible for the transfer of powers from the Parliament to the electorate.

(g) National emergencies have placed unrestricted powers in the hands of the executive.

Q.13. The Prime Minister is by far the most powerful man in the country and not without reason he is likened to a dictator." Critically examine the statement with reference to the powers and position of the Prime Minister in the British Constitution.

Q. "The Prime Minister is the Keystone of the Cabinet arch." Discuss.

Ans: Wherever there is a parliamentary form of government the general election has become the election of the Prime Minister. Laski has rightly said, "The key-stone of the Cabinet arch is

the Prime Minister. He is central to its formation, central to its life, and central to its death. No cabinet can fail to take its complexion from what he is and does in its direction. The British Prime Minister is more than primus inter pares, but less than autocrat."

Like so many other institutions and offices, the office of Prime Minister is also the result of a Convention. Till the passage of the Ministers of the Crown Act 1937, the position of the Prime Ministers was not legally recognised. Only twice the office of Prime Minister was referred to in legal records before the passage of this Act. First of all, it appeared in the preamble to the Treaty of Berlin, 1878, when Beaconsfield was referred to "First Lord of Her Majesty's Treasury and Prime Minister of England". Second time in 1905, the Office of the Prime Minister was mentioned in the 'Order of Precedence' although he was given only the fifth position and was placed even below the Archbishop of York.

The Prime Minister of Great Britain enjoys a position of supreme importance in the British Constitution. He is often referred to as an autocrat so long as he enjoys the support of a stable majority in the House of Commons. He is even more powerful than the American President in certain respects. The following points clearly indicate the importance of his office:

1. Leadership of the Cabinet: If Cabinet is the engine of the ship of state; the Prime Minister is its driver. He is the moon round which the stars revolve. The Prime Minister forms the Ministry. He appoints and dismisses the ministers with the ceremonial approval of the King. In the selection of his colleagues, his choice is unrestrained except that he must include 5 or 6 top leaders of his party. Otherwise he has a free hand to choose his colleagues because he has to find a homogeneous team. Sometimes, a Prime Minister with dominating personality may keep even a prominent member of his party out of his Cabinet. For example Mr. Chamberlain kept Mr. Churchill out of his Cabinet.

He is the Chairman of the Cabinet and presides over its meetings. He may force any member to resign if he does not see eye to eye with him. Prime Minister Mrs. Margaret Thatcher has given a new term to her government—the conviction cabinet by stating that she could not waste time having any internal argument. But ordinarily, decisions in the Cabinet are taken by a majority vote but a policy supported by the Prime Minister is more likely to be accepted. He can ask his colleagues to accept his views or resign. In case, the Cabinet does not yield to his wishes he may even threaten them with his own resignation, which means the collapse of the whole Cabinet. Ramsay Muir demonstrated this attitude in 1931.

He is not only the leader of the cabinet, which is his own creation, but also he is the Party Chief and as such wields immense influence over his colleagues who invariably submit to his wishes.

2. Leadership of the House of Commons: The Prime Minister is the leader of the Parliament, which in practice means the House of Commons. He makes all principle announcements regarding major issues of governmental policy in the House. In all political battles in the House, he represents the Cabinet. He is the chief spokesman of the government and bears the burden of opposition's strong attacks and criticisms in debates from the government benches.

But nowadays-governmental work has become so unwieldy and unmanageable that it is not possible for a single person to cope with both executive and legislative functions. The Prime Minister has to attend to so much work in his office as also around the Cabinet table, that it has become humanly impossible for him to take full interest in the House. It has now become customary to delegate leadership of the House to some senior minister of the Cabinet. But still the Prime Minister speaks on all important government measures.

3. Source of Communication between the Cabinet and the Queen: The Prime Minister is a link, between the Cabinet and the Queen. He is the chief advisor of the Crown not only in the affairs of the United Kingdom but also in those of British Colonies and Commonwealth countries. Although every Cabinet minister has a direct right of access to the Queen, yet no loyal colleague would ever think of communicating any important matter to the Queen without the consultation of the Prime Minister. Mr. Baldwin exercised his freedom regarding advising the King even in personal matters. He advised King Edward VII on his contemplated marriage with Mrs. Simpson. He consulted the Cabinet only at that stage when differences became irreconcilable.

4. Control over Foreign Affairs: Conduct of foreign relations is the direct concern of the Prime Minister even though he does not hold this portfolio. The Foreign Secretary always keeps a close contact with the Prime Minister and consults him on all-important matters of foreign policy. In fact all international agreements and treaties on behalf of the U.K. are made on his initiative. He may give a promise beforehand that such and such treaty will be signed and ratified. The Prime Minister may occasionally attend and participate in international conferences. Lord Beaconsfield attended Berlin Conference Lloyd George took part in Paris Peace Conference. Mr. Chamberlain took part in Munich Conference; Churchill had some six meetings with President Roosevelt and two with Stalin during World War II. At these conferences the Prime Minister may even make secret commitments.

5. Control over Finances: Not only does the Prime Minister exercise control over the foreign affairs but also he has complete control over the national purse. The Chancellor of Exchequer prepares the budget but he keeps the Prime Minister regularly informed about the financial affairs.

6. Patronage: The Prime Minister enjoys vast patronage both in the government and the Church. He appoints a number of officials like ambassadors and other diplomatic representatives, Governor-General of Dominions, Governors of Colonies and a number of other officials. He recommends award of all titles and honours by the Queen to the distinguished persons in society.

7. Manager-in-Chief of the Government: The Prime Minister is the chief coordinator of policies of the several ministries and departments. He is in fact a general manager of the Government organisation.

8. Chairman of various Bodies: The Prime Minister is the ex-officio Chairman of the important Committees like foreign affairs, defence and economic policy.

9. His Position: The powers and functions of the Prime Minister justify the remark of Marriott that he is the political ruler of England. He is endowed with such a plentitude of power, as no other constitutional ruler in the world possesses, not even the President of America. For so long as his party commands a majority in the House of Commons, he can give a pledge beforehand that such and such treaty will be signed, such and such law will be passed and such and such amount of money will be sanctioned. Thus the formal powers of the Prime Minister compare very favourably to those of an autocrat. The prerogatives, which the King has lost in the course of history, have fallen in the hands of the Prime Minister in the position of his being the principal adviser of the King. The Prime Minister enjoying the support of a stable majority in the House can make, amend and repeal the law and Constitution of England, can impose any amount of taxation and can declare war and conclude peace. During national emergency, he becomes a virtual dictator of the country. The Cabinet is the real government of the country and he is the master of the Cabinet.

The powers of the Prime Minister, as a matter of fact, depend upon the personality of the person holding this office. Men like Disraeli, Gladstone, Peel and Churchill proved to be

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2– GENERAL FEATURES

As stated earlier the present Constitution of the United States of America was adopted at the Philadelphia Convention held in 1787, after the minimum required number of States had ratified it. The Constitution is unique in many respects. It is probably the briefest Constitution in the world. Originally it consisted of 7 Articles, but 26 Amendments have been added to it during the last 200 years. The constitution presents a classic example of its rigidity. The Separation of Powers a doctrine propounded by Montesquieu, had found favour in American Constitution in a way unknown to any other constitution in the world. The application of the principle of Separation of powers has been combined with a remarkable system of checks and balances in the U.S. administration.

Again, the judiciary occupies a pivotal position in the U.S. political system. It exercises judicial review, It interprets the constitution and has developed it. To take an instance the Constitution created a weak Federal Government but the Supreme Court has made the Central Government sufficiently strong in order to meet the needs of modern America through its doctrine of implied powers.

Q.1. Analyse the salient features of the Constitution of the United States of America.

Ans: The Constitution of the United States is characterised by certain special features. Some of which may be summed up as follows:

1. Written Character: Like other federal constitutions in the world, the American Constitution is written in form. It is a brief document consisting of only 7 Articles and 26 Amendments. Indeed it was a skeleton constitution since the framers of the constitution left the details to be filled in by the Acts of the Congress. The constitution was thus a starting point or taking off ground. It has been adequately clothed with conventions, customs, judicial decisions and legislative measures. The unwritten element in the form of conventions has played a vital role so that the very nature of the constitution stands changed now. To take one example, the fathers of the constitution provided for indirect election of the President but as a matter of convention, he is now directly elected.

2. Conventions and Usages: The framers of Constitution did not make a strong jacket. They only made a Constitution capable of giving a starting point; a take off ground. They made a skeleton, which was to be supplied with flesh and blood by way of customs, traditions and usages. During the long period of its working it is seen that development of conventions and traditions have changed the Constitution beyond recognition. For example, by way of convention, indirect election of the President has become a direct one. The first President of America, George Washington established a convention that a President should not continue for more that two terms. This convention was adhered to till 1940, when President Roosevelt offered himself for a third term and even fourth in 1944. But such was the force of convention set by Washington that the constitution was amended limiting the tenure of the President for 2 terms.

3. Rigidity: The American Constitution is probably the most rigid constitution in the world. A very lengthy and cumbersome process can amend it. Because of the complicated nature of the amendment procedure, sometimes it takes years before an amendment becomes operative after it has been proposed. Every amendment, which can be moved in two different ways, must be ratified by three-fourths of the States. The rigidity of the constitution is obvious from the fact that during the 200 years it has been in operation, only 26 amendments have been made in the Constitution.

4. Federal Character: The American Constitution is federal in character. It was originally a federation of 13 States but due to admission of new States, it is now a federation of

50 States. A constitutional division of powers has been made between the Center and the federating units the constitution enumerates the powers of the Center and leaves the residue of powers to be exercised by the federating States. The States exercises all powers not delegated to the Centre or not reserved for the people. The Constitution thus creates a weak Centre because residuary powers have been given to the units. However, in practice, Federal Centre in America has become very powerful due to the application of the doctrine of *"Implied Powers"* as propounded by the Supreme Court of the U.S.A.

5. Supremacy of the Constitution: The Constitution is the supreme law of the land. Neither the Centre nor the States can override it. The Supreme Court can declare a law or an executive order repugnant to the Constitution unconstitutional and invalid.

6. Separation of Powers: The U.S. Constitution is based on the doctrine of *"Separation of Powers"*. Although the three wings of administration, viz., the executive, the legislature and the judiciary are inter-dependent and cannot be separated entirely in the interests of good government yet an attempt has been made in the American Constitution to separate them as much as possible. The Congress is the legislative organ. The President is the executive. He is elected directly by the people and has nothing to do with the Congress. He enjoys a fixed tenure of 4 years and is not a member of the Congress and cannot be removed by the vote of no confidence before the expiry of his term of office. He does not participate in debates, nor can he dissolve the Congress. Both are independent of each other. The Supreme Court heads the federal judiciary and enjoys freedom in its work. However, today, the Separation of Powers has been limited to a very large extent. The President today controls the legislative policy. This fact was more established in the times of Roosevelt administration. This ensures coordination between the executive and legislative branches of the government.

7. Checks and Balances: Recognising the importance of close co-operation among three organs of the government, the fathers of the Constitution introduced 'checks and balances.' The powers of one organ were so devised as to exercise a check upon the powers of others. As for example, the President can veto the Bills passed by the legislature. The Senate shares with the President his powers of making appointments to the various federal offices and conclusion of treaties and agreements with foreign States. 2/3 majorities in the Senate must ratify all such appointments and treaties. Through this power, the Senate controls the internal administration and external policy of the President. The Congress determines the organisation of federal judiciary and the President with the consent of the Senate appoints the judges of the Supreme Court. The Supreme Court can declare the laws passed by the Congress and executive action taken by the President *ultra vires*. In this way, the three organs of the government have been inter-locked.

8. Bill of Rights: The Constitution guarantees fundamental rights of person, property and liberty. It is, however, noteworthy that the rights were incorporated in the Constitution by a number of amendments effected after the Constitution was promulgated. They were not enumerated in the original draft of the Constitution. But by subsequent amendments, individual liberty has been effectively safeguarded. These rights have been introduced in the Constitution on the insistence of federating states and first 10 amendments were immediately made to incorporate the fundamental rights. The rights of citizens are enforceable by recourse to the judiciary. These rights cannot be modified or suspended except by a Constitutional amendment.

9. Judicial Review: The Constitution provides for judicial review of the legislative enactments. The federal judiciary can declare any legislation or executive action null and void if the same is found to be inconsistent with the provisions of the Constitution. The judiciary thus acts as the guardian and custodian of the Constitution and fundamental rights of citizens. The Supreme Court has so interpreted the Constitution that it has adapted it to the changing needs of

successful Prime Ministers and added much to the prestige and dignity of this office. But a weak Prime Minister may lose much of the position and dignity of this office.

PRIME MINISTER AS PRIMUS INTER PARES

The position of Prime Minister in relation to other ministers was described during the 19th century as primes inter pares, i.e., the first among equals. It is no more true today. He is the master of the Cabinet. In essentials, the policy of the Cabinet is his policy. He is the moon among lesser stars. Another philosopher says that he is the sun round which the planets revolve. Of course, he cannot be a dictator. Though he exercises a general supervision, he cannot dictate arbitrarily to his colleagues who hold an equally important position in the party. He is under the constant criticism of the opposition. He is to pull his colleagues in the Cabinet and majority in the legislation with him. All this means that he cannot be called a dictator or an autocrat despite the fact that at times he may wield dictatorial powers.

THE PRIME MINISTER IS NOT DICTATOR

Those who say that the Prime Minister is fast becoming a dictator give these arguments.

(i) He can ask any minister to resign.

(ii) He can ask the queen to dissolve the House of Commons.

(iii) He can resign himself; his resignation will mean the resignation of the Cabinet. When we read these points we generally get the impression that the Prime Minister is a dictator. But the fact of the matter is that he is not a dictator. When he acts like that, he risks his power and position.

1. He can ask any minister to resign but in practice there are the following difficulties:

(a) Resignation of a Minister may cause rift in the party, Cabinet and the Parliament.

(b) No party has unlimited talents to be supplied to the Prime Minister.

(c) The people have no faith in the Cabinet, which changes every now and then.

2. He can ask the Queen to dissolve the House of Commons but he may not be able to do it due to the reasons given below.

(a) Fresh election means expense of millions of Pounds. No party is always ready with huge sums to spend.

(b) The opinion polls always do not show that he is likely to win the election.

(c) No Prime Minister can be 100% sure of the victory of his party at the polls. Election means many sleepless nights for the leadership and the workers. So no Prime Minister will invite elections. He will hold it when he has to.

3. The Prime Minister can resign himself. It will lead to the resignation of the Cabinet. This is true in theory but not in practice as the number 2 in the cabinet is always ready and eager to step into his shoes.

(a) Mr. Lloyd George has said, that there is no generosity at the top; there is always someone willing, even eager, to take his place.

(b) He can never say like Clement VII, "Now that we have got the Papacy let us enjoy it."

(c) The Parliamentary system is conducted on the vital hypothesis that no man is indispensable; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon his recognition of this truth, says Laski.

The Prime minister is not a dictator; he is first among the equals or little more than this.

We will say in the end that wherever there is a Parliamentary form of government, the general election has become the election of the Prime Minister. Very often the party is spoken of a party of such and such Prime Minister.

POINTS TO REMEMBER

The Prime Minister holds a key position in the governmental structure of Great Britain. He is central to formation, life and death of the Cabinet. The office of Prime Minister has come into existence as a result of a convention. The Prime Minister is the leader of the Cabinet. He presides over the meetings of the Cabinet and conducts its proceedings. He is the leader of the House of Commons. All principle announcements are made by him on the floor of the House. He is the source of communication between the Cabinet and the Queen. He has full control over foreign affairs and finances of the country. He has a lot of patronage in his hands. He is the chairman of various committees. In spite of all his powers, he is only first among equals and cannot behave like a dictator.

Q.14. Describe the position and functions of the Privy Council and the Judicial Committee of the Privy Council.

Ans: While the Government of the United Kingdom is carried on in .the name of the King, the Privy Council is the constitutional machine through which the executive orders of the King are transacted. The Privy Council has its origin in the Curia Regis of the Norman period. The King from amongst the feudal lords appointed the members of the Curia Regis. This body was meant to advice the King when its advice was sought. It powers increased during the reign of Norman Kings but at the same time the number of its members increased enormously and it became an unfit body for deliberations. Charles II, therefore; consulted some five close friends of his own, out of all the members of his body. Thus the famous Cabal Ministry came into existence, which is regarded as the mother of the present Cabinet. Although later developments placed all the executive functions in the hands of the Cabinet yet this body continued to be a medium to carry out the wishes of the Crown. It is no longer an advisory body since the Cabinet now performs these functions.

ITS COMPOSITION

The Privy Council at present consists of more than 300 members. The King or Queen who may appoint anybody as Privy Councillor on the advice of the Prime Minister appoints its members. All ministers—present and past, men of eminence in political life, distinguished scientists, litterateurs and artists, Archbishop, retired judges and other persons who have held administrative posts under British Government—are made Privy Councillors. A Privy Councillor is addressed as the Right Honourable. The Privy Councillors enjoy lifelong tenure.

FUNCTIONS

The Privy Council is a defunct body and hardly performs any function today. It meets in full only on occasions like Coronation of the King or the Queen. But in order to transact formal business to issue Orders-in-Council, a quorum of three persons is considered to be sufficient. As a matter of rule, three Cabinet Ministers including the Lord President of the Council meet and act on behalf of the Privy Council. The meetings are generally held at Buckingham Palace in the presence of the King or the Queen but his or her presence is not essential. The work of the Council is done in the name of the King-in Council. It may be noted that all executive orders passed by the Cabinet by way of delegated legislation and other orders relating to the colonies and dependencies and wartime orders are embodied in the Order-in Council.

society. It has enlarged the power of the Congress. The supremacy of the judiciary over the executive and the legislature has led to the remark that the Government of U.S.A. is government by the judges.

10. Division of Powers: As the federal government requires a double set of government—that of center and those of states there must be a division of powers between the two parts. The Constitution specifies power of the federal government and leaves the rest for the States.

11. Popular Sovereignty: An important feature of the American system is that it emphasises the theory of popular sovereignty. Ultimate authority has been vested in the people. According to Madison, "The American system was based on that honourable determination which animates every votary of freedom, to rest our political experiments on the capacity of the mankind for self-government".

12. Republicanism: The U.S.A. is a republic with the President as the elected head-of the State. The Constitution derives its authority from the people. Moreover, the Constitution makes it binding upon every constituent State to have the republican form of government.

13. Presidential: The Constitution provides for the Presidential type of government in the U.S.A. All powers are vested in the President. Though the Constitution provides indirect election of the President but in practice his election has become direct. The President is not politically responsible to the Congress in the manner in which the executive is responsible to the legislature in England or India. He does not attend its sessions, nor initiates legislation directly, nor answers questions. The Congress cannot remove him during the term of his office, which is fixed for four years. On the other hand, the President cannot dissolve the Congress. The members of his Cabinet are neither members of the Congress nor answerable to it.

14. Dual Citizenship: The U.S. Constitution provides for dual citizenship for the people of the United States. An American is the citizen of the U.S.A. As also of the State wherein he or she is domiciled. It is in contrast with the idea of single citizenship as incorporated in the Constitution of India where every citizen irrespective of domicile is the Citizen of India alone.

15. Spoils System: This is an interesting feature of the American political system. The system is associated with the name of President Andrew Jackson. According to this system, when the new President takes over the charge of administration, appoints afresh all important officials of federal government. The entire administration of the previous President is streamlined. The system is known as 'Spoils System' because important jobs are distributed among the henchmen of the President or his Party without taking into account ability, experience or talents of the men appointed.

POINTS TO REMEMBER

The U.S. Constitution is written in form. It is rigid. It is federal in character with a weak center. It is based on 'separation of powers' with a system of checks and balances. It derives its authority from the people. Supremacy of the constitution is guaranteed through the doctrine of judicial review. It contains a Bill of Rights for the citizens. It provides for the Presidential type of government. The citizens of the United States enjoy dual citizenship.

Q.2. Discuss the various factors responsible for the evolution of the American Constitution with special emphasis on the role played by the conventions.

Ans: The original Constitution of the United States of America consists of seven Articles containing not more than seven thousand words. It was framed to satisfy the requirements of the original thirteen States with a small population living in the pastoral *cum* agricultural age. The

constitution of 1789 embodied only general outlines of the framework of the federal government. But the present Constitution of the U.S.A. cannot be identified with the original constitutional document prepared by the Philadelphia Convention. Today it includes many rules and regulations, judicial interpretations and conventions etc., which affect the distribution and exercise of the sovereign powers of the State. It has, in fact, changed beyond recognition. The various factors, which have led to an all-round development of the American Constitution, may be summed up as follows:

1. **Amendments:** Though the process of amending the Constitution has been extremely slow yet it has led to its growth. There have been only 26 amendments to the Constitution during the last 200 years. The, first ten amendments guarantee to all Americans, religious freedom, freedom of speech, freedom of press, the right of trial by jury, the right to assemble peacefully for any purpose, to petition the government for a redress of grievances, and the right to bear arms. They give the people also security against unreasonable search and seizure of persons or property, and assure those charged with crimes of a fair public trial. Excessive bail may not be required, nor excessive fines imposed, nor cruel punishments inflicted. In the peacetime no soldier may be quartered in any house without the owner's permission. No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation. According to the Ninth Amendment, the listing of certain rights in the Constitution is not to be construed as denial of other rights already retained by the people. In the immediate aftermath of the Civil War, and as a direct consequence of its outcome, three additional amendments were adopted which abolished slavery and opened the door of citizenship to former Negro slaves. The Fifteenth Amendment removed all barriers on voting on account of race, color, or previous condition of servitude. It became effective in 1870. The Sixteenth Amendment, ratified in 1913, gave the national government power to tax incomes. The Nineteenth Amendment, ratified in 1920, gave women the right to vote on the same basis as men. The Twenty-second Amendment, ratified in 1951, limited the office of the Presidency to 2 four-yearly terms. The Twenty-fifth Amendment, adopted in 1967, enabled the Vice-President to become Acting President if the President should become disabled, and gave the President authority to fill the Vice-Presidency, with Congressional assent, should that office become vacant. The Twenty-sixth Amendment granted the voting right at the age of eighteen.

(Note: All the amendments in detail are discussed under a separate Question.)

2. **Law:** The second factor responsible for the development of the American Constitution is the Law passed by the Congress. The framers of the Constitution prescribed only the general outlines of the federal government. The determination of details in regard to the organization and functioning of the government was left to the Congress. Naturally laws passed by the Congress have contributed more to the evolution of the constitution than the Twenty-six amendments. The constitution made provisions for the establishment of the Supreme Court, but its organization, tenure and salaries of the judges were left to be determined by the Congress. Similarly, the constitution prescribed the composition of the two Houses of Congress but the method of election and suffrage were left to be determined by the State legislatures. Electoral Act of 1887 regulated the election disputes. Original constitution is silent about organization of the administrative departments. The Congress, by law, determines their number, functions, organization etc. All these laws dealing with the organization and functioning of the government have expanded and enriched the constitution to a great extent.

3. **Judicial Interpretations:** Judicial decisions and interpretations have also played a major part in the evolution of the American Constitution. So great has been the role of the judiciary that some commentators of the American Constitution have named the Supreme Court

as a continuous constitutional convention. Munro remarks, "One might almost say that it (constitution) undergoes some change every Monday when the Supreme Court hands down its decisions." The implied powers of the Congress owe their origin to the Supreme Court. The Supreme Court has given wide meaning to the words used in the constitution. The power of the national government to regulate inters State commerce; railways, telegraphy, aeroplanes and radio all owe their origin to decisions of the Supreme Court. The Supreme Court has strengthened the center at the cost of the States quite in keeping with the needs of the time.

4. Development by Executive: Powerful Presidents of the U.S.A. have also contributed a lot towards the growth of the American Constitution. Washington, Jackson, Lincoln and Roosevelt molded and developed the constitution by a vigorous use of their Presidential powers. As for example, President Washington created a Cabinet and began consulting it. Since then the Cabinet has because a regular organ of the U.S. Government.

5. Conventions: The conventions have played a magnificent role in the development of the Constitution of the United States. The conventions are not a peculiar feature of the British Constitution alone. The American Constitution is equally rich in this respect. The framers of the constitution only prepared a skeleton. The flesh has been added to it by the usages and conventions, which have grown up during the last 200 years. In the words of Beard, "A great revolutionary change in the American Constitution has not been brought about by amendments or statutes but by customs and conventions. The conventions have changed the very spirit of the constitution." Some of these conventions are given below:

1. The fathers of the constitution provided for an indirect election of the President. But by convention the election of the President has become more or less direct.
2. According to the constitution the Speaker of the House of Representatives should be chosen by the House itself. In reality he is the nominee of the majority party.
3. The system of Senatorial Courtesy according to which the Senate accepts the recommendations made by the President for the appointment of the federal officers, is the result of a convention. Similarly, the rule that a candidate for election to the House of Representatives should belong to the constituency, which he seeks to represent, is based on a convention.
4. The practice of keeping the leader of the majority party in the Senate informed about the progress of treaty-negotiations by the President is also the result of a convention.

The above description shows that conventions play a significant part in the working of the Constitution of the United States. But it must be remembered that the extent of conventional element in the American Constitution is much less than that in the British Constitution.

The American constitution is thus a living organism expanding and developing in different directions. In the words of Woodrow Wilson, "the original American Constitution is just like Magna Cart and it has sprouted out of a small seed into a big tree."

POINTS TO REMEMBER

The Constitution of America is a small document consisting of only 7 Articles and some 7,000 words. Later, the constitution was developed enormously by the addition of the amendments, laws passed by the Congress, judicial interpretations and conventions. Each of these factors played its part in the growth of the constitution. But the most vital role was *played by the development of conventions, which have practically transformed the spirit of the constitution.*

"The Constitution of the U.S.A. is the most completely federal Constitution in the world."

—C.F. Strong

3– FEDERALISM OF THE U.S. CONSTITUTION

The original 13 Member States under an atmosphere characterized by jealousy, bitterness, suspicion and political fear framed the Constitution of the United States. The federation came into existence under the pressure of circumstances although the original member-States wished to maintain their political independence. The federation was thus a compromise between the centrifugal and centripetal tendencies. It was just out of fear that a weak Central Government was sought to be established by the Constitution. All possible efforts were made to protect the right of the Stated against the encroachment of the federal authority. Although the framers of the Constitution gave extremely limited authority to the federal government yet under the impact of new economic and political forces, the Centre has assumed enormous authority in various spheres originally exclude from its jurisdiction. The Supreme Court has come to its rescue and has jurisdiction. The Supreme Court has come to its rescue and has enhanced its authority through the doctrine of 'Implied Powers'

Q.3. Discuss the scheme of division of powers in the American Constitution. Account for the increase of powers of the federal government.

Ans: The United States Constitution is federal. Originally, it consisted of 13 States, now it contains 50 units. It was established through the centripetal process. The thirteen independent sovereign States surrendered some of their powers and created the Union (United States of America). Naturally enough, they surrendered as little powers as could be possible. The federal Government has, therefore, delegated and specified powers. All other powers not reserved to the federal government or to the people were vested in the States. The residuary powers thus lie with them. In this way the Constitution leaves a vast authority with the States. Woodrow Wilson pointed out that of a dozen great legislative measures carried through by the British Parliament in the 19th century, only two would have come within the scope of federal legislature in America (i.e., the Corn Laws and Abolition of Slavery). The Constitution contains three lists of subjects, namely, a list of what the Congress can do, a list of what the Congress cannot do and a list of what the States cannot do.

The Constitution (Art. 1, Sec, 8) enumerates 18 powers for the U.S. Congress. They include, among others, to impose and collect taxes and duties etc., foreign trade, inter State commerce, naturalisation, common defence and general welfare of the United States, coinage and weights and measures, promotion of science and other useful arts, Constitution of tribunals inferior to the Supreme Court, declaration of war, raising armies, and making all laws necessary for the execution of these powers.

The other two lists detail powers, which are forbidden to the Centre and the States respectively. Section 9 of Article 1 forbids the Federal Government from suspending a writ of *habeas corpus* or from passing *ex-post facto* laws; granting titles or nobility; passing laws affecting religious beliefs of the people in any way and abridging freedom of speech and of press. The States are forbidden from making any alliance or treaty with any foreign power, coinage and among other things, maintaining armies. The 10th Amendment provides that powers granted to the Centre and forbidden to the States, vest in the people themselves. These relate mostly to certain rights of the people, which no government can violate. The Constitution thus preserves the essential authority of the people in consistence with democratic principles.

The scheme of division of powers in the U.S. Constitution shows that the Suites enjoy all those powers which have not been given to the Federal Government and which have not been forbidden to the States. Such a system of division of powers is bound to make the Central Government weak since it enjoys jurisdiction over specified items only.

GROWTH OF FEDERAL AUTHORITY

There is now an inherent tendency in the United States towards the increase of federal centralisation. At the time when the Constitution of U.S.A. was made participating states wished to retain the local independence as much as possible and thus they gave a limited number of powers to the newly created federal government. They only agreed to have a Union rather than unity. But under the impact of time and circumstances, the powers of the Federal government have increased beyond imagination.

The following factors have been responsible for the enormous increase in the federal authority.

1. Doctrine of Implied Powers: The Supreme Court has so interpreted the Constitution that the powers of the federal government have increased even at the cost of States. It developed the doctrine of *'Implied Powers'*. This doctrine enunciated mostly by Chief Justice Marshal of Supreme Court, provides that the Constitution not only enumerated certain powers for the centre, but also gave all those powers, which are implied in the enumerated ones. There have been several cases when the Supreme Court, in interpreting the Constitution, has helped the Centre through the application of the doctrine. A few examples may be taken to illustrate the application of this doctrine. The constitution empowers the national government to regulate commerce with foreign nations and among the several States. The Congress has derived from this clause of the constitution, the power to control all means of transport and communication. From the clause giving to Congress the power 'to promote general welfare', it has derived the authority to pass social legislation like old age insurance schemes and other laws of this nature. Again, through the powers of the Congress to impose and collect taxes and duties, the Congress got the authority to establish and control exclusively the Central Bank of United States. This is how the Federal Government has acquired much authority which was originally not granted to it by the constitution.

2. Amendments of the Constitution: Many amendments have increased the powers of the federal government. The fifteenth amendment gave the powers of judicial review to the Supreme Court over state legislation. The sixteenth amendment of the constitution authorised the Congress to levy and collect taxes on incomes of all kinds whereas the original constitution had prohibited the Central Government to impose direct taxes.

3. Physical, Economic and Social Changes: By far the most important factor responsible for the growth of federal authority is the change in physical, economic and social setting of United States. At the time of promulgation of the constitution, America was just a federation of 13 small states. But now it is a Union of 50 states with a huge extent of territory and enormous population. This growth in size, population together with complexity of social organisation has led to the great shift (of power in favour of National Government. The matters, which were once considered to be of local) importance has now assumed national character. The vast development of communication, trade, technology, rise of 'big business' and inter-state co-operation created problems which could not be tackled by states and could only be handled successfully by the National Government. People demanded services, which the states were either unable or unwilling to provide. Step by step the national government took over what the states would not do. Thus there has been a steady flow of authority to Washington, the seat of federal authority.

4. Role of Powerful Presidents: The powerful Presidents have issued rules and regulations in the exercise of their authority widening the federal government. Presidents like Lincoln, Washington, Roosevelt, and Wilson have exercised dictatorial powers. They have taken action even without any constitutional justification. President Lincoln declared war against Southern States on the question of slavery. Roosevelt's 'New Deal' policy has widened the control

of Federal Government over subjects originally within State jurisdiction.

5. The Impact of the Civil War (1861-65). The issue of Centre-State relationship was effectively decided by the Civil War 1861-65, which gave a negative verdict against separatism, state autonomy and state loyalty.

6. Confidence in the National Government: The people of U.S.A. at all stages of their development have looked to the national Government for solving their problems. Their desire to make the country big and prosperous involved big efforts and big enterprise and all this evolved a big government. The economic crisis of 1931, for example, appreciably enhanced the prestige of the national government. The resources of the state proved absolutely inadequate to provide relief to 12 million unemployed in the country. During war, importance of Central Government is enhanced immeasurably. Prosecution of war needs planning and co-ordination. "In total war, there should be total power. As long as we live in a world where war is an ever-present possibility, the defence activities of the government will be many and varied, and they will impinge on all aspects of our lives." This leads to centralization pure and simple.

7. Federal Grants-in-Aid: Federal grants-in-aid are a prolific source of centralization. Grants-in-aid are the payments made by the national government to State and local governments for the support of welfare activities administered by States and their local bodies, e.g., housing, agriculture, education and various other like matters. State functions cannot now be compartmentalised. All state subjects are national in scope and though they are locally administered, yet must be standardised at high level by the Central Government. The centre gives the grants for the specified purpose and subject to conditions stipulated by Congress. It is a matter of common knowledge that one who gives money has a loud voice in calling the tune.

8. Defence of the country: The Constitution empowers the National Government to protect the country from external aggression and when necessary for waging war. The problem of common defence makes the government responsible for gearing up the entire life of the nation and when the country is in the midst of war, all out efforts must be made to win it. It means conscription of men, control of channels of production, transportation, distribution, and in fact, nearly every aspect of economic and social life in the country. When the war ceases, the government must tackle problems of demobilization and post-war reconstruction. All this leads to increase in authority of the federal Government.

9. Impact of World Situation: The centralising tendency in the American Constitutional System has been further strengthened by the international situation. World War II was responsible for enormous increase in the powers of the federal government. Post war cold war going on between the Communist Block and Capitalist bloc in world politics continues to strengthen the powers of the Central Government of America. According to D. White, "the most obvious giant pushing us towards the centre is the Russian bear."

This enormity in the growth of federal authority has led to the conclusion, that United States is no longer a federal polity. But it is an exaggeration to say that federalism in America is dead. It is an age when federation cannot exist without having a strong centre. Now everywhere, whether it is India or Canada or Russia or America, there is an irresistible tendency towards the development of what knows as co-operative federalism.

POINTS TO REMEMBER

The Constitution of the United States enumerates three lists of subjects, viz., a list of what the Congress can do, a list of what the Congress cannot do and a list of what the States cannot do. In the scheme of distribution of powers, the federal government was sought to be very weak and the States were given a position of vantage. But the Supreme Court through the application

of the doctrine of 'Implied Powers' has considerably increased the powers of the Federal Government. Its powers have also increased through constitutional amendments and development of international relations of the United States.

Q.4. Describe the process of the amendment of the Federal Constitution of the U.S.A. Examine critically the rigidity of the U.S. Constitution.

The fathers of the American Constitution were cautious to avoid all possibilities of capricious alterations in the Constitution.' *(Munro) In* the light of this statement, discuss nature of rigidity of the U.S. Constitution.

Ans: One of the essential features of federalism is the rigidity of the constitution. The U.S. Constitution fulfils this requirement to a remarkable degree. Article 5 of the Constitution lays down a very cumbersome and difficult procedure for its amendment. There are two methods by which amendments may be carried. They are as follows.

1. An Amendment may be proposed by two-thirds majority in each House of the Congress. It must be ratified by three-fourths of the total number of the States. The ratification may be done either by State legislatures or by special conventions held in the States for this purpose. The mode of ratification is to be determined by the Congress.

2. The States themselves may take the initiative in proposing amendments. If two-thirds of the State legislatures apply to the Congress for this purpose the Congress calls a Constitutional convention, which shall on the basis of the original recommendation, propose the amendment. These amendments must be ratified by 3/4th of all the States either through their legislatures or at specially called conventions. The mode of ratification is to be determined by the Congress.

Out of 27 amendments which have been carried so far, all but one have been initiated by the Congress and ratified by the State legislatures, i.e., Congress proposed them and submitted them for ratification to the State Legislatures. Only the 21st Amendment which repealed the 18th Amendment (the 18th amendment had enforced prohibition) was ratified by conventions in the States.

SOME PECULIARITIES OF AMENDMENT PROCEDURE

(a) The constitution did not fix any time limit for ratifying the constitutional amendments. This results in a great delay in their passage and implementation. One State, for example, ratified a proposal after 80 years. But now the Congress by its resolution can place a time limit on ratification. As for example, in the cases of 18th, 20th and 21st amendments, it clearly laid down that the amendment would be lost if not ratified by the required number of States within 7 years.

(b) If a State once ratifies an amendment it cannot go back. But if it has rejected once, it can ratify it later provided it feels like revising its decision.

(c) The Constitution prescribes that an amendment may be proposed by the Congress by two-thirds majority in each of its Houses. But it is silent as to whether two-thirds majority means the majority of total membership or of members present and voting. As a matter of practice, it is the latter scheme, which prevails.

(d) There are, moreover, certain provisions, which cannot be amended. For example, the right of every State to equal representation on the Senate cannot be taken away without the consent of the State concerned. Also no State can be split up into two or more or any State merged with it, without the prior consent of the legislature of the State concerned.

CRITICISM OF AMENDING PROCESS

1. The system of amending the U.S. constitution is extremely rigid. Between 1789 and 1965 nearly 1900 proposals of constitutional amendment were moved but only 25 were finally accepted. This shows that the U.S. Constitution lacks the virtue of adaptability with the change of time.
2. Undue rigidity sometimes hampers the path of democratic forces. If, for example, 38 States, which may have an absolute majority of the American population, ratify an amendment the opposition of one small State can stop it from being effective. In other words, thirteen small States with, say one-tenth of the total population may decide to oppose a proposal for constitutional amendment and may thus prevent nine-tenth of the people from effecting any change in the constitution. Thus the U.S. Constitution envisages consent of the States and not the majority of population. This is considered to be against the spirit of democracy. The minority shall defeat the majority.

The procedure for amendment is extremely difficult. It is not even easily possible to secure two-thirds majority in the Congress in favour of a constitutional amendment. Out of all the proposals made for constitutional amendment, two-thirds majority in the Congress could pass only 29. Out of these 29 proposals, the required number of States ratified only 25. It has, therefore, been suggested that only majority vote in the Congress and subsequent ratification by two-thirds of the States should be made necessary for constitutional amendments. But this suggestion has not been seriously considered.

Despite much of criticism, the American people have proved to be flexible, and have changed the Constitution if it was demanded by the times. Between 1913 and 1933 alone, for example, 6 major amendments were effected. In the words of Prof. Munro, "U.S. Constitution is a *living* organism. The rigidity has only been provided as the fathers of the Constitution were cautious to avoid all possibilities of capricious changes in the constitution."

POINTS TO REMEMBER

The U.S. Constitution is very rigid. It can be amended by two different methods—but in both of them it requires ratification by at least three fourths of the number of States. Two-third majority in both, the House of the Congress, may propose the amendment and then it must be ratified by three fourths of the States. The States themselves may propose an amendment if two-thirds of them apply to the Congress for this purpose. The method of Constitutional amendment in the U.S.A. is so very difficult that during the last 200 years, only 26 amendments could be carried.

Q.5. What are the various Amendments made to the American Constitution? What are their effects?

Ans: The Constitution of U.S.A. is very rigid in character and since its promulgation till today, only 26 amendments have been made which may be listed as follows:

The first amendment guarantees freedoms of religious worship, speech and press, and the rights of peaceful assembly, and of petitioning the Government.

The Second Amendment guarantees the people the right to have weapons.

The Third Amendment guarantees that troops shall not be quartered in private homes without the owners' consent.

The Fourth Amendment guarantees that there shall be no search or seizure of person, houses, goods or papers without a search warrant.

The Fifth Amendment forbids the trial of any person for a major crime, except after

indictment by a grand jury: prohibits repeated trials for the same offence; forbids punishment without due process of law; and provides that an accused person may not be compelled to testify against himself. Nor may property be taken for public use except at a fair price.

The Sixth Amendment orders speedy and public trial of persons charged with criminal offences in the district where the crime was committed; requires trial by an un-biased jury after a plain statement of the accusation: guarantees counsel for the accused and provides that witnesses for the accused shall be compelled to attend the trial and that all witnesses shall testify in the presence of the accused.

The Seventh Amendment provides a right to trial by jury for law suits involving anything valued at more than twenty dollars. The Eighth Amendment forbids setting of excessive bail for persons involved in criminal cases. It also prohibits the levy of excessive fines and cruel punishment. The Ninth Amendment states that rights not mentioned in the constitution shall continue to be enjoyed by the people. The Tenth Amendment provides that powers not delegated to the federal government are to be exercised by the States or the people. These amendments provided for a Bill of Rights for the American people. The Eleventh, and Twelfth Amendments removed some-ambiguities in the original Constitution. The Thirteenth Amendment abolished slavery. The Fourteenth Amendment guarantees individual liberty against state governments. The Fifteenth Amendment extends the right to vote to all the adults of either sex irrespective of race, color or previous condition of servitude. The Sixteenth Amendment authorizes the Congress to pass appropriate law for imposing income tax, the proceeds of which are not to be distributed among the states. The Seventeenth Amendment provides that Senate of the United States shall be composed of 2 Senators from each state elected by the people for a period of six years. In case of a vacancy, the executive authority of the state concerned shall nominate a person as Senator till the people duly elect somebody.

The Eighteenth Amendment prohibited the sale of intoxicating beverages in the United States and subsequently repealed by the Twenty-first Amendment.

The Nineteenth Amendment gives women the right to vote. The Twentieth Amendment changed the dates of the beginning of the sessions of the Congress and of assumption of office by the President. The Twenty-first Amendment repealed the Eighteenth Amendment but prohibited the transportation of liquor into a state against its will. The Twenty-second Amendment limits the President to two terms of office. It further provides that a Vice-President or other successor to the Presidency may not be elected more than once if he has served more than two years of the term to which he succeeded.

The Twenty-third Amendment gives the people of the District of Columbia the right to vote for President and Vice-President.

The Twenty-fourth Amendment prohibits any poll tax *as a* prerequisite for voting in a national election.

The Twenty-fifth Amendment, ratified on February 10, 1967, designates the Vice-President *as* Acting President when the President is physically or mentally unable to carry on the duties of his office. It also authorizes the President to nominate a Vice-President, with Congressional assent, if the Vice Presidency becomes vacant.

The Twenty-Sixth Amendment ratified on June 30, 1971 reduced the voting age at Eighteen.

The Twenty-Seventh Ratified May 7, 1992, Now law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

It is of the greatest significance that out of twenty-six amendments, no less than eighteen provide for guarantees of civil or political liberties. Two others, the Eighteenth and Twenty-first, cancel each other. Only six have been deemed necessary to make fundamental changes in the scheme of organization and powers drafted in Philadelphia by the Constitutional Convention.

Q.6. Discuss the doctrine of Separation of Powers as incorporated in the American Constitution. How has the Separation been affected by the system of 'Checks and Balances?

Ans: The principle of 'Separation of Powers' is one of the most important features of the American Constitution. The constitution clearly states that all legislative, executive and judicial powers are vested in the Congress, the President and the Supreme Court respectively. There is no other constitution in which the demarcation of the three wings of administration is so clear. In India, for example, all executive power of the Union is vested in the President, but the Parliament consists of the President and two Houses. This shows that the executive has been associated with the legislature in a very active manner. Similarly, in England Parliament is sovereign in every respect and the executive is subordinate to it. However, in the United States each of the three wings is separate and distinct without being dependent upon the other. It is said that the fathers of the American Constitution were deeply impressed by the theory of 'Separation of Powers' as propounded by Montesquieu. In their attempt to make three wings as separate as possible, they have made each one of them independent from each other. The President, for example, has a fixed tenure and is not responsible to the Congress. The Congress is independent of the President since it cannot be prorogued or dissolved by him. The federal judiciary is also independent of both the executive and the legislature. No judge of the Supreme Court can be removed except by a very difficult procedure of impeachment. Thus, as Finer points out, the "American Constitution was consciously and elaborately made an essay on the separation of powers and is today the most important polity in the world which operates upon that principle."

CHECKS AND BALANCES

However, the American Constitution has not produced a 'clean severance' of the three organs of the government. To weaken the authority of government further, the fathers of the Constitution introduced checks *and balances*, so that one organ obstructs the other. They possibly apprehended that an organ of the government, left to it completely, might degenerate and misuse its power, thus becoming tyrannical and oppressive. The constitution has, therefore, provided for a system of internal *checks and balances*. The Senate in the matter of making appointments to high offices, for example, controls the executive. It is laid down that the Senate must ratify all high appointments made by the President. Again, it is the Senate, which ratifies all international treaties made by the President. This power was effectively used in 1919 when the Senate refused to ratify the Treaty of Versailles, which had been accepted by the President, Woodrow Wilson. The Senate, an important part of the U.S. Congress, thus controls the internal administration through its power of ratifying all treaties, and agreements to be made with foreign States. The Senate moreover, is the court of impeachment against the President and other high officials of the United States. The President, in turn, controls the Congress in the sense that all Bills passed by the Congress must be submitted to him for his signature. He may veto a Bill, in which case the Congress can override it by re-passing the Bill with 2/3rd majority voting separately in the two Houses. He can exercise his *pocket veto* during the last ten days of the session of the Congress. Again, both the President and the Congress have certain checks on the judiciary. The President appoints the judges of the Supreme Court in consultation with the Senate. The Congress, subject to certain constitutional restrictions, determines their salaries etc.. The judiciary in turn exercises

its control over the executive and the legislature through its power of judicial veto. It can veto the laws passed by the Congress and the orders issued by the executive if they are found to be at variance with the spirit of the constitution. The Supreme Court sets the framework, both negatively and positively, within which the government works.

Thus we see that the principle of separation of powers has been considerably marred in actual practice by the principle of *checks and balances*.. These two principles pervade the American political system from top to bottom. According to Finer, the problems that have arisen as a result of this in the United States, have been very obstinate and have frustrated the modern social will. In his 'American Government and Politics', Charles Beared states, "By the time a proposed law runs the gauntlet of all these independent agencies of government, the passions of those who support it are likely to be cooled and the will of majority tempered by much reflection.

But there are others who regard this system of checks and balances as a necessary corollary to the principle of separation of powers. There can never be a complete separation if administration is to be run smoothly. They say that in the American system too the ultimate power of the people does prevail. According to Lord Bryce, "The ultimate fountain of power, popular sovereignty, always flows full and strong, swelling up from its deep source, but it is thereafter diverted into many channels each of which is so confined by skillfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

POINTS TO REMEMBER

The principle of separation of powers is one of the most important features of the American Constitution. The constitution establishes three separate and distinct organs of government. The executive functions are vested in the President. The Congress performs the law-making functions and the federal judiciary performs the judicial functions. In order to avoid the rigour of the 'Separation of Powers' the Constitution introduces a system of 'Checks and Balances.' The power of one organs is made a check upon the others.

PROBABLE QUESTIONS WITH HINTS (CSS & LLB –I)

Q. 'If power is not to be abused then it is necessary in the nature of things that power be made a check to power'. In the light of this statement justify the system of checks and balances as introduced in the U.S. Constitution.

Q. 'The outstanding contrast between the Constitution of England and the U.S.A. is the great extent to which in the U.S.A. the legislature, the executive and the judiciary are independent of one another. Elucidate.

[For answer, refer to the question dealing with the separation of powers checks and balances.]

"Our republican form of government with its elective presidency was born in the declining period of divine-right absolutism." —Willis G Swartz "No president-dare violate social decorum as European sovereigns have so often done. If he did so, he would be the first to suffer.". —James Bryce "The presidency is more than executive responsibility. It is the inspiring symbol of all that is highest in America's purpose and ideals." **—Herbert Hoover**

4- THE UNITED STATES EXECUTIVE

The United States Constitution vests executive powers in the hands of the individual, the President of the United States of America. His powers are so enormous, wide and overwhelming that he has been described as 'the foremost ruler in the world'. The office of American President has been organised on the basis of non-Parliamentary or Presidential type of government. There are Presidents in other countries too. But their authority is greatly limited by the powers of the legislatures. They are constitutional or nominal heads of their States. The Indian President, for example, cannot afford to go against the advice of the Council of Ministers, which is responsible to the Parliament. In the U.S.A., on the other hand, the President and his Cabinet are not answerable to the Legislature. The President of the U.S.A. is supreme in the executive sphere, making due allowance for some devices of internal checks and balances. Any Cabinet does not bind down the American President. He chooses his own Cabinet, which is at best his personal team of advisors. It has been rightly characterised as the 'President's Family' and head of the family, the President inevitably dominates them.

Quite a number of factors are responsible for this state of affairs. The constitution is clear and unequivocal in giving all executive powers to the President. Secondly, he is directly elected by the people and as such enjoys greater measure of popular support.

Indeed the American Constitution has made the President a real executive head rather than a titular one, as is the case in Parliamentary governments.

Q. 7. How is the President of the United States of America elected? Explain the difference in theory and practice regarding the election of the President. What is the position regarding his re-eligibility? How is he impeached?

Ans: The constitution provides for indirect election of the American President. The President is elected constitutionally, by an electoral college consisting of as many "Presidential Electors" as is the number of members in both houses of the Congress, i.e., 538 (438 present number of members in the House of Representative in 1988 and 100 members in the Senate). This Electoral College is constituted in each State and consists of as many members as each State has in the Congress, i.e., both in the House of Representatives and the Senate. Since each State has 2 members in the Senate, it means that number of Presidential Electors in each State is equal to the numbers of its members in the House of Representatives plus 2. This means that a big state like the state of New York has 43 electoral votes (equal to its 41 members in the House of Representatives plus 2 in the Senate) and a small state like the state of Delaware has only 3 (equal to its 1 member in the House and 2 in the Senate). The winner of the Presidential election in a state will receive all of its elector votes on `winner-take-all basis.' The method of electing the Presidential Electors in each State has been left to be determined directly by the State concerned. Originally they were elected by the State legislatures, but now they are elected directly by the people. The Presidential Electors meet in each State and cast their votes on the day fixed for Presidential election. There are thus 50 local contests for Presidency. It is the sum of these contests, which provides the actual result.

The American political system moves according to calendar pattern. The Presidential Electors are elected on the Tuesday after the first Monday in November of every leap year. These electors meet in the capital of each State on the first Monday after the second Wednesday in December, and record their votes for the Presidential candidates. A certificate of election is then sent to the Chairman of the Senate by each state. On 6th January, the Congress meets in a joint session, where votes are counted. The person securing an absolute majority of votes is declared elected. In other words in counting the majority of votes, the majority of total votes is considered,

and not simple majority. The new President is sworn into office on January 20. In case no candidate secures the required majority of votes, the House of Representatives elects one person from amongst the first three candidates, securing the highest number of votes. In such a case, each State has one vote irrespective of the number of representatives in the House. If this attempt also fails, then after 4th March, the Vice-President automatically succeeds to the Presidential office.

Thus we see that the constitution has prescribed the method of election of the President with great precision. In the opinion of Hamilton, this process of election "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

DIRECT ELECTION IN PRACTICE

Although the U.S. Constitution prescribes a system of indirect election, yet in practice election of the President has become almost direct. The change has been brought about by the growth of powerful political parties in America. Months before the date of Presidential election, the major political parties had their national conventions and nominate their Presidential candidates. The parties in each State, then, nominate their own candidates for the Presidential Electoral College. The ballot papers are so printed that by one cross, a voter can vote for the whole list of Presidential electors put up by a particular party of his choice. This victory of a particular party in the election of Presidential electors means the election of the party's candidate to the Presidentship. The formal election in each State and counting of votes by the Congress, are conducted just as a necessary constitutional formality. Thus to all intents and purposes, the Presidential election in the United States has become direct. The country knows weeks before the actual date of election as to who is going to be elected. The voters in the States do not, in fact, cast vote for the Presidential Electors, but they cast a direct vote in favour of Presidential candidates whose names are already known to them. The election of the Electoral College is just a formality. If the election of this intermediary body were to be excluded, the same result would accrue. Thus with the growth of strong political parties, the powers of electing the President has been actually transferred to the people although the framers of the constitution wished it otherwise.

QUALIFICATIONS

The Constitution provides that a candidate for Presidency must fulfil the following conditions:

(a) He must be a natural born citizen of the United States.

(b) He must not be less than 35 years of age.

(c) He must have lived in the U.S.A. for not less than 14 years.

In practice the qualifications for Presidential candidate are severer than prescribed for. As a matter of rule, the candidates for Presidency are drawn from amongst the Senators, Governors of States, Cabinet ministers or important officials in the previous administration.

EMOLUMENTS

The salary of the President originally was $25,000 a year. It has been revised from time to time and now it stands at $1,00,000 a year apart from various other allowances and privileges. Emoluments and allowances of the President cannot be reduced during the course of his office. He is entitled to the use of free residential accommodations known as the White House in Washington.

TENURE AND RE-ELIGIBILITY

The President of the United States holds office for 4 years. The constitution, originally, did not put any restriction on the re-election of a President. George Washington, the first President, was elected twice but he refused to contest election for the third term. Since then a convention had been developed forbidding the reelection of a President for more than two terms. The convention was scrupulously observed for a long time but it was violated during war years when President Roosevelt was re-elected for the third and fourth terms in 1940 and 1944. However, by the 22nd Amendment, which was ratified by the required number of States in 1951, no person shall be elected to the office of President for more than two terms. It means that normally a person cannot be re-elected for the third time after the completion of two terms totaling 8 years. But if the President dies when 2 or more than 2 years of his term are over, the Vice-President succeeding him will have two more chances of contesting election. But if the Vice President succeeds to the office when there are more than 2 years to go till the term expires, he will get only one More chance because the maximum term that can be enjoyed by any President is now fixed at 10 years. This is in contrast with the Indian practice where the President may be re-elected for any number of times he likes.

THE SUCCESSION

The original constitution is silent as to who shall succeed to the Presidency in case both President and Vice-President die or their offices fall vacant on account of resignation or disability or removal. The 25th Amendment ratified on Feb. 1967 designates the Vice-President as Acting President when the President is physically or mentally unable to carry on the duties of his office. It also authorises the President to nominate a Vice-President with the consent of the Congress if the office of the Vice-President falls vacant. The succession to the Presidency is as follows.

If the President dies, the Vice-President becomes President. If the President becomes disabled, the Vice-President becomes Acting President during the disability. When the Vice-Presidency is vacant, the President may nominate a Vice-President, with confirmation by the Congress. Next to the Vice-President, in the line of Presidential succession is the speaker of the U.S. House of Representatives followed by President pro-tempore of the U.S. Senate, then the Secretary of State followed by other members of the Cabinet.

IMPEACHMENT

The President may be removed from office before the expiry of his normal term through impeachment. The House of Representatives adopts by resolution, articles of impeachment charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate, which acts as a judicial tribunal for impeachment. Its meeting is then presided over by the Chief Justice of the Supreme Court. The Senate may convict the President by two third majority of its members present and voting. The penalty cannot extend more than the removal of the President from office and disqualification to hold any office of trust and responsibility under the United States. The method or impeachment is not an easy one. During the long constitutional history of the U.S.A. only once in 1868, President Johnson was subjected to the process of impeachment but impeachment could not be carried through for want of a required majority in the Senate.

POINTS TO REMEMBER

The U.S. Constitution provides for indirect election of the President. He is to be elected by an Electoral College consisting of as many members as there are in the Congress. Each State elects Presidential Electors equal to the number of its representatives in the Congress. A candidate securing absolute majority of votes is declared elected, failing which the House of

Representatives elects one from amongst the first three candidates securing the highest votes. Although the constitution provides for indirect election yet in practice it has become direct on account of the growth of strong political parties. The President may be removed from the office before the expiry of his normal term through impeachment. The House of Representatives prefers the charge against the President and Senate convicts him by its two-thirds majority.

Q.8. Discuss the powers and position of the American President.

Q. The President of the United States governs but does not reign. (Sir Henry Maine) Elucidate.

Ans: It is often remarked that the President of the United States wields the largest amount of authority ever wielded by anyone in a democracy. Lord Bryce regards the American Presidency as the greatest office in the world. Haskin declares that the President of the United States is the foremost ruler in the world. He enjoys real and effective powers as contrasted with the powers of the King or Queen of England or the President of the Indian Republic.

FINER REMARKS

"The Constitution intended that the executive should be more than a mere executive: it very considerably modified the pure idea of the separation of powers. He has become a very active legislative leader as well as an executive."

All these remarks are correct in their assertions that the powers of the American President have increased enormously much against the spirit of the original Constitution. The following are the factors responsible for the enhancement of the powers of the American Presidents:

(a) In the *first* place, the original constitution confers certain powers and privileges.

(b) In the Second place, the Supreme Court enhanced his authority in all those cases in which the constitution was not clear. As for example, the constitution clearly prescribed the method of making appointments to various federal offices but was silent about the mode of their removal. The power of removal of all federal officials was then vested in the President by the decisions of the Supreme Court. Then the constitution authorised the Congress to declare war, but power to terminate war was not clearly vested in any part of the federal government. By the verdict of the Supreme Court, this power too was vested in the President.

(c) A substantial part of Presidential powers has been derived from the statutes of the Congress assigning certain powers and responsibilities to him either directly or through implication. The Congress generally passes laws in broad outlines and details therein are left to be filled in the executive orders of the President. The Congress may also bestow upon him the exercise of wide discretionary powers. As for example, in 1933, the Congress vested in the President the discretionary powers to reduce gold content of the dollar etc.

(d) The powers of the President have also been increased through conventions and usages. As for example, the convention of Senatorial Courtesy with respect to appointments has virtually placed in the hands of the President unfettered powers regarding all appointments.

(e) Lastly, the powers of the President increase enormously during emergencies. The President, for example, had almost dictatorial powers during the 2nd World War and post-war period.

The President of America now enjoys extensive executive, legislative, financial and judicial powers, which may be discussed as follows:

EXECUTIVE POWERS OF THE PRESIDENT

1. Chief Administrator. The President is the head of the national administration. All executive action of the Republic is taken in his name. He is responsible for the enforcement of the federal laws and treaties with foreign States throughout the country. He sees to the implementation of the decisions of the courts and enforces the constitution and laws of the country. For the performance of these functions, he sends directions to the heads of the various departments. In the discharge of his executive functions, his own cabinet the members of which are the heads of the various departments assists him. The President appoints the ministers and they remain in office so long as he is pleased with their work. The Cabinet has been described as the President's family and he can override their decisions whenever he likes.

2. Commander-in-Chief. The President is the Supreme Commander of the armed forces of the United States. As such he is responsible for the defence of the country. He appoints military officers with the advice and consent of the Senate and can remove them at will. Although the power to declare war vests in Congress yet the President can make war unavoidable and necessary by his conduct in the administration. As for example, President Truman took Police Action in Korea without authorization by the Congress. During war, President's military powers increase enormously. He becomes the sole incharge of war operations. During World War II, President Roosevelt was given almost a blank cheque to conduct war on the part of the United States. He became a sort of constitutional dictator.

3. Dictator of Foreign Relations. The President represents the U.S.A. in foreign relation. He formulates the foreign policy of the United States. He appoints all diplomatic representatives of the U.S.A. to foreign States with the consent of the Senate. He receives the foreign diplomats accredited to the U.S.A. He can negotiate treaties and agreement with foreign States in his discretion. But all treaties with foreign States must be ratified by two-thirds majority of the Senate. This is no doubt a limitation on his authority regarding the conduct of foreign relations. But the President is not to face any difficulty if majority in the Senate belongs to his party. The President is however, placed in a difficult position when majority of the Senate is hostile to him. The hostile Senate, for example, foiled President Wilson's efforts regarding the organisation of the League of Nations. The fact of the matter is that the President has position of vantage in the conduct of foreign relations of the U.S.A. since he is placed in a key position. He has unfettered freedom to negotiate treaties. It is only in the final stage that the treaties are placed before the Senate. Sometimes, it becomes difficult for the Senate to reject them at the final stage. Then the President can enter into executive agreements with foreign Stages, which do not require ratification by the Senate. President Roosevelt and Taft exercised this power freely. These agreements are no less important than others. The President does not declare the war at his own but he has the exclusive right to terminate hostilities. Further, the President has sole authority to extend recognition to a new foreign State. It was according to this right that President Roosevelt accorded recognition to the Soviet Government in 1933. It is again on account of the willful policy of Presidents Truman, Eisenhower and Kennedy that the Communist government of China had not been recognised by America for long.

All these facts clearly show that the President of the United States is the dictator of foreign relations. Washington, the first President, proclaimed the policy of 'American Neutrality' in 1793. President Munro enunciated the famous 'Munro Doctrine'. President Wilson and Roosevelt steered the State during the first and second world wars respectively. President Truman propounded his 'Truman Doctrine'. President Kennedy dictated American relations with full vigour and force. President Reagan enunciated the theory of "Constructive engagement" in Africa.

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4. Appointments. The President makes a large number of appointments in the federal services. The power of making appointments is the most important and effective power in the hands of the President. It enables the President to command the allegiance of a huge number of federal officers and secure their support for implementation of his policy.

There are two categories of federal Services, i.e., 'Superior Services' and 'Inferior Services'. The President with the consent of the Senate appoints Superior Services and the President alone, according to civil service rules, appoints members of the 'Inferior Services'. The officers belonging to superior category number about 1600 and tenure of service is generally four years coinciding with the Presidential term. Out of these services, the Senate without any objection ratifies certain appointments even if the majority in the Senate is against the President. For instance, the Senate would not interfere in the President's choice regarding the appointments of his own Cabinet, i.e., heads of the federal departments, Diplomatic representatives, military and naval appointments, especially during war. In all other appointments, the Senate exercises its power to reject or accept President's nominations. The President, however, has no difficulty in this connection if his own party has majority in the Senate. The President according to Convention, commonly known, appoints a number of services especially of local nature *as Senatorial Courtesy:* The Senate usually ratifies an appointment of this nature if the Senator from the State in which the appointment is made, approves of it. The President can also evade the consent of the Senate in making appointments to higher offices if he so desires. He may fill a vacancy temporarily during the recess of the Senate. It is to be submitted to the Senate when it comes into session but in spite of objection by the Senate, the appointment may hold good till the end of the session. And the President may reappoint the same person after the end of session if at all removed during session. Above all, it may be noted that the President has the sole right to remove federal officials from services. The President, however, cannot remove judges of the federal judiciary and members of various boards and commissions appointed under civil service rules.

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HIS LEGISLATIVE POWERS

Consistent with the theory of Separation of Powers, the constitution confers upon the President a limited legislative authority. The President does not possess the authority to summon, prorogue and dissolve the Congress. He cannot initiate any Bill directly in the Congress. The President, unlike the British or Indian Prime Minister, is not the leader of the majority party in the House. He has no direct control over the legislature whatsoever. The Congress is the real law-making body. The President can persuade and request the Congress for enactment of a particular law but he cannot threaten it as is possible with the British Prime Minister. The Congress may make laws against the wishes of the President, and he must execute them. The position, however, is not so desperate as it appears to be. During the course of time, the President has acquired a vital share in legislation. He has virtually become the 'chief legislator' in practice. Some of his legislative powers may be summed up *as* follows:

1. Veto Power. All Bills passed by the Congress must be referred to the President for his final approval. The President can deal with them in three different ways:

(a) He may give his assent to a Bill referred to him and the Bill will become an Act.

(b) He may reserve the Bill with him in which case it becomes a law at the expiry of ten days without his signatures provided the Congress is still in session. The Bill in such a case is killed if the Congress adjourns before the expiry of ten days. This is known as *Pocket Veto.*

(c) He may reject a Bill and may return it to the House with or without his

amendments. In such a case, the Congress by its two-thirds majority in each House may repass the Bill and then it will be obligatory on the part of the President to give his assent.

The facts given above clearly show that the President has an effective role in law making. He enjoys absolute veto during the last ten days of the session of the Congress. It is interesting to note that towards the end of a session, the Congress passes numerous Bills and resolutions in order to clear up its arrears. A considerable number of last minute Bills can thus be killed by the President if he is against them and the fact is that the various Presidents have frequently used this power. Otherwise too a Bill rejected by the President must be re-passed by two-thirds majority of Congress in each House. This much majority in the Congress is not always available in favour of a particular Bill. The result is that most of the Bills rejected by the President are totally killed. Even the President may check the enactment of a particular legislation by giving a threat of his direct veto in advance.

2. Messages. The President may send messages proposing some legislative measures. As the messages come from the highest functionary of the State, the Congress cannot easily ignore these. President's messages stir the nation and it is one great public document, which is widely read and discussed. In fact, many laws owe their origin to the Presidential messages. The famous 'Munro Doctrine' enunciated by President Munro was transmitted to the Congress through a message. He reports to the Congress on the State of the Union and on problems, which he believes requires immediate action on the part of the Congress. He being the nation's principal spokesman, the Congress cannot ignore such messages. President Roosevelt often used these methods. He got the New Deal Programme accepted from the Congress by sending a message to the Congress saying it must be passed before it adjourns.

3. Special Sessions. The President has the right to convene special sessions of the Congress. All-important laws were passed in 1913 in special sessions convened according to the wishes of President Wilson. The practice of convening special session of the Congress was very common previously. But under the new Calendar introduced by the Twentieth Amendment, the need of special session has become less because the interval between regular sessions has been lessened.

4. Patronage. The President has extensive patronage in his hands. He makes a large number of appointments in the federal services. The Senators and Representatives always want to win the President's favour in order to secure jobs for their supporters and friends. The Presidents of the United States have often made bargains with members of the Congress to get their proposals for legislation passed by them.

5. Appeal to Public Opinion. The President is not only the head of the Republic but also the leader of the nation. His office carries an inherent respect. The nation listens to him with attention. Whenever he finds that the Congress is pitched against him he can make direct appeal to the nation, and may create public opinion against his opponents in the Congress. There are instances when this method was effectively used by the President to put the Congress on the right errand.

6. Personal Influence. The President at the dinner table discusses most of the legislative programme of the Congress with the prominent party leaders in the Congress. The President, in fact, experiences no difficulty if his party has a majority in the Congress.

7. Delegated Legislation. In addition to an immense influence exercised by the President on the Congress, he can legislate on his own authority as well. He has the power to make rules and regulations in the form of executive orders. In most cases, the Congress makes laws in general outlines. The details are left to be filled in by the executive. The rules and regulations

thus made have the force of law. This is known as delegated legislation or rule-making power. This power has increased immensely during recent years. President Roosevelt is supposed to have exercised this power extensively. He is said to have issue 3,703 executive orders during his Presidential career prior to 1941. During the same period the Congress passed only 4,553 laws.

HIS FINANCIAL POWERS

Although the control over federal finances has been vested in the Congress yet in actual practice, the President directs and controls finance. It is under the direct supervision of he President that the Budget is prepared. It is placed before the Congress, which can amend it in any way. But the general practice shows that the Budget is passed as it is. Very few of the Congress understand the technicalities involved in the Budget and d it is difficult to amend it on account of its niceties. The President is thus the general manager of the financial affairs of the government.

HIS JUDICIAL POWERS

Like all other chief executive heads, the President of the United States enjoys the power to grant pardon, reprieve or amnesty to all offenders convicted for the breach of federal laws except those impeached by the Senate. He cannot grant pardon or reprieve for punishment under State laws. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

GENERAL ESTIMATE OF PRESIDENT'S POWERS AND SHADOW POSITION

A perusal of the powers of the U.S President proves beyond a shadow of doubt that he is one of the most powerful heads of the State. His powers are both real and effective unlike those of his prototype, the Indian President or the Queen of England. Here lies the justification of Sir Henry Maine's remarks that "the American President rules but does not reign". The fathers of the American Constitution took all the powers of the British King and gave them to the President only restraining them where they seemed to be excessive." This probably is the best explanation of the huge powers of the American President. In d the words of President Wilson himself, the nation as a whole has elected him and the nation is conscious that it has no other political spokesman. His is the only voice in all affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces can easily over-power him. He is the representative of no constituency but of the whole nation. He is then the ceremonial head of the Republic and performance of any dignified function is incomplete without his presence or message. We may conclude with the remarks of Laski that "the President of the United States is both more or less than a king; he is both more or less than a Prime Minister. The more carefully his office is studied the more does its unique character appear".

POINTS TO REMEMBER

The American President is the most powerful head of the State. The constitution did not make him so powerful but later on through Congressional legislation, judicial decisions and development of conventions, he has assumed plentitude of powers.

His Executive Powers. *He conducts federal administration. He is Commander-in-Chief of the armed forces. He represents the United States in foreign relations and formulates the foreign policy. He makes a large number of appointments through senatorial courtesy.*

His Legislative Powers. *He has suspensive and pocket veto. He may send messages to the Congress, which embody his proposals for legislation. He may convene special sessions. He can influence the Congress through patronage. He may appeal to public*

opinion. He has vast powers of delegated legislation.

His Financial Powers. *The Budget is prepared under his guidance. It is generally passed in original.*

His Judicial Powers. *He may grant pardon, reprieve and respite to all offenders convicted for breach of general laws. He shares in the appointment of the judges of the Supreme Court.*

Q. 9. Compare and contrast the powers and functions of the American President with those of the Indian or British Prime Minister. In what way does he differ from the Indian President?

Ans: According to Prof. Laski there is no foreign institution with which, "in any basic sense" the American Presidency may be compared. However, as the real executive heads of two countries the American President and the Indian Prime Minister may be contrasted in respect of their functions and powers. The Indian and the British Prime Ministers are basically similar in respect of position and powers. The contrast and comparison may be summed up *as* follows:

1. The American President's term of office is secure constitutionally. He cannot be removed before the expiry of a period of 4 years unless impeached earlier, by the Congress, but it is a very difficult and impracticable procedure. The Pakistan's Prime Minister, on the other hand, depends for his term upon the National Assembly. He continues in office as long as he enjoys the support of the majority party in the House. He must vacate his office, as soon *as* the confidence reposed in him by the majority is withdrawn.

2. The American President is directly elected by the people. The Indian Prime Minister is appointed by the President from the majority party in the House.

3. The President is the head of the State as well as of the government. But the Prime Minister is only the head of the government.

4. The President is not responsible to the legislature for his actions, whereas the Prime Minister is answerable and accountable to the National Assembly. The President, moreover, does not guide the course of legislation, nor is he a member of the Congress. The Prime Minister, on the other hand, is the leader of the House and actively steers the course of legislation.

5. The American President is helpless if the majority in the Congress is against him. He cannot get all the necessary legislation enacted. The Indian Prime Minister is always the leader of the majority party and can get the necessary legislation passed. In this respect he is more powerful than the American President.

6. The Prime Minister is only the head of his Cabinet. Since the Cabinet includes the leading party members with considerable backing, he cannot easily afford to ignore the advice of the Cabinet. The American President, on the other hand, is the boss and the Cabinet members are his subordinate assistants. He is the master of his Cabinet. The Cabinet members are mere advisers. The advisers only advice. The President makes the decisions alone.

7. The American President's power of making appointments is shared by the Senate. There is no such restraint on the powers of the Prime Minister. The Prime Minister makes all high appointments although formally they are made under the signatures of the President.

8. The American President derives all his powers from the constitution. The Prime Minister of India, on the other hand, derives his powers from constitutional

conventions. Theoretically all power is vested in the President of India, and the prime Minister and his colleagues are appointed only to aid and advise the President.

AMERICAN AND INDIAN PRESIDENT

There is a great deal of difference between the American and Indian Presidents. The American President is the real executive, while the Indian President like the British Queen, is only a titular head.

The American President is both the head of the State and the government, while the Indian President is only the head of the State. The American President is elected more or less by the direct vote of the people. The Indian President's election is absolutely indirect. Whereas the American President holds office for 4 years and can seek re-election only once, the Indian President holds office for 5 years and can be reelected for any number of terms. The American President is not the part and parcel of the legislature, but the Indian President is a part of the legislature. The Indian Parliament consists of the President and two Houses. Moreover, the Indian President has to act normally on the advice of his Cabinet, which is selected from the legislature and is jointly and severally responsible to it. The Indian President is more powerful than the American President in one respect. The latter cannot interfere with the government in the States. But the Indian President can proclaim a state of emergency in any State and can assume to himself the administration of that State.

Both the Presidents, however, can be removed only by impeachment, though the methods of impeachment differ.

POINTS TO REMEMBER

There is a world of difference in the position and status of the American President and the Indian Prime Minister. The President of America is elected for a fixed term of 4 years whereas the term of the Indian Prime Minister's office depends upon the fluctuating will of the legislature. The President is both the head of the State and the government whereas the Prime Minister is only the head of the government. The President is elected by the direct vote of the people but the Prime Minister is only the nominee of the President of India. Whereas the President of America has no responsibility towards the legislature, the Prime Minister is answerable for his policies before the House. The American President has no control over the legislature but the Prime Minister is the leader of the House. The President can easily ignore the wishes of his Cabinet but the Prime Minister cannot easily do so. The Prime Minister has greater patronage in his hands. The President of America is both the constitutional and real head of the State but the Indian President is only a nominal head. Whereas the American President is elected directly, the Indian President is the indirect choice of the people.

Q.10. Discuss the working of 'Cabinet System' in the U.S.A. and compare it with that of India and England. The 'Cabinet' in the United States is characterised as the President's family. How far do you agree with this statement?

Ans: The American Constitution did not envisage any Cabinet to aid and, assist the President in the discharge of his functions. However, in course of time, separate departments of the government have been created, each of which is under the charge of a Secretary. These Secretaries are the principal advisers of the President. They are appointed by every President when he enters upon his office, and are usually his ardent supporters in the political field. They are not members of the Congress, nor are they responsible to it. They are the President's personal advisers, first and foremost. However, their appointment like all other high appointments is subject to the approval of the Senate; although the Senate does not stand in his way as a matter of

his ability; to each according to his work" as laid down in article 6 of the constitution is well protected. Equality before law, freedom of religious belief, protection of home and hearth, privacy of correspondence etc. guaranteed as rights are fully entrenched. The freedoms of speech, press, assembly, association, procession and demonstration; although secured under article 35, are allowed only to a limited extent against insignificant organs of state but not against the party or top brass of government.

Q. 4 Name the highest organ of State authority in People's Republic of China. Also explain its composition, powers and functions.

"The National People's Congress is the highest organ of state authority in the People's Republic of China." Discuss.

Ans: Chapter 3 of the constitution of the People's Republic of China describes the organisation of the legislature. Article 57 declares the National People's Congress as the highest organ of State power. All the legislative powers of the People's Republic of China are vested in the National People's Congress. Unlike the Supreme Soviet of U.S.S.R. the National People's Congress is unicameral in composition. It consists of deputies directly elected by provinces, autonomous regions, municipalities directly under the central authority, the armed forces, and the Chinese residents abroad. Their number and the manner of their election are not given in the Constitution but are prescribed by electoral law.

TERM OF OFFICE

According to article 60, the National People's Congress is elected for a period of 4 years. But if the election becomes impossible because of exceptional circumstances, the term of office of the sitting congress may be extended until the first session of the new congress.

A Standing Committee convenes its session once a year. But an additional session may be convened whenever the Standing Committee thinks necessary or when one-fifth of the deputies demand it.

POWERS AND FUNCTIONS

The National People's Congress exercises all kinds of powers and covers all aspects of state functions. The Constitution of China is not based on the theory of separation of powers. It has legislative, executive, electoral, financial and constituent powers. It has the power to remove a high official of the State.

According to article 62 the National People's Congress has the power to amend the Constitution. It has also the powers to enact laws. Further, it supervises the enforcement of the Constitution. It elects the President and the Vice President of the Republic of China. It elects the President of Supreme People's Court. It has the power to decide on the choice of the Prime Minister of the state Council (Council of Ministers) upon the recommendation of the President of the People Republic. It also decides and approves the appointment of members of the States Council, Chairman of various Centre Commissions, Auditor General and Secretary General of State Council on the recommendations of the Premier.

It passes the State Budget and the financial report. It approves establishment of Provinces, autonomous regions and municipalities directly under the Central authority. It decides on questions of war and peace. It approves the state budget. It also examines and approves the plan for national development and it may also exercise such other functions and powers as the National People's Congress may think necessary.

According to article 63 the Congress has the power to remove the under mentioned from office:—

1. The President and Vice-President of the People's Republic of China.

2. The Premier and Vice-Premiers, State councillor and Heads of Commissions, Secretary-General of the State Council and the Auditor General.
3. The Chairman and other members of the Central Military Commission.
4. The President of Supreme People's Court.
5. The Procurator General.

The deputies of the Congress may ask questions to the State Council or to the Ministers and commissions of the State Council. They may ask any question concerning administration in order to elicit information.

PRIVILEGES

The deputies, as in other legislatures of the world, enjoy some privileges. They cannot be arrested or placed on trial without the consent of the Congress and if the Congress is not in session, of its Standing Committee. The deputies are subject to the supervision of units responsible for their election. And if the work of any deputy is not satisfactory the concerned unit according to the procedure prescribed by law may recall that deputy.

The above description of the powers and functions shows that the Congress is a very powerful body. It exercises various kinds of powers and functions and is the only body that is authorised to make laws for the whole of China. As various kinds of functions have been entrusted to this body, it occupies an enviable position in the constitutional system of the People's Republic of China. But as the Congress is an unwieldy body its present strength being 2700 and it meets quite infrequently, it cannot exercise all these powers in practice.

Q.5. Explain the composition, powers and functions of the Standing Committee of the National People's Congress?

Ans: The National People's Congress meets once in a year and that also for a very short period of time. Therefore, during its long absence, some other body is needed. As in Soviet Russia the Presidium acts and exercises all the powers and functions of the Supreme Soviet of U.S.S.R., when the latter is not in session, the Standing Committee does in the constitutional system of China. The Standing Committee of the National People's Congress exercises almost all the powers of the National People's Congress. Article 57 of the Constitution describes the Standing Committee as "Permanent body."

COMPOSITION

The Standing Committee consists of the Chairman, Vice-Chairman, Secretary-General and some other members. The National People's Congress elects all these members. According to Article 69, the Standing Committee "is responsible to the National People's Congress and reports to it". The National People's Congress may recall the members of the Standing Committee.

TERM OF OFFICE

The Standing Committee is elected for a term of 4 years. But even after the expiry of its term of office, it continues to function till the new Standing Committee is elected by the next National People's Congress. The Chairman and Vice Chairman do not serve for more than two terms.

POWERS AND FUNCTIONS

According to Article 67 the Standing Committee exercises the following powers and functions:

The Committee interprets constitution and statutes. It also enacts and amends the statutes. It supervises the work of the State Council, the Supreme People's Courts, and the Supreme people's Procurator and the Central Military Commission. It also annuls the decisions and orders

of the State Council, which are in contravention of the constitutional laws or decrees. It has also the power to annul or revise decisions of the Governments of the provinces, autonomous regions and municipalities directly under the central authority.

It decides on the choice of the Ministers. Ministers, Auditor General & secretary General of State Council upon nomination by the Premier and Members of Central Military Commission upon recommendation of its Chairman. It also appoints and removes the Vice-Presidents, Judges and other members of the judicial committee of the Supreme People's Court, the Deputy Chief Procurators, Procurators, and other members of the Procuratoral Committee of the Supreme Procuratorate. It further decides the appointment and recall the ambassadors of China accredited to foreign States. It ratifies and abrogate treaties concluded with foreign States as well as other agreement. It issues the proclamation of state of war, when the congress is not in session, in the event of armed attack on the country or in fulfilment of international treaty obligation concerning, common defence against aggression. It proclaims the enforcement of martial law throughout the country or in certain parts and also decides on general or partial mobilization. It institutes military, diplomatic or other special titles and ranks. It grants special pardons. It institutes State medals and titles of honour and decides on whom to be conferred. Lastly it exercises and performs such other powers and the Congress vests functions as in the Standing Committee.

The National People's Congress performs its functions through various committees, such as, the Bills Committee, the Budget Committee, the Credentials Committee etc. All these committees work under the direction and supervision of the Standing Committee when the Congress is not in session. However, it must be remembered that the powers enumerated above, though quite impressive, are neither complete nor exhaustive. The Constitution authorises the National People's Congress to vest in the Standing Committee any other powers, thus the National People's Congress and not the Constitution is the final determining authority as to what powers shall be enjoyed by the Standing Committee.

CONCLUSION

Like the Presidium of the Supreme Soviet of the U.S.S.R., the Standing Committee occupies the central position in the constitutional structure of China. Constitutionally speaking, it is a committee of the National People's Congress and is responsible to it. But in actual practice, it acts as the legislature of the Chinese Republic. Being a small body and practically dominated by the Communist Party of China it occupies an enviable position in the structure of the Chinese Government.

Q.6 How is the President of the People's Republic of China elected? Also explain his powers and functions.

Ans: The highest executive authority of the Chinese Republic is vested in the President and the State Council. The President is the head of the State and the State Council is, at least in form, like the Parliamentary Executive in other countries.

ELECTION

The National People's Congress elects the President of the People's Republic of China. Mao Zedong first held the high office. Thereafter, the post of Chairman, of the republic has ceased to be of much significance. At present, the Chairman of Military Commission has assumed the real power of the state.

TERM OF OFFICE

The President is elected for a term of four years. According to the Constitution he may be re-elected only once and no more. The maximum tenure that the President can have is thus eight years under normal circumstances.

POWERS AND FUNCTIONS

The President of the People's Republic of China is vested with all the powers of the head of the State. His powers and functions may be given as under—

1. The President, in pursuance of the decision of the National People's Congress or its Standing Committee–
   - (a) promulgates statutes
   - (b) appoints or removes the Premier, Vice Premiers, Ministers, State Councillors Auditor General and Secretary-General of the State Council (i.e., the Council of Ministers).
   - (c) Appoints ambassadors to foreign countries.
   - (d) confers State medals and titles of honour.
   - (e) proclaims Martial law,
   - (f) declares a state of war,
   - (g) orders mobilization.
   - (h) issues order of special pardons
   - (i) receives foreign diplomats. The President of the Republic
2. (a) The President of the Republic represents Republic of China in its relations with foreign states. All correspondence with foreign states is conducted in his name.
   - (b) He appoints or removes ambassadors etc. to foreign states and ratifies treaties concluded with foreign states. But he performs this function in accordance with the decision of the Standing Committee of the National People's Congress.
3. The President is assisted in the discharge of his responsibilities by a Vice-President. He may ask the Vice-President to perform any of his functions.

CONCLUSION

A careful study of the above powers and functions shows that most of his powers are to be exercised by him only in accordance with the decisions of the National People's Congress or its Standing Committee. He is, therefore, only a figurehead. But as long as Mao occupied this exalted office he was both in theory and practices the real ruler of nation, because of his position and prestige in the Communist Party, able to guide and influence the decisions of the bodies concerned. It is, therefore, an office of position and respect in China but much depends upon the person occupying it. Under the constitution of 1982, the President is not the Supreme Commander of armed forces which function under the Central Military commission who's Chairman holds the real power in the country.

Q.7. How is the State Council of the People's Republic of China formed? Give its powers and functions.

Q. Describe the composition, powers and functions of the "Central People's Government' in the People's Republic of China.

Ans: The State Council of the People's Republic of China is similar to the Council of Ministers in other countries like India and particularly the U.S.S.R. It is described by the Constitution as the executive body of highest organ of the state and the highest administrative organ of the State.

COMPOSITION

The State Council, i.e., the Council of Ministers comprises—

(a) the Premier (Prime Minister),
(b) the Vice-Premiers
(c) the State Councillors in charge of Ministries and Commissions
(d) the Auditor-General and
(e) the Secretary-General.

The National People's Congress upon nomination by President-elects the Premier and other members of the State Council are appointed by the Congress on the advice of the Premier.

The Premier is the head of the State Council and presides over its meetings. The supervision and direction of the working of the State Council is also the task of the Premier. The constitution says that the Ministers and the heads, of the various commissions direct the administration of their respective departments.

POWERS AND FUNCTIONS

According to articles 89, the State Council exercises the following powers and functions—

1. To adopt administrative measures, exact administrative rules, issue decisions and orders and verify their execution, in accordance with the Constitution, laws and decrees.
2. To submit proposals to the National People's Congress or its Standing Committee.
3. To lay down tasks and responsibilities of various Ministries and Commissions.
4. To exercise united leadership over the work of local administrative organs of State throughout the Republic.
5. To alter or annul Inappropriate decisions and orders and directives of the Ministries and Commissions.
6. To alter or annul inappropriate decisions and orders issued by local organs of the State administration.
7. To draw up and implement the implementation of the plan for National Economic and social development of the state budget.
8. To direct and administer cultural, educational and public health work.
9. To direct and conclude treaties and agreements with foreign states.
10. To decide on enforcement of martial law
11. To approve geographical division of provinces.
12. To direct and administer the building of Nation defence
13. To examine and decide on the size of administrative organ.
14. To remove administrative personnel according to law.
15. To exercise such other powers and functions as may be vested in the State Council by the National People's Congress or its Standing Committee.

It is claimed that the State Council of the People's Republic of China is akin to a cabinet in a parliamentary system of Government. At the face of it, this claim appears to be justified because there are a number of resemblances. Like other countries, having parliamentary government, the State Council is responsible to the Congress and reports to it or to the Standing Committee when the Congress is not in session. The members of the Congress have the right to ask questions to the State Council or to the Minister or the Commissions of the State Council. Like the Prime Ministers of other countries, the Premier directs the work of the State Council and

presides over its meetings. The Ministers preside over their respective departments and issue orders and directives in accordance with the laws and decrees and decisions and orders of the State Council relating to their departments. The State Council is the creation of National People's Congress and is responsible to it for all its public acts. The above analysis shows that the powers and functions of the Premier are very much like the powers and functions of the Prime Minister in England or India.

But there is a great difference in theory and practice in China. Outwardly it appears to have all the features of the Cabinet form of Government but in reality it would be a gross mistake to conclude that there is a parliamentary form of Government in China. In practice, there is complete centralization in China and the Communist Party has a tight grip and exercises a strict control on all the Governmental bodies including the State Council. The collective responsibility is also missing. And above all, there is no organised opposition to the State Council in the Congress. The Communist party of China is in complete control of both the Congress and the State Council. From all this, it can, therefore, be safely concluded that in China there is no parliamentary government consistent with the accepted principles of the Parliamentary form of Government.

Q.8. Describe the judicial system of the People's Republic of China with special reference to the Supreme People's Court.

Ans: Section VII of Chapter 3 of the Constitution of the People's Republic of China gives the description of the judicial system of China.

According to article 124 of the Constitution, there are four types of courts in China.

(i) Supreme People's Court.
(ii) Local People's Courts.
(iii) Military Courts
(iv) Special people's Courts.

Law determines the composition and organisation of all these courts.

SUPREME PEOPLE'S COURT

The Supreme People's Court is the highest judicial organ. It consists of a President, a Vice-President and some other judges. The National People's Congress elects the President of the court for four years. The Congress can also remove him. The Vice-Chairman and the other judges are appointed by the Standing Committee of the National People's Congress and are removable by it. The President is, however, allowed only two consecutive terms and no more.

The Supreme People's Court supervises administration of justice by the local people's courts and the special people's courts. The constitution also provides that Supreme People's Court is responsible to the National People's Congress. In the absence of National People's Congress it is responsible to the Standing Committee of the National People's Congress. Local courts are responsible to the Local Congress, which elected them.

As the organisation of judiciary in China is like a pyramid the Supreme People's Court is at the top and below the Supreme Court are:

(i) Higher People's Courts for the provinces, autonomous regions and municipalities directly under the central government.
(ii) Below the higher people's courts are the people's courts in the counties and in the autonomous Chow.
(iii) Last of all, are the primary people's courts.

The above courts are organised by the Congress of the respective areas. These

Act provides conditions under which this deprivation can take place.

CRITICAL ESTIMATE

We find that there are five categories of citizens of India. Firstly, there are persons of direct Indian origin permanently domiciled in India. Secondly, there are persons who migrated from Pakistan to India before 19th July, 1948 and their parents being permanent residents of India before partition. Thirdly, there are persons of Indian origin who migrated from Pakistan after 19th July 1948. Fourthly, there are persons who had migrated to Pakistan before or after the partition but were allowed to return to India under permanent permit of settlement. Fifthly, there are persons of Indian origin living abroad and having their names registered with Indian Diplomatic missions abroad. Indian Constitution allows citizenship on the basis of birth, descent and domicile.

The laws of citizenship have been subjected to severe criticism by certain authorities. It is pointed out that citizenship of India is the cheapest in the world. Five-year residence clause will open floodgates for foreign spies, and infiltrators to settle in India.

According to Dr. M.V. Pyle, the most conspicuous feature of the Constitution regarding citizenship is that it establishes single citizenship in India. A citizen of India is entitled to the enjoyment of all the rights guaranteed by the constitution irrespective of his residence in any part of India. But all the same there is one barrier, which hinders the realization of the ideal of single citizenship. This barrier lies in the existence of rules regarding domicile. Every State in India gives preference in services and admission to professional institutions to the people permanently domiciled in the State concerned. This leads to discrimination between one citizen or other. They also encourage provincialism, and regionalism, thus undermining the unity of the nation.

"The Indian Federation does not suffer from the fault or weakness of conservatism or legalism."

—**S.N. Mukherjee**

7 – FEDERAL ASPECTS OF THE INDIAN CONSTITUTION

The Constitution of India is federal in character yet some commentators that the constitution establishes a federation with a unitary bias point it out. The centre has been given very wide powers. In federal constitutions like those of the U.S.A. and Switzerland, the centre has lesser powers than those of the units. The framers of the Indian Constitution were, however, conscious of the fact that while a strict federal structure calls for a weaker centre, the special circumstances prevalent in this country at the time of the framing of the constitution called for a stronger centre. Thus, while in a strictly federal constitution like that of the U.S.A. the residuary powers are vested in the states, in India, like Canada, they are vested in the Centre. Moreover, the past history of India warranted the establishment of a strong centre, since India always fell an easy prey to foreign invaders mainly on account of a weak central authority and division of the country into a number of princely states.

Q.16. How far is the Indian Constitution Federal? Mention specially the points, which give it a unitary bias.

"Indian Constitution establishes a quasi-federal polity." Discuss.

Ans: India has a vast territory with a great diversity of race, religion and language as depicted in this chapter. Such a big country cannot do without a federal form of government. The framers of the Indian Constitution were convinced of the importance and necessity of a federal polity for India. The inclusion of the former princely States in the new set-up made it all the more imperative to frame the Constitution of India on federal lines since the princely States would not have agreed to join the rest of India if it were a unitary State. The common subjection of all the

parts of India to British Imperialism and the joint struggle of all the people in India against foreign rule were great forces in unifying the diverse elements of the Indian population. All these factors contributed to the ideal of having a federation for India since a federation provides unity at the centre and allows autonomy in local and cultural matters.

The new Constitution, however, does not make India a typical federation like that of the U.S.A. Certain special conditions facing the country at the time of Independence and the desire of the fathers of the Constitution to provide a machinery for the rapid economic development of the country and maintaining national integrity led to the creation of a strong centre. The Constitution makes India or Bharat into a 'Union of States.' Before we proceed with the discussion as to whether India is a typical federation or not, we must understand the various features of a typical federation. Prof. Dicey points out that "a federal state is a political contrivance intended to reconcile national unity and power, with the maintenance of State rights". In the opinion of Dr. Finer, "a federation is that in which part of authority is vested in the local areas and the other part is vested in a central institution deliberately constituted by an association of previously independent local areas." Dr. K.C. Wheare says the "federalism is the method of dividing powers so that the general and regional governments are each, within a sphere coordinate and independent."

A typical federation is supposed to satisfy the following conditions:

(i) Division of powers between the Centre and the States.
(ii) Supremacy of the Constitution.
(iii) Written Constitution.
(iv) Rigid Constitution.
(v) Special Judiciary.
(vi) Dual Polity.

Let us now see how far the Indian Constitution fulfils these tenets of federalism.

(i) Division of Powers: In a typical federation, all the subjects of administration are divided between the federal centre and the federating units. This has been done in the U.S.A., Switzerland, Canada and many other federations of the world. The Constitution of India also declares India to be a Union of States. The Constitution draws up three lists of subjects, viz., the Union List, the State List and the Concurrent List. 97 subjects have been placed in the Union List, 66 in the State List and 47 in the Concurrent List while the residuary powers have been vested in The Central Government. The Centre is competent to administer all the subjects contained in the Union List. The States are authorised to deal with the subjects placed in the State List. The concurrent subjects are under the joint jurisdiction of both the centre and states. This division of powers between the federal centre and the federating units proves the fact that India possesses a federal type of government.

(ii) Supremacy of the Constitution: The Constitution is the supreme law of the land. Both the Union Government and the State Governments derive their authority directly from the Constitution and no authority in India can go against the Constitution. The Judiciary in India has the authority to declare null and void any law or executive order that might go against any provision of the Constitution.

(iii) Written Constitution: The Constitution in a federation is considered to be a sacred agreement on the basis of which the States agree to form a union. It is, therefore, essential that the constitution of a federation must be a written document containing all the provisions governing the relations between the federal centre and the federating states. The Constitution of India satisfies this condition as well since it is a written document duly enacted by the Constituent

Assembly of India elected by the people.

(iv) Rigidity of the Constitution: Every federation has more or less a rigid constitution. The Constitution of the Indian Republic to some extent satisfies this condition as well. The Constitution provides for a special procedure with regard to its amendment. The Union Parliament cannot amend it in the manner in which ordinary laws can be passed, amended or repealed. Those provisions, which deal with the federal features of the Constitution, can be amended only after ratification by at least half the State legislatures.

(v) Special Judiciary: India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution. The existence of a Supreme Court with special powers is always essential for a federation. The Indian Constitution satisfies this condition too. It gives powers to the judiciary to declare says ultra vires if they are proved to be against any provision of the constitution.

(vi) Dual Polity: The Indian Constitution establishes a dual polity with a double set of governments, i.e., Central government and State governments. The sphere of authority of each part is clearly defined in the Constitution. Thus it satisfies another essential condition of federalism.

The foregoing account of the federal aspect of Indian Constitution proves beyond doubt that India has got a federal form of Government. But the Indian federation is a class by itself. It has certain special features, which make the centre strong against the federating units. The following facts bring into limelight the pronounced unitary bias of our Constitution:

1. Single Citizenship: In a federation like that of America, each citizen enjoys double citizenship—citizenship of the state wherein one is domiciled and citizenship of the federation as a whole. But the Republican Constitution of India establishes a dual polity with a single citizenship. This means that constitutionally all Indians are labelled as Indians alone, not as Punjabis, Bengalis, Beharis etc. All enjoy equal rights in all the parts of the Indian territory. The idea of single citizenship is clearly a departure from the accepted principles of federalism. The fathers of our Constitution introduced this element in the Constitution in order to ensure the development of a strong feeling of national unity among the diverse elements of Indian population and to minimise the separatist tendencies in the country. The idea of single citizenship is indicative of the unitary character of the Constitution.

2. Excessive authority of the Centre: A weak Central Government is the essence of federalism. But out Constitution has created a very strong Centre. The powers are distributed between the Union and the States in such a way as to make the Centre very powerful. The Union List contains as many as 97 subjects whereas only 66 subjects have been allotted to the States, 47 subjects are placed in the Concurrent List. Although the Concurrent List is a common List and both the Centre and the States are competent to make laws regarding the subjects enunmerated in it, yet the Centre has an upper hand. In case a law is passed both by Parliament and one or more State legislatures regarding a certain concurrent subject, it is the law of the Union Parliament that shall prevail in the event of conflict between the two.

3. Residuary Powers: In a federation like that of the U.S.A. the residuary powers are enjoyed by the states but in the Indian federation; the residuary powers are vested in Parliament. This tends to increase the powers of the centre. In this case, we find that the distribution of powers is similar to that of the Canadian federation where the centre is also very powerful. The Union Government of India, however, has been made even more powerful than the Canadian federation since the Concurrent List in Canada contains only two subjects whereas there, are as many as 47 subjects in the Concurrent List of the Indian Constitution.

4. Emergency power of the Centre: The strength of the Centre can be immense

increased during the times of war and other national emergencies. Under such contingencies, the President of the Indian Union can assume extraordinary powers, which may amount to suspension of the autonomy of the States. The Union Parliament in such cases is empowered to make laws regarding the subjects enumerated in the State list. The federal structure of the country can thus be changed into unitary one without amending the Constitution during the time of national emergency.

A similar effect will follow if the President is satisfied that the government cannot be carried on in accordance with the provisions of the Constitution in a particular State and declares an emergency. This shows that the Indian, Constitution is at once unitary and federal. It is federal in peacetime and unitary in times of national emergency.

5. Jurisdiction of the Centre over the subjects of the States: Not only does the Union Centre enjoy extraordinary powers during a national emergency but it can also encroach upon the authority of the State during normal times. The Union Parliament can at any time he empowered to pass laws regarding the subjects contained in the State List, if the Rajya Sabha (Upper House of the Union Parliament) declares it to be necessary or expedient in the national interest, by a resolution supported by the majority of not less than two thirds of the members present and voting. Parliament can also pass a law on an item in the State List if such a law is required to honour an international obligation by the Government of India, or if two or more States request Parliament to do so. Thus the Union Centre can encroach upon the autonomy of the units of the Indian Federation at any time.

6. Flexibility of the Constitution: The Indian federal system is not so rigid as is the case with most other federations of the world. The method of amending the Constitution is rather simple. The Union Parliament itself without the approval of the State Legislatures can amend major part of the Constitution. This fact also emphasises the strength of the Centre. The units have no right to initiate amendments to the Constitution.

7. Position of Union Territories: The States enjoy some powers but the Union Territories enjoy no such position. These are merely administrative units directly governed by the Union. This is a clear departure from the established principles of federalism. This fact pointedly indicates the unitary character of the Indian Constitution.

8. Inequality of Representation: In the Swiss and American federations, the upper chamber generally secures an equality of representation to federating units irrespective of their size and population. The lower chamber is supposed to represent the national interest and the upper chamber represents the local interests of the states. In the Indian Union, however, the principle of equality of representation of the units in to upper chamber has not been followed as the states are represented in the Rajya Sabha on the basis of their populations. This fact again proves the inherent unitary nature of Indian Polity.

9. Provisions Regarding the Constitutions of the States: In other federations and particularly in the United States of America and Switzerland, the units have the right to draw up their separate constitutions within the federal framework. But the Indian Constitution like the Canadian Constitution, contains provisions relating not only to the Constitution of the Union but also to the Constitutions of the States. The Constitution of the Union and of the States is a single structure within which the units must work.

10. Redistribution of the Boundaries of the States: The Union Parliament has the power to alter existing boundaries of any State.

Passing a bill to this effect in the Union Parliament on the recommendation of the President can make these changes. The President is, of course, required to ascertain the views of the legislature of the State concerned. The States were reorganised in 1956 and many a time

thereafter. Parliament may pass such a law in contradiction to the views expressed by the States. In the American and Swiss federations, however, the territorial integrity of the States cannot be violated under any circumstances by the federal government. In these countries, the federating units may be small or big but their names and territorial boundaries cannot be changed.

11. Common All-India Administrative Services: The Constitution provides for common All-India Administrative Services. The Union Government appoints members of these services and they are answerable to The Union Government in the conduct of their service. They are placed in key positions in the State governments. On the other hand in the U.S.A. different States have their own administrative officers appointed by the State Governments themselves. The provision enables the Union Government to exercise control over the administration of States. This practice is a clear departure from the rigid principles of federalism.

12. Institution of Governorship: The head of a State is the Governor who is appointed and dismissed by the President and is responsible to him alone. The President can issue him instructions, which are binding upon him. Thus he acts as the agent of the Union Government in the States. In other federations like that of the U.S.A. and Switzerland, the head of a unit is appointed or elected by the unit itself. This fact also makes it more than clear that the Central Government exercises direct authority over the States.

13. Single Judiciary and Uniform System of Civil and Criminal law: The Constitution provides for a single integrated judicial system for the whole country. The Supreme Court and the High Court are links in the same chain. There is also a single Civil and Criminal Code for the entire country. This fact is clearly indicative of the unitary character of our Constitution since in all the typical federations of the world, like that of the U.S.A. and Switzerland, the State Judiciary is separate and independent of the control of the federal centre.

CONCLUSION

All the factors mentioned above show that the Indian Constitution is federal in form but unitary in spirit. It has made the Union very strong at the expense of the States. Dr. K.P. Mukherjee asserts, "The Union of India does not satisfy any one of the conditions enshrined in the federal principles. On the contrary, our Constitution in its first four chapters makes it amply clear that it is a unitary Constitution and whatever categorisation of the units of the Union and distribution of power between the Centre and States has been done is all for the sake of administrative convenience and these may be withdrawn at any time." The framers of the Constitution justify the creation of a strong Centre on the following grounds:-

JUSTIFICATION FOR CREATING A STRONG CENTRE

(i) India attained independence under curious circumstances. Communal and separatist tendencies were spreading fast. Propaganda initiated by the Muslim League and other communal organisations before Independence had evil repercussions on the political life of the country. These communal and separatist tendencies could be suppressed only by the creation of a strong Central Government.

(ii) The attitude of the rulers of the so-called native States also necessitated the establishment of a strong Central Government capable enough to undo their evil designs. Freedom given to the Princes under the Indian Independence Act, 1947 to accede to either Dominion (India or Pakistan) or declare themselves as independent was clever trick played by the British rulers. Making capital out of the situation, certain rulers of the native States of India had actually declared their independence. It was really a great danger to the territorial integrity of

India. This danger could only be averted' by the creation of a strong centralised administration in India. In fact, federal sentiments as obtained at the time of the framing of the U.S. Constitution could not be accepted as fundamental in the condition then prevailing in India. Creating a strong centre could only save the territorial integrity of India.

(iii) The framers of the Constitution wanted to profit from the lessons of Indian history. India fell a prey to foreign invaders because of a weak Central Government and bitter rivalries among her ruling princes. A strong Centre alone could possibly save the newly won Independence.

(iv) It was realised that it was absolutely necessary for the reconstruction and development of the country to preserve and mobilise the collective efforts of the people in all parts of the country who got organised in their common fight against the foreign rule.

(v) The old Indian traditions of cultural unity had to be preserved.

(vi) The volcanic state of international life also necessiated the establishment of a strong Central Government.

(vii) The framers of the Constitution were aware of the fact that all those federal Constitutions wherein the federal Centre was deliberately kept weak, are experiencing great difficulties. In the U.S.A. as for example, the authority of the federal government is constantly being increased in view of the enormous increase in the sphere of its activity. The Supreme Court of the U.S.A. in a series of judgements has enhanced the federal authority to an unimaginable extent.

Dr. K.C. Where observes, "The framers of the Constitution merely have done well in not following slavishly any existing federal Constitution? They have chosen rather to make use of such element in federal Constitution as they thought likely to be of value to them". According to Dr. Ambedkar, "the Constitution has not been set in a light mould of federalism. It has been so designed that it should work as a federal system in normal times and as a unitary system in war and other emergencies."

POINTS TO REMEMBER

(i) The Constitution of the Union Republic possesses the following distinctive features of a federation--

1. Like other federations, our Constitution distributes subjects of administration between the Centre and the States.
2. The Constitution is the supreme law of the land giving its authority to both the Central and State Governments.
3. India possesses a written Constitution which is an essential requisite of a federation.
4. Our federation has more or less a rigid Constitution.
5. India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution.

(ii) The following facts prove its Unitary Character—

1. Single citizenship
2. A large amount of authority to the Centre.
3. Residuary powers lie with the Centre which becomes strong.
4. Strength of the Centre increases enormously during National Emergency.

Emergency Powers: The President has wide powers to meet emergencies. The constitution envisages three kinds of emergencies--general emergency, emergency regarding failure of constitutional machinery in a particular State and financial emergency. He has extensive powers with regard to these emergencies.

President and the Council of Ministers: Although the Constitution has armed the President with a wide array of powers, yet he cannot use them effectively. He is only the constitutional head of parliamentary government.

Influence of the President: Absence of effective powers does not mean that he has no influence or prestige. He is the first citizen of India and his office holds great prestige. He has the right to be consulted, to warn and to encourage his Ministers.

Q.24. Critically examine the Emergency Powers of the President. Are those powers consistent with the spirit of Democracy?

Ans: Far more significant and vitally important than the executive and legislative powers of the President are the emergency powers which the Constitution confers on him. By virtue of these powers, the President can change the form and content of the constitution itself. These powers are a unique feature of our Constitution. Similar provisions regarding emergency powers were given only in the Weimer Constitution of Germany, which was responsible for the emergence of dictatorship in Germany.

The Constitution envisages three types of emergency and arms the President with substantial powers to deal with each one of them:

(a) Emergency arising out of war, external aggression or armed rebellion.

(b) Emergency arising out of the failure of the constitutional machinery in a state.

(c) Emergency arising out of the threat to financial stability or credit of India.

It is to be noted that the President himself is the sole judge to determine whether an emergency has arisen or not. The proclamation of emergency can be made even before the actual occurrence of war or external aggression or internal disturbances if the President is satisfied that there is an imminent danger thereof. The President's satisfaction cannot be inquired into or questioned in a court of law.

(a) Genera' Emergency: The proclamation of emergency of this category will have the following consequences:

The Union Parliament will have unrestricted power to make laws regarding the subjects enumerated in the State List. Any law passed by a State Legislature can be declared null and void if the same is inconsistent with laws passed by Parliament.

The Union Executive will issue directions to the State Executive for the conduct of executive business. The Union Executive may appoint officer of its own in the State for any specific purpose.

The President may alter the normal distribution of revenues between the Union and the Sates.

The Fundamental Rights guaranteed in Article 19 of the Constitution will remain suspended during such an emergency, if so ordered by the President.

The President will have the power to suspend the right to move the Supreme Court or High Courts for enforcement of any of the Fundamental Rights given in Article 32.

In short, by declaring emergency, the President can transform the very character of the Constitution. Federal structure of the Government will be changed into a unitary one. Such a power of converting a federation into a unitary government is not possessed by a chief executive head in any other Federal Government.

It may be noted that the President is not absolutely free to act in an arbitrary manner. There is one democratic safeguard. He is subject to the authority of Parliament. Every such proclamation must be laid before Parliament and cannot remain in force for more than 2 months unless approved by Parliament in the meantime. Moreover, it can safely be presumed that the President on the advice of his ministers will wield the executive authority.

Proclamation of National Emergency was made in October 1962 on account of the Chinese Aggression. With this declaration, the people's right to move the Courts in respect of freedoms guaranteed under Article 19 of the Constitution stood suspended. Although the President had the power to curtail the autonomy of States to any extent, yet it was not done, on account of the fact that the same party had its government at the Centre as also in the States. The emergency was lifted in January 1968. The national emergency was declared for the second time on 3rd December, 1971 on account of the treacherous attack by Pakistan on our air bases in the western and eastern sectors.

Prime Minister Indira Gandhi declared the national emergency arising out of internal disturbances on 26th June 1975. She felt that some political parties with fascist leanings had joined hands with frustrated politicians to destroy the country's self-confidence and to challenge the very basis of democratic functioning. They forced and compelled the M.L.A's of Gujarat State to tender their resignations. They wanted to repeat the same technique in Bihar and other States. Together, they launched a violent agitation to paralyse the country's economic life and to divert the nation's attention from its social and economic tasks. They wanted to create anarchy and chaos in order to over-throw a popularly elected government in the country. It was the sole purpose of keeping these undemocratic and anti social forces in check that the national emergency in its full-fledged form had to be declared.

(b) Failure of constitutional machinery in the States: The condition of Emergency can also arise in case the constitutional machinery in a State of the Indian Union fails to function. The President, if satisfied on the recommendation of the Governor of a State or otherwise, can declare emergency and suspend the Constitution in that State. The proclamation of an emergency arising out of the breakdown of the Constitution shall be laid before the two Houses of Parliament within a period of two months. If Parliament (both the Houses) approve, of it, the emergency shall continue to operate in that part of the country for a period of six months. If the situation continues to be abnormal, the period of emergency can be further extended to six months after the approval of both the Houses of Parliament. It can continue to remain effective in this manner for the maximum period of 3 years. It must be remembered that limitation of six monthly approval with 3 years as the maximum period is applicable only to aforesaid emergency and not to other two types of emergency.

The proclamation of emergency under this condition shall have the following consequences.

1. The President assumes to himself all executive authority vested by the Constitution in the Governor. The Governor concerned may, however be directed to act as an agent of the President.
2. The President may empower Parliament to exercise all the powers of the Legislature.
3. The President will have the authority to withdraw money from the Consolidated Fund of the State pending the sanction of Parliament if it is not in session.
4. The President cannot however, assume to himself or transfer to someone else the powers of the State High Court.

EMERGENCY PROVISIONS IN OPERATION

Since the inauguration of the Constitution in January 1950, there have been many occasions when emergency was declared in various States of Indian Union on account of failure of constitutional machinery. Punjab was the first State where emergency was declared in 1950 when Dr. Gopi Chand-Bhargava lost the support of the majority in the State Legislature. The second occasion arose when non-Congress ministry led by Gian Singh Rarewala lost the support of the majority in Pepsu Legislature. The President had to declare emergency in 1952. The President appointed a senior I.C.S. officer to act as an advisor to the Rajpramukh. The third occasion arose in Andhra in 1954 when Prakasham was dismissed. The fourth occassion arose when emergency was declared in Travancore Cochin (now a part of Kerala State). The fifth occasion arose in 1958 when emergency was declared in Kerala when the Communist Party had a workable majority. This was done in response to popular pressure mounted by the opposition parties. The sixth occasion arose in 1961 when emergency was declared in Orissa. The seventh occasion arose in 1964 regarding Kerala State. In Kerala, emergency was declared thrice after 1959. A similar emergency was declared in Punjab in 1966. In 1967 emergency was declared in Rajasthan. Breakdown of constitutional machinery was declared in Haryana in November 1967. It was declared in West Bengal in March 1970. In 1973, it was declared in Orissa, U.P., Andhra and Bihar States. In fact, there is no State in which this emergency has not been declared.

(c) Financial Emergency: A Proclamation of Emergency may also be made if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or a part thereof is threatened. The terms and conditions of the Proclamation of financial emergency are the same as of the national emergency. The consequences are, however, different. They are given as under:

1. The salaries and privileges of all public officials including the Judges of the Supreme Court and the High Courts and members of the Public Service Commission can be reduced.
2. All money bills passed by the State Legislatures will be reserved for the consideration of the President.
3. Normal distribution of revenues between the Centre and the States may be altered.
4. The President may take all necessary action for restoration of financial stability.

CRITICISM

(a) The provision regarding emergency powers of the President are regarded as incompatible with the spirit of democracy and federalism. The powers are like a loaded gun which may be used at any time to destroy democratic federalism. The Weimer Constitution of Germany granted similar powers to the President of the German Reich and it was by the use of these powers that Hitler was enabled to destroy the liberty of the German people and establish his dictatorship.

(b) The powers of suspending fundamental rights is perhaps the most undemocratic feature of these powers. To make matters worse, the President can suspend the right to move the courts for the enforcement of the fundamental rights. When a debate over these provisions was going on in the, Constituent Assembly Shri H. V. Kamth protested: "This is a day of shame and sorrow. May God help the Indian people."

It may, however, be noted that the British Parliament and the American Congress can also suspend the writ of 'Habeas Corpus'. But in India, the President or rather the Union

Executive, can suspend these rights at any time. A redeeming feature of the whole thing lies in the fact that the President is required to lay before Parliament his orders regarding the suspension of the right to move the courts for enforcement of the fundamental rights. Moreover, one single individual cannot be expected to take such drastic measures all by himself. In proclaiming emergencies, like all other actions, the President is expected to act on the advice tendered by Cabinet.

(c) The provision regarding the suspension of the Constitution in a State by the President is also no less objectionable. The autonomy of a State can be encroached upon at any time. The President is not required to wait for the report of the Governor regarding the failure of constitutional machinery in a State. He takes action on his own initiative. Further, Article 365 lays down that the Constitution in a State may be suspended if a State executive fails to comply with any directions given by the Union Executive. This type of emergency has been declared several times regarding one State or the other.

The President's powers in this connection are undoubtedly drastic. This reminded one of the powers of the Governor-General under the Act of 1935. But the essential spirit of the Constitution enjoins the adoption of the British Parliamentary conventions, which reduce the President to the status of mere constitutional figurehead and only a symbol of national unity. He is expected to act on the advice of his Ministers who are responsible to the Lok Sabha.

The justification of these emergency provisions lies in the past history of India. Whenever there was a weak Centre, it led to ruin and disaster. After independence, the country was facing separatist tendencies. The fissiparous forces were strong. The problem before the fathers of the Constitution was not only to give a democratic Constitution but also provide safeguards against anti-national and anti-democratic forces. These emergency powers of the President were expected to be used sparingly only in case of real emergencies.

There is however, a danger against misuse of these powers by the party in power for its party ends. This can be avoided only if the public opinion and democratic forces are very strong in the country. In fact, no democracy can work successfully unless the people are alert and vigilant against non-democratic and anti-democratic forces. Thus a heavy responsibility lies on the people to safeguard their interest and democracy in the country. The emergency powers always hang like the sword of Damocles on the shoulders of erring States. They also ensure continued government there. Dr. Amal Ray remarks "an overall estimate of the proclamation of emergency declared by the President in respect of different States at various occasions shows that the Centre never tried to retain power longer than what was necessary to normalise the State administration." Some critics, however, point out that the breakdown of constitutional machinery in a number of States was declared in order to curb opposition and support the installation of Congress Ministers. They cite the example of Kerala and Rajasthan. in support of their contention. In these States emergency provisions of the Constitution were invoked to push the interest of the ruling party at the Centre.

POINTS TO REMEMBER

The President of Indian Republic has been armed with extensive powers during emergency. By the use of these powers, he can transform the entire governmental structure of the State. The constitution envisages three different emergencies, viz., an emergency arising out of external aggression and armed rebellion, an emergency arising out of the failure of constitutional machinery in the States and an emergency arising out of financial breakdown. In the event of the first emergency, the federal structure of the country is converted into unitary one. In case of second emergency, the State Government comes under the direct control of the Union

Government. In case of financial emergency, the President may take necessary steps to restore the financial stability of the country. The emergency provisions of the Constitution are subjected to scathing criticism. These powers are like a loaded gun which may be used at any time to destroy democratic federalism. The power regarding the suspension of fundamental rights is, perhaps the most undemocratic feature. Suspension of internal autonomy of States is another objection. The redeeming feature of the whole thing is that the President cannot act independently of the Parliament and the Cabinet. It will be only in grave situations that these powers can be used. Moreover, a strong Central Government is the lesson of Indian history, which cannot be easily ignored.

Q. 25. Compare and contrast the powers and functions of the Indian President and the Governor General of India under the Government of India Act 1925.

Ans: Very often it is pointed out that the President has almost all the powers which were given to the Governor-General by the Government of India Act, 1935. Though at first sight, this comparison might seem to be correct, it is not so in actual practice. The Governor-General was intended to be a despot by the Act of 1935, so that he could act as a watchdog of the British Imperial interests, both during peace and war. He was, therefore given very wide powers in the executive, a legislative and financial sphere. In the executive sphere, there were three reserved subjects over which he had the sole authority and was allowed to act in his own direction. These were defence, external affairs and ecclesiastical affairs. In the administration of these subjects, he was not supposed to consult the Council of Ministers. Even in other matters he was not supposed to act on the advice tendered by the Ministers if that tended to affect the interests of the British Empire in India. The Governor General had special instructions to exercise his personal judgement in matters relating to maintenance of law and order and financial matters too. The Ministers were supposed to be mere henchmen of the Governor-General. Although, the Ministry was to be responsible to both the chambers of the Federal Legislature, yet the Instrument of Instructions required the representation of the princely and other interests in the Council of Ministers.

The Constitution does not arm the President with all these sweeping powers. He has no reserved subjects. On all matters he is supposed to act on the advice of the Cabinet. The entire executive sphere has been placed under the jurisdiction of the Cabinet. The President has neither 'discretionary powers' nor can he use his individual judgement, which the Governor-General was empowered to use. The Indian President has been made a constitutional head of the State and real powers are vested in the Cabinet, which is responsible to the Lok Sabha.

Though the latest amendment of the Constitution makes it obligatory on him to accept the advice of the Ministers yet he is to follow the conventions of the British parliamentary system. The Council of Ministers is constitutionally responsible to the Lok Sabha. The President has no free hand in the election of Ministers, who are to be selected only on the advice of the Prime Minister who is to be the leader of the majority party in the Lower House of Parliament. Whereas the Governor-General was only responsible to the British Government for his actions, the Indian President can be impeached by Parliament for any violation of the spirit of the Constitution.

In the legislative sphere, the Governor-General could veto the bills passed by the Federal Legislature. The President possesses only suspensory veto. It can be over-ridden by Parliament, if it re-passes the bill in the same form within 6 months. In the matter of issuing ordinances during the absence of the legislature, the powers of the Governor-General were almost the same as those of the President. But in addition, there were certain subjects for which the Governor-General could issue ordinances at any time, and they were valid for 6 months, subject to renewal for further periods of 6 months. For these ordinances, the Governor-General was required to obtain

the approval of the Secretary of State for India and the British Parliament, and not of the federal Legislature. The President of India, however, cannot issue any such ordinances.

The residuary powers which are now exercised by Parliament, were given to the Governor-General under the Act of 1935, to be exercised in his discretion. The Federal Legislature was also greatly handicapped. It had very limited control over the Federal finances.

There were certain items of the budget over which it could not vote. The Governor-General could certify a demand rejected by the legislature. The Indian Constitution does not give any such power to the President. It only says that all bills must receive the President's assent before becoming Acts. The President is normally expected to give his assent. With respect to financial legislation, the President cannot withhold his assent. Thus the Governor-General was given very wide powers under the Act of 1935, which are not stipulated under the Indian Constitution for the President. The President is supposed to act merely as a constitutional head like the King of England. Though the British Government also held out assurance that the Governor-General would not interfere in the day-to-day administration. Yet it could not be tested as the Act was never enforced so far as the provisions regarding the federal Government were concerned.

POINTS TO REMEMBER

Sometimes, it is pointed out by critics that the President of India is no less autocrat than the Governor-General of India under the Act of 1935. But it is a false assertion. The Governor-General under the Act of 1935 was indeed a jealous guardian of British Imperial interests in India. He had vast over-riding power in the executive, legislative and financial spheres. He was the supreme lawmaker because he could veto all Bills passed by the Federal Legislature. On the positive side, he could issue ordinances. He had control over the major part of the budget. He could act in his own discretion and individual judgement and could ignore the advice of his Ministers. The President of India like the King or Queen of England is only a constitutional head of Parliamentary Government.

Q.26. Compare and contrast the powers of Indian President thereof the American President.

Ans: It has been usual to regard the American President as wielding the largest amount of authority ever wielded by any one in a democracy. But a perusal of the powers conferred upon the Indian President by the Constitution show that the Indian President has, at least on paper, far more formidable powers. Leaving aside his vast executive, legislative, judicial and financial powers, his emergency powers are unprecedented. By an exercise of these powers, he becomes a controller of the whole constitutional machinery both at the Centre and the State and the country can be transformed into a unitary State. The superiority of the Indian President over the American President is seen in the following facts:

1. The American President presides over a weak Centre while the Indian President does so over a strong one. In the American constitutional system, the States occupy a place of vantage and the Centre occupies a position of inferiority. In the case of India, on the other hand, the Centre has been made far stronger. Particularly the emergency powers given to the Indian President to suspend the autonomy of the States in times of a national crisis are such as are not enjoyed by the American President. The Indian President can suspend the Constitution in a State and declare constitutional emergency either on the recommendation of the Governor or independently. He may assume the control of the administration of the State affected and dissolve the State Legislature and dismiss the State Council of Ministers. In financial emergencies, the Indian President has the power of

reducing the salaries and allowances of all Government officials, whether of the States or of the Union, including the salaries and allowances of the judges of the Supreme Court and the High Courts. Only the Indian President possesses such a control over the judiciary.

Apart from the emergency powers, the President of India has been given a formidable list of other executive, financial and legislative powers. He is also the supreme commander of the armed forces of India and can take an action in case of an imminent or actual aggression against India on the advice of the Cabinet, in anticipation of its subsequent approval by Parliament. He can suspend the Constitution in a State in case of failure of the constitutional machinery in that State and assume the administration himself. He can also declare a financial emergency. The American President has no such power.

But this is only one side of the picture. In reality the Indian President occupies a position of far lesser strength than the one occupied by the American President. In the first place, the Indian President is guided by the advice of his Ministers who are responsible to and controlled by Parliament in a way in which the American President is not. Thus whereas in India, there is the parliamentary system of government in the U.S.A. there is Presidential system of Government. As such the American President is free from the control of the legislature. Secondly, the Indian President is more or less a choice of Parliament whereas an electoral college specially elected for the purpose elects the American President. An electoral college composed of the elected Members of both Houses of Parliament and the Legislative Assemblies of the States chooses the Indian President. Either House of Parliament can impeach the Indian President whereas in America it is the Upper House, the Senate, which has the sole power of impeachment. In India, on the other hand, either House of Parliament will have such power provided the other House prefers the charges.

In the third place, the Indian President has lesser veto power than that held by the American President. The American President possesses double veto power. He can veto a Bill passed by the Congress unless the two third majorities of both the Houses once again pass it. Then he has his power of pocket veto, according to which a Bill, which is lying with him for signatures, dies an automatic death if the session of Congress comes to an end within ten days during which he is required to return the Bill. On the other hand, the Indian President has no such power regarding the exercise of 'pocket veto' and his veto can be over-ridden by a simple majority in Parliament. The Indian President can only exercise his veto regarding certain types of Bill passed by the State Legislatures. His veto is absolute in this respect. The American President has no such powers at all. The Indian President can dissolve Parliament, while the American President can never dissolve the Congress before the expiry of its normal term. In the fourth place, the President of America is both head of the state and the Government. The Indian President on the other hand is head of the State but not of the Government.

However, it is the parliamentary system of Government in India that is the real check on the power of the Indian President. The President is provided with a Council of Ministers, which is required to aid and advise him in the discharge of his duties. Of course, the Constitution demands of him to follow the advice tendered by the Council. In America, the Cabinet Members are mere servants of the President. They are not responsible to the Congress, nor have they any power to speak on the floor of the House. They are appointed by the President and are liable to be dismissed by him. They have no such status as the Cabinet Ministers in India have.

As Laski rightly says, "The President (American) in a word symbolises the whole nation in a way that admits of no competitor while he is in office. The voice of a Cabinet officer is, at

best a whisper, which may or may not be heard". In other words, it is the American President who determines the policy of the Government independently. The Cabinet Ministers are merely his assistants. In India, however, the Cabinet occupies a position very much similar to that occupied by the British Cabinet. It is the Cabinet, which is responsible to the people through its responsibility to the Lower House. The President will not normally dare to disregard such an advice as is given to him by the Cabinet since it is the latter which is in control of the majority in the Lower House. It is this fact which greatly limits the powers of the President in actual practice. The fact is that whereas the American President is a real executive head, the Indian President is expected to be a constitutional head.

As is evident from the above, there is a great difference between theory and practice regarding the powers and position of the Indian President. In theory, the powers enumerated in the Constitution belong to the President but in reality they belong to him only in a formal sense. In practice, these powers are expected to be exercised by the Cabinet which is the real executive of the Union, a responsible body answerable for its policies and actions to Parliament. Though the executive authority of the Union is exercised in the name of the President yet it is actually exercised by the Ministers. It is the Ministers who take all the decisions although these decisions are executed in the President's name. However, in times of the constitutional crises, these powers may turn out to be very real as happened in case of Weimer German Republic after 1928. The President established Fascism in that State by exercise of emergency powers, similar to those of the Indian President. Our President, of course, cannot assume such dictatorial powers since he is under an effective control of both Parliament and the Cabinet.

POINTS TO REMEMBER

Theoretically, the Indian President enjoys more powers than the American President. The Indian President is the head of a very strong Central Government, whereas the American President is the head of a very weak Federal Government. Secondly, the Indian President enjoys certain emergency powers, which do not fall within the sphere of authority of the American President. But this difference is only to be found in theory. In practice, the Indian President fades into insignificance before the American President. The difference is mainly caused by the system of government which prevails in the two countries. The Indian President is the head of a Parliamentary government and is, therefore, required to be a figurehead like his prototype, the British King or Queen. The American President is the head of a Presidential government and is not, therefore, supposed to surrender his powers to his ministers.

Q. 27. Describe the Method of Election, qualifications, and term of office and functions of Vice-President of the Indian Republic.

Ans: The Constitution of India provides for the office of a Vice-President.

ELECTION

Both the Houses of Parliament elect the Vice-President indirectly by secret ballot in accordance with the system of proportional representation by means of single transferable vote. The fifth Vice-President B.D. Jatti was elected to the august office on August 27, 1974. He polled 78.3% of valid votes defeating N.E. Horo sponsored by several opposition parties.

Mr. Mohammad Hidayatullah, formed Chief Justice of the Supreme Court, was elected unopposed as the Sixth Vice-President of India on August 7, 1979. He was sworn in on August 31, 1979 when the term of Mr. B.D. Jatti expired. The Seventh Vice-President was Shree R Venkataraman. He was succeeding by Dr. Shankar Dayal Sharma when the former became President of India in 1987.

EMOLUMENTS

The Constitution does not fix any emoluments for the Vice-President of India in his official capacity as such. He draws his salary as the Chairman of Rajya Sabha. He gets the emoluments equivalent to that of the President in the event of his being an Acting President.

QUALIFICATIONS

(i) He must be an Indian citizen and qualified for election as a member of the Rajya Sabha.

(ii) He should have completed 35 years of age.

(iii) He should not be a member of either House of Parliament or of any State Legislature. If such a member is elected Vice-President, he shall resign his membership.

(iv) He should not hold an office of profit under the Government. However, an exception to this is made in the case of President. Vice-President, Governor and Ministers.

TERM OF OFFICE

The term of his office is 5 years. During this period, a Vice President may resign voluntarily or he may be removed from office by a resolution passed by an absolute majority of the Rajya Sabha and agreed to by the simple majority of the Lok Sabha. But no resolution will be moved for this purpose without a notice of 14 days. It is to be noted that no procedure for impeachment is necessary for the removal of the Vice-President. The election of the Vice-President must be held as soon as possible after the vacancy has arisen. He shall hold office for the full term of 5 years. The Supreme Court shall decide all disputes regarding the election of the Vice-President.

HIS FUNCTIONS

The Vice-President performs the following functions:

1. The Vice-President is the ex-officio chairman of the Rajya Sabha, like the Vice-President of the U.S.A. who is also the ex-officio chairman of the Senate. In case, the Vice-President acts as President of India and discharges the functions of the Presidency, he shall not preside over the sessions of the Rajya Sabha.

2. The Vice-President officiates as President in case of death, resignation or removal of the latter till the new President is elected. The period can be extended for a maximum period of six months. The Vice-President thus unlike the Vice-President of U.S.A. does not succeed as the President for the rest of the latter's term.

It may be noted that after the death of the President Dr. Zakir Hussain, Shri V.V. Giri who was then Vice-President succeeded to the Presidency and continued to work as Acting President till he was formally elected as President of India.

3. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions. During such periods, he shall be entitled to all the powers and immunities of the President. He shall be entitled to such emoluments, allowances and privileges as may be fixed by Parliament by law.

4. Like the Vice-President of U.S.A. the Vice-President of India may pay official visits on behalf of the Government of India to foreign States.

5. The Vice-President is the ex-officio Chancellor of the University of Delhi.

POINTS TO REMEMBER

1. His election: both the Houses of the Union Parliament elect The Vice-President by secret ballot.
2. His qualifications:
   (a) He must be an Indian citizen and qualified for election as a member of the Rajya Sabha.
   (b) He must not be less than 35 years of age.
   (c) He should not be a member of either House of Parliament or of any State Legislature.
   (d) He should not hold any office of profit.
3. His term of office: His term of office is 5 years.
4. (a) His Functions: He is the ex-officio chairman of the Raiya Sabha.
   (b) He officiates as the President when the latter is ill or absent from the country or resigns or dies

Q. 28. Describe the procedure for the formation of the Council of Ministers with special emphasis on the relations between the President and the Council of Ministers. Discuss the Functions of the Council of Ministers.

Ans: The Constitution provides that, "there shall be Council of Ministers to aid and advise the President in the exercise of his functions." The President appoints the Prime Minister and the latter on the advice of the former appoints other Ministers. They hold office during the pleasure of the President. Article 53 of the Constitution also prescribes that the executive power of the Union vested in the President is to be exercised by him either directly or through officers subordinate to him. Thus the Ministers cannot take any executive action in their own name. The President himself makes rules for the organisation of the departments and conduct of the Government. Moreover, the Constitution now makes it binding upon the President to act according to the advice of his Ministers. The Parliamentary system presupposes gap between theory and practice. In theory all the powers belong to the head of the State but in practice, they belong to the Ministers who are responsible to Parliament. In actual practice, therefore, his position is quite otherwise. The Constitution lays down that the Council of Ministers shall have collective responsibility towards the Lok Sabha. In other words, the Constitution provides for a Parliamentary type of government. The form of government cannot work successfully unless the legal executive head surrenders his powers to the responsible cabinet. A constitutional deadlock will occur if the legal executive head wants to enjoy real and effective powers. Since, then, it was not obligatory on the President to accept the advice of the ministers, Dr. Rajendra Prasad the then Chairman of Constituent Assembly remarked in the Constituent Assembly, "Although there is no provision in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the conventions, under which in England the King always acts on the advice of his Ministers, would be established in this country also and the President would become a Constitutional President in all matters."

Dr. Rajendra Prasad as first President of Indian Republic, proved the truth of his words quoted above. He established healthy parliamentary conventions by following the advice tendered by the Ministers. It can now be safely hoped that true Parliamentary relations between the chief executive head and the Ministers have come to stay.

Formation of Ministry in Practice

(43)

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8
The Constitution of 1956

After nine years of effort, Pakistan succeeded in framing a Constitution which became effective on 23 March 1956, proclaiming Pakistan as an Islamic Republic. In its general aspect, the 1956 Constitution was based on the pattern of the Government of India Act, 1935.

The 1956 Constitution was lengthy and detailed. It contained 234 Articles, divided into 13 parts and 6 schedules. On examination, we find several explanations for its length as stated below:

i. The Islamic character of the Consititution sought to base the Constitution on Islamic principles and provisions which occupied some length;
ii. It was a federal Constitution which is usually more complex, prescribing not only for the federation but also for the units;
iii. The relations between the federation and the provinces were complicated, necessitating considerable length;
iv. Special provisions had to be made for tribal areas and special areas;
v. Some matters which could have been dealt with by ordinary legislation, such as judicial organization, were included in the Constitution; the organization of the Federal Court and the judiciary of the provinces occupied as many as thirty-one Articles;
vi. There were other matters which the Constituent Assembly thought fit to include in the Constitution, relating to the public services, the languages of the federation, and the election commission, and others;
vii. It was found necessary to include emergency provisions covering Part IX of the Constitution; and
viii. Lastly, it was thought fit to include not only a lengthy Bill of Rights but also directive principles of state policy.

Part I of the 1956 Constitution dealt with the Republic and its territories; Part II with Fundamental Rights; Part III with directive principles of state policy; Part IV with the federation; Part V with the provinces; Part VI with the relations between the federation and the provinces; Part VII with property, contracts, and suits; Part VIII with elections; Part IX with judiciary; and Part X with the services of Pakistan; Part XI dealt with emergency provisions; Part XII with general provisions; and Part XIII with temporary and transitional provisions. Of the six schedules, the first dealt with the election of the President; the second with oaths and affirmations; the third with powers of the Supreme Court and the remuneration of judges; the fourth with the remuneration and privileges of the President, the Speaker, the Deputy Speaker of the National Assembly and provincial assemblies, the members of the National Assembly and provincial assemblies, as well as the provincial governors; the fifth with the lists of subjects for which either the federation or the provinces, or both concurrently, would be competent to legislate; and the sixth with the election of the first President of the Republic.

Fundamental Rights

There was no Bill of Rights under the interim Constitution. The British constitutional experts who drafted the Government of India Act, 1935 were against the incorporation of such a Bill in the Act, but after independence, the preponderance of views in Pakistan as in other new democracies was in favour of a Bill of Rights being incorporated into the Constitution. Experience under the rule of law during British rule was not always happy because the British practice in their colonies differed from that in the United Kingdom. During the movement for freedom, the idea of a Bill of Rights, as incorporated in the Constitution of the United States of America and in many other modern constitutions, appealed very much to nationalist leaders. It was, therefore, natural

that the nature and content of fundamental rights should have engaged the attention of the framers of the Pakistan Constitution from the very beginning of their assignment in 1947. A committee on the fundamental rights of the citizens and on matters relating to minorities was set up at the inaugural session of the first Constituent Assembly in August 1947. In fact, there were weighty arguments in favour of fundamental rights being defined and inserted in the proposed Constitution. In a country such as Pakistan where the English tradition of democratic practices was lacking and where public opinion was not yet articulate or powerful, the need for such a declaration was imperative. Further, since Pakistan had religious minorities, it was necessary to define and protect the rights of individuals, irrespective of caste, creed, or religion. The interim report of the Committee of Fundamental Rights was accepted in 1950 long before the adoption of any other laws of the Constitution. The single idea, in the interim report on Fundamental Rights, was to quote the words of Liaquat 'to respect the dignity of man'. The Fundamental Rights, as adopted by the first Constituent Assembly, included familiar liberties such as equality of status, of opportunity and before law; social, economic, and political justice; and freedom of thought, expression, belief, faith, worship, and association. Fundamental Rights were guaranteed to Muslim as well as to non-Muslim citizens, without any discrimination or distinction. No concept of 'second class citizens' could be found in the list of these rights which were to be enforced by the law courts.[1]

The second Constituent Assembly retained all these rights, liberties, and liberal principles and ideals behind them, but with improvement in the content of some. The 1956 Constitution laid great emphasis on fundamental rights by asserting that if any existing law or custom or usage having the force of law on Constitution day was inconsistent with any provision of fundamental rights, it would be void to the extent of such inconsistency and similarly no authority in Pakistan whether the federal government, the National Assembly, a provisional government or legislature, or any local authority, was competent to make any law, regulation, or any order which might be repugnant to any of the provisions of the fundamental rights and if any such law, regulation or order was made, it would to the extent of repugnancy be void.[2] Thus the democratic concept of limited government, that is, a government that rules by law is itself ruled by law, was established. The judiciary was given the power to enforce fundamental rights and the courts were to decide if a law was repugnant to any provisions of fundamental rights.

Familiar democratic rights and freedom such as freedom of speech and expression, of assembly and association, of movement and profession, were all provided for in the Constitution, with the usual qualifications. With regard to civil rights, familiar rights such as the right to life, liberty, and property were granted, again with the usual qualification and safeguards. Most of the constitutions which guaranteed such liberties have found it necessary to make qualifications regarding the exercise of such rights. An important provision from the standpoint of civil liberty was provided which laid down that a person arrested should not be detained in custody without being informed, 'as soon as may be' of the grounds for such arrest, and such person should not be denied the right of legal consultation and defence. Further, a person arrested or detained in custody was given the right to be produced before the nearest magistrate within a period of twenty-four hours and no further detention was allowed, except on the order of the magistrate.[3]

Such safeguards were, however, not applicable to an enemy alien, or anyone arrested or detained under a law providing for preventive detention. When the Constitution was in the process of being made, Security Acts regarding preventive detention were targets of severe criticism and attack from the opposition parties and also outside the legislature. The United Front in East Pakistan pledged itself to repeal any Security Act that may be in existence. The majority of the framers of the Constitution, including the members of the United Front felt that some safeguards against subversive, anti-state, and anti-social actions should be retained in the Constitution. They took sufficient steps to lessen the risk of such provisions being misused by limiting the powers of preventive detention to not more than three months, unless an advisory board appointed by the Chief Justice of Pakistan in the case of persons detained under a central Act and by the Chief Justice of the province in the case of people detained under a

provincial Act, could certify that there was sufficient cause for such detention. The provision for review by a judicial body was undoubtedly an improvement which would act as a healthy check against abuses.[4]

During an emergency the President could, by an order, suspend the enforcement of fundamental rights guaranteed to the citizens under the Constitution. It is the right to move any court for the enforcement of the fundamental rights that could be suspended. Such an order was required 'as soon as may be' to be laid before the National Assembly.[5]

The principal fundamental rights guaranteed by the 1956 Constitution are briefly described below:

1. All citizens were equal before the law and entitled to equal protection of the law.[6]
2. No person could be deprived of life or liberty, save in accordance with the law.[7]
3. No person could be punished for an act which was not punishable when committed.[8]
4. The right to apply for a writ of habeas corpus could not be suspended, except in the case of an external or internal threat to the security of the state or other grave emergency.[9]
5. There should be no discrimination on grounds of religion, race, caste, sex, or place of birth with regard to access to places of public entertainment, recreation, welfare, or utility.[10]
6. All forms of slavery, servitude, forced labour, torture, or cruel or inhuman treatment or punishment were declared illegal.[11]
7. All duly qualified citizens were made eligible for appointment to the service of the state, irrespective of religion, race, caste, sex, descent or place of birth, provided that it should not be unlawful for the state to reserve posts in favour of any minority or backward section.[12]
8. No person could be deprived of his property without adequate compensation.[13]
9. All citizens were guaranteed (a) freedom of speech, expression, association, occupation, acquisition and disposal of property, and peaceful assembly; (b) the right to move freely throughout Pakistan and to reside in any part of the country.[14]
10. Freedom of conscience and the right to profess, practise, and propagate any religion, subject to public order and morality, were guaranteed.[15]
11. No one attending any educational institution could be required to receive religious instruction or to attend religious worship other than that of his own community or denomination. No religious community could be prevented from providing religious instruction to pupils of that community in any educational institution which it maintained. No one could be compelled to pay any special taxes the proceeds of which were specifically appropriated for the propagation or maintenance of any religion other than his own.[16]
12. The notion of untouchability being inconsistent with human dignity, its practice was declared unlawful.[17]

These 'fundamental rights' contained a clear statement regarding the rights of individuals (whether *qua* individuals or members of a wider group like a community or a religious denomination), and these rights were fundamental not only in the sense that they had been mentioned in and guaranteed by the Constitution but were such as neither the legislature nor the executive could in any manner curtail or diminish. These rights limited legislative and executive powers and would be a clog on the 'temporary' will of the 'simple' majority in the legislature. They embodied a permanent and paramount law which could not be disturbed by the will of the legislature or of the executive. These fundamental rights would operate like a double-edged sword. They not only destroyed those portions of existing laws which were in conflict with these rights but also operated to render void any state action (whether in the legislative or executive field) which, after the coming into force of the Constitution, had the effect of taking away or abridging any of the fundamental rights.[18]

Directive Principles of State Policy

The Basic Principles Committee had recommended the inclusion of Directive Principles of State Policy. The following were included in the 1956 Constitution:

1. Steps should be taken to enable Muslims to order their lives in accordance with the Quran and the *sunnah*, *inter alia*, the compulsory teaching of the Quran, namely the prohibition of drinking, gambling, and prostitution, and the proper organization of mosques.[19]
2. The provision of food, clothing, housing, education, and medical relief should be made for citizens incapable of earning their livelihood owing to unemployment, sickness, or similar reasons.[20]
3. The improvement of living standards, the prevention of the concentration of wealth and means of production in the hands of a few, and the prevention of the exploitation of the workers and peasants.[21]
4. Abolition of illiteracy as rapidly as possible.[22]
5. Training and education for the population of different areas to enable them to participate fully in all forms of national activity and service.[23]
6. Discouragement of parochial, tribal, and racial feelings among Muslims.[24]
7. Strengthening of the bonds of unity between Muslim countries.[25]
8. Promotion of peace and goodwill among the peoples of the world.[26]
9. Separation of the judiciary from the executive, as soon as practicable.[27]
10. Protection of all legitimate rights and interests of non-Muslim communities.[28]
11. Protection of children, young people, and women against exploitation and employment in unsuitable occupations.[29]
12. To achieve parity in the representation of East Pakistan and West Pakistan in all spheres of federal administration.[30]
13. To eliminate *riba* as early as possible.[31]

The state was to be guided by these Directive Principles of State Policy in the formulation of its policies, but they were not enforceable in any court of law.[32] The provisions of the Constitution containing such principles constitute the manifesto of the policies and programmes of the state as they were to be administered and as they were visualized by the founding fathers and were required to be kept in view by subsequent generations so as to secure a continuity in the maintenance of a homogeneous and consistent policy in the matter of handling the affairs of the state.[33]

Parliamentary Form of Government

The first Constituent Assembly decided in favour of the parliamentary form of government, both at the centre and in the provinces. There were some who believed that parliamentary democracy was not suited to Pakistan. Their argument was that in the absence of two strong, stable, and responsible political parties, the parliamentary form of government, wherein the real executive authority is vested in a Cabinet responsible to the legislature, would become a farce and stable government a forlorn hope. They pointed out difficulties in the emergence of strong political parties in Pakistan; a probability that the legislature might be divided into small groups separated one from the other for personal or political reasons, thus making stable government impossible. Their main contention was that a new country like Pakistan required, more than anything else, a stable and strong government. Those who favoured a full-fledged Islamic state in Pakistan also considered that parliamentary government was not in accordance with the system which existed in the early days of Islam. Their intention was that the head of the Islamic state of Pakistan should be a Muslim and responsibility for the administration of the state should primarily be vested in the head of the state, although he might delegate part of his powers to any individual or body. The first Constituent Assembly, however, expressed faith in a parliamentary form of government in the hope that it would ensure a better relationship between the executive and the legislature.[34]

The second Constituent Assembly, like its predecessor, decided in its favour, both at the centre and in the provinces.

When the second Constituent Assembly met in 1955, the relationship between the executive and the legislature, particularly the powers and position of the head of the state, assumed great importance in view of certain controversial and undemocratic actions of the head of the state under the interim

Constitution. The framers of the Constitution had before them vivid examples in the dismissal of a Cabinet enjoying the confidence of the legislature in 1953 and the dissolution of a legislature in 1954 when it sought to curb the powers which the head of the state had tried to exercise in an authoritarian way. They wanted to ensure that such actions would not be repeated. Hence, we find that the draft presented to the second Constituent Assembly in January 1956 had to be modified considerably regarding provisions relating to the powers and position of the head of the state. A parliamentary system was sought where real executive authority vested in a Cabinet responsible to the legislature would be guaranteed within the Constitution and not, as in Britain and in some Commonwealth countries, based on conventions alone. Countries having a parliamentary system have found it necessary to provide for a separate head of state who normally exercises only ceremonial and formal functions. In most important matters he acts on the advice of the Cabinet. Still, a separate head of the state seems to be necessary in a parliamentary system because a neutral constitutional official is needed to bridge the gap between outgoing and incoming ministries, not in taking over the government but in providing the decisions evolved in bringing a new government into office.

The President and the Cabinet

The executive authority of the federation in the 1956 Constitution was vested in the President and was to be exercised by him in accordance with that Constitution.[35] The President was to be a Muslim of not less than 40 years of age and qualified for election as a member of the National Assembly. He was to be elected by an Electoral College comprising members of the National Assembly and the Provincial Assemblies in accordance with provisions outlined in great detail in the first schedule appended to the Constitution.[36] He was to hold office for five years and no one could hold the office for more than two terms.[37] The President might resign or might, on a charge of violating the Constitution or of gross misconduct, be impeached by the National Assembly by an absolute majority.[38] He would not be allowed to hold any office of profit in the service of Pakistan but was not prevented from holding or managing any private property.[39]

The draft presented to the second Constituent Assembly originally provided for a Vice President but the proposal was not accepted and the Constitution provided that if the President was away from Pakistan or unable to perform his duties, the Speaker of the National Assembly would exercise the functions till the President resumed his duties or until a new President were elected.[40]

The Constitution provided for a Cabinet of ministers with the Prime Minister at its head 'to aid and advise' the President in the exercise of his functions. The President was required by the Constitution 'to act in accordance with the advice of the Cabinet' except in those matters in which he was empowered to act at his discretion. The Constitution strictly limited the discretionary powers of the President to the making of a few non-controversial appointments, such as the chairman and members of the Federal Public Service Commission, the Chief Election Commissioner, and other members of the Election Commission and the Chairman and Members of the Delimitation Commission. But the most important discretionary power of the President was to appoint from among the members of the National Assembly a Prime Minister who in his opinion was most likely to command the confidence of the majority of the members of the Assembly. While this may be a purely formal task in a clear cut two-party system, it becomes a function of great importance when the party situation is not clear. This discretionary power could very easily be misused. It was alleged that under the interim Constitution a head of the state had appointed somebody as Prime Minister who was not even a member of Parliament and 'who was flown from Washington without having any footing on the soil and planted as our Prime Minister'.[41] In the provinces too, several cases had occurred of chief ministers being nominated or imposed from outside. To ensure that the discretionary power was not misused, the Constitution provided a safeguard under Article 50 regarding the discretionary powers of the President and enjoined a ministry coming into power to call a session of the National Assembly within two months to demonstrate that it enjoyed the confidence of the legislature.

It was the duty of the Prime Minister to communicate to the President all decisions of the Cabinet and proposals for legislation and to furnish him with

information as the President might call for.[42] The question whether any advice had been tendered by the Cabinet or a minister could not be enquired into by any court of law, nor was there any provision for countersignature by the Prime Minister or any other minister of an Act signed by the President.[43] This provision might have an effective safeguard to ensure the parliamentary nature of the executive. There was no remedy in the Constitution if the President disregarded the advice of the Cabinet except that it might resign in protest. But as the party system was not well developed, this remedy could not be an effective check on the powers of the President.

'The Prime Minister shall hold office during the pleasure of the President', such was the proposal in the provisional draft Constitution presented to the second Constituent Assembly in January 1956. But the proposal evoked great criticism and fears were expressed that this might lead to a repetition of the Cabinet dismissal of 1953. The second Constituent Assembly finally amended this as follows:

> The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly.

The Cabinet was collectively responsible to the National Assembly.[45] Although the concept of collective responsibility of the Cabinet is based on convention under the British Constitution, yet it had been expressly included in the Constitutions of India, Sri Lanka, and the Irish Republic. The 1956 Constitution followed the example of these countries by expressly including it in the Constitution.

Functions and Powers of the President

The President, on the advice of the Cabinet, was entrusted with multifarious functions. Some of the key appointments, such as those of the Chief Justice of the Supreme Court and judges of the Supreme and High Courts, the Governors of the provinces, the Attorney-General, and the principal military officers, were made by the President on the advice of the Cabinet. He would constitute the National Economic Council, the National Finance Commission, the Inter-Provincial Council, the Commission for bringing the existing laws into conformity with the injunctions of Islam, and the Organization for Islamic Research and Instruction. He also had the power to issue proclamations of political or financial emergency, and could suspend a provincial government. The supreme command of the Armed Forces was vested in the President and he was conferred the power to raise and maintain the naval, military, and air forces of Pakistan. The administration of the federal capital was vested in the President. He was also given powers to grant pardon and to remit, suspend, or commute a sentence passed by any tribunal.

Similarly, the President was given certain legislative functions to be exercised on the advice of the Cabinet. Thus he could summon, prorogue, and dissolve the National Assembly on their advice. In the draft Constitution of the second Constituent Assembly there was a provision that the President might at his discretion dissolve the National Assembly if he were satisfied that it had ceased to command the confidence of the majority of the electorate. This proposal raised strong protests both inside and outside the Assembly and consequently, the Constitution provided that the dissolution should take place on the advice of the Cabinet. But what would happen if the President should dismiss a Prime Minister, appoint a new one, and dissolve the Assembly on his advice? Was the President bound to accept advice for a dissolution if a Prime Minister who had been defeated in the National Assembly should advise the President to dissolve the Assembly? It was difficult to conceive that the President would accept such advice. In such a case, he could surely dismiss the defeated Prime Minister and appoint a new one. So occasion might have arisen when, under the Constitution, the President could force a dissolution or refuse advice for dissolution.

The President could address the National Assembly and send messages to it.[45] He would cause the budget to be laid before the National Assembly and no Bill imposing taxation or involving expenditure from the federal consolidated fund could be moved without the President's recommendation. He possessed a limited veto regarding laws made by the National Assembly.[46] When a Bill was passed by the National Assembly he could either assent to it or withhold his assent. In the latter case, if the National Assembly

again passed the Bill, with or without amendment, by a majority of two-thirds of those present and voting, the President was bound to assent to it. He could also send a Bill for reconsideration and if such a Bill were passed again by a majority of the total members of the Assembly, it had to receive his assent.

When the National Assembly was not in session, the President possessed the positive power of making laws by ordinances which were to be laid before the National Assembly and would cease to operate at the expiry of six weeks from the next meeting of the National Assembly or at such time as a resolution of disapproval should be passed by the Assembly.[47] Should the National Assembly stand dissolved, the President might by ordinance authorize the expenditure from the federal consolidated fund (whether the expenditure was charged upon that fund or not), but such an ordinance was to be laid before the National Assembly 'as soon as may be' after reconstitution of the Assembly and the normal financial procedure[48] would have to be complied with not later than six weeks from that date.

The Federal Government

Another basic feature was the federal form of the Constitution, following the decision in 1949. Although the solitary voice of the independent member, Fazlur Rahman, could be heard in the second Constituent Assembly in favour of a unitary form of government, the 1956 Constitution embodied all the characteristics of a federation: a written Constitution, dual polity, distribution of powers between the national and provincial governments, and a Supreme Court.

This federal structure was similar, in many respects, to that provided under the Government of India Act, 1935 which introduced a federal Constitution in undivided India. Federalism in Pakistan had to make room for self-expression and self-support for the units. The process of decentralization, therefore, was allowed under the 1956 Constitution to an extent which was unusual with other new federal constitutions. The federal Constitution of India, for instance, had a strong tendency towards centralization of authority and administration. A modern democratic government can hardly fulfil the wider objectives of social welfare services or full employment unless it has the power of legislation over the whole economic and fiscal field. Similarly, the nature of modern warfare is forcing a federal government to extend its sphere of operations.

In a complex modern society, the federal system could hardly be expected to work satisfactorily and smoothly without the process of centralization. Yet, the architects of the 1956 Constitution provided maximum room for decentralization in view of the number of powerful factors, political, economic, psychological, working towards demands for regional autonomy. Unless the demands were reasonably satisfied, the movement for secession which subversive elements were trying to create, might have been encouraged. On the other hand, the risk was that the decentralized structure of a weak federation might afford footholds for foreign intrigue and attack.

Turning to the distribution of legislative powers between the centre and the provinces, the powers were exhaustively enumerated in three lists—federal, provincial and concurrent, as in the Government of India Act, 1935. The extent of federal laws was extended to the whole or any part of Pakistan, including the power to make laws with extra-territorial operations. The power of a provincial legislature extended to the whole of that province or any part thereof.[49] Parliament was given exclusive power to make laws concerning thirty items in the federal list as against sixty-one under the Government of India Act, 1935, and sixty-six in the draft Constitution of the first Constituent Assembly. The subjects given to the centre included foreign affairs, comprising all matters which would bring Pakistan into relations with foreign countries; defence; currency; citizenship; foreign and inter-provincial trade and commerce; insurance and corporations set up by the federation; industries owned wholly or partially by the federation; posts and all forms of telecommunications; and minerals, oil, and gas.[50]

The provincial list was most comprehensive and included ninety-four items, as against fifty-five under the Government of India Act, 1935, and forty-eight in the draft Constitution of the first Constituent Assembly, which indicated the trend towards decentralization recognized by the second Constituent Assembly. The provincial list included, amongst others, public order, administration of justice, police, land, agriculture, local government,

education, public health, sanitation, industries and corporations subject to the federal lists, factories, regulations of mines and mineral development subject to the federal and concurrent lists, forests, electricity, and other subjects of local interest.[51] The most important addition to the provincial list was railways which continued to be under central control at the time of the abrogation of the constitution in 1958.

The concurrent list was the smallest and included only nineteen items and was justified on the ground that there were certain matters which could not be given exclusively either to the centre or to the provinces since they might normally be dealt with by the provinces but occasions might arise when it would be desirable and necessary to deal with them on a national level. Again, the regulation of some matters by one unit might prejudice the interests of the other unit, or to secure legal and economic uniformity, federal jurisdiction might be necessary. The list dealt with such matters as civil and criminal law, scientific and industrial research, price control, economic and social planning, inter-provincial migration and quarantine, trade union, and other matters of common interest.[52]

With regard to subjects in the concurrent list, the precedence of federal legislation was guaranteed. So the Constitution had provided priority of federal legislative power over the provincial one applicable over the concurrent list, and the concurrent list had priority over the provincial, as had been provided for in the Government of India Act, 1935. In fact, the structure and content of Article 106 were identical with those of Section 100 of the Government of India Act, 1935.

The question whether residuary powers should be vested in the federal or in provincial authorities had produced lengthy discussions and controversies in the constituent Assemblies of Pakistan but under the 1956 Constitution residuary power was vested with the provincial legislatures which were to have exclusive power to make laws with respect to any matter not enumerated in the federal, provincial, or concurrent lists.[53]

The federal government was fully equipped for the conduct of international affairs. Parliament was authorized to implement treaties with laws which it might have no power otherwise to pass; a treaty could reach and control matters normally within the powers of the provinces. It was given power to make laws for implementing any treaty, agreement or convention or a decision taken by an international body even though it might deal with a matter enumerated in the provincial list, or a matter not enumerated in the provincial list, or a matter not enumerated in any of the three lists.[54]

The Chief Justice of Pakistan was assigned an important role in the settlement of disputes between the federal government and one or both provincial governments, or between the two provincial governments. He was to appoint a tribunal to settle such a dispute. The report of the tribunal was to be submitted to the Chief Justice who would forward it to the President who could make such orders as might be necessary to give effect to the report. This order must be made effective by the provinces and any action of the provincial legislature which might be repugnant to the President's order would be void.[55]

There was also provision for an inter-provincial council which the President could set up for the purpose of investigating and discussing subjects of common interest between the federation and one or both the provinces.[56] Neither a tribunal under Article 129 nor an inter-provincial council under Article 130 was set up in the duration of the 1956 Constitution.

There was no provision in the Constitution, as under the Indian Constitution, whereby the federal legislature could make laws in any provincial matters on the grounds of 'national interest'. There were, however, at least two processes which would enable the federal legislature to legislate even on a provincial subject. The first applied when a provincial legislature authorized parliament to make laws in any matter enumerated in the provincial list or any matter not enumerated in any of the three lists. An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.[57]

While legislation by the federal legislature under Article 107 was voluntary, the second process which would enable the federal government to intervene in provincial matters, was of far-reaching importance. This related to the power to issue a proclamation of emergency and while this was in operation,

parliament was empowered to make laws for a province with respect to any matters not enumerated in the federal or concurrent lists.[58]

The Federal Legislature (The Parliament)

Unlike other federal constitutions of the time, the 1956 Constitution provided for a unicameral system. The first conflict relating to the federal structure in Pakistan was over the quantum of representation for the two wings of the country. After several years of acute controversy it was agreed that there should be parity of representation between East and West Pakistan. Under the draft Constitution made by the first Constituent Assembly there was provision for a second Chamber and parity of representation was provided for in the joint session of the two Houses. When the provinces and states in West Pakistan were amalgamated into a single unit by the second Constituent Assembly, the problem of representation in the federal legislature was made much simpler and it was, therefore, proposed that the legislature should have only one House in which parity of representation between East and West Pakistan could be maintained.

The parliament of Pakistan under the 1956 Constitution consisted of the President and one House, the National Assembly.[59] The National Assembly was to consist of 300 members, half elected by constituencies in East and half by constituencies in West Pakistan. Ten additional seats were provided for women, five from East, and five from West Pakistan, for a period of ten years.[60] Hence, the female citizens of Pakistan were granted double franchise for at least ten years. Parliament might alter the numbers of the members of the National Assembly provided that the parity of representation between East and West Pakistan was maintained.

Members of the National Assembly were to be elected under an electoral system for which the second Constituent Assembly did not legislate, but left it to be decided by the National Assembly after consulting the provincial assemblies. In October 1956, the National Assembly, passed an electoral law amidst scenes of riot and confusion. The Bill was passed in great haste without giving the National Assembly or the country an opportunity to judge its merits. Debate over the system of electorate, whether it should be joint or separate, had a long history behind it and had been debated at great length. The Bill provided for a joint electorate in East and a separate electorate in West Pakistan.[61] It was the most ridiculous system ever to have been thought of and was the product of party alliances and groupings prevailing at the time. It apparently sought to satisfy the exponents of both joint and separate electorates and failed to satisfy either. Subsequently, electoral law was changed to joint electorates for the whole country,[62] but the issue was alive till the abrogation of the 1956 Constitution and it had a long-lasting impact on politics in Pakistan. The Awami League, in coalition with the Pakistan National Congress, advocated joint electorates while some of the Muslim parties were still opposed to it.

A person was entitled to vote for the National Assembly (as well as the provincial assemblies) if he were a citizen of Pakistan, not less than 21 years of age, not declared by a court to be of unsound mind, and had resided within the constituency for six months before the first day of the year in which the preparation of the roll should commence. Parliament could impose other qualifications in this respect.[63]

The candidate for election to the National Assembly was to be not less than 25 years of age and qualified to be a voter. The Election Commission, on reference from the Speaker of the National Assembly, could decide questions of disqualification of a member and its decision was final. No one could to be a member of the National Assembly for two or more constituencies, though a person could seek election from more than one constituency. A member of the National Assembly could lose his seat if he remained absent for sixty consecutive sitting days. No one could be a member simultaneously of the National Assembly and of a Provincial Assembly.[64]

The President, as noted earlier, was empowered to summon, prorogue, and dissolve the National Assembly on the advice of the Cabinet. There were to be at least two sessions of the National Assembly every year, and at least one session was to take place in Dhaka, the capital of East Pakistan. This was done to remove the feeling of neglect in East Pakistan. The Assembly was to be summoned within two months of the formation of a new Cabinet. Even a minister and the Attorney-General had the right to speak and take

part in the proceedings of the National Assembly but not the right to vote unless he were a member. The President could address or send messages to the National Assembly.[65]

The National Assembly would choose the Speaker and Deputy Speaker from its own members. They could be removed by a resolution of the National Assembly, passed by a majority of the total membership. When the National Assembly stood dissolved, the Speaker would continue his office until the convening of the first meeting of the successor elected National Assembly.[66]

The National Assembly was to frame its own rules of procedure and the validity of any proceedings in the National Assembly could not be questioned in any court. The rules of procedure were based on the spirit and substance of those at Westminster. The usual procedure in the National Assembly was that a decision would be made by a majority of votes of the members present but in some specific cases, such as the impeachment of the President, the removal of judges of the Supreme Court, the overriding of the President's suspensive veto, and amendments to the Constitution, an absolute majority of the total membership was required. No member of the National Assembly could be made liable in any proceedings in any court regarding anything said or any vote given by him in the National Assembly or its committees. The privileges of the National Assembly, committees, the members thereof, and people entitled to speak therein could be determined by an Act of parliament.[67]

The procedure in financial matters was also largely based on the system existing in England and in Commonwealth countries. The tradition of parliamentary control over public money was largely maintained. No tax, for instance, could be levied for federal purposes, except by or under the authority of an Act of parliament,[78] custody of the federal consolidated fund including the payment of money into it and withdrawal of money from it and all matters connected with public money and public accounts, were to be regulated by an Act of parliament.[69] No proposal for the imposition of taxation or for appropriation of public revenues or for borrowing of money and similar matters could be made except with the recommendation of the President, that is, it could be made only with the approval and responsibility of the Cabinet.[70]

In the budget, the financial statement was divided into two parts: one showing the expenditure charged upon the consolidated fund—the expenditure which the National Assembly could discuss but not vote upon; the other part showing the sums required for the estimated expenditures of the various departments for the financial year. Expenditures charged upon the consolidated fund included; (a) remuneration and pension of the President, salaries of judges of the Supreme Court, members of the Federal Public Service Commission, the Speaker and the Deputy Speaker, the Comptroller and Auditor-General, the Election Commissioners and members of the Delimitation Commission; (b) the administrative expenses of the Supreme Court, the Federal Public Service Commission, the department of the Comptroller and Auditor-General, the Election Commission; and (c) the debt charges binding on the federal government and sums required to satisfy any judgment, decree, or award against Pakistan by any court or tribunal and any other sum declared by the 1956 Constitution or by Act of Parliament.[71] The National Assembly was given a normal life of five years but the President, on the advice of the Cabinet, could dissolve it earlier.[72] In the case of dissolution, fresh elections were to take place within six months and no by-election could be delayed beyond three months. These were to be healthy democratic checks against prolonged rule without a parliament or any attempt to avoid the expression of public opinion through by-elections. By-elections had often been unduly delayed or evaded altogether under the interim Constitution.

Provincial Governments and Legislatures

The provincial legislatures and executives were small replicas of the national legislature. Provincial Assemblies, like the National Assembly, were unicameral and were to be directly elected by the people through universal adult franchise under the same electoral law. The relationship between the provincial Governor, provincial Chief Minister, and the Provincial Assembly closely resembled that between the President, the Prime Minister, and the

National Assembly. The Governor could appoint and dismiss the provincial Cabinet through a procedure similar to that of the President in exercising his powers at the centre. The provincial Cabinet was also collectively responsible to the provincial legislature which could be dissolved by the Governor on the advice of his Cabinet. Contrary to section 51(5) of the interim Constitution which laid down that in the exercise of his functions with respect to the choosing, summoning, and dismissal of ministers, the Governor would be guided under the general control and would comply with such particular directions as might be given, from time to time, by the Governor-General, there was no similar provision in the 1956 Constitution. Yet, in practice, the position was not different from that under the interim Constitution. The Governor continued to be an agent of the central government which could, and did, exercise pressure in provincial politics through the Governors.

Distribution of Powers between the Centre and the Provinces

In the distribution of legislative powers between the centre and the provinces the framers of the 1956 Constitution allowed a greater decentralization than under the Government of India Act, 1935. Administrative relations between the centre and the provinces, however, changed a little. The federal system showed, a marked tendency towards unified control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance. Although the maintenance of law and order was a provincial subject, the federal government was vested with the ultimate responsibility of ensuring the peace and safety of the country, the primary duty which no national government can afford to neglect, be it under a unitary or a federal system. The federal government was also entrusted with the task of ensuring that the government of each province was carried on in accordance with the provisions of the Constitution.[73] A provincial government would not be allowed to flout the supreme law of the land, that is, the Constitution. A provincial government was obliged to exercise its executive authority in such a manner as to ensure compliance with the Acts of Parliament and existing laws applying to that province. The central government would make laws in the federal or concurrent lists which would apply to the provinces. Although these laws might be administered by the federal authority itself, yet the Constitution enjoined upon the provincial authorities the duty of giving due effect to the federal laws prevailing or applying to the provinces and not impeding or prejudicing the exercise of the executive authority of the federation. The federal government was entitled to give direction to a province with regard to the duties of the provincial authority and was further entitled to give directions to a province in the following matters:[74]

(a) the construction and maintenance of communications declared to be of national or military importance;

(b) the measures to be taken for the protection of railways within the province (although railways were included under the provincial list);

(c) the manner in which the executive authority of the province was to be exercised for the purpose of preventing any grave menace to the peace and tranquility or economic life of Pakistan or any part thereof;

(d) the carrying into execution in the provinces of any Act of parliament in Part II of the concurrent list, such as measures to combat corruption, or price control, and economic or social planning.

There was one important provision in the 1956 Constitution which would enable the federal government to delegate a provincial government as its agent. The President might, with the consent of a provincial government, entrust either conditionally or unconditionally to that government, or to its officers, functions regarding any matter to which the executive authority of the federation extended.[75] The practice of delegation to a provincial government or their servants the duty of executing orders of the federal government had been exercised under the interim Constitution. The federal government did not have sufficient number of officers in the provinces to execute its laws or orders, hence the necessity of such delegation. The framers of the Constitution allowed this process of delegation to provincial governments to continue, thus permitting the federal government to utilize provincial executive machinery for the enforcement of federal laws.

The Judiciary

Adequate provisions were made in the 1956 Constitution to ensure the independence of the judiciary so that 'justice could be dispensed in Pakistan in a real and unpolluted form'. The efficiency and independence of the judicial system depends to a great extent upon the method of appointment, tenure of service, and salary of the judges. The framers of the Constitution thought it desirable to include the organization of the judicial system and provisions relating to it were given in considerable length. The aim of such constitutional safeguards in the organization of the judiciary was to secure its independence as being fundamental to both the Islamic and the western concepts of justice.

Though the Supreme Court under the 1956 Constitution was the successor of the Federal Court, in the interim Constitution its jurisdiction was in some respects wider. Apart from expressed constitutional or statutory provisions there was no limit to its jurisdiction in matters decided by the High Courts.[76] The law which it would lay down was binding on all courts in Pakistan. As supreme tribunal, it was the sole judge of its jurisdiction and there was no judicial means of challenging its exercise. A judgment of the Supreme Court was binding on all courts in Pakistan; all executive and judicial authorities throughout the country also had to act in the aid of the Supreme Court and all directions, orders, decrees, or writs issued by that court were to be executed as if they were issued by the High Courts of the appropriate province.[77]

Like its predecessor, the Federal Court, the Supreme Court was entrusted with the task of interpreting the Constitution. It was specifically given the power to adjudicate in any dispute between:[78]

(a) the federal government and the government of one or both provinces, or

(b) the federal government and the government of a province on the one side and the government of the other province, or

(c) the governments of the provinces, if and in so far as the dispute should involve any:

   i. question of legal rights;

   ii. question relating to the interpretation of the Constitution.

The 1956 Constitution thus departed from the principle of parliamentary supremacy which exists in England and accepted the principle of judicial review found in the federal systems of Australia, Canada, and the United States of America. The Constitution was made the 'supreme law of the land' and the 'judiciary was made the guardian of the Constitution'.

The writ jurisdiction of the superior courts which was introduced in July 1954, was retained under the 1956 Constitution. Each High Court had the power throughout its territories to exercise jurisdiction to issue to any person or authority orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto, and *certiorari* for the enforcement of any of the fundamental rights guaranteed under the Constitution or for any other purpose.[79] The writ jurisdiction of the superior courts in Pakistan constitute a perpetual reminder to the executive to exercise restraint and caution as imposed under the laws of the land. The courts exercised this power in a beneficial and befitting manner and thus earned the confidence and trust of the people.

The provisions regarding judiciary in the 1956 Constitution followed the pattern set under the Second Report of the Basic Principles Committee, 1952 which was more or less included *in toto* in the draft Constitution adopted by the first Constituent Assembly in October 1954. The Supreme Court consisted of the Chief Justice and not more than six judges, a number that could, be raised by the parliament under the Act.[80] The Chief Justice was to be appointed by the President and other judges were to be appointed by the President in consultation with the Chief Justice.[81] The qualification for appointment as a Judge of the Supreme Court was either five years standing as a Judge of a High Court or fifteen years standing as an advocate or pleader of a High Court.[82] The retirement age of a Supreme court Judge was fixed at sixty-five years and he was disqualified from pleading or acting before any Court or authority in Pakistan.

The provision regarding the removal of a Judge of the Supreme Court was similar to one provided under the Constitution of India.[83] A Judge could only be removed on the presentation of an address by the National Assembly by not less than one-third of the

total number of members of the Assembly; by the President, if after due investigation and proof of misbehaviour, or infirmity of mind or body was established, with the National Assembly votes for his removal by two-thirds of its members present and voting (but not less than a majority of total membership) on the ground of misbehaviour, infirmity of mind or body.[84] There was also provision for the appointment of acting Chief Justice in the absence of the Chief Justice or when the office became vacant.[85] There were also provisions for acting judges and adhoc judges.[86]

The Constitution provided for two High Courts, one for the province of East Pakistan, and the other for the province of West Pakistan. Each High Court was to consist of a Chief Justice and such number of other judges that the President might determine.[87] The Chief Justice of a High Court was to be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the province concerned. In case of appointment of other judges of the High Court, the President could appoint them in consultation with the aforesaid constitutional functionaries as well as the Chief Justice of the concerned High Court.[88] The retirement age was fixed at sixtee years. The qualification for appointment as a judge of a High Court included ten years standing as an advocate or pleader of a High Court, ten years standing as a member of the civil service of Pakistan including at least three years as a district judge, or holding of a judicial office in Pakistan for at least ten years.[89] Members of the civil service in India were not qualified for appointment as judges of High Courts.[90]

A High Court judge could not be removed from his office except by an order of the President made on the ground of misbehaviour or infirmity of mind or body, if the Supreme Court, on reference being made to it by the President, reported that the judge ought to be removed on any of those grounds.[91] There was provision for appointment of acting Chief Justice when the office of the Chief Justice became vacant or he was absent or unable to perform his duties.[92] However, transfer of judges from one High Court to another was made subject to the consent of the judge being transferred and subject to the consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he was a judge.[93] This procedure of transfer of a judge from one High Court to another could strengthen the judiciary and its independence and could pre-empt the interference of the executive with the judiciary.

As discussed above, the High Courts were given the power to issue writs of habeas corpus, mandamus, prohibition, quo-warranto, and *certiorari*. Similar powers were vested in the Supreme Court of Pakistan to issue all such writs for the enforcement of the fundamental rights guaranteed under the Constitution.[94] This provision was apparently borrowed from the Indian Constitution (enforced in 1950) wherein the Supreme Court was empowered to issue all such writs for the enforcement of fundamental rights.[95]

Islamic Provisions

According to the Constitution, Pakistan was declared as an 'Islamic Republic' wherein the principles of freedom, equality, tolerance, and social justice as enunciated by Islam should be fully observed.

The Islamic provisions were contained in the directive principles of state policy which were not enforceable in the law courts but were supposed to serve as a guide to state authorities in the formation of policies. According to the directive principles, steps were to be taken to enable the Muslims of Pakistan individually and collectively to order their life in accordance with the Holy Quran and *sunnah*.[96]

The head of the state, the President, was to be a Muslim. The original proposal provided for a Vice President who should also be a Muslim, but the provision was not accepted. The Speaker of the National Assembly would exercise the functions of the President if he was absent from Pakistan or was unable to discharge the duties of his office owing to illness or any other cause. The Speaker might be a non-Muslim, so occasion might arise when the temporary head of the state could be a non-Muslim.

The argument for reserving the presidency for a Muslim was that Pakistan was founded on the basis of Islamic philosophy and it was, therefore, logical that the President as a symbolic head should be amongst those believing in the Muslim faith. It was further stated that as real power was vested in the parliament, therefore, reservation of the presidency

for a Muslim would not reduce the non-Muslims to the position of second-class citizens. With the exception of this solitary clause there was no discrimination against any citizen on the grounds of religion, colour, race, or nationality. Moreover, adequate and generous provisions were made in the Constitution to safeguard the interests of non-Muslim minorities. Hence, there was no basis for apprehension that the introduction of an Islamic state in Pakistan would per se relegate non-Muslim citizens to an inferior status.

A more important Islamic provision laid down that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the *sunnah*' and that existing laws 'shall be brought into conformity with such injunctions'.[97] Whether a law was repugnant to Islam or not could only be decided by the National Assembly. Article 198 provided that the President should appoint within one year of the day of commencement of the Constitution a commission to make recommendations for bringing existing laws into conformity with the injunctions of Islam and to specify the stages by which the measures should be brought into effect. They were also to compile in a suitable form for the guidance of the National and provincial assemblies such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within five years of its appointment and might submit an interim report earlier. The report, whether interim or final, was to be laid before the National Assembly, and within six months of its receipt, the Assembly was to enact laws in respect thereof. It was made clear that nothing in this Article should affect the personal laws of non-Muslims or their status as citizens or any provision of the Constitution.

Emergency Provisions

The description of the federal structure under the 1956 Constitution would not be complete without a reference to the emergency provisions that is provided for as they greatly affected relations between the centre and the provinces. The Government of India Act, 1935 which introduced federation in the subcontinent for the first time made elaborate provisions for dealing with an emergency. Following this model, the 1950 Indian Constitution contained elaborate emergency provisions. The framers of the Pakistan Constitution also felt the need for such provisions. The draft Constitution made by the first Constituent Assembly contained detailed provisions for dealing with different types of emergencies. These were, however, subject to severe criticism from those political parties and groups which had described the first Constituent Assembly as 'unrepresentative of the people'. Curiously enough, the second Constituent Assembly in which those political groups had the opportunity to redraft the Constitution in Part IX (Articles 191–196) retained all these emergency provisions, making them even stronger in some respects.

Under Article 191, if the President was satisfied that a grave emergency existed in which the security or economic life of Pakistan or any part thereof was threatened by war or external aggression or by internal disturbance beyond the power of the provincial government to control, he could issue a proclamation of emergency which might also be issued before the actual occurrence of war or any such aggression if the President were satisfied that there was imminent danger thereof.

While this Article was being debated in the second Constituent Assembly, some of its members opposed its application to internal disturbance and wanted to restrict its application to war or armed rebellion. Another amendment sought to delete the words 'economic life of Pakistan'. The contention was that an emergency must be clearly defined, otherwise the powers would be misused. They stated that proclamation after proclamation had been made in Pakistan without sufficient cause. 'We understand threat of war, we understand external aggression, but we do not understand what is meant by internal disturbance. Anything may be internal disturbance. A movement against a particular measure of the government for the time being may be interpreted as internal disturbance'. Similarly, the term 'economic life of Pakistan' was stated to be vague. 'Anything might be considered as endangering the economic life of Pakistan'.[98] While the allegations that emergency provisions under the interim Constitution had been used on many occasions without sufficient cause contained substantial truth, this does not prove that emergency provisions to deal with internal disturbance are superfluous and a negation of

democracy. Most existing federal systems grant such power to the central authority. The effects of a proclamation of emergency under Article 191 included:

(a) the power of the parliament to make laws for a province in matters which were not included in the federal or concurrent lists, that is, it would have power to legislate even in provincial matters;

(b) during a proclamation of emergency the federal executive authority had the power to give direction to a province regarding the manner in which the executive authority of the province was to be exercised;

(c) during a proclamation of emergency the President, might issue an order assuming himself, or directing the Governor of a province to assume on his behalf, all or any powers of the provincial government or any organ of the provincial government except the provincial legislature and judiciary. The President was also empowered to suspend in whole or in part the operation of any provision of the Constitution relating to any body or authority in the province except the High Court.

While emergency provisions of the type discussed above are common in existing federal systems, there was provision for another type of emergency, namely, the breakdown of constitutional machinery in a province, which was peculiar to the constitution of Pakistan. (The 1950 Indian Constitution, is also an exception). This unique feature had its origin in the Government of India Act, 1935 which elaborated provisions relating to an emergency due to a failure of the constitutional machinery, both at the centre and in the provinces.[99] There was no provision in the 1956 Constitution relating to the breakdown of constitutional machinery at the centre; it retained provisions to meet a constitutional crisis only in the provinces. Thus, under Article 193 of the 1956 Constitution, if the President, on the receipt of a report from the Governor of a province, was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Constitution, he could, by proclamation, assume to himself, or direct the Governor to assume on his behalf, all or any of the functions or powers of the provincial government or any organ or body of the provincial government except the provincial legislature and judiciary and the National Assembly might be authorized to exercise the powers of the provincial legislature. The President could also suspend the operation of any provisions of the Constitution relating to any body or authority in the province except the High Court. The President, during a proclamation under this Article, was empowered to authorize expenditure from the provincial consolidated fund in anticipation of approval by the National Assembly.

The net effect of a proclamation under Article 193, as under 92A of the interim Constitution, would be to suspend parliamentary government in a province. This power of the central government to suspend democratic process in a province was the subject of severe criticism in many quarters and it appeared to many people that this power had previously been exercised by the central government not always with sufficient cause or justification, and seemingly abused on more than one occasion for party or sectional interests. It was an excellent weapon in the hand of the central government to put pressure and exert influence on provincial politics. When this Article came before the second Constituent Assembly it was under heavy fire from the exponents of provincial autonomy and provincial rights: 'We had a bitter experience of section 92A in Pakistan in the different provinces of Pakistan. During the last eight years of independence we have seen how this provision has been misused most undemocratically and for political ends. A misuse is likely to creep in and such misuse may arise when the provinces and the central government are not governed by the same political party; if the central government is of the opinion that the political party which is running the government in the province is to be suppressed it will not hesitate in the interest of good government to let it carry on purely for political motive, but it may bring about an influence to bear upon the President to suspend the democratic process in the province'.[100]

The type of emergency for which the 1956 Constitution made provisions related to the financial stability or credit of Pakistan. If the President were satisfied that a situation had arisen whereby the financial stability or credit of Pakistan or any part

thereof was threatened, he could, after consultation with the provincial Governors or with the Governor of the province concerned, issue a proclamation of financial emergency. During the period of a financial emergency, the federal government could direct a province to observe such principles of financial propriety and any other direction required for restoring financial stability and credit, including a direction to reduce the salaries and allowances of government servants. Even the salaries of judges of the Supreme Court or the High Courts could be affected by such a regulation. A financial emergency could not extend for more than a total period of six months.

The salient features of the 1956 Constitution, along with their historical perspective, have been discussed above. Other features included the composition of the Election Commission of Pakistan for holding periodic elections to the National Assembly and the Provincial Assemblies;[101] determination of conditions of service of persons in the service of Pakistan;[102] formation of All-Pakistan Services;[103] and establishment and composition of Public Service Commissions.[104] Urdu and Bengali were declared as the state languages.[105]

The 1956 Constitution or any of its provision could be amended by an Act of Parliament provided it was passed by a majority of the total number of members of the National Assembly and by the votes of not less than two-thirds of the members of that National Assembly present and voting. However, no amendment of a constitutional provision affecting the interest or composition of provinces or any of the provinces could be made unless such an amendment had been approved by a resolution of each Provincial Assembly, or, if it applied to one province only, of the Provincial Assembly of that province.[106] The condition of assent by the President appeared to be necessary for a constitutional amendment. However, no provision was made regarding the eventuality if the President withheld his assent or wanted the National Assembly to reconsider the amendment. It appears that the President could kill an Amendment Bill of the constitution by withholding his assent. This meant that the President had a veto power over Constitutional amendments and there was no way for the National Assembly to override it.

Notes

1. Chaudhry, G.W., *Constitutional Development in Pakistan*, 1969, Longman Group Ltd., London, pp. 130-31.
2. Constitution of Islamic Republic of Pakistan 1956, Article 4.
3. Ibid., Article 7.
4. Choudhry, G.W., *Constitutional Development in Pakistan*, *supra*, note 1, p. 132.
5. Constitution of the Islamic Republic of Pakistan, Art. 192.
6. Ibid., Article 5(1).
7. Ibid., Article 5(2).
8. Ibid., Article 6.
9. Ibid., Article 22.
10. Ibid., Article 14.
11. Ibid., Article 16.
12. Ibid., Article 17.
13. Ibid., Article 15.
14. Ibid., Articles 8, 10, and 11.
15. Ibid., Article 18.
16. Ibid., Article 13.
17. Ibid., Article 20.
18. Brohi, A.K., *Fundamental Law of Pakistan*, 1958, Din Muhammad Press, Karachi, p. 309.
19. Ibid., Article 25.
20. Ibid., Article 28.
21. Ibid., Article 29.
22. Ibid., Article 28(b).
23. Ibid., Articles 28 & 29.
24. Ibid., Article 26.
25. Ibid., Article 24.
26. Ibid.
27. Ibid., Article 30.
28. Ibid., Article 27.
29. Ibid., Article 28(c).
30. Ibid., Article 31.
31. Ibid., Article 29(f).
32. In the matter of including Directive Principles of Policy, the Constitution of 1956 followed the example of Indian Constitution wherein also such Principles are provided under its Articles 36 to 51.
33. Brohi, A.K., *Fundamental Law in Pakistan*, *supra*, note 18, p. 313.
34. Chowdhry, G.W., *Constitutional Development in Pakistan*, *supra*, note 1, pp. 116.
35. Constitution of Islamic Republic of Pakistan, 1956; Article 39.
36. Ibid., Article 32.
37. Ibid., Article 33.
38. Ibid., Article 35.
39. Ibid., Article 34.
40. Ibid., Article 36.
41. Referring to the appointment of Mr Muhammad Ali Bogra by Governor-General Ghulam Muhammad.
42. Constitution of Islamic Republic of Pakistan, 1956; Article 42.
43. Ibid., Article 37.

44. Ibid., Article 37(5).
45. Ibid., Article 52.
46. Ibid., Article 57.
47. Ibid., Article 69.
48. Ibid., Articles 63, 65, and 66.
49. Constitution of Islamic Republic of Pakistan, 1956, Article 105.
50. Ibid., Article 106(1), Fifth Schedule - Federal List.
51. Ibid., Article 106(3), Fifth Schedule - Provincial List.
52. Ibid., Article 106(2), Fifth Schedule - Concurrent List.
53. Ibid., Article 109.
54. Ibid., Article 108.
55. Ibid., Article 129.
56. Ibid., Article 130.
57. Ibid., Article 107.
58. Ibid., Article 193.
59. Ibid., Article 43.
60. Ibid., Article 44.
61. Electorate Act, 1956 (Act XXXVI of 1956). See PLD 1956 Central Acts and Notifications 482.
62. Electorate (Amendment) Act, 1957 (Act XIX of 1957). See PLD 1957 Central Statutes 276.
63. Constitution of Islamic Republic Pakistan, 1956, Article 143.
64. Ibid., Articles 45, 46, and 47.
65. Ibid., Articles 50, 51, 52, and 53.
66. Ibid., Article 54
67. Ibid., Articles 55 & 56.
68. Ibid., Article 60.
69. Ibid., Articles 61, and 62.
70. Ibid., Article 59.
71. Ibid., Articles 60, and 61.
72. Ibid., Article 50.
73. Ibid., Article 125.
74. Ibid., Article 126.
75. Ibid., Article 127.
76. Ibid., Articles 157, 158, and 159.
77. Ibid., Article 163.
78. Ibid., Article 156.
79. Ibid., Article 170.
80. Ibid., Article 148.
81. Ibid., Article 149(1).
82. Ibid., Article 149(2).
83. The Constitution of India, Article 124.
84. Constitution of Islamic Republic of Pakistan, Article 151.
85. Ibid., Article 152.
86. Ibid., Articles 153 and 154.
87. Ibid., Article 165.
88. Ibid., Article 166.
89. Ibid., Article 167.
90. The Constitution of India, Article 217.
91. Constitution of the Islamic Republic of Pakistan, 1956, Article 169.
92. Ibid., Article 168.
93. Ibid., Article 172.
94. Ibid., Article 22.
95. The Constitution of India, Article 32.
96. Constitution of the Islamic Republic of Pakistan, 1956, Article 23. See also preamble.
97. Ibid., Article 198.
98. Debates of the Constituent Assembly of Pakistan, 17 February 1956.
99. Sections 45 and 93 of the Government of India Act, 1935.
100. Debates of the Constituent Assembly of Pakistan, 9 February 1956.
101. Constitution of Islamic Republic Pakistan, 1956, Articles 137 and 138.
102. Ibid., Articles 179, 180, 181, and 182.
103. Ibid., Article 183.
104. Ibid., Articles 184, 185, 186, 187, 188, 189, and 190.
105. Ibid., Article 214.
106. Ibid., Article 216.

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The Constitution of 1962

The report of the Constitution Commission was presented to Ayub on 6 May 1961.[1] It was examined by him and his Cabinet. A sub-committee of the Cabinet was appointed, with Manzoor Qadir, the Foreign Minister, as its chairman and Mohammad Shoaib, Zulfiqar Ali Bhutto, A.K. Khan, and Muhammad Ibrahim as its members. The sub-committee examined the report of the Constitution Commission and prepared a report of its own. It is alleged that the sub-committee was appointed and a report was obtained from it only in order to frustrate the report of the Constitution Commission. In this manner, Ayub could obtain alternate recommendations from two reports and had the option to choose those which were to his liking and inclination.[2]

The 1962 Constitution was very different from the recommendations made by the Constitution Commission. Ayub favoured a presidential form of government which allowed the President to choose his own Cabinet, and also gave him the right to nominate provincial Governors.[3] Ayub disagreed with the recommendations of the Constitution Commission regarding restricted adult franchise; bicameral legislatures; creation of the office of the Vice-President; and procedure for resolving disagreements between the President and the legislature over the budget and money bills.[4] Ayub also received support for his views from a number of individuals, prominent among them were Mohammad Zafarullah Khan, Ghulam Ahmad Parvez, and Pir Ali Muhammad Rashdi. Zafarullah attacked the Constitution Commission's recommendations that political parties should be allowed to function but agreed with the Constitution Commission that there should be no sudden jump to universal adult franchise. He completely agreed with Ayub's electoral arrangement, and supported a presidential form of government. Parvez called the establishment of political parties a *shirk*. Rashdi went to the extent of suggesting a monarchy for Pakistan, with Ayub as the first monarch. Ayub was obviously pleased with such support.[5]

The two reports and their findings were examined by the Cabinet. The constitutional proposals were finally discussed at the Governors' Conference held in Rawalpindi from 24 to 31 October 1961. The Governors' Conference was attended by the provincial governors, central ministers, and senior officers. It was decided that the President would announce the outline of the constitution soon after the governors' Conference, but subsequently it was announced in its entirety in March 1962. While the Governors' conference was under way, Ayub declared in his speech on the third anniversary of 'Revolution Day' that the Constitution would be capable of producing a strong and stable government, with an emphasis on a strong executive.

The Governors' conference had appointed a drafting committee with Manzoor Qadir and the Law Secretary, Abdul Hamid, as members. The drafting committee was authorized to enlist, if necessary, the services of experts on constitutional law.[6] It took about four months to finally draft the Constitution which was announced in a broadcast to the nation by Ayub on 1 March 1962. In his speech, Ayub referred to the pledge given on 8 October 1958, to restore democracy in Pakistan and claimed that the new Constitution represented the fulfilment of that pledge.

The 1962 Constitution contained 250 Articles divided into twelve parts and three schedules. It had a lengthy preamble, similar to the 1956 Constitution, based on the language of the Objectives Resolution. Significantly, the name initially given to Pakistan was 'The Republic of Pakistan',[7] which was a clear departure from the 1956 Constitution wherein Pakistan was named 'The Islamic Republic of Pakistan'.[9] This fact clearly demonstrates Ayub's secular mindset. Its most distinguished feature was the introduction of the presidential system of government.

Presidential Form of Government

The main emphasis of the 1962 Constitution of was a strong executive, expressed through the office of the President. The fundamentals of the system are enunciated below:

1. The President was elected independently of the legislature and had a direct mandate from the electors to perform the executive functions of government;
2. He was to hold office for a fixed term and could not be removed from office by an adverse vote in the legislature against any of his policies, but only by a special process of impeachment;
3. The legislature was elected independently and had a fixed term;
4. The legislature functioned independently of the executive and could not be dissolved by the executive or the President;
5. The legislature was the supreme law-making body of the country and no proposal could become law unless voted by this body;
6. The judiciary was responsible for the interpretation of laws and executive orders in the light of the principles embodied in the Constitution.

The Ayub government gave the following arguments in support of the presidential system: one, the presidential system had special advantages to offer to a nation which had recently emerged out of a colonial past and was embarking upon an ambitious programme of social reform and economic development political unity. Two, the presidential system, by giving executive authority to one individual with a mandate from the entire nation, could facilitate the growth of unity in the country.[9]

In introducing the 1962 Constitution, Ayub stated:

> We have adopted the presidential system as it is simpler to work, more akin to our genius and history, and less liable to lead to instability, a luxury that a developing country like ours cannot afford.[10]

Political leaders, however, continued to press for a parliamentary system. In a joint statement made by political leaders of different shades of opinion in East Pakistan including Husain Shaheed Suhrawardy, they reaffirmed their preference for the parliamentary system.

Powers of the President

Under the 1962 Constitution, the President was the repository of all powers. It was commonly said that the President under the Constitution was like the clock-tower of Faisalabad where all the bazaars converged.

The Constitution provided that there would be a President elected in accordance with the Constitution and the law.[11] The President was required be a Muslim, not less than 35 years of age, and qualified for election as a member of the National Assembly.[12] He was to be elected indirectly by an electoral college in accordance with the provisions outlined in the Constitution. The lower age limit for the President under the 1956 Constitution was 40 years, as against 35 years under the 1962 Constitution.

The system of election, that is, whether the President should be elected directly or indirectly, was discussed and examined in great detail by the Constitution Commission as well as by the people in general. The Constitution Commission favoured direct election on the basis of a restricted franchise. Ultimately, the system of indirect election through local government institutions was adopted. The President was to be elected by an electoral college formed by not less than 80,000 electors, equally distributed between the two provinces (East and West Pakistan). Each province was to be divided into not less than 40,000 territorial units to be known as electoral units.[13] Any citizen who was at least 21 years of age, of sound mind, and was a resident of or was deemed by law to be resident of an electoral unit would have the right to be enrolled. Those enrolled for an electoral unit would elect from amongst themselves a person of at least 25 years of age who would be an elector for that unit.[14] The electors thus elected in both the provinces formed the electoral college of Pakistan and this electoral college elected the President by a majority vote.[15]

The electoral college was to have other functions conferred upon them by law, particularly in relation to matters of local government. Thus, the electoral college was elected not simply for the election of the President and the legislatures but was also to act as the institution of local government. Critics of the system pointed out that, apart from the disadvantages of indirect election, it would wreck local government

institutions by involving them in party politics. The argument put forward by the government was that if the electoral college was divorced from affairs of local government it would become a political forum and there was no means, specially for an unsophisticated electorate, to judge the members of the electoral college on the basis of their concern for public interest.[16]

When the constitution was implemented in 1962, Ayub became the first President of Pakistan in accordance with the result of the referendum held in February 1960. His term of office was three years,[17] since he had already served two years of his term from 1960.

Selection of Candidates for Election to the Office of President

If the number of candidates for election to the office of President exceeded three, the Speaker of the National Assembly was to convene a joint session of the members of the national and provincial assemblies to select three of the candidates for election, the remaining candidates thus becoming ineligible. This screening was not applicable to a person who was holding the office of the President, that is, if the incumbent President was also a candidate, the number of candidates could be four.[19]

The term of the President was fixed for five years. A person was not eligible for re-election if he had held the office of the President for a continuous period of more than eight years. However, with the approval of a joint sitting of the members of the national and provincial assemblies, such a person could be eligible for election of the President for more than two terms. In fact, with the approval of the legislatures there seemed to be no limit to the number of terms for which a person might be eligible for re-election as President.[19]

Impeachment and Removal of the President

The President could be impeached by the National Assembly on a charge of violating the Constitution, or for gross misconduct, in accordance with the following procedure:

One-third of the total members of the National Assembly had to give written notice to the Speaker for the removal of the President. The notice had to set out particulars of the charge and it was to be transmitted to the President by the Speaker. The resolution for removal of the President was not to be moved in the National Assembly earlier than fourteen days or later than thirty days after the notice of the resolution. The President had the right to appear or be represented before the National Assembly when it discussed the motion for impeachment. The President was to be removed from office if the resolution for impeachment was passed by votes of not less than three-fourths of the total members of the Assembly.[20]

A significant feature of the impeachment procedure was that if the resolution for removal of the President failed to obtain one-half of the total number of members of the National Assembly, the movers of the resolution would cease to be members of the National Assembly. A similar procedure had been provided for the removal of the President on the grounds of his physical or mental incapacity.[21]

The President was not allowed to hold any office of profit in the service of Pakistan but was not prevented from holding or managing private property. Protection of the President from legal proceedings while he was in office was provided.[22] Similar protection was provided in the 1956 Constitution.

Independence of the Executive Authority

The executive authority of the Republic was vested in the President to be exercised by him in accordance with the provisions of the Constitution and the laws.[23] The President was responsible for regulating the allocation and transaction of the business of the central government, and for establishing divisions of the government, he also had to specify the manner in which the orders and instruments made in pursuance of the authority vested in him should be expressed and authenticated.[24] The Constitution had conferred on the President adequate powers not only for the carrying out, or administration of laws, enacted by the legislature but also for the conduct of foreign affairs and of war; he had military and legislative powers and the limited judicial functions of granting pardons and reprieves.[25] He was the ceremonial head of state, chief of the executive, and also retained substantial power in law-making.

The President had the power to make all key appointments. He appointed the Governors, central ministers,

Auditor-General, judges of the Supreme Court and the High Courts, the Election Commissioner, the Central Public Service Commission, the Council on Islamic Ideology, the National Finance Commission, the National Economic Council, the Attorney-General, among others.[26] The supreme command of the defence services was also vested in the President. He had the power (a) to raise and maintain the Defence Services of Pakistan, and (b) to grant commissions and to appoint chief commanders of those services and to determine their salaries and allowances.[27]

The list of powers granted to the President under the 1956 Constitution were also comprehensive but that constitution provided a parliamentary system in which the President was expected to exercise his extensive executive powers on the advice of the Prime Minister and the Cabinet who were responsible to the legislature. Under the 1962 Constitution, the President could exercise these powers independently. There was, no doubt, a council of ministers, but their advice was not binding on the President, nor were his ministers responsible to the legislature.

The President and his Cabinet

The President could appoint a council of ministers to assist him in the performance of his duties. The Constitution did not elaborate on the exact relationship between the President and his council of ministers. He was not bound by the advice of his ministers and the ministers held office at the pleasure of the President and could be removed from office any time, without the President having to assign any reason therefor.[28]

The President was empowered not only to dismiss a minister or a Governor, but also to disqualify him from public office for a period of five years on a charge of gross misconduct in relation to his duties. The Governors or ministers would have the option of agreeing to the disqualification or of having the matter referred to a tribunal for inquiry. In the case of a central minister, the tribunal was to consist of a Judge of the Supreme Court appointed by the President after consultation with the Chief Justice.[29] The Constitution provided that if a member of the National Assembly should be appointed as a member of the President's council of ministers, he would lose his seat in the National Assembly,[30] but this provision was amended by the President within the first three months of the enforcement of the constitution.[31] The amendment would have greatly altered the character of the council of ministers. The ministers as members of the legislature would have some followers in the legislature and as such would exercise an influence unusual in a Presidential Cabinet. The strong sentiment among the politicians in favour of some form of parliamentary system in Pakistan would also consolidate and strengthen their position. As the President had to depend on the support of the legislature, it was not conceivable that a minister with a powerful backing in the legislature would be treated as a mere adviser.

It is generally believed that the need for the Presidential Order, enabling the ministers to retain their seats in the National Assembly, arose because of Muhammad Ali Bogra, who had been offered the office of Foreign Minister. Bogra had also been elected to the National Assembly from East Pakistan and he was not willing to lose his seat in the National Assembly on becoming a minister. The Presidential Order was declared by the Supreme Court of Pakistan as *ultra vires* upholding the earlier decision of the Dhaka High Court in this matter.[32] It was held that the amendment of Article 104(1) of the constitution by the Presidential Order so as to omit the word 'minister' from clause (1) of Article 104, with a view to enable ministers appointed from amongst members of the Assembly to retain their seats in the National Assembly after appointment was inoperative, because the Presidential Order was itself void and *ultra vires* the Constitution. The Supreme Court interpreted Article 224(3) of the constitution, which enabled the President to pass Orders for removing any difficulty that might arise within three months after the commencing day, so as to mean that the principal duty laid upon the President and those working with him was to bring the constitution and all its provisions into operation as an integral whole, without variation whatsoever. The responsibility, under Article 224(3), at the highest level was given to vary provisions in the constitution, not for the purpose of altering the constitution itself, but in order that the constitution as a whole should be brought into force. The provision of the constitution debarring the members of the council of ministers from continuing as members of the National Assembly had a very important purpose, namely, to bring into operation a Presidential form of

government, in which the executive was to be completely separated from the legislature. The Court observed that instead of performing the major duty enjoined upon the President to bring these fundamental provisions into operation, they were altered in a fundamental way so as to change the form of government from the purely Presidential form to an anomalous parliamentary form.

Presidential Powers and the Legislature

The Presidential system is based on the theory of the separation of powers between the legislature and the executive. The executive usually not being an integral part of the legislature though retaining considerable power and influence in the legislative organ. Under the Parliamentary system, the executive and the legislature are united and the head of the state is an integral part of the Parliament. However, in the Presidential system adopted under the 1962 Constitution, the President was made an integral part of the central legislature which consisted of the President and one House, known as the National Assembly of Pakistan.[33]

The President could summon the legislature and prorogue it. The Speaker of the National Assembly could also summon the National Assembly at the request of not less than one-third of the total number of members of the National Assembly and when the Speaker had summoned the legislature, it was he who could prorogue it and not the President.[34]

The President was also empowered to dissolve the National Assembly at any time subject to the condition that in case of dissolution the President also had to quit office and there were to be fresh elections for both the President and the National Assembly.[35] This, no doubt, was a healthy check against arbitrary dissolutions of the National Assembly as the President himself would have to face the hazards of an election, and it was not likely that the President would exercise the power frequently or lightly. The idea of summoning, proroguing, and dissolving the legislature by the President seems again more in accord with a Parliamentary, rather than a Presidential form of government. As a further safeguard, the President was not given power to dissolve the National Assembly when it was to consider a resolution of impeachment against him under Article 13 or 14.[36]

In case of a difference of opinion between the President and the National Assembly, the President could call for a referendum on the matter to be conducted among the members of the electoral college. The matter to be referred to a referendum would be put in the form of a question capable of being answered either yes or no.[37]

The President had the right to address the National Assembly and to send messages to it. The members of the President's council of ministers and the Attorney-General had the right to speak and otherwise take part in the proceedings of the National Assembly or of any of its Committees, but were not entitled to vote.[38]

Certain categories of Bills could not be introduced or moved in the National Assembly without the previous consent of the President, for example, a Bill relating to preventive detention.[39] The President had the right to veto Bills passed by the National Assembly. The American President also has veto power though not an absolute one since the Congress can override his veto if the Bill is passed again by a two-third vote in both Houses. The 1962 Constitution gave a more comprehensive and effective veto power. When a Bill had been passed by the National Assembly, the President could do one of the following:

(a) give assent to the Bill;
(b) withhold assent from the Bill; or
(c) return the Bill to the National Assembly with a message requesting that the Bill or a particular provision of the Bill be reconsidered and amendments suggested in his message be considered.

If the President did not take any of these three steps, the Bill would be deemed to have received his assent after the expiry of thirty days.[40]

If the President withheld assent from a Bill, the National Assembly could reconsider it and if the Bill was passed again by the votes of not less than two-thirds of the total number of members of the National Assembly, the Bill would again be presented to the President for assent. If the President returned the Bill for reconsideration and if the Bill was again passed by the National Assembly, without amendment or with amendment as suggested by the President in his message, by a simple majority vote, or if the Bill was passed by the National Assembly with amendments

not suggested by the President by votes of two-thirds of the total members of the National Assembly, the Bill would be presented to the President for assent.

When the Bill was sent to the President for the second time for consideration, the President could do either of the following:

(a) give assent to the Bill;

(b) refer the Bill to a referendum under Article 24 in the form of a question whether the Bill should or should not receive assent.

If the Bill received majority votes of the total number of members of the electoral college, the President would be deemed to have assented to the Bill.[41]

Legislative Powers of the President

The President had the power to make and promulgate ordinances which had the same force of law as Acts of the central legislature. The President could promulgate an ordinance when the National Assembly stood dissolved or was in session and he was satisfied that circumstances existed which necessitated immediate legislation. Such an ordinance, however, had to be laid before the National Assembly as soon as practicable. If the ordinance was approved by the National Assembly, it was deemed to have become an Act of the central legislature. In case of disapproval by the National Assembly, the ordinance ceased to have any effect after the expiry of the prescribed period. The power of the President to make laws by ordinance was restricted to matters with respect to which the central legislature had competence.[42] The power to legislate by ordinance was provided under both the interim and the 1956 Constitutions.

Presidential Control over the Budget

Critics of the Presidential system in Pakistan stressed again and again the possibilities of deadlocks between the President and the legislature over the budget in the absence of democratic traditions and conventions similar to those which have grown in the United States of America. Nobody could deny or dismiss altogether the validity of this apprehension. The Constitution Commission examined this issue in great detail and suggested a procedure by which the ultimate control of the public purse by the legislature was retained by providing the President with a limited power of certification for a period not exceeding one year. But if the deadlock continued for more than one year, both the President and the legislature would have to face election. When the proposals of the Constitution Commission were reviewed by the Cabinet sub-committee, the recommendation of the Constitution Commission in respect of budgetary matters was not accepted. The Cabinet sub-committee was supposed to have evolved a new formula under which no new taxation or increase in the existing taxation or in existing expenditure could take place unless the National Assembly approved.[43] Ayub while introducing the 1962 Constitution stated that in order to reduce the chances of conflict between the National Assembly and the President, and to prevent paralysis of the administration, and to ensure continuance of ongoing schemes, the constitution provided that a previously passed budget would not be altered without the permission of the President and new taxation would not be levied without the consent of the National Assembly. This, according to Ayub, was based on the theory that the President was finally responsible to the country for administration and members of the National Assembly represented the feeling of the people who had to pay taxes.[44]

The 1962 Constitution drew a distinction between recurring expenditure and non-recurring expenditure. While the National Assembly had the power to discuss, debate, and pass opinion on non-recurring expenditure, it would have no power to reject this item of the budget. It was only with regard to new expenditure and new taxation that the legislature had been given unqualified power.

Custody of the central consolidated fund, including payment of money into, and withdrawal of money from, that fund, and all matters connected with public money and public accounts were to be regulated by an Act of the central legislature or, subject to any such Act, by rules made by the President.[45] The President was to present the budget, and the annual financial statement before the National Assembly. The financial statement was divided into two parts. Part one showing the expenditures charged upon the consolidated fund, the expenditure which the National Assembly could discuss, but not vote upon.[46]

As a safeguard for continuation of the economic development projects it was provided that the

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financial statement might specify in relation to a project the sum required not for the current year but also for the subsequent years of the project. Once the National Assembly had approved the project, the expenditures for the subsequent years could be placed before the National Assembly, but it would have no right to reject them.[47] This particular provision regarding the development projects was suggested by the Administrative Committee which examined proposals before the 1962 Constitution was finally drafted. The argument in favour of this restriction on the powers of the legislature was that these projects were vital to the economic development of the country and as such they should not be left to the whims of the legislature. Once the National Assembly had approved them, it should be bound to grant money for the subsequent years. It was pointed out that in the past development projects were often subjected to partisan or sectional considerations and consequently had been hampered.[48]

After consideration of the annual budget estimate by the National Assembly, the President had the responsibility of causing the schedule of authorized expenditures to be prepared showing (i) the sums to meet expenditures upon the central consolidated fund, (ii) sums granted or deemed to have been granted by the National Assembly under Article 41. No money was to be withdrawn from the central consolidated fund unless provided for in the schedule of authorized expenditures as authenticated by the President and laid before the National Assembly for information.[49]

Provisions for supplementary and excess budget estimates as well as provisions for unexpected expenditure had been provided in the 1962 Constitution.[50] If for any reason the schedule of authorized expenditure for a financial year could not be authenticated before the commencement of that year, the President could authorize withdrawal from the central consolidated fund of amounts to meet expenditures provided for in the annual budget estimates, but this was restricted to expenditures charged upon the central consolidated fund and recurring expenditures.[51]

No proposal relating to Money Bills, namely, no proposal for imposition of taxation, or for the appropriation of public revenues, or for borrowing of money and similar matters, could be made except with the recommendation of the President.[52] As regards taxation, Article 48 provided that no tax could be levied except by or under the authority of an Act of the central legislature.[53]

Emergency Powers of the President

If the President was satisfied that a grave emergency existed in which Pakistan or any part of Pakistan was threatened by war or external aggression or in which the security or economic life of Pakistan was threatened by internal disturbances beyond the power of a provincial government to control, the President could issue a proclamation of emergency. The proclamation of emergency had to be laid before the National Assembly 'as soon as it was practicable', there being no fixed time-limit. The President could revoke a proclamation when satisfied that the grounds on which it was issued had ceased to exist.[54]

During a time of emergency, the President was authorized to make and promulgate such ordinances as might appear to him to be necessary to meet the emergency. The President could exercise this extraordinary legislative power even when the National Assembly was in session.

With the revocation of the proclamation of emergency the ordinances made by the President ceased to have effect unless such ordinances had been approved by the National Assembly. One significant aspect of the emergency powers of the President was that the President's power to make laws by ordinance was again restricted within the legislative competence of the central legislature.

Although the constitution did not prescribe any time-limit, yet there was a safeguard under Article 109 which laid down that there should be at least two sessions of the National Assembly in a year and not more than 180 days should intervene between the last sitting of the National Assembly in one session and its first sitting in the next session. Since there was no provision that during an emergency the President would have any power to suspend any clause of the constitution, the National Assembly had to be summoned within 180 days of its last session, and this indirectly gave a time-limit during which President could rule without the aid of the National Assembly.

A Centralized Federal System

After independence, a highly centralized federal system was established in Pakistan under the interim constitution. There were a number of factors responsible for the dominance of the centre over the provinces. The Government of India Act, 1935 as well as the 1956 Constitution provided for the centre's dominance over the provinces and most importantly political and financial controls of the centre over the provinces. If the centre had exercised this power in a broad national perspective, the dominance of the centre might have been an asset. Unfortunately, however, in the formative stages of Pakistan's nationalism, those in power at the centre during the political turmoil and instability in Pakistan of the 1950s could not inspire confidence among the people of East Pakistan and the result was a great sense of frustration and bitterness in East Pakistan against the centre. This is the reason why when the 1956 Constitution was framed, there were repeated demands for a weak centre in the second Constituent Assembly.

The political parties with predominant following in East Pakistan did not accept the 1956 Constitution as containing sufficient provincial autonomy. The fact was that even under the 1962 Constitution, the central government continued to dominate, and the provincial and regional feelings continued to grow, particularly over the economic development of the country.

The distribution of legislative powers under the Government of India Act, 1935 was unique in its character. It had three lists of powers. Following the model of the Government of India Act, all the constitutional drafts made in Pakistan and the 1956 Constitution also divided the lists of subjects into central, concurrent, and provincial. Similarly, in India, the same method of distribution on the basis of three lists had been followed. The 1962 Constitution, however, provided for a much simpler method of distribution of powers, under which there was only one list of subjects of national importance, all other subjects were left to the provinces.[55] The central government, however, was given overriding powers in matters concerning the security of the country, coordination between the provinces, and economic development. It was provided that the central legislature would have exclusive power to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan with respect to any matter enumerated in the third schedule of the constitution.[56] The subjects given to the centre included defence, external affairs, inter-provincial trade and commerce, national economic planning and national economic coordination, currency, foreign exchange, central banking, insurance, nuclear energy, mineral oil and natural gas, industry owned wholly or partly by the central government or by a corporation set up by the centre, preventive detention for reasons connected with defence, external affairs, and the security of Pakistan. There were in all forty-nine items in the central list as against thirty in the 1956 Constitution, sixty-one under the Government of India Act, 1935, and sixty-six under the draft constitution of the first Constituent Assembly.

A Unicameral Central Legislature

The 1962 Constitution, like the 1956 Constitution, provided for a unicameral system though most of the federal systems in the world have a bicameral system. The central legislature consisted of the President and one House known as the National Assembly of Pakistan.[57] It had 156 members on the basis of parity of representation between East and West Pakistan. There were 150 elected constituencies, half elected by constituencies in East and the other half by constituencies in West Pakistan. Six seats were reserved for women—three from East Pakistan, and three from West Pakistan.[58] Whereas, under the 1956 Constitution, the seats reserved for women were for a period of ten years, there was no such time-limit under the 1962 Constitution. Women could also contest general seats in the National Assembly. Thus, female citizens in Pakistan enjoyed a double franchise. The term of the National Assembly was fixed for five years unless it was sooner dissolved by the President.[59]

The members of the National Assembly were to be elected under the same system as was provided for election of the President, that is, indirectly by the members of the electoral college. A candidate for election to the National Assembly had to be at least 25 years of age and his name had to appear on the electoral

roll for any electoral unit. The constitution specified the disqualification which could prevent a person from being elected as a member of the National Assembly.[60] A person could not, at the same time, be a candidate for election to more than one seat in any Assembly or to a seat in more than one Assembly. If a person who was a member of one Assembly was elected to another Assembly, then he would lose his seat in the previous Assembly, of which he was a member.[61]

The President could summon and prorogue the National Assembly. The Speaker could summon the National Assembly on the requisition of one-third of the members and when the Speaker summoned the National Assembly, only he could prorogue it. If the offices of the President, Speaker, and Deputy Speaker, were vacant at any time, the Chief Justice of the Supreme Court could summon the National Assembly.[62]

No member of the National Assembly was liable to any proceedings in any court in respect of anything said or any vote given by him in the National Assembly or any of its committees. The privileges of the National Assembly, its committees, the members thereof and a person entitled to speak therein could be determined by law.[63] It was provided that if a member of the National Assembly was elected as President or appointed as a Governor or minister or to any other office of profit in the services of Pakistan, he would cease to be a member of the Assembly.[64]

There were two interesting and novel provisions under the 1962 Constitution with regard to 'instruction in law-making' and 'conduct of members'. The Speaker of an Assembly was expected to make such arrangements as were necessary to ensure that the members of the Assembly understood the functions of the Assembly as an organ of the state and of their responsibilities as its members.[65] Similarly, it was provided that when the Speaker of an Assembly was satisfied that a member of the Assembly had committed a breach of the rules framed by the Assembly relating to the conduct of the members in such a way as to have been guilty of gross misconduct, he would refer the matter for inquiry to the Supreme Court (in case of the National Assembly) or to the High Court (in the case of a Provincial Assembly) and if the court was satisfied that the member had been guilty of gross misconduct, he ceased to be a member of the Assembly.[66]

Governors and Provincial Legislatures

The Provincial Legislatures and executives were smaller replicas of the national legislatures and executives, subject to overriding control and supervision of the President over the provincial executives. The provincial executives under the constitution were directly subordinate to the President inasmuch as the provincial government, the head of the provincial executive was appointed by and held office during the pleasure of the President. The Governor was not merely a figurehead but the holder of the real executive authority in the province. The provincial Cabinet was responsible to the Governor who, however, could not appoint or remove a Provincial Minister without the concurrence of the President.[67] It was further provided that Governor of a province should, in the performance of his functions, be subject to the direction of the President.[68]

Relations between the provincial Cabinet and the Governor and the provincial executive and legislature were more or less the same as in the central government. The procedure for the dissolution of a Provincial Assembly was, however, different. In cases of conflict between the provincial government and the Provincial Assembly, the conflict could be referred to the National Assembly and if the National Assembly decided in favour of the Governor and if the President concurred, the Governor could dissolve the Provincial Assembly.[69]

The financial procedure in the provincial legislature resembled that of the central legislature and the powers of the provincial legislature in respect of money matters were similarly curtailed.

The provincial governments were structured in a manner similar to the central government. The Governor, like the President, was the chief executive of a Province and selected his council of ministers.[70] He could appoint Parliamentary Secretaries and the Advocate-General.[71] However, the Governor, being an appointee of the President, had to work under the direction and supervision of the President. Although several ideas under the 1962 Constitution were borrowed from the Constitution of the United States of America, yet there was major digression in the

matter of appointment of Governors. The Governors of the states in the United States are elected like the President, for a fixed term and enjoy autonomy within their own sphere.

The provisions regarding Provincial Consolidated Funds and Public Moneys of provincial governments were similar to the provisions regarding Central Consolidated Fund and Public Moneys of the central government respectively. Financial procedure of the provinces was similar to the financial procedure of the centre.[72]

Relations between the Centre and the Provinces

A provincial legislature was given more power to make laws for the province or any part of the province with respect to any matter other than those enumerated in the central list.[73] The central legislature, however, could legislate on any matter connected with a provincial subject on the grounds of national interest in relation to the security of Pakistan, including the economic and financial stability of Pakistan, planning, co-ordination, or the achievement of uniformity in respect of any matters in different parts of Pakistan.[74] The central legislature could also legislate on a provincial subject when the provincial legislature authorized the central parliament to make any laws in a matter not enumerated in the third schedule. If a resolution to that effect was passed by the provincial legislature, the central legislature had the power to make laws in provincial matters but any law made in pursuance of this power could be amended or repealed by an Act of the provincial legislature.[75]

In case of conflict between the central and provincial laws the latter had to give way to the former to the extent of such repugnancy.[76] The 1962 Constitution, like the 1956 Constitution, had provided predominance of the central legislative powers over provincial powers. Such was the provision also under the Government of India Act, 1935 and the same is the case with the Indian Constitution.

Residuary power had been vested in the provincial legislatures which had an undefined residuum of power to make laws with respect to any matter not enumerated in the third schedule. The question whether residuary powers should be vested in the federal or provincial authorities produced lengthy discussion and controversy in the Constituent Assemblies of Pakistan. Those who wanted to make the centre strong naturally wanted this power to remain with the central authority, arguing that it should have as free a hand as possible to meet the changing needs and requirements of society. In the Indian Constitution, the residuary subjects are with the centre. The supporters of provincial autonomy in Pakistan were equally firm in demanding residuary powers for the provinces and ultimately the 1956 Constitution vested the residuary power in the provinces; this practice was retained under the 1962 Constitution.

Both the Government of India Act, 1935 and the 1956 Constitution contained detailed provisions relating to the administrative relation between the centre and the provinces. The 1962 Constitution, however, contained hardly any provision in this respect. It was provided that executive authority of the central government extended in all matters with respect to which the central legislature had exclusive power to make laws under clause (1) of Article 131.[77] Where a law was made by the central legislature on a provincial subject and if the law provided that such law was to be administered by the central government, the central executive authority might be extended to the execution of such law. The extent of the executive authority of the province was defined to include all matters over which the legislature of the province had power to make laws.[78] Other than these two Articles there is no further provision as to the administrative relation between the centre and the provinces. The President could delegate with the consent of a provincial government functions in relation to any matter in which the executive authority of the central government extended.[79]

Distribution of Financial Resources between the Centre and the Provinces

Under the 1962 Constitution, the allocation of the proceeds of the taxes and duties collected and administered by the central government to the provinces were as follows:

i. 50 per cent of the income tax including corporation tax, as compared to 50 per cent of income tax excluding corporation tax and taxes collected in Karachi under the previous arrangement.

ii. 60 per cent of the sales tax as against 50 per cent in the previous arrangement.

iii. 60 per cent of the excise duties on tobacco, tea, and betel nuts were allocated to the provinces as against 50 per cent under the previous arrangement.

iv. 100 per cent of the export duties on jute and cotton would go to the provinces as compared to 62.5 per cent of the export duties on jute allotted to East Pakistan under the previous arrangement. Under the new arrangement both East and West Pakistan would receive 100 per cent share from the joint pool of export duties on jute and cotton on the basis of population.

The basis of allocation had also been changed. According to the previous arrangement, income tax and excise duties were distributed broadly in the ratio of 55 per cent to West Pakistan and 45 per cent to East Pakistan and sales tax was distributed on the basis of collection. The new basis of allocation as regards sales tax was 70 per cent to be allocated on the basis of population and 30 per cent on the basis of incidence, that is, the point of collection, and as regards the remaining taxes, they were distributed on the basis of population.[80]

As regards the distribution of the power to tax between the centre and the provinces, the 1962 Constitution did not alter the scheme of distribution as given under the interim and the 1956 Constitution. The President, however, was to constitute a National Finance Commission consisting of the central Finance Minister and provincial Finance Ministers and such other persons as the President might appoint after consultation with the Governors of the provinces.[81] The Commission was to make recommendations to the President as to the distribution between the central and the provincial governments of the proceeds of the central taxes.

The National Economic Council was to be appointed by the President by nominating its members.[82] The functions of the National Economic Council were to review the overall economic development of Pakistan. It was stressed that in formulating the plans, the National Economic Council was to ensure that disparities between the provinces, and between different areas within a province, in relation to income per capita should be removed and the resources of Pakistan, including resources in foreign exchange, be used and allocated in such a manner that disparities between the provinces should be removed in the shortest possible time. It was further stressed that the duty of each government should be to make the utmost endeavour to achieve this object of removing economic disparity between the provinces.

An Independent Judiciary

When Ayub decided to restore constitutional government and the 1962 Constitution was in process of being drafted, there was an almost universal demand for restoration of the full jurisdiction and powers of the courts and the incorporation of a Bill of Rights under the new constitution. The Shahabuddin Commission stressed and emphasized the fact that the independence of the judiciary should be maintained as had been the practice for a long time and any inroad into it, which had been found necessary during the martial law period, should not be treated as a precedent. The Shahabuddin Commission recommended all the safeguards to ensure the independence of the judiciary as recognized under the 1956 Constitution. The recommendations of the Shahabuddin Commission relating to the powers of the judiciary and fundamental rights were, however, modified by the cabinet sub-committee when giving final touches to the 1962 Constitution.

The security of tenure of office and other conditions which give trust and confidence to the judiciary were guaranteed in the 1962 Constitution. The method of removal of judges of the superior courts was, however, made different from that of the 1956 Constitution. Under that constitution, judges of the Supreme Court would hold office till the age of 65 years unless, of course, they were removed from office on the ground of misbehaviour or infirmity of mind or body by an Order of the President, following an address by the National Assembly praying for such a removal. Under the 1962 Constitution, the President was to appoint a

council to be known as the Supreme Judicial Council, consisting of the Chief Justice and the two next senior judges of the Supreme Court, and the Chief Justice of each High Court.[83] If, on information received from the Supreme Judicial Council, or from other sources, the President was of the opinion that a judge of the Supreme Court or of a High Court might be incapable of performing the duties of his office by reason of physical or mental incapacity or might have been guilty of gross misconduct, he was to direct the Supreme Judicial Council to enquire further into the matter and remove the judge from office if need be. The method of removal of the judges under the 1962 Constitution was on the same lines as that recommended by the first Constituent Assembly in its draft constitution of 1954. The idea behind the new method was that legislatures in the country were not yet mature and competent enough to decide the issues relating to the removal of judges. It had indeed been suggested in some quarters that for some time to come, legislatures might not have the requisite integrity and competence to sit in judgment over a superior court judge.

It would be incorrect to say that the judiciary had no part in interpreting the constitution. The original power under the 1962 Constitution of the Supreme Court included jurisdiction in any dispute between the central government and a provincial government, or between two provincial governments. Similarly, the appellate jurisdiction of the Supreme Court provided that an appeal from a judgment, decree, order or a sentence, would lie as of right if the High Court should certify that the case involves a substantial question of law as to the interpretation of the constitution.[84] Thus, Articles 57 and 58 appeared to be in conflict with Article 133 which laid down that responsibility for deciding whether a legislature had power under the constitution to make a law was that of the legislature itself, and that the validity of a law would not be called in question on the ground that the legislature by which it was made had no power to make the law. How could the judiciary settle disputes between the central and a provincial government, or interpret the constitution, if it had no power to decide the constitutionality of enactments passed by any legislature?

The first amendment of the 1962 Constitution, made in 1963, however, greatly changed this position.[85] The judiciary was vested with full power to pass judgment over the *vires* of the legislature. Judicial control over the executive from the inception of the 1962 Constitution had been fully maintained. As to the judicial review of executive action, the 1962 Constitution had faithfully preserved the jurisdiction of the courts, on the lines of the common law of England. The substance of the former writ jurisdiction which were greatly valued and cherished in Pakistan had been preserved under the Constitution of 1962 though the latin names of *habeas corpus*, *mandamus*, *certiorari*, and *quo-warranto* had not been mentioned.[86]

Other provisions relating to the Judiciary regarding appointment of the Chief Justice and judges of the Supreme Court; the Chief justices and judges of the High Courts; their retirement age; appointment of acting Chief Justice, acting judges and ad hoc judges of the Supreme Court; appointment of acting Chief Justice and Additional judges of the High Courts; transfer of judges; and their remuneration were identical or similar to the provisions of the 1956 Constitution.[87]

Elections through the Electoral College

As discussed above, the Constitution of 1962 introduced indirect elections not only for the President but also for the National as well as Provincial Assemblies. The Basic Democrats, that were elected, constituted the electoral college for the election of the President and the Assemblies. The Basic Democrat, who was elected for the local self government, was called elector and the electors in both provinces constituted the electoral college for five years. On the expiry of five years, the electoral college stood dissolved. However, the functions performed by these electors in relation to matters of local government would not be disturbed by the dissolution of the electoral college.[88] An electoral roll had to be maintained for each electoral unit.[89] The qualification for being elected as an elector was that he had not to be less than 25 years of age.[90]

The system of indirect election to the Assemblies, in particular, was quite unusual for a democratic constitution and created a strong possibility of political corruption and purchase and sale of votes.

After all a member of the National Assembly was elected by about 500 to 550 electors on the average and a member of a Provincial Assembly was elected by half as many electors. Hence, the inherent possibility of purchase of votes in such a set-up. Furthermore, the members of the legislatures are representatives of the people at large in a democratic system and ought to be elected by the people through universal suffrage. In this system, as given by the new constitution, the representatives of the people were not elected by the people themselves.

Indirect election to the office of the President is not unusual in other countries. The constitutions of India, Germany, Italy and quite a few other countries provide for indirect elections for the Presidency based on an electoral college consisting of the central and provincial legislatures. But it must be borne in mind that in these countries, there is parliamentary form of government and the President is only a figure head. The real power rests with the Prime Minister and the cabinet. In the presidential system of government, the President has dual capacity of the head of state as well as the head of government. Thus, most of the constitutions providing for the presidential system require the President to be elected by the people of the country directly on the basis of adult franchise.

Islamic Character of the Constitution

The preamble, so far as the Islamic character of the constitution was concerned, was almost identical with that of the 1956 Constitution. The preamble followed the Objectives Resolution in laying emphasis on the principles of democracy, freedom, equality, tolerance, and social justice, with the qualification that these principles should be observed as enunciated by Islam.

Islamic provisions were continued, as in the 1956 Constitution, in the Directive Principles where according to the constitution, 'the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the fundamental principles and basic concepts of Islam and should be provided with the facilities whereby they may be able to understand the meaning of life according to those principles and concepts.[91]

Further, it was laid down in the Principles of Policy that (i) teaching of the Quran and Islamiat to the Muslims of Pakistan should be made compulsory—the word Islamiat was not included in the relevant Article of the former constitution; (ii) unity and observances of Islamic moral standards would be promoted among the Muslims of Pakistan; (iii) proper organization of *zakat*, *waqfs*, and *mosques* should be ensured.[92] It was provided that the bonds of unity among Muslim countries should be preserved and strengthened.[93]

The head of the state, the President, was to be, as in the 1956 Constitution, a Muslim.[94] Under the 1956 Constitution also the Presidency was reserved for the Muslims and the Constitution Commission favoured the retention of this clause.

Article 1 of the 1956 Constitution designated Pakistan an 'Islamic Republic'. It was laid down that 'Pakistan shall be a federal republic to be known as Islamic Republic of Pakistan'. The relevant clause of the new constitution laid down simply that the 'state of Pakistan shall be a republic under the name, the "Republic of Pakistan".'[95] The word 'Islamic' was dropped. When the National Assembly met in 1962, there was a demand that the word 'Islamic' should be reintroduced. There was justification for this demand. If Islamic provisions were to be maintained, there was no reason why the republic should not be designated an Islamic Republic. The first amendment, therefore, rectified the anomalous position.

The most important Islamic provision in the 1956 Constitution was Article 198 which laid down that no law should be enacted which would be repugnant to the injunctions of Islam as laid down in the Holy Quran and *sunnah* and that existing laws should be brought into conformity with such injunctions. This Article 198 provided that the President would appoint a commission to make recommendations as to the measures for bringing existing laws into conformity with the injunctions of Islam and as to the stages by which measures should be brought into effect and to compile in a suitable form for the guidance of National and Provincial Assemblies such injunctions of Islam as could be given legislative effect. But it was the legislature which was given the final authority to accept or reject the recommendations of the Islamic Commission. So, ultimately it was the National Assembly which would decide whether a particular

law would be repugnant to the injunctions of Islam and would also decide how far and which or what existing laws should be brought into conformity with the Islamic injunctions.

The 1962 Constitution substituted Article 198 of the 1956 Constitution with a simple clause on the 'principles of law making' to the effect that 'no law should be repugnant to Islam'.[96] The responsibility of deciding whether a proposed law disregarded or violated Islam or was otherwise in accordance with the principles of law making was that of the legislature concerned. This provision was not enforceable in the law courts and it was one of the principles which the law makers had to bear in mind.

The 1962 Constitution provided for an Advisory Council of Islamic Ideology to be appointed by the President. It was to consist of not less than five or not more than twelve members who would be appointed on such terms and conditions as the President might determine. In selecting the members of the council, the President was to have regard to the persons' understanding and appreciation of Islam and of the economic, political, legal, and administrative problems of Pakistan. The members were to hold office for a period of three years. The President might remove a member from office if a resolution recommending his removal was passed by a majority of the total members of the council.[97]

The function of the council was to make recommendations to the governments, both central and provincial, as to the steps and means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam. A more important function of the council, however, was to advise the National Assembly, a Provincial Assembly, the President or a Governor, on any question referred to the council for advice as to whether a proposed law disregarded or violated or was otherwise not in accordance with the principles of law-making enumerated under Article 6 of the constitution.[98]

The advice of the council was not binding on the legislature or the President or the Governor. The responsibility of deciding whether a proposed law did or did not disregard any of the principles of law-making was that of the legislature concerned. The council was given only an advisory power and the legislature itself was the final arbitrator.

The Islamic Research Institute which was provided for under Article 197 of the late constitution, was retained under the new constitution. It was provided that there would be an institution to be known as the Islamic Research Institute which was to be established by the President.[99]

Conclusion

The principal objections to the 1962 Constitution were the Presidential system, the indirect franchise, and the non-justiciability of fundamental rights. Ayub was not willing to consider the preference of the East Pakistanis for parliamentary form of government. He felt very strongly about the state structure he had created under the 1962 Constitution and removal of any vital element from the constitution, in his opinion, would cause the whole edifice to collapse. He was convinced that only a Presidential form of government could ensure Pakistan's unity and hence, there could be no tempering with this feature of the constitution. He felt that all the powers of state should be concentrated in the hands of the President who alone could guarantee unity, integrity, and solidarity of the state of Pakistan.

Notes

1. President Ayub's Broadcast of 1 March 1962, *Speeches and Statements of F.M. Mohammad Ayub Khan*, Vol. IV, p. 170.
2. Ayub was well aware of the views of Manzoor Qadir and Bhutto who had already written articles in support of Ayub's ideas on future constitution. A document drafted by Manzoor Qadir on 26 May 1960 and the other titled 'Thoughts on constitution' by Bhutto on 10 October 1959 had already voiced what Ayub desired in the future Constitution by way of limited and indirect franchise, centralized structure and very powerful presidency. Altaf Gauhar in his biography of Ayub, at page 176, has referred to his Personal Papers in regard to these documents.
3. Ayub Khan, Mohammad, *Friends, Not Masters*, 1967, pp. 205-206, Oxford University Press, London.
4. Ibid., pp. 212-16.
5. Gauhar, Altaf, *Ayub Khan—Pakistan's First Military Ruler*, 1994, Sang-e-Meel Publications, pp. 179-81 and 184-6.

6. Choudhry, G.W., *Constitutional Development in Pakistan*, 1969, p. 178, Longman Group Ltd., London.
7. The Constitution of the Republic of Pakistan, Part I Article 1. PLD 1962 Central Statutes 143.
8. The Constitution of the Islamic Republic of Pakistan, Part I, Article 1. PLD 1956 Central Acts and Notifications 54.
9. A Pledge Redeemed—a pamphlet circulated by the Government of Pakistan in March 1962, explaining and justifying the Constitution. Quoted by G.W. Choudhry, *Constitutional Development in Pakistan*, *supra*, note 7, p. 190.
10. *Speeches and Statements of F.M. Mohammad Ayub Khan*, Volume IV, p. 170.
11. The Constitution of 1962, Article 9.
12. Ibid., Article 10.
13. Ibid., Article 155.
14. Ibid., Articles 156, 157, and 158.
15. Ibid., Article 165.
16. A Pledge Redeemed, *supra*, note 9.
17. The Constitution of 1962, Article 226.
18. Ibid., Article 167.
19. Ibid., Articles 165 and 166.
20. Ibid., Article 13.
21. Ibid., Article 14.
22. Ibid., Article 116.
23. Ibid., Article 31.
24. Ibid., Article 32.
25. Ibid., Article 18.
26. Ibid., Articles 33, 36, 50, 66, 92, 144, 145, 147, 182, 191, and 201.
27. Ibid., Article 17.
28. Ibid., Article 118.
29. Ibid., Article 121.
30. Ibid., Articles 103 and 104.
31. Removal of Difficulties (Appointment of Ministers) Order, 1962. President's Order No. 34 of 1962. PLD 1962 Central Statutes 647.
32. Fazlul Quadir Chowdhry v Mohammad Abdul Haque, PLD 1963 S.C. 486, upholding the Judgment of the Dhaka High Court in Mohammad Abdul Haque v Fazlul Quadir Chowdhry, etc., PLD 1963 Dhaka 669.
33. The Constitution of 1962, Article 19.
34. Ibid., Article 22.
35. Ibid., Article 23.
36. Ibid.
37. Ibid., Article 24.
38. Ibid., Article 25.
39. Ibid., Article 26.
40. Ibid., Article 27.
41. Ibid., Article 29.
42. Ibid., Article 29.
43. Choudhury, G.W., *Constitutional Development in Pakistan*, *supra*, note 6, p. 203.
44. *Speeches and Statements of F.M. Mohammad Ayub Khan*, Vol. IV, p. 173.
45. The Constitution of Pakistan, 1962, Article 38.
46. Ibid., Article 41.
47. Ibid., Article 42.
38. Choudhry, G.W., *Constitutional Development in Pakistan*, *supra*, note 6, pp. 204-205.
49. The Constitution of 1962, Article 43.
50. Ibid., Articles 44 and 45.
51. Ibid., Article 46.
52. Ibid., Article 47.
53. Ibid., Article 48.
54. Ibid., Article 30.
55. Ibid., Third Schedule to the Constitution.
56. Ibid., Article 131.
57. Ibid., Article 19.
58. Ibid., Article 20.
59. Ibid., Article 21.
60. Ibid., Article 103.
61. Ibid., Article 105.
62. Ibid., Article 22.
63. Ibid., Article 111.
64. Ibid., Article 104.
65. Ibid., Article 112.
66. Ibid., Article 113.
67. Ibid., Article 82.
68. Ibid., Article 66.
69. Ibid., Article 74.
70. Ibid., Article 82.
71. Ibid., Articles 84 and 85.
72. Ibid., Articles 86, 87, 88, and 89.
73. Ibid., Article 132.
74. Ibid., Article 131(2).
75. Ibid., Article 131(3).
76. Ibid., Article 134.
77. Ibid., Article 135.
78. Ibid., Article 136.
79. Ibid., Article 143.
80. Choudhry, G.W., Constitutional Development in Pakistan, Supra, note 6, pp. 227-8.
81. The Constitution of 1962, Article 144.
82. Ibid., Article 145.
83. Ibid., Article 128.
84. Ibid., Article 58.
85. Constitution (First Amendment) Act, 1963. Act I of 1964. PLD 1964 Central Statutes 33.
86. The Constitution of 1962, Article 98.
87. Ibid., Articles 49, 50, 52, 53, 54, 55, 92, 94, 95, 96, 99, and 124.
88. Ibid., Article 158.
89. Ibid., Article 156.
90. Ibid., Article 158(1).
91. Ibid., Principles of Policy, Para 1.
92. Ibid.
93. Ibid., Para 21.
94. Ibid., Article 10.
95. Ibid., Article 1.
96. Principles of Law Making, Para 1.
97. Ibid., Articles 199, 200, 201, 202, and 203.
98. Ibid., Article 204.
99. Ibid., Article 207.

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The Constitution of 1973

It has been discussed earlier that the 1973 Constitution was adopted with the consensus of all the political parties in the National Assembly. Undoubtedly, no constitutional document can be described as perfect. It is always a product of compromises amongst various political parties and forces present within the constitution-making body. Nevertheless, the 1973 Constitution embodied the best possible arrangement to accommodate the various political parties, political issues and demands, economic interests, parties' manifestos, and so on. Pakistan People's Party (PPP), the majority party in the National Assembly, had promised in the general elections of 1970 to introduce an egalitarian set-up in Pakistan. The National Awami Party (NAP) was the main opposition party in the National Assembly, with a strong presence in the assemblies of the NWFP and Balochistan. It championed the cause of provincial autonomy. NAP also had the support of another party in these provinces, Jamiat-i-Ulema-i-Islam (JUI). Hence a formula had to be devised which could strike a balance between the conflicting demands of provincial autonomy and a strong centre.

It was also necessary to reach a compromise between the Islamic and the socialist concept. The PPP had landed itself in difficulty by raising three apparently irreconcilable slogans: Islam is our faith, democracy is our politics, and socialism is our economy. The Islamic and socialist ethos were satisfied through Articles 2 and 3 of the Constitution respectively. Article 2 declared Islam as the state religion of Pakistan and Article 3 provided for the elimination of all forms of exploitation and equitable distribution of economic resources in keeping with the ability and work put in by individuals.

Another sticky point was the distribution of powers between the president and the Prime Minister, since a national consensus had been arrived at (at least it was so perceived) on the rejection of the presidential form of government (as introduced in the 1962 Constitution) and introduce a federal parliamentary form of government (as was done in the 1956 Constitution). There can be no cavil with the proposition that in a parliamentary set-up, real powers rest with the cabinet headed by the prime minister, and the president is only a figurehead. Nevertheless, the president does become, in certain parliamentary democracies, a repository of power in difficult emergency conditions and thus plays a vital role by exercising the real powers of the state. This issue was resolved in a lopsided manner, reducing the president to a rubber-stamp and making the prime minister all powerful. The orders of the President had to be counter-signed by the prime minister to be valid. An unusual expression, particularly in constitutional jargon, was used to describe the prime minister as the chief executive of the federation.[1] Hence, it was made amply clear that the executive powers of the federation would vest in the prime minister.

But for a few Articles pertaining to constitutional matters, the framers of the 1973 Constitution followed the pattern of the earlier Constitutions of 1956 and 1962. Even the language used in the earlier Constitutions was retained in a majority of the Articles.

This Constitution, like the earlier ones, was lengthy and detailed. It contained 280 Articles divided into twelve parts and six schedules. Part I dealt with the Republic and its territories and other introductory matters; Part II with fundamental rights and directive principles of policy; Part III with the federation; Part IV with the provinces; Part V with relations between the federation and the provinces; Part VI with property, contracts, and suits; Part VII with judicature; Part VIII with elections; Part IX with the Islamic provisions; Part X with emergency provisions; Part XI with amendment of constitution; and Part XII with miscellaneous, temporary, and transitional provisions. Of the six schedules, the first one dealt with the laws constitutionally protected; the second

with election of the President; the third with oaths and affirmations; the fourth with legislative lists; the fifth with powers of the Supreme Court and the remuneration of judges; and the sixth with the laws altered, repealed, or amended without the previous sanction of the President.

Fundamental Rights

Like the previous Constitutions of 1956 and 1962, the new Constitution provided for the fundamental rights of the citizens. It laid great emphasis on these rights by asserting that if any existing law or custom or usage having the force of law was inconsistent with any provision of fundamental rights, it would be void to the extent of inconsistency and that no authority in Pakistan, whether the federal government, the National Assembly, a provincial government, or legislature, or any local authority, was competent to make any law, regulation, or any order which might be repugnant to any provisions of the fundamental rights. If any such law, regulation, or order was made, it would, to the extent of repugnancy be void.[2] The judiciary was given the power to enforce fundamental rights and the courts were to decide if a law was repugnant to any of their provisions.

The familiar democratic rights and freedoms such as freedom of speech and expression, of assembly and association, of movement and profession were all provided for in the constitution, with the usual qualifications. Regarding civil rights, familiar rights such as rights to life, liberty, and property were granted, again with the usual qualifications and safeguards. An important provision from the standpoint of civic liberty laid down that if a person were arrested he/she could not be detained in custody without being informed, 'as soon as may be' of the grounds for such arrest, and he or she could not be denied the right of legal consultation and defence. Further, a person arrested or detained was given the right to be produced before the nearest magistrate within a period of twenty-four hours and no further detention was allowed except on an order of the magistrate. Serious restrictions were laid down regarding laws relating to preventive detention. No law could authorize the detention of a person beyond one month unless the appropriate Review Board headed by a Supreme Court judge in case of a federal law, and by a High Court judge in case of a provincial law, after affording opportunity to the *detenu*, came to the conclusion before the expiry of such period that there was sufficient cause for such detention. It was also provided that the detaining authority should communicate to the *detenu*, within one week, the grounds of his detention so that he could have representation against such order. It was also provided that no detention under a law for preventive detention could exceed eight months in a span of two years for acting in a manner prejudicial to the public order and twelve months in any other case.[3] Such safeguards were, however, not applicable to any person arrested or detained for anti-national activities under any law providing for preventive detention.

During an emergency, the President could, by an order, suspend the enforcement of some of the fundamental rights guaranteed to the citizens under the Constitution. The right to move any court for the enforcement of fundamental rights could also be suspended.[4]

The principal fundamental rights guaranteed by the 1973 Constitution are briefly described below:

1. All citizens are equal before the law and entitled to equal protection of laws.[5]
2. No person should be deprived of life or liberty save in accordance with the law.[6]
3. No person should be punished for an act which was not punishable when it was committed.[7]
4. There should be no discrimination on grounds of religion, race, caste, sex, or place of birth with regard to access to places of public entertainment, recreation, welfare, or utility.[8]
5. All forms of slavery, servitude, forced labour, torture, or cruel or inhuman treatment or punishment were declared illegal.[9]
6. All duly qualified citizens were made eligible for appointment in the service of the state, irrespective of religion, race, caste, sex, descent, or place of birth, provided that for an initial period of ten years it would not be unlawful for the state to reserve posts in favour of members of any sex or class or residents of any area to secure their adequate representation in the service of Pakistan.[10]

7. Every person was guaranteed a right to acquire, hold and dispose of property in any part of Pakistan subject to reasonable restrictions and public interest under the law.[11] No person should be deprived of his property save in accordance with the law. The right to property was subject to a number of constitutional restrictions including acquisition of enemy property; acquisition of property for providing housing, education; maintenance of sick, old, and infirm; acquisition of property acquired through unfair means and in an illegal manner; or acquisition of property in excess of the maximum limit provided under a law for land reforms. However, the new constitution did not specifically provide for fair compensation. Adequacy of compensation provided under any law relating to compensation for acquisition of property, could not be called in question in any court.[12]
8. All citizens were guaranteed (a) freedom of speech, expression, and press; (b) freedom to assemble peacefully; (c) freedom of association; and (d) the right to move freely throughout Pakistan and to reside in any part of the country.[13]
9. Freedom of conscience and the right to profess, practise, and propagate any religion, subject to public order and morality, were guaranteed. Every religious association and every sect thereof was guaranteed the right to establish, manage, and maintain its religious institutions.[14]
10. No person attending any educational institution should be required to receive religious instruction or to attend religious worship other than that of his own community or denomination. No religious community should be prevented from providing religious instruction for pupils of that community in any educational institution which it maintained. No person should be compelled to pay any special taxes, the proceeds of which were specifically appropriated for the propagation or maintenance of any religion other than his own.[15]
11. The dignity of man and the privacy of home were declared inviolable. Procuring evidence through torture was prohibited.[16]
12. Protection was provided against double punishment and self incrimination.[17]
13. Every citizen was guaranteed the freedom to enter upon any lawful profession or occupation or to conduct any lawful trade or business. However, this freedom was subjected to such qualifications as might be prescribed by law.[18]
14. Other fundamental rights granted by the constitution included as under:
    (a) Safeguards against discrimination in services on the ground only of race, religion, caste, sex, residence, or place of birth. This right was, however, subjected to regional quotas for some time.[19]
    (b) Non-discrimination in respect of access to places of public entertainment or resort. However, special provisions could be made for women and children.[20]
    (c) Right to preserve and promote distinct language, script, and culture.[21]

Directive Principles of State Policy

Like the earlier Constitutions, the new Constitution also included Directive Principles of Policy. It was made the responsibility of each organ and authority of the state and those performing functions under them to act in accordance with these principles.[22]

These principles are enumerated as under:

1. Steps to be taken to enable Muslims to order their lives in accordance with the Holy Quran and the *sunnah*. The state should endeavour to facilitate learning of Arabic, to promote observance of Islamic moral standards, and to secure the proper organization of *zakat*, *auqaf* and mosques.[23]
2. Securing the well-being of the people, prevention of the concentration of wealth and means of production in the hands of a few, providing of basic necessities of life, reducing disparity of income, provision of food, clothing, housing, education, and medical relief for citizens incapable of earning their livelihood owing to unemployment, sickness, or similar reasons.[24]
3. Promotion of social justice by removing illiteracy; providing of free and compulsory

secondary education; ensuring inexpensive and expeditious justice; making provisions for securing just and humane conditions of work; enabling the people of different areas to participate fully in all forms of national activities; preventing prostitution, gambling, alcoholic liquors, drugs, etc.[25]

4. Discouragement of parochial, tribal, and racial feelings among Muslims.[26]
5. Strengthening of the bonds of unity between Muslim countries and promotion of peace and goodwill among the peoples of the world.[27]
6. Protection for all legitimate rights and interests of the non-Muslim minorities.[28]
7. Protection of marriage, the family, the mother, and the child.[29]
8. To ensure full participation of women in all spheres of law.[30]
9. To promote local government institutions.[31]
10. To eliminate *riba* as early as possible.[32]
11. To enable people from all parts of Pakistan to participate in the armed forces of Pakistan.[33]

It is interesting to note that in the new Constitution, separation of the judiciary from the executive was not relegated to the chapter of the principles of policy. This principle was, instead, included in the operative part of the Constitution. It became a dictate of the Constitution and the separation was required to take place within three years.[34]

Parliamentary Form of Government

After the sad experience of the presidential form of government under the 1962 Constitution, Pakistan was ready to revert to the parliamentary form on the pattern of the 1956 Constitution. As discussed earlier, serious resistance had come from Bhutto to the re-introduction of the parliamentary system, resulting in the resignation of a law minister. Nevertheless, Bhutto finally succumbed to the pressure in favour of the parliamentary form primarily because his party had committed itself to it in the general elections of 1970. However, the political happenings and bargainings prior to the adoption of the Constitution were not without impact on the ultimate shape of the parliamentary set-up under the new Constitution. Bhutto succeeded in introducing some basic changes in the parliamentary system as it had been known in the subcontinent. The changes thus introduced tried to address the following fears rooted in the constitutional and political experience in Pakistan:

i. The parliamentary system is vulnerable to frequent changes in government with the resultant instability, insecurity, and uncertainty.
ii. Presidents, under the parliamentary system, try to increase their powers and influence by indulging in partisan politics, thus weakening and undermining the governments.
iii. The political oppositions act with irresponsibility and indulge in Byzantine intrigues, thus rendering the government in power weak and ineffective. Often, the opposition collaborates with the President or uses the provision for vote of no-confidence as a constant sword hanging over the head of the government in power.
iv. A powerful bureaucracy in cohorts with the President, army, and/or the opposition could undermine a government.
v. All these factors are aggravated especially when the party in power does not command a clear majority and is dependent upon smaller parties or groups to keep itself in power. This situation is ideal for manipulations and intrigues, whether they are launched by the President, army, opposition, bureaucracy, or small political parties or groups.

In brief, the primary concern before Bhutto and other constitution-makers was: how to ensure a stable government under the parliamentary system? This concern was addressed in the new Constitution by introducing the following changes:

(a) The office of the Prime Minister was made extremely powerful and the office of the President was made correspondingly weak, ineffective, and dependent. The Prime Minister was more than the sum of the Cabinet put together and the President was less than a figurehead. The Prime Minister became the Chief Executive of the federation.[35] The President could not exercise his option to

appoint a member of the National Assembly as Prime Minister, of course subject to his obtaining a vote of confidence later on. The Prime Minister had to be elected immediately after the election of Speaker and Deputy Speaker by the National Assembly with the votes of the majority of its membership.[36] The President's veto over legislation was completely done away with. He had only seven days to give his assent to a Bill passed by the parliament and if he failed to do so within such a period, the Bill would become law.[37] The President was required to act on the advice of the Prime Minister which was binding on him. Such advice was made non-justiciable.[38] The President was also without power to dissolve the National Assembly which could only be dissolved on the advice of the Prime Minister. In case he failed to act on the advice, the National Assembly would automatically stand dissolved on the expiration of forty-eight hours from such advice.[39]

(b) The procedure for a vote of no-confidence against the Prime Minister was made difficult and cumbersome. A resolution for a vote of no-confidence could not be moved in the National Assembly unless, in that very resolution, the name of another member of the assembly was put forward as the successor. If the resolution was by a majority of the total membership of the assembly, then the President had to call upon the person named in the resolution as successor to assume office as Prime Minister. However, for the first ten years, a provision was made in order to prevent floor crossing to the effect that the vote of a member, elected to the National Assembly as candidate or nominee of a political party, in favour of the resolution would be disregarded if the majority of the members of that political party in the National Assembly had cast its votes against such a resolution.[40] However, on the failure of such a resolution, no further resolution for a vote of no-confidence could be moved in the National Assembly for a period of six months.

The President and the Cabinet

As discussed above, the President was reduced to merely a figurehead under the new Constitution. The executive authority of the federation was to be exercised in the name of the President by the federal government consisting of the Prime Minister and the federal ministers.[41] The qualifications of being elected as President were that he was required to be a Muslim of not less than forty-five years of age and qualified to be elected as a member of the National Assembly.[42] The President was to be elected by an electoral college comprising members of the parliament in joint sitting in accordance with provisions of the second schedule.[43] His term of office was five years and no one could hold the office for more than two consecutive terms.[44] The President could resign or might, on charges of violating the Constitution or gross misconduct or on the ground of physical or mental incapacity, be removed by the parliament in a joint sitting by a two-thirds majority of the total membership of the parliament.[45] The President was required to act on and in accordance with the advice of the Prime Minister which was binding on him.[46] However, the Prime Minister was supposed to keep the President informed on matters of internal and foreign policy and on all legislative proposals that the federal government intended to bring before the parliament.[47]

The Prime Minister and the federal ministers were collectively responsible to the National Assembly.[48] Federal ministers and ministers of state were to be taken from the parliament and were appointed by the Prime Minister. No more than one-fourth of such federal ministers and ministers of state could be taken from the upper House, the Senate.[49] It is noticeable that in the new Constitution, the word 'Cabinet' was carefully avoided. In its place, expressions like 'federal government' or 'the Prime Minister and the federal ministers' were used. Theoretically, the parliamentary system postulates Cabinet and the joint responsibility of the Cabinet. The Prime Minister is part and parcel of the Cabinet and not separate or different from it. He is regarded as first amongst equal members of the Cabinet. But in the new Constitution, the Prime Minister's position, powers, and responsibilities were separately and expressly described. He was clearly the boss of the federal ministers and Chief Executive of the federal government. Another departure from the peculiarities of the parliamentary system was the appointment of the ministers by the Prime Minister and not by the

President. Generally, in parliamentary democracies, ministers are appointed by the President though on the recommendation and nomination of the Prime Minister. These provisions, however, established the office of a super prime minister to befit the concept, personality, and the ambitions of Bhutto.

The President, subject to the advice of the Prime Minister, was entrusted with multifarious functions. Some of the key appointments, such as those of the Chief Justices and judges of the Supreme Court and the High Courts, the Governors of the provinces, the Attorney-General and the Chiefs of Staff of the Armed Forces, the Chief Election Commissioner, Auditor-General, and the Chairman and members of the Islamic Ideology Council were to be made by the President.[50] He could constitute the National Economic Council, the National Finance Commission, the Council of Common Interests, and the Islamic Ideology Commission for bringing the existing laws into conformity with the injunctions of Islam.[51] He also had the power to issue proclamations of political or financial emergency and could suspend a provincial government.[52] The President was empowered to raise and maintain the naval, military, and air forces of Pakistan.[53] He was also given powers to grant pardon and reprieve, and to remit, suspend or commute a sentence passed by any court, tribunal, or any other authority.[54] All these powers were exercisable on the advice of the Prime Minister.

Similarly, the President was given certain legislative functions to be exercised on the advice of the Prime Minister. He could summon, prorogue, and dissolve the Parliament on his advice.[55] The President could address the National Assembly and send messages to it.[56] When a Bill was passed by the National Assembly, he could not withhold his assent for more than seven days. After the expiry of seven days, the Bill would automatically become an Act of Parliament.[57] When the National Assembly was not in session, the President possessed the positive power of making laws by ordinances which were to be laid before the National Assembly and would cease to operate at the expiration of four months from its promulgation, or at such time as a resolution of disapproval was passed by either House of the Parliament.[58]

The Federal Government

Another basic feature of the new Constitution was the federal form of the government like the previous Constitutions. A clear distribution of powers between the national and provincial governments was provided and the principle of decentralization was accepted.

As for the distribution of legislative powers between the centre and the provinces, the powers were enumerated in two lists, federal and concurrent.[59] The extent of the federal laws was extended to the whole or any part of Pakistan, including the power to make laws having extra-territorial operations.[66] The power of a provincial legislature extended to the whole of that province or any part thereof.[61] The subjects given to the centre included foreign affairs comprising all matters which would bring Pakistan into relation with any foreign country, defence, currency, citizenship, foreign and inter-provincial trade and commerce, census, leisure, taxes and duties of excise and customs, copyright, trade mark, designs, maritime shipping and navigation, central bank, postal and all forms of telecommunications, minerals, oil and gas, and others. The federal legislative list consisted of two parts. Part I had fifty-nine items and Part II eight items.

The concurrent list comprised forty-seven items and was justified on the grounds that there were certain matters which could not be given exclusively either to the centre or to the provinces because, although such matters might normally be dealt with by the provinces, an occasion might arise when it would be desirable and necessary to deal with these matters on a national level. The list dealt with such matters as civil and criminal law, marriage and divorce, adoption, bankruptcy, arbitration, trusts, transfer of property and registration, preventive detention, arms and explosives, drugs, population planning, electricity, tourism, trade union, and other matters of common interest. With regard to subjects in the concurrent list, the precedence of federal legislation over the provincial legislation was guaranteed. A provincial law, to the extent of repugnancy with the federal law on the same subject, was to be void.[62]

The Constitution did not provide for a separate provincial legislative list and Provincial Assemblies were extended power to make laws on the residuary

subjects, that is, matters not enumerated in either the federal or in the concurrent list.[63]

The Chief Justice of Pakistan was assigned an important role in the settlement of disputes between the federal government and a provincial government under a federal law conferring powers on provincial governments. He was to appoint an arbitrator to settle such a dispute[64] and was empowered to appoint an arbitrator to settle disputes between the federal government and a provincial government arising out of refusal by the federal government to entrust functions to a provincial government regarding broadcasting and telecasting or due to any conditions imposed by the federal government in this behalf.[65]

There was also provision for a Council of Common Interests which the President could set up in relation to matters enumerated in Part II of the Federal Legislative List or the Concurrent Legislative List or regarding exercise of supervision and control over related matters.[66] This was meant to be an important body for the provinces to air their grievances against the federation or other provinces and for redressal of such grievances. If the federal government or a provincial government was dissatisfied with the decision of the Council, it could refer the matter to parliament in joint sitting, whose decision would be final.[67]

There was provision in the Constitution whereby the federal legislature could make laws on any provincial matter. There were, however, two processes which would enable the parliament to legislate on a provincial subject. The first applied when a provincial legislature would authorize parliament to make laws in any matter within its competence. An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.[68] While legislation by the federal legislature under this provision was voluntary, the second process which would enable the federal government to intervene in provincial matters, was of far-reaching importance. While a proclamation of emergency was in operation, parliament was empowered to make laws for a province concerning any matter not enumerated in the federal or in the concurrent lists.[69]

The Federal Legislature (The Parliament)

Unlike the Constitutions of 1956 and 1962, the 1973 Constitution provided for a bicameral system. As discussed earlier, under the draft constitution made by the first Constituent Assembly, there was provision for a second chamber. The reasons for and the advantages of having a second chamber are, however, not confined to its utility as an instrument of representation of the units in a federation. From the standpoint of checks and balances, the second chamber is considered very useful and has a restraining as well as a sobering effect on the other chamber.

The 1973 Constitution is distinguishable from the earlier Constitutions particularly in two respects: the federation now had four provinces or federating units rather than the earlier two, and the principle of parity had ceased to be effective. Thus, in the chamber of the people (the National Assembly), where the representation is made on population basis, the small provinces like Balochistan would be meagrely represented. Therefore, the Upper House or House of States/Provinces would be meant for checks and balances. By allowing equal representation to all the provinces in the Upper House, regardless of their size and population, the smaller provinces were given a greater voice and larger role in the national affairs. The Upper House thus becomes a bulwark for the protection of smaller provinces against the brute majority commanded by the larger provinces in the Lower House. This situation is all the more pronounced in Pakistan (or what is left of Pakistan) where one province, the Punjab, holds an absolute majority of the population and the other three provinces put together are in minority. Thus, the unicameral system would necessarily result in the dominance of the Punjab. The bicameral system had, therefore, become a necessity and the Upper House, called the Senate, was introduced in the Constitution of 1973.

Members of the National Assembly were to be elected under an electoral system to be provided for by the parliament. The matters to be decided regarding elections included allocation of seats, delimitation of constituencies, preparation of electoral rolls, the conduct of elections and election petitions, matters

relating to corrupt practices in the elections, and so on.[70] In the electoral laws that followed, the system of joint electorate was enforced.

A person was entitled to vote for the National Assembly (as well as a Provincial Assembly), if he was a citizen of Pakistan, not less than 18 years old, had not been declared by a court to be of unsound mind and his name had appeared in an electoral roll.[71]

A candidate for election to the National Assembly had to be at least 25 years of age and had to be qualified to vote. The Election Commission, on reference from the Speaker of the National Assembly, could decide questions of disqualification of a member and its decision was to be final.[72] No one was to be allowed to be a member of the National Assembly from more than one constituency, though a person could seek election from as many seats as he wished.[73] A member of the National Assembly could lose his seat if he remained absent for forty consecutive sitting days without leave of the House.[74] No one was allowed to be a member simultaneously of the National Assembly and of the Senate (of a federal house) and a Provincial Assembly.[75] The National Assembly would elect its Speaker and Deputy Speaker from amongst its members in its first meeting.[76] The term of the National Assembly was fixed at five years, on the expiration of which it would stand dissolved, if not dissolved earlier.

The Senate was to consist of sixty-three members, of whom fourteen were to be elected from each province by the members of the Provincial Assembly of that province in accordance with the system of proportional representation by means of a single transferable vote. Five members were to be elected by the National Assembly members from the Federally Administered Tribal Areas, and two were to be chosen from the Federal Capital in a manner prescribed by the President. The Senate was meant to be a permanent House not subject to dissolution. The term of office of its members was to be four years, half of them retiring every two years. However, the term of office of a person elected or chosen to fill a casual vacancy was to be the unexpired term of the member whose vacancy he had filled.[77] Like the National Assembly, the Senate also had to elect its Chairman and Deputy Chairman at its first session, from amongst its own members. However, the term of the office of Chairman or the Deputy Chairman was to be two years from the date of assumption of office.[78]

As discussed above, the 1973 Constitution introduced bicameral legislation for the first time in Pakistan. The federal legislature was given the name of Parliament and its two Houses were to be known as the National Assembly and the Senate.[79] The President was empowered to summon and prorogue the parliament.[80] There were to be at least two sessions of the National Assembly each year and not more than one hundred-and-twenty days were to intervene between any two sessions.[81] There was a similar provision for the Senate.[82] Every federal minister and minister of state and the Attorney-General had the right to speak and take part in the proceedings of either House of the Parliament but not the right to vote unless he were a member of that House.[83]

Either House of the Parliament was empowered to frame its own rules of procedure and the conduct of its business.[84] No member of the National Assembly could be made liable in any proceedings in court regarding anything said or any vote given by him in the assembly or its committees.[85] The privileges of the National Assembly, committees, the members thereof, and persons entitled to speak therein could be determined by an Act of Parliament.[86] In keeping with the principle of separation of powers, no court could enquire into the proceedings of Parliament.[87] Correspondingly, no discussion could take place in Parliament concerning the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.[88]

The financial procedure provided by the Constitution was similar to that of the previous ones. No tax, for instance, could be levied for federal purposes except by or under the authority of an Act of Parliament.[89]

In the budget, the financial statement was divided into two parts; one showing the expenditure charged upon the consolidated fund, the expenditure which the National Assembly could discuss but not vote upon; the other part showing the sums required for the estimated expenditures of the various departments for the ensuing financial year. Expenditures charged upon the consolidated fund included; (a) remuneration and pension of the President, salaries of judges of the Supreme Court, members of the

Federal Public Service Commission, the Speaker and the Deputy Speaker, the Attorney General, the Chief Election Commissioner, Chairman and Deputy Chairman of the Senate, and (b) the administrative expenses of the Supreme Court, the Federal Public Service Commission, the department of the Auditor-General, the office of the Election Commission, the Senate and the National Assembly; and (c) the debt charges binding on the federal government and sums required to satisfy any judgment, decree, or award against Pakistan by any court or tribunal, and any other sum declared by the Constitution or by Act of Parliament.[90]

The introduction of bicameral legislature at the centre had its effect on the legislative procedure. It has been discussed earlier that the competence of the parliament to make laws was extended to the federal and concurrent legislative lists. The federal legislative list, as stated before, was divided into two parts: Part I and Part II. The scheme of this division appears to be that the subjects enumerated in Part I were purely federal subjects and the subjects enumerated in Part II were subjects in which the provinces had special interest like the railways; minerals, oil and natural gas; Council of Common Interests, and others. The subjects enumerated in the concurrent list were, of course, of common interest and importance for the federation and the provinces. This being the case, it became imperative that the Senate, being a House of provinces, should be given greater role and voice in legislation on the subjects enumerated in Part II of the federal legislative list and the concurrent legislative list. Thus, different legislative procedures were given in the constitution for legislation on the subjects enumerated in Part I of the federal legislative list on the one hand and the subjects enumerated in Part II of the federal legislative list on the other.

A Bill relating to matters in Part I of the federal list could only originate in the National Assembly and if it was passed, it was transmitted to the Senate for consideration. If the Senate passed it without amendment or did not reject it or amend it within ninety days of transmission to it, then it would be deemed to have been passed. However, if the Senate rejected the Bill or passed it with amendment, then it would be presented to the National Assembly for reconsideration and if after such reconsideration, the National Assembly passed it again, with or without amendments proposed by the Senate, it would be deemed to have been passed and presented to the President for his assent.[91] A Bill relating to matters in Part II of the federal list or the concurrent list could originate in either House and if it was passed by one House, it would be transmitted to the other House. If the Bill was passed by the other House without amendment, it was presented to the President for his assent. In case the other House rejected it or passed it with amendment, the Bill, at the request of the House where it originated, had to be considered in a joint sitting of the two Houses of the Parliament which the President would summon.[92] If the Bill was passed by the votes of the majority of the total membership of the two Houses, then the same would be presented to the President for assent.

The purpose of different legislative procedures for the passing of the Bill relating to Part II of the federal list and the concurrent list was to give greater weightage to the Senate which could exercise a temporary veto against a Bill passed by the National Assembly on any such matters. Nevertheless, the National Assembly could override such a veto in a joint sitting because it initially had 210 members compared to sixty-three in the Senate and a majority in the joint sitting meant 137 votes which the National Assembly alone could procure.

The Money Bills could only originate in the National Assembly and, if passed, they would be presented to the President for assent, without transmission to the Senate. If a question arose as to whether a Bill was a Money Bill or not, the decision of the Speaker of the National Assembly thereon should be final.[93]

Provincial Governments and Legislatures

The provincial legislatures and executives were small replicas of the institutions at the national level. The provincial legislature remained unicameral and directly elected by the people through universal adult franchise under the electoral laws common for the federal and provincial legislatures. The relationship between the provincial Governor, provincial Chief Minister and the Provincial Assembly closely resembled that between the President, the Prime Minister, and the Parliament. A Chief Minister was to be elected by the Provincial Assembly in the same

manner in which the Prime Minister was to be elected by the National Assembly.[94] The Chief Minister and the provincial ministers were to be collectively responsible to the Provincial Assembly concerned which could only be dissolved by the Governor on the advice of the Chief Minister. The procedure of vote of no-confidence against a Chief Minister was the same as that for the Prime Minister, meaning thereby that a successor had to be named in a resolution for a vote of no-confidence.[95] The Governor did not have any power to veto any Bill passed by the Provincial Assembly and had to assent to it within seven days, otherwise it would be deemed to have been assented.[96] Governors could dissolve Provincial Assemblies but only on the advice of the Chief Ministers.[97] Various provisions relating to the Parliament or a House thereof were to apply to the Provincial Assemblies with appropriate adjustment of reference to the relevant authorities.[98] The Governor continued to be an appointee of the President and an agent of the central government which could exercise pressure in the provincial politics through the Governors.[99]

Distribution of Powers and Relations between the Centre and the Provinces

Administrative relations between the centre and the provinces were on the same lines as provided under the previous Constitutions. The federal system showed a marked tendency towards centralized control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance and to ensure that the government of each province was carried on in accordance with the provisions of the Constitution.[100] A provincial government was obliged to exercise its executive authority in such a way as to ensure compliance with the Acts of Parliament and existing laws applying to that province.[101] The federal government was entitled to give direction to a province with regard to the duties of the provincial authority and was further entitled to give directions to a province in the following matters:[102]

(a) as to the construction and maintenance of communications declared to be of national or strategic importance;
(b) as to the manner in which the executive authority of the province was to be exercised for the purpose of preventing any grave menace to the peace and tranquility or economic life of Pakistan or any part thereof.

There was one important provision in the Constitution which would enable the federal government to delegate power to the provincial governments as its agents. The federal government might, with the consent of a provincial government, entrust either conditionally or unconditionally to that government, or to its officers, functions relating to any matter to which the executive authority of the federation extended.[103] Similarly, a provincial government, with the consent of the federal government, was also empowered to entrust, either conditionally or unconditionally, some of its executive functions to the federal government or to its officers.[104]

The new Constitution made no material changes regarding the distribution of financial resources between the centre and the provinces. The centre was given the power to levy custom duties, export duties, excise duties, corporation tax, taxes on income other than agricultural income, estate and succession duties regarding property other than agricultural land, tax on capital value of the assets exclusive of agricultural land, taxes on goods or passengers, and taxes on mineral, oil, and natural gas. The principal source of income for the provinces were land revenue and taxes on agricultural income, the capital value of agricultural land, taxes on land and buildings, taxes on mineral rights subject to the federal list, excise on alcohol and drugs, taxes on electricity, taxes on vehicles and advertisements, animals, boats, on professions and trades, and on luxuries.[105]

The Judiciary

In the new Constitution provisions relating to the judiciary were on the same lines as those in the previous Constitution. However, an effort was made to regulate and confine the powers and jurisdiction of the superior courts. It was clearly stated that no

court should have any jurisdiction except that which was conferred or would be conferred in future, on it by the Constitution or by or under any law.[106] Thus, the courts could not assume unto themselves any jurisdiction or powers which were not expressly conferred on them by the Constitution or a law. This provision was clearly meant to whittle down the concept of inherent powers and jurisdiction of the superior courts.

The Supreme Court continued to be the apex court in the land. The law which it would lay down was binding on all courts in Pakistan.[107] All executive and judicial authorities throughout the country would act in aid of the Supreme Court and all directions, orders, decrees or writs issued by that Court were to be executed as if they were issued by the High Courts of the appropriate province.[108] The Supreme Court was entrusted with the task of interpreting the Constitution. It was specifically given the power to adjudicate in any dispute between any two or more 'governments', which term included the federal government and the provincial government.[109] The Supreme Court had appellate jurisdiction, both criminal as well as civil, over the judgments, decrees, final orders, and sentences passed by the High Courts. The Supreme Court could also hear an appeal from any judgment, decree, order, or sentence of a High Court on grant of leave.[110] The Supreme Court also had advisory jurisdiction on any question of law that the President might consider of public importance and refer it to the Supreme Court.[111] The Supreme Court was conferred with original jurisdiction to make orders on a question of public importance with reference to the enforcement of any fundamental rights.[112] The Constitution of 1973 for the first time provided for administrative courts and tribunals to be set up for the civil servants in relation to the matters of their terms and conditions including disciplinary matters. Appeals against the orders or judgments of such courts or tribunals would lie directly to the Supreme Court and that also on grant of leave to appeal on a substantial question of law of public importance.[113]

The writ jurisdiction of the superior courts which was conferred under the previous Constitutions was retained under the new Constitution. Each of the High Courts was conferred power throughout the territories regarding which it could exercise jurisdiction to issue to any person or authority, orders in the nature of *habeas corpus*, mandamus, prohibition, quo-warranto and *certiorari*. The High Courts were also empowered to issue orders for the enforcement of any of the fundamental rights guaranteed under the constitution.[114]

The Supreme Court was to consist of the Chief Justice and as many other judges as might be determined by an Act of Parliament or until so determined, as might be fixed by the President.[115] The Chief Justice was to be appointed by the President and other judges were to be appointed by the President in consultation with the Chief Justice.[116] The qualification for appointment as a judge of the Supreme Court was either five years standing as a judge of a High Court or fifteen years standing as an advocate of a High Court.[117] The retirement age of a Supreme Court judge was fixed at 65 years and he was disqualified from pleading or acting before any court or authority in Pakistan.[118]

A judge could only be removed by the President on the report of the Supreme Judicial Council to the effect that he was incapable of performing the duties of his office or had been guilty of misconduct. Such a report could only be made after due inquiry and affording opportunity to the judge concerned to defend himself.[119] The Supreme Judicial Council would consist of the Chief Justice of Pakistan, two next senior-most judges of the Supreme Court and the two most senior Chief Justices of the High Courts. There was also provision for the appointment of an Acting Chief Justice in the absence of the Chief Justice or when the office of the Chief Justice had become vacant.[120] There were also provisions for acting judges and adhoc judges for the Supreme Court.[121] The seat of the Supreme Court was to be at Islamabad but until such time it was so established, it was to be at a place appointed by the President.[122]

The Constitution provided for three High Courts, initially, one for the province of the Punjab, one for the province of NWFP and a common High Court for the provinces of Sindh and Balochistan.[123] Each High Court was to consist of a Chief Justice and such number of other judges that the President might determine.[124] The Chief Justice of a High Court was to be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the province concerned. In case of appointment of other judges of a High Court, the President would

appoint them in consultation with the aforesaid constitutional functionaries as well as the Chief Justice of that High Court.[125] The retirement age was fixed at 62 years.[126] The qualification for appointment as a judge of a High Court included ten years standing as an advocate of a High Court, ten years service as a member of the civil service of Pakistan including at least three years as a district judge, or holding of a judicial office in Pakistan for at least ten years.[127]

A judge of a High Court could not be removed from his office except by an order of the President made on the grounds of misbehaviour or infirmity of mind or body, if the Supreme Judicial Council, on reference being made to it by the President, reported that the judge ought to be removed on any of those grounds.[128] There was provision for the appointment of an Acting Chief Justice when the office of the Chief Justice became vacant or he was absent or unable to perform his duties.[129] The President had no option in the matter of appointment of Acting Chief Justice. He could only appoint the most senior of the other judges of the High Court to act as Chief Justice. However, transfer of judges from one High Court to another was made subject to the consent of the judge being transferred and subject to consultation with the Chief Justice of Pakistan and both the Chief Justices of the High Court of which he was a judge and to which he was being transferred.[130] The decision of a High Court on a question of law would be binding on all courts subordinate to it,[131] and which each High Court was empowered to supervise and control.[132]

Islamic Provisions

Islam was declared the state religion of Pakistan.[133] The Islamic way of life was to be promoted including steps like the organization of *zakat, auqaf,* and the mosques.[134] Strengthening of bonds with the Muslim world was another principle of policy under the Constitution.[135] The Head of the State, the President, was to be a Muslim.[136] The Prime Minister was also required to be a Muslim member of the National Assembly.[137]

An important Islamic provision declared that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the *sunnah*' and that existing laws 'shall be brought into conformity with injunctions of Islam as laid down in the Holy Quran and *sunnah*'.[138] The President would appoint within ninety days of the commencement of the Constitution a Council of Islamic Ideology to make recommendations to Parliament and the Provincial Assemblies for bringing the existing laws into conformity with the injunctions of Islam and as to the stages by which such measures should be brought into effect.[139] The Council was also to compile in a suitable form for the guidance of Parliament and the Provincial Assemblies such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within seven years of its appointment and might submit any interim report earlier. The report, whether interim or final, was to be laid before the Parliament and each Provincial Assembly within six months of its receipt and its legislatures, after considering the report, were to enact laws in respect thereof within a period of two years of the final report.[140]

Emergency Provisions

Under Article 232, if the President was satisfied that a grave emergency existed in which the security of Pakistan or any part thereof was threatened by war or external aggression or by internal disturbances beyond the power of the provincial government to control, he could issue a proclamation of emergency. The effects of a proclamation of emergency under Article 232 are as under:

(a) the parliament has the power to make laws for a province on those subjects which were not included in the federal or concurrent lists, that is, the Parliament would have power to legislate even in provincial matters.

(b) the federal executive authority has power to give direction to a province as to the manner in which the executive authority of the province would be exercised.

(c) the federal government might issue an order assuming unto itself, or directing the Governor of a province to assume on its behalf, all or any powers of the provincial government or any function of the provincial government except that of the Provincial Assembly. The federal government is also empowered to suspend in whole or in part the operation of any provision

of the Constitution relating to any body or authority in the Province.[141]

There was also provision for the proclamation of emergency due to the breakdown of constitutional machinery in a province. If the President, on receipt of a report from the Governor of a province, was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Constitution he could, by proclamation, assume to himself, or direct the Governor to assume on his behalf, all or any of the functions or powers of the provincial government or any organ or body of the provincial government except the Provincial Assembly, and the Parliament might be authorized to exercise the powers of the Provincial Assembly. The President could also suspend the operation of any provisions of the Constitution relating to any body or authority in the province. The President, during a proclamation under this Article, was empowered to authorize expenditure from the provincial consolidated fund in anticipation of approval by the Parliament in the joint sitting.[142] The President, on the advice of the Prime Minister, has the discretion to make such a proclamation but, on the resolution of the two Houses, is under compulsion to make such a proclamation.

Another type of emergency for which the Constitution made provisions related to the financial stability or credit of Pakistan. If the President was satisfied that a situation had arisen whereby the financial stability or credit of Pakistan or any part thereof was threatened, he could, after consultation with the provincial Governors or with the Governor of the province concerned, issue a proclamation of financial emergency. During the period of financial emergency the federal government could direct a province to observe such principles of financial propriety and any other direction required for restoring financial stability and credit, including a direction to reduce the salaries and allowances of government servants or any other class of people serving in connection with the affairs of the federation.[143]

During the period of emergency, the operation of certain fundamental rights like freedom of movement, freedom of assembly, freedom of association, freedom of trade and business, freedom of speech, and property rights, could be suspended. The President could declare by order that the enforcement of fundamental rights during the period of emergency would remain suspended.[144] A proclamation of emergency could be varied or revoked by a subsequent proclamation.[145] The Parliament could enact laws of indemnity for those people in government service or otherwise regarding any act done in connection with the maintenance or restoration of order in any area in Pakistan.[146]

Other Features

Other features of the Constitution included the composition of the Election Commission of Pakistan for holding periodic elections to Parliament and the Provincial Assemblies,[147] determination of the conditions of employment of people in the service of Pakistan,[148] and the establishment and composition of the Public Service Commission.[149] The terms and conditions of service of civil servants were no longer protected under the Constitution but were made subject to ordinary law. Administrative courts and tribunals were to be set up under ordinary law for adjudication of questions arising from the terms and conditions of government servants, including disciplinary matters.[150]

The Constitution, or any of its provisions, could be amended by an Act of Parliament provided it originated and was passed by the votes of not less than two-thirds of the total number of members of the National Assembly and by the votes of a majority of the total membership of the Senate. However, no amendment of a constitutional provision affecting the limits of a province could be made unless such amendment had been approved by a resolution of its Provincial Assembly by not less than two-thirds of the total membership of that assembly.[151] However, the President can not withhold his assent to the amendment beyond seven days of the presentation of the Bill, after the expiry of which period, he would be deemed to have assented. If the Amendment Bill was not passed within ninety days of its receipt by the Senate, it would be deemed to have been rejected. An interesting aspect of this provision was that the Senate had complete veto power over the amendment of the Constitution. There was no provision for sending the Bill for consideration to the two Houses of the Parliament in the joint sitting. Thus, any two

provinces could successfully thwart any effort to amend the Constitution to their dislike or disadvantage.

Another important provision was the validation of all laws including all proclamations, President's orders, martial law regulations, and martial law orders during the civilian martial law of Bhutto. All orders, proceedings taken, and acts done by any authority or person during the period of civilian martial law under the aforesaid laws were validated and those passing such orders, holding such proceedings, and performing such acts were indemnified.[152] All existing laws, subject to the Constitution, were continued in force so far as applicable and with necessary adaptations until altered, repealed, or amended by the appropriate legislature.[153]

Urdu was declared the national language of Pakistan. Steps were to be taken to bring it in use as the official language within fifteen years of the commencement of the Constitution and until such time, the English language might be used for official purposes.[154] The President, the Prime Minister, governors, chief ministers, federal ministers, ministers of state, and provincial ministers were granted immunity from court action for any act done in exercise of their powers or in performance of their functions.[155]

The Proclamation of Emergency on 23 November 1971 was deemed to be a Proclamation of Emergency under Article 232 and all laws, rules or orders made in pursuance of that proclamation would be deemed to have been validly made.[156]

Notes

1. Constitution of Islamic Republic Pakistan, 1973, Article 90.
2. Ibid., Article 8.
3. Ibid., Article 10.
4. Ibid., Article 233.
5. Ibid., Article 25.
6. Ibid., Article 9.
7. Ibid., Article 12.
8. Ibid., Article 26.
9. Ibid., Article 11.
10. Ibid., Article 27.
11. Ibid., Article 23.
12. Ibid., Article 24.
13. Ibid., Articles 15, 16, 17, and 19.
14. Ibid., Article 20.
15. Ibid., Articles 21 and 22.
16. Ibid., Article 14.
17. Ibid., Article 13.
18. Ibid., Article 18.
19. Ibid., Article 27.
20. Ibid., Article 26.
21. Ibid., Article 28.
22. Ibid., Articles 29 and 30.
23. Ibid., Article 31.
24. Ibid., Article 38.
25. Ibid., Article 37.
26. Ibid., Article 33.
27. Ibid., Article 40.
28. Ibid., Article 36.
29. Ibid., Article 35.
30. Ibid., Article 34.
31. Ibid., Article 32.
32. Ibid., Article 38(f).
33. Ibid., Article 39.
34. Ibid., Article 175(3).
35. Ibid., Article 90(1).
36. Ibid., Article 91.
37. Ibid., Article 75.
38. Ibid., Article 48.
39. Ibid., Article 58.
40. Ibid., Article 96.
41. Ibid., Article 90.
42. Ibid., Article 41.
43. Ibid.
44. Ibid., Article 44.
45. Ibid., Article 47.
46. Ibid., Article 48.
47. Ibid., Article 46.
48. Ibid., Article 90.
49. Ibid., Article 92.
50. Ibid., Articles 100, 101, 168, 177, 193, 213, 228, and 243.
51. Ibid., Articles 153, 156, 160, and 238.
52. Ibid., Articles 232, 234, 235, and 236.
53. Ibid., Article 243.
54. Ibid., Article 45.
55. Ibid., Articles 54 and 58.

56. Ibid., Article 56.
57. Ibid., Article 75.
58. Ibid., Article 89.
59. Ibid., Fourth Schedule.
60. Ibid., Article 141.
61. Ibid.
62. Ibid., Article 143.
63. Ibid., Article 142.
64. Ibid., Article 146.
65. Ibid., Article 159.
66. Ibid., Articles 153 and 154.
67. Ibid., Article 154.
68. Ibid., Article 144.
69. Ibid., Article 234.
70. Ibid., Article 222.
71. Ibid., Article 51.
72. Ibid., Article 63.
73. Ibid., Article 223.
74. Ibid., Article 64.
75. Ibid., Article 223.
76. Ibid., Article 53.
77. Ibid., Article 59.
78. Ibid., Article 60.
79. Ibid., Article 50.
80. Ibid., Article 54.
81. Ibid., Article 54.
82. Ibid., Article 61.
83. Ibid., Article 57.
84. Ibid., Article 67.
85. Ibid., Article 66.
86. Ibid.
87. Ibid., Article 69.
88. Ibid., Article 68.
89. Ibid., Article 77.
90. Ibid., Article 81.
91. Ibid., Article 70.
92. Ibid., Article 71.
93. Ibid., Article 73.
94. Ibid., Article 131.
95. Ibid., Article 136.
96. Ibid., Article 116.
97. Ibid., Article 112.
98. Ibid., Article 127.
99. Ibid., Article 145.
100. Ibid., Article 148.
101. Ibid.
102. Ibid., Article 149.
103. Ibid., Article 146.
104. Ibid., Article 147.
105. Ibid., Fourth Schedule.
106. Ibid., Article 175(2).
107. Ibid., Article 189.
108. Ibid., Articles 187 and 190.
109. Ibid., Article 184.
110. Ibid., Article 185.
111. Ibid., Article 186.
112. Ibid., Article 184(3).
113. Ibid., Article 212.
114. Ibid., Article 199.
115. Ibid., Article 176.
116. Ibid., Article 177.
117. Ibid.
118. Ibid., Articles 179 and 207.
119. Ibid., Article 209.
120. Ibid., Article 180.
121. Ibid., Articles 181 and 182.
122. Ibid., Article 183.
123. Ibid., Article 192.
124. Ibid.
125. Ibid., Article 193.
126. Ibid., Article 195.
127. Ibid., Article 193.
128. Ibid., Article 209.
129. Ibid., Article 196.
130. Ibid., Article 200.
131. Ibid., Article 201.
132. Ibid., Article 203.
133 Ibid., Article 2.
134 Ibid., Article 31.
135 Ibid., Article 40.
136. Ibid., Article 41.
137. Ibid., Article 91.
138. Ibid., Article 227.
139. Ibid., Articles 228 and 230.
140. Ibid.
141. Ibid., Article 232.
142. Ibid., Article 234.
143. Ibid., Article 235.
144. Ibid., Article 233.
145. Ibid., Article 236.
146. Ibid., Article 237.
147. Ibid., Articles 213, 215, 218, 219, and 220.
148. Ibid., Article 240.
149. Ibid., Article 242.
150. Ibid., Article 212.
151. Ibid., Articles 238 and 239.
152. Ibid., Article 269.
153. Ibid., Article 268.
154. Ibid., Article 251.
155. Ibid., Article 248.
156. Ibid., Article 280.

(69)

Germany's political system

Bundesrat

The **German Bundesrat** is a legislative body that represents the sixteen *Länder* (federal states) of Germany at the national level. The Bundesrat meets at the former Prussian House of Lords in Berlin. Its second seat is located in the former West German capital of Bonn.

The Bundesrat participates in legislation, alongside the Bundestag, the directly elected representation of the people of Germany, with laws affecting state competences and all constitutional changes requiring the consent of the body. For its similar function, it is often described as an upper house of parliament along the lines of the US Senate, the Canadian Senate or the British House of Lords. The German constitution, however, does not define the Bundesrat and the Bundestag as the upper and lower houses of a bicameral legislature. Officially, it is generally referred to as a "constitutional body" alongside the Bundestag, the Federal President, the Federal Cabinet and the Federal Constitutional Court.

I - COMPOSITION

The Bundesrat is composed of members of government from the 16 Länder, which appoint and recall members.

This amounts to 69 members.

II - APPOINTMENT SYSTEM

Each Land government chooses among their members those who shall sit in the Bundesrat. In practice, the members of Länder's governments who do not sit in the Bundesrat are appointed as deputies, giving them the possibility to participate to the debates and to vote in the Bundesrat. To leave the government of a Land, or to be dismissed by it, leads to the inevitable loss of the position as member of the Bundesrat.

Each Land can delegate to the Bundesrat as many members as the number of votes it has. Each Land has at least 3 votes, and therefore 3 delegates; Länder with over two million inhabitants have 4 votes, those with over six million inhabitants have 5, and those with over seven million inhabitants have 6 votes.

The duration of the term of office is the same as of the Land governments. From the constitutional point of view, the Bundesrat is a «permanent body», regularly renewed with the elections of regional parliaments. Because of this, these elections always have political consequences on the Federation.

III - SESSION CALENDAR

The Bundesrat helds one single session per year. The President of the Chamber convenes the Bundesrat. He must convene it at the request of at least two Länder representatives, or of the Federal Government. In practice, the agenda of plenary sessions is established in advance for the calendar year, according to the sitting weeks in the Bundestag. The Bundesrat convenes about thirteen times a year, with three-week intervals.

IV - RELATIONS WITH THE OTHER CHAMBER AND EXECUTIVE

When fulfilling their tasks, the Federal State and the Länder shall monitor each other; but they also have to take into account each one's interests, and exert a common action.

In this context of shared competences, the German federalism differs from all other federal systems because of the direct participation, through the Bundesrat, of Länder governments to the decisions of the Federal State. In the Bundesrat, this is in fact the will of the Land which shall be expressed, and not that of its members as individuals. As indicated in the Basic Law, each Land can express its vote only globally. Before any vote in the Bundesrat, the government of each Land must therefore reach an agreement on the way they think to express their votes. It has to be said that, in the Bundesrat, abstention does not mean a neutral position: any abstention equals a negative vote.

A - LEGISLATIVE POWER

1) Legislative initiative

It is attributed to the Bundesrat concurrently with the federal Government and Bundestag members.

Initiatives can originate from a Land or several Länder. If Länder wish the Bundesrat to introduce a government bill, they shall table a motion along the same lines. The Bundesrat gives its decision through a resolution. If the text that Länder wished is supported by an absolute majority, it becomes a Bundesrat bill, strictly speaking.

Government bills are then sent to the Federal Government, and later to the Bundestag within 6 weeks.

2) Right of amendment

The Bundesrat takes a stand on texts submitted to it, but cannot modify them. The Bundesrat does not have, strictly speaking, the possibility to amend government or draft bills.

Nevertheless, in practice, when the Bundesrat comes to a decision on a text, either to give a previous opinion (for the examination of government draft bills in first reading: see below), or to approve it outright, to reject it outright, or else to call for a convening of the Mediation Committee, it supports its stand with proposals of modifications of the text. As the Bundesrat has a significant power of blocking in the legislative procedure, the Federal Government and the Bundestag are strongly encouraged to take into account the proposals of amendment expressed by the Bundesrat, if they want to see a text adopted.

3) Ordinary legislative procedure

The course of the legislative procedure may differ, depending on whether it is a text initiated by the Federal Government, the Bundestag or the Bundesrat. It also may differ depending on whether it is a so-called consent bill or objection bill.

a) Submission and transmission

Whenever **draft bills are issued by the Federal Government** (namely 2/3 of texts), the Bundesrat has the right to express itself on the drafts *before* the German Bundestag, during a «first reading». It may then give its stand within six weeks - three or nine in some specific cases. It frequently proposes amendments, additions or alternatives.

Bundestag

The **Bundestag** is a constitutional and legislative body at the federal level in Germany. For its similar function, it is often described as a lower house of parliament along the lines of the US House of Representatives and the Canadian or the British House of Commons. The members of the Bundestag are elected for a term of four years by the German citizens on the principles of Universal Suffrage. However, the election day can be earlier if the Federal Chancellor (*Bundeskanzler*) loses a vote of no confidence and asks the Federal President to dissolve the Bundestag in order to hold new general elections.

Election

All candidates must be at least eighteen years old; there are no term limits. Half of the Members of the Bundestag are elected directly from 299 constituencies (first-past-the-post system), the other half are elected from the parties' Land lists in such a way as to achieve proportional representation for the total Bundestag (if possible).

Accordingly, each voter has two votes in the elections to the Bundestag. The first vote, allowing voters to elect their local representatives to the Bundestag, decides which candidates are sent to Parliament from the constituencies.

The second vote is cast for a party list; it determines the relative strengths of the parties represented in the Bundestag.

Powers and Functions

Together with the Bundesrat, the Bundestag is the legislative branch of the German political system.

Although most legislation is initiated by the executive branch, the Bundestag considers the legislative function its most important responsibility, concentrating much of its energy on assessing and amending the government's legislative program.

The Bundestag members are the only federal officials directly elected by the public; the Bundestag in turn elects the Chancellor and, in addition, exercises oversight of the executive branch on issues of both substantive policy and routine administration. This check on executive power can be employed through binding legislation, public debates on government policy, investigations, and direct questioning of the chancellor or cabinet officials. For example, the Bundestag can conduct a question hour *(Fragestunde)*, in which a government representative responds to a previously submitted written question from a member. Members can ask related questions during the question hour. The questions can concern anything from a major policy issue to a specific constituent's problem.

German President

The **President of Germany**, officially the **President of the Federal Republic of Germany** is the head of state of Germany.

Germany has a parliamentary system of government in which the Federal Chancellor is the nation's leading political figure and *de facto* chief executive. However, the President has a role which, while not an executive post, is more than ceremonial. Presidents have extensive discretion regarding the way they exercise their official duties.The Federal President gives direction to general political and societal debates and has some important "reserve powers" in case of political instability. The Federal President represents the Federal Republic of Germany in matters of international law, concludes treaties with foreign states on its behalf and accredits diplomats. Furthermore, all federal laws must be signed by the President before they can come into effect; however, he or she can only veto a law that he/she believes to violate the constitution.

The Federal President, by his or her actions and public appearances, represents the state itself, its existence, its legitimacy, and unity. The President's office involves an integrative role and the control function of upholding the law and the constitution. It is a matter of political tradition – not legal restrictions – that the Federal President generally does not comment routinely on issues in the news, particularly when there is some controversy among the political parties.[5] This distance from day-to-day politics and daily governmental issues allows the Federal President to be a

source of clarification, to influence public debate, to voice criticism, offer suggestions and make proposals. In order to exercise this power, he/she traditionally acts above party politics

The federal President of Germany is the German head of state. On paper that makes him the most powerful political figure in Germany. His main responsibilities and actions are, however, mostly representative and ceremonial.

The President of Germany is not directly involved in making laws or political decisions which stir the country in one direction or the other. His role in German politics is rather that of a *watcher* or *public conscience.*

Powers and functions

State visits and foreign representation: As first ambassador the President of Germany travels to a lot of different countries to establish and strengthen bi- or multinational relations. These relations are mainly symbolic, social and cultural, because he cannot independently sign treaties for Germany. President Horst Köhler for example was known for his commitment for developing countries in Africa while in office between 2004 and 2010.

Signing and verifying laws

All laws that are passed in parliament must be signed by the President of Germany to become effective. Only in a select few cases the president decided not to wave them through. When he did, the reason was either that he thought the law would break German Basic Law or because certain formalities had not been met.

Appointment and dismissal of the government

After elections the President of Germany suggests the Chancellor and appoints the various other members of the government. He also appoints and dismisses federal judges, high-ranking military personnel and other officials. He may also dissolute the parliament if no stable government can be formed or a vote of confidence is defeated.

Election of the President

To become a presidential candidate a few conditions must be met: The President of Germany must be a German citizen, at least 40 years old, and not be employed by or own any business. He cannot be part of the elected government. The President of Germany is elected in a Federal Convention (Bundesversammlung).

The Federal Convention consists of the members of the parliament and an equal amount of delegates elected from the different federal states. These delegates can be either politicians, but more often as not they are notable personalities and celebrities from all over the country. Because the President of Germany is elected secretly, the delegates are not bound to vote for the candidate their particular party favors.

German Chancellor and Cabinet.

The **Chancellor of Germany** is the head of government of Germany. In German politics, the *Chancellor* is equivalent to that of a prime minister in many other countries.The federal government consists of the chancellor and his or her cabinet ministers. As explained above, the Basic Law invests the chancellor with central executive authority. For that reason, some observers refer to the German political system as a "chancellor democracy." The chancellor's authority emanates from the provisions of the Basic Law and from his or her status as leader of the party or coalition of parties holding a majority of seats in the Bundestag. Every four years, after national elections and the seating of the newly elected Bundestag members, the federal president nominates a chancellor candidate to that parliamentary body; the chancellor is elected by majority vote in the Bundestag.

The Basic Law limits parliament's control over the chancellor and the cabinet. Unlike most parliamentary legislatures, the Bundestag cannot remove the chancellor simply with a vote of no-confidence. In the Weimar Republic, this procedure was abused by parties of both political extremes in order to oppose chancellors and undermine the democratic process. As a consequence, the Basic Law allows only for a "constructive vote of no-confidence." That is, the Bundestag can remove a chancellor only when it simultaneously agrees on a successor. This legislative mechanism ensures both an orderly transfer of power and an initial parliamentary majority in

support of the new chancellor. The constructive no-confidence vote makes it harder to remove a chancellor because opponents of the chancellor not only must disagree with his or her governing but also must agree on a replacement.

Article 65 of the Basic Law sets forth three principles that define how the executive branch functions. First, the "chancellor principle" makes the chancellor responsible for all government policies. Any formal policy guidelines issued by the chancellor are legally binding directives that cabinet ministers must implement. Cabinet ministers are expected to introduce specific policies at the ministerial level that reflect the chancellor's broader guidelines. Second, the "principle of ministerial autonomy" entrusts each minister with the freedom to supervise departmental operations and prepare legislative proposals without cabinet interference so long as the minister's policies are consistent with the chancellor's larger guidelines. Third, the "cabinet principle" calls for disagreements between federal ministers over jurisdictional or budgetary matters to be settled by the cabinet.

The chancellor determines the composition of the cabinet. The federal president formally appoints and dismisses cabinet ministers, at the recommendation of the chancellor; no Bundestag approval is needed. According to the Basic Law, the chancellor may set the number of cabinet ministers and dictate their specific duties. Chancellor Ludwig Erhard had the largest cabinet, with twenty-two ministers, in the mid-1960s. Kohl presided over seventeen ministers at the start of his fourth term in 1994.

The power of the smaller coalition partners, the FDP and the CSU, was evident from the distribution of cabinet posts in Kohl's government in 1995. The FDP held three ministries–the Ministry of Foreign Affairs, Ministry of Justice, and Ministry for Economics. CSU members led four ministries–the Ministry of Finance, Ministry for Health, Ministry for Post and Telecommunications, and Ministry for Economic Cooperation.

The staff of a cabinet minister is managed by at least two state secretaries, both of whom are career civil servants responsible for the ministry's administration, and a parliamentary state secretary, who is generally a member of the Bundestag and represents the ministry there and in other political forums. Typically, state secretaries remain in the ministry beyond

the tenure of any one government, in contrast to the parliamentary state secretary, who is a political appointee and is viewed as a junior member of the government whose term ends with the minister's. Under these top officials, the ministries are organized functionally in accordance with each one's specific responsibilities. Career civil servants constitute virtually the entire staff of the ministries.

Turkish Political System
Turkish grand national assembly

Legislative power is vested in the unicameral Grand National Assembly, consisting of 550 deputies elected every 5 years. Under the 1961 constitution, the Grand National Assembly was a bicameral parliament with over 600 members. The 1982 system represents an effort to avoid the imbalances and the challenges to leadership that occurred under the larger, two-house legislature. And the number of deputies was dropped to 450 which later in 1998 became 550.

The legislative term has been lengthened by one year under the new Constitution in an effort to reduce the preoccupation with campaigning that had contributed to Turkey's political fragmentation in the past. For the same reason, by-elections to fill vacant seats are to be held only once between general elections unless the number of vacancies reaches 5 percent of the total assembly membership. General elections may be held earlier than scheduled if a majority of deputies so decides or if a prolonged parliamentary deadlock occurs.

The Grand National Assembly is to convene on the first day of September and may not recess for more than three months a year. During an adjournment, the president may summon the assembly for an extraordinary session, either on his own initiative or at the written request of one-fifth of the members. The assembly has the power to enact, amend, and repeal laws and can pass legislation over the veto of the president. It also supervises the Council of Ministers and authorizes it to issue governmental decrees. It debates and approves the budget and makes decisions regarding the printing of currency. In addition, the assembly approves the ratification of international treaties and has the power to authorize a declaration of war. Although the Constitution provides for legislative controls over the executive in the form of written questions, investigations, and interpellations, whereby the Council of Ministers can be voted out of office, there are also procedures under which the parliament may delegate its lawmaking powers to the Council of Ministers.

Every Turkish citizen over the age of twenty-five is eligible to be a deputy, provided that he/she has completed primary education and has not been convicted of serious crime or been involved in "ideological and anarchistic

activities". Male candidates are required to have performed the compulsory military service. Members of higher judicial and educational institutions as well as civil servants and members of the armed forces must resign from office before standing for election.

According to the Constitution, deputies represent the whole nation, not merely their own constituencies. A member of the Turkish Grand National Assembly wields more patronage and influence than do members of most other Western parliaments and is expected to intervene in the bureaucracy more actively and frequently.

Legislators are granted parliamentary immunities, such as freedom of speech and, with some qualifications, freedom from arrest. They can be deprived of their membership in the assembly by the decision of an absolute majority of its members. A deputy who resigns from his party may not be nominated as a candidate in the following elections by any party in existence at the time of his resignation.

Members of parliament have traditionally been a fairly young, educationally elite group; at least two-thirds of the deputies of every Grand National Assembly have been university educated. Whereas this has continued to be the case under the new constitutional system, there has been a shift in occupational representation away from a predominance of officials. A large portion of the deputies since 1983 have been lawyers, engineers, businessmen, and economists.

Kamal principles

Republicanism means government through the will of the people, parliamentary elections, rotation of office, and popular sovereignty. The beginning of the Republic in Turkey is usually dated at April 23, 1920, with the opening of the Grand National Assembly in Ankara. Although it would be decades before the full realization of a Western-style parliamentary republic would be achieved (multiparty democracy, constitutional supremacy; individual rights to complete freedom of conscience, speech, press, religious liberty and due process of law), Mustafa Kemal began the

arduous task of transforming the old Ottoman Empire into a modern, liberal Western society with the permissions of the national assembly.

Nationalism means an independent, powerful country free from foreign domination. Unlike the multicultural Ottoman Empire, the Turkish nation is distinct in culture, but it pledged to tolerate diversity in culture and religion and respect individual freedom and conscience.

Nationalism defines the "Turkish People" as "those who protect and promote the moral, spiritual, cultural and humanistic values of the Turkish Nation."

"Turkish Nation" meant People who live under the borders of the Republic of Turkey, always love and seek to exalt their country and family, who know and exercises their duties and responsibilities towards the democratic, secular and social state for common benefits and interests of the residents of the country.

Mustafa Kemal Atatürk defines the Turkish Nation by saying "the folk which constitutes the Republic of Turkey is called the Turkish Nation."

Nationalism is closely coupled with Secularism (Laicite) which provides individuals with freedom of consciousness which establishes setting up an environment in which common goals can be developed and reached without being manipulated or restricted by any particular belief system.

Populism means democratic control by the people of internal politics through the rule of law. Self-government, popularly elected leaders, and regular elections constitute "populism" in the Turkish sense. This revolution aims to ensure o the best interest of the general public without limiting opportunities, individual rights, freedom, development and progress. It is closely linked with the Statism which aims to support individuals, groups and society in attempting their goals. The Statism and Populism are in equilibrium while each complements the other.

Statism refers to the mixture of private property/free enterprise economics with government control of major industries and regulation of the overall economy for the good of the whole country. Today, this "mixed economy" of capitalism and socialism dominates in modern, Western societies.

Secularism means the formal, legal separation of religion from politics, the end of the domination of the state by Islamic officials, and the individual freedom of conscience to believe, worship, and communicate religious truths as the individual understands them. Such liberty of religion implies the freedom to learn of all faiths, to seek God's guidance in knowing His Truth, and sharing it with others without fear of persecution or injury. The premise of this is that such individual searching after God's Truth and voluntary faith in God is pleasing to God, while forced adherence to a certain religion is not really pleasing to God.
So, the "secularization" means not against religious truth; but meant separating it from scientific and purely political matters. A religious moral people are necessary to an ethical, healthy republic, but faith is best inculcated at home and church rather than school.

Revolutionism means a continuous progressive change in any subject that are interests of Turkish society to conform with modern civilization, better human conditions and progress.
In this respect and understanding of revolution, Mustafa Kemal' s revolutions included but not limited to the following.

- establishing Citizenship consciousness
- transiting individuals from the slave of Sultan to independent individuals
- establishing freedom of consciousness and beliefs
- establishing freedom of speech and views
- granting equal legal rights to women;
- adopting a better working justice code;
- public education; using the Latin (rather than Arabic) alphabet;
- abolition of titles;
- adoption of Western time standards, calendar, and measures;
- abolition of rural tithes and traditional religious dress codes

Together, these revolutions radically transformed society in Turkey from an impoverished, isolated society to a relatively prosperous, democratic culture integrated into the modem, civilized, competitive, and free society wh8ich did not exist for the society before.

However, Atatürk's political principles did not take effect immediately. They took a few generations to become embedded in the Turkish culture and psyche. They required "the talents of a reformer, a builder, a statesman, a leader" and Kemal Atatürk became all those things. He led the early, fledging Turkish Republic with a dedicated mind and determined hand.

Role of military in Turkish politics

The role of the military in Turkish politics is the central question in the country's European Union membership process, since one of the crucial political factors stipulated by Brussels for obtaining full membership has been the democratic control of the military.

In order to achieve this ambitious aim, a dramatic reform process for democratic control has been launched. Under the AKP government, the power of the army in Turkish politics has dramatically diminished since 2002. Over the past two years, a number of officers and retired generals have been arrested in connection with the so-called "Ergenekon" case. Prosecutors accuse the network of planning to create chaos through a serious of bloody provocations, thus justifying a coup against the AKP government.

On the other hand, the Turkish general staff denied these accusations. As a result, there is an ongoing power struggle between Erdoğan's government and the Turkish military. So, in spite of this move by the government, there are serious difficulties in terms of establishing full civilian control over the military due to the strong position of the Turkish military in politics.

The Military and the State: the Ottoman Legacy

The legacy of military involvement in Turkish politics goes back to Ottoman times. The military played a key role in the history of the Ottoman Empire.

since it could extend its territory by having a strong army. Toward the end of the empire, the state's modernization process was driven by military concerns.

The evolution of the army commenced through the establishment of institutions developed according to Western models, in which a new generation of reformist officers appeared. These officers began to see themselves as the vanguard of enlightenment. They pioneered the political modernization by leading the 1876 revolution and the Young Turk revolution of 1908. The legacy of military intervention appeared through these revolutions in which the armed forces played a leading role. These interventions brought about new reforms, which changed significant aspects of the political and social system.

The Role of the Military after the Creation of the Kemalist Republic

After the First World War, Mustafa Kemal (Ataturk) emerged as the country's political and military leader. He and other generals transformed the Ottoman Empire into a modern nation-state. In other words, Turkey's modernization process was again led by the military.

In the first year of the Republic, Mustafa Kemal sought to exclude the army from open involvement in party politics. In order to achieve this, a law was passed in 1923 which obliged serving officers who were elected to parliament to resign from the army. The aim of Mustafa Kemal was not only to prevent the military from exercising direct political influence, but also to protect the military from the everyday struggles of the political arena. However, Ataturk's removal of the army from politics was never quite complete, because he also saw the role of army as the guardian of the secular republic.

As a result, the army has since then felt a responsibility for the protection of the principles of the Kemalist republic. When it has felt that the republic and its principles to be threatened, the army has in the past taken responsibility for its protection. This principle was written into the Turkish Armed Services Internal Service Code. It states that "the duty of the armed forces is to

protect and safeguard Turkish territory and the Turkish Republic as stipulated by the Constitution." Three interventions have been justified on this legal basis.

Thus, the current position of the military in Turkish politics is the product of a long-term process. The army sees itself as a "guardian" of the Republic and its principles. These characteristics of the military, however, have also caused a dilemma for Turkey-EU relations, as the EU's principles are completely opposed to military involvement in politics. The reasons why the European Union has been pushing Turkey to reform its civil-military relations are specified in the Copenhagen criteria, which comprise of three distinct criteria: political, economic, and those related to the obligations of the EU membership.

The Changing Role of the Military following EU Reforms

The political criteria require the implementation of institutional stability, complete freedom of expression, the entrenchment of human rights, and respect and protection of minorities. Although the democratizing of civil-military relations are not directly mentioned in the.Copenhagen criteria, the military as an institution should be subordinate to the political criteria. Following the acceptance of Turkey as a candidate country in 1999, Turkey agreed to the fulfilment of the Copenhagen political criteria in order to start accession negotiations. As a result, the democratizing of civil-military relations has become one of the most important issues in the overall reform process, since one of the most important conditions of the political criteria for Turkey's full membership is the democratic control of the military.

After the acceptance of Turkey as a candidate country, the main criticism of the accession partnership document, annual reports and progress reports on Turkey concerned the perceived lack of democratic control over the country's military. The main criticisms of these documents were generally in regards to the institutional aspect of democratic control. In this respect, the status of the Chief of the General Staff under the prime minister, the role of the National Security Council in Turkish political life and the lack of an

effective civilian control over the military budget constitute main reform areas.

All of these required reforms have been outlined in official EU documents, namely the Accession Partnership Documents and Regular Reports. According to these reports, Turkey's reform process in civil-military relations can be divided into four parts: the transformation of the role and composition of the National Security Council; the transparency of the defense budget; the removal of the military representatives from the civilian boards; and an amendment concerning military courts.

Reforms Undertaken: From the National Security Council to Military Courts

Firstly, the position of the National Security Council in politics was one of the main impediments in relations with the EU. The NSC was established after the 1960 Military Intervention in order to legitimize the place of the army in politics. Its power was then enlarged after the 1980 Military Intervention. The new council of the NSC is composed of the president of the republic, the prime minister, the chief of the general staff, the ministers of foreign affairs, internal affairs, and defense, as well as the top military commanders. Thus, the military was able to make itself politically more active and effective.

However, in the process of moving towards EU membership, the power of the NSC has been restricted. With the modification of Article 118 of the constitution, the role of the NSC was diminished. According to the 1982 Constitution, the NSC was responsible for the drafting of national security and foreign policy. With this amendment, it became solely an advisory body. Furthermore, the composition of the NSC has been altered, with an increase in the number of its civilian members. Moreover, the post of The Court of Auditors has been authorized to audit accounts and transactions of all types of organizations, including state properties owned by the armed forces. With the introduction of these reforms, Turkey's elective representatives became more effective in making the armed forces more accountable.

The removal of military representatives from the civilian boards is the third area of the reform process. As part of the 6th Harmonization Package of 19 July 2003, the NSC representative on the supervisory Board of Cinema, Video and Music was removed; similarly, military representatives on the Higher Education Board and the Higher Broadcasting Board were also withdrawn. As a result, progress on EU reforms have prepared the way for a diminished military influence on the policies of educational, arts and broadcasting institutions.

The final area of the reform process concerns the amendments of military courts. According to the Accession Partnership Documents, the European Commission's main criticism was of the excessive power of State Security Courts that deal with political crime. The Commission also had doubts about the impartiality of judges, since one in three State Security Court judges were military judges. This was the only example in Europe in which civilians can be tried, at least in part, by military judges. For these reasons, the legal basis for the existence of State Security Courts has been removed. Moreover, the trial of civilians in military courts was abolished as part of the 7th Harmonization Package. Eventually, State Security Courts were totally abolished in 2004.

Therefore, in regards to EU demands, Turkey has made reforms in all the area mentioned. The important question, then, becomes the extent to which these reforms have been successful in restoring full civilian control over the military. Through the EU membership process, civil-military relations have become more democratized. In other words, the autonomy of the military in Turkey has been diminished by means of EU reforms. As a result, the NSC is no more an executive body, and has only an advisory function; the transparency of the defense expenditures has been enhanced; and the function of the military court has been limited.

However, there are still perceived problems regarding the position of the military. Firstly, military representatives continue to make their views known on a variety of topics, through speeches, their influence on the media, and through formal declarations. Most of the time, statements by the military are

perceived as warnings to the civilian government. During the presidential election in 2007, the army was able to influence politics. As the generals objected to Abdullah Gül, the AKP candidate, they placed a message on the defense ministry's website, threatening intervention. This "e-coup" caused political chaos in Turkey, which resulted in a new general election.

The second problem is that the chief of the Turkish general staff is still directly responsible to the prime minister, contrary to EU practices. These unchanged positions of the military indicate that the political influence of the military remains, and that civil power in Turkey is still far from exercising full control over the military.

There is no doubt that EU candidacy has contributed to the democratization of civil-military relations in Turkey. According to the last EU Progress Report on Turkey's accession, progress has been made regarding civilian control of the army. The military court's competencies have now been limited through the constitutional package. Moreover, the decisions of the Supreme Military Council are now open to judicial review.

However, there are certain limits to its impact because of the legacy of the Ottoman Empire and the Kemalist Republic, and this will probably remain the case in the near future. Full civilian control over the military can only be maintained with the full implementation of recent reforms, which, as the Regular Reports on Turkey consistently indicate, are crucial to the democratization process.

President of Turkey

The **President of Turkey** is the head of state of the Republic of Turkey. The Presidency is largely a ceremonial office but has some important functions. In this capacity, the President represents the Republic of Turkey, and the unity of the Turkish nation, as well as ensuring the implementation of the Constitution of Turkey and the organized and harmonious functioning of the organs of state. The duties and powers of the President have be stated in Articles 101, 102, 103, 104, 105 and 106 of the Constitution of the Republic of Turkey.

A. Qualifications and Impartiality

The President shall be elected by the people, from among the members of the Turkish Grand National Assembly who are over forty years old and who have completed their higher education or from among Turkish citizens who fulfill these requirements and who are eligible to be members of parliament.

The term of office of the President is five years. A person can be elected President for a maximum of two terms.

The nomination of a candidate for the Presidency from within the members of the Turkish Grand National Assembly or from outside the Turkish Grand National Assembly shall be possible with a written proposal by twenty members of parliament. Furthermore, when the total of the valid votes is calculated together in the latest member of parliament general elections, the political parties who surpassed ten-percent can show a joint candidate.

The President-elect, if a member of a political party, shall sever his/her relations with his/her party and his/her status as a member of the Turkish Grand National Assembly shall cease.

D. Duties and Powers (Article 104)

The President is the head of the State. In this capacity, he/she shall represent the Republic of Turkey and the unity of the Turkish Nation;

he/she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of State.

To this end, the duties he/she shall perform, and the powers he/she shall exercise, in accordance with the conditions stipulated in the relevant articles of the Constitution are as follows:

a) Those related to legislation:

- To deliver, if he/she deems necessary, the opening address of the Turkish Grand National Assembly on the first day of the legislative year,
- To summon the Turkish Grand National Assembly to meet, when necessary,
- To promulgate laws,
- To return laws to the Turkish Grand National Assembly to be reconsidered,
- To submit to referendum, if he/she deems necessary, legislation regarding amendments to the Constitution,
- To appeal to the Constitutional Court for an annulment in part or entirety of certain provisions of laws having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content, and
- To call new elections for the Turkish Grand National Assembly.

b) Those related to the executive function:

- To appoint the Prime Minister and to accept his resignation,
- To appoint and dismiss Ministers on the proposal of the Prime Minister,
- To preside over the Council of Ministers or to call the Council of Ministers to meet under his/her chairmanship whenever he/she deems it necessary,
- To accredit representatives of the Turkish State to foreign states and to receive the representatives of foreign states to the Republic of Turkey,
- To ratify and promulgate international treaties,
- To represent the Commander-in-Chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly,
- To decide on the use of the Turkish Armed Forces,

- To appoint the Chief of General Staff,
- To call the National Security Council to meet,
- To preside over the National Security Council,
- To proclaim martial law or state of emergency, and to issue decrees having the force of law, in accordance with the decisions of the Council of Ministers convened under his/her chairmanship,
- To sign decrees,
- To remit, on grounds of chronic illness, disability or old age, all or part of the sentences imposed on certain individuals,
- To appoint the members and Chairman of the State Supervisory Council,
- To instruct the State Supervisory Council to carry out enquiries, investigations and inspections,
- To appoint the members of the Higher Education Council, and
- To appoint rectors of universities,

c) Those related to the judiciary:

To appoint the members of the Constitutional Court, one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the Supreme Council of Judges and Public Prosecutors.

The President shall also exercise powers of election and appointment and perform the other duties conferred on him by the Constitution and laws.

E. Accountability and Non-accountability (Article 105)

All Presidential decrees except those which the President is empowered to enact by him/herself without the signatures of the Prime Minister and the minister concerned, in accordance with the provisions of the Constitution and other laws, shall be signed by the Prime Minister, and the ministers concerned. The Prime Minister and the ministers shall be accountable for these decrees. No appeal shall be made to any legal authority, including the Constitutional Court, against the decisions and orders signed by the President on his/her own initiative.

The President may be impeached for high treason on the proposal of at least one-third of the total number of members of the Turkish Grand

National Assembly, and by the decision of at least three-quarters of the total number of members.

F. Deputation for the President (Article 106)

In the event of a temporary absence of the President on account of illness, travel abroad or similar circumstances, the Chairman of the Turkish Grand National Assembly shall serve as Acting President and exercise the powers of the President until the President resumes his/her functions, and in the event that the Presidency falls vacant as a result of death or resignation or for any other reason, until the election of a new President.

Iran's Political system

PARLIAMENT

The Iranian Parliament is a unicameral legislative body whose 290 members are publicly elected every four years. It drafts legislation, ratifies international treaties, and approves the country's budget. In the parliamentary elections of 2000, reformist candidates won nearly three-quarters of the seats in Parliament; only 14 percent of the newly elected deputies were clerics. However, Parliament is still held in check by the Council of Guardians, the influential oversight body that examines all laws passed by Parliament to determine their compatibility with sharia, or Islamic law. At times, the council, half of whose members are appointed by the Supreme Leader, has struck down up to 40 percent of the laws passed by Parliament.

Parliamentary sessions are open to the public; its deliberations are broadcast and its minutes are published.

Each deputy represents a geographic constituency, and every person sixteen years of age and older from a given constituency votes for one representative. The Majlis cannot be dissolved: according to Article 63, "elections of each session should be held before the expiration of the previous session, so that the country may never remain without an assembly. A principal requirement for any members of parliament (MP) is

his/her deep belief in Islam. Another important qualification for candidacy is a history of participating in the 1978-79 Revolution.

Iranian President

The **President of Iran** is the head of government of the Islamic Republic of Iran. The President is the highest elected official in Iran, although the President answers to the Supreme Leader of Iran, who functions as the country's head of state. Chapter IX of the Constitution of the Islamic Republic of Iran sets forth the qualifications for presidential candidates and procedures for election, as well as the President's powers and responsibilities as "functions of the executive". These include signing treaties and other agreements with foreign countries and international organizations; administering national planning, budget, and state employment affairs; and appointing ministers subject to the approval of Parliament.[2]

Unlike the executive in other countries, the President of Iran does not have full control over Iran's foreign policy, the armed forces, or nuclear policy, as these are ultimately under the control and are the responsibility of the Supreme Leader.[3]

The President of Iran is elected for a four-year term by the direct vote of the people and may not serve for more than two consecutive terms or more than 8 years.

Qualifications and election

The President of Iran is elected for a four-year term in a national election by universal adult suffrage for everyone of at least 18 years of age.[6] Candidates for the presidency must be approved by the Council of Guardians, a twelve-member body consisting of six clerics (selected by Iran's Supreme Leader) and six lawyers (proposed by the head of Iran's judicial system and voted in by the Parliament).[7] According to the Constitution of Iran candidates for the presidency must possess the following qualifications:

- Iranian origin;
- Iranian nationality;
- administrative capacity and resourcefulness;
- a good past record;
- trustworthiness and piety; and
- convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab of the country.[3][9]

Within these guidelines the Council vetoes candidates who are deemed unacceptable. The approval process is considered to be a check on the president's power, and usually amounts to a small number of candidates being approved. In the 1997 election, for example, only four out of 238 presidential candidates were approved by the council. Western observers have routinely criticized the approvals process as a way for the Council and Supreme Leader to ensure that only conservative and like-minded Islamic fundamentalists can win office. However, the council rejects the criticism, citing approval of reformists in previous elections. The council rejects most of the candidates stating that they are not "a well-known political figure", a requirement by the current law.

The President must be elected with a simple majority of the popular vote. If no candidate receives a majority in the first round, a runoff election is held between the top two candidates.

Powers and responsibilities

- Leader of the executive branch of government and chairman of the cabinet
- The deputy commander-in-chief of the military of the Islamic Republic of Iran
- Declare a state of emergency suspending all laws or enacting a state of martial law
- Head (Presided) of the Supreme National Security Council
- Head (Presided) of the Supreme Council of the Cultural Revolution
- Appointment of First Vice Presidents
- Nomination of Cabinet members to the Parliament
- Sends and receives all foreign ambassadors
- Issue executive orders
- Issue medals in honor of service for the nation

- Issue presidential pardons

Supreme Leader of Iran

The **Supreme Leader of Iran** is the head of state and highest ranking political and religious authority in the Islamic Republic of Iran.

This post was established by the Constitution of the Islamic Republic of Iran in accordance with the concept of the Guardianship of the Islamic Jurist. According to the Constitution, the powers of government in the Islamic Republic of Iran are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the **Absolute Guardianship and the Leadership of the Ummah**, that refers to the Supreme Leader. The title *"Supreme"* Leader is often used as a sign of respect; however, this terminology is not found in the Constitution, which simply referred to the **"Leader"**.

The Supreme Leader is more powerful than the President of Iran and appoints the heads of many powerful posts in the military, the civil government, and the judiciary. Originally Iran's constitution stated that the Supreme Leader must be the highest ranking cleric and authority on religious laws in Usuli Twelver Shia Islam. However, in 1989, the constitution was amended to require simply Islamic "scholarship" of the leader, i.e., the leader could be a lower ranking cleric.

In its history, the Islamic Republic has had two Supreme Leaders: Ruhollah Khomeini, who held the position from 1979 until his death in 1989, and Ali Khamenei, who has held the position since Khomeini's death.

In theory, the Supreme Leader is elected and supervised by the Assembly of Experts. All candidates to the Assembly of Experts, the President and the Majlis (Parliament), are selected by the Guardian Council, whose members are selected by the Supreme Leader of Iran.[8] As such, the Assembly has never questioned the Supreme Leader.

His Power of Appointments

- (inaugurates) the President and may also together with a two third majority of the Parliament impeach him.
- the Chief Justice (head of the Judiciary Branch usually a member of the Council of Experts) for a term of 8 years,

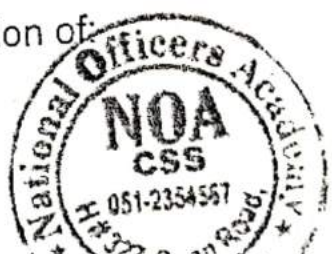
- 6 of the 12 Members of the Guardian Council from among the members of the Council of Experts the other 6 are chosen by the Parliament.

- the head of the National Radio and Television Institution IRIB for a term of 8 years
- the Imams of the Friday Prayer of each Province Capital (with the advice of all the Marja') for a lifetime
- Armed Forces of the Islamic Republic of Iran
  - the Commander of the Armed Forces of the Islamic Republic of Iran
  - the Commander of the Islamic Republic of Iran Army
  - the Commander of the Islamic Republic of Iran Navy
  - the Commander of the Islamic Republic of Iran Air Force
  - the Commander of the Islamic Republic of Iran Air Defense Force
- Islamic Revolutionary Guard Corps (IRGC)
  - the Commander of the IRGC

Functions and duties of the Supreme Leader

According to Article 110 of the Constitution, the Duties and Powers of the Supreme Leader are:

1. Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Expediency Discernment Council.
2. Supervision over the proper execution of the general policies of the systems.
3. Issuing decrees for national referendums.
4. Assuming supreme command of the armed forces.
5. Declaration of war and peace, and the mobilization of the armed forces.
6. Appointment, dismissal, and acceptance of resignation of:
   1. the fuqaha' on the Guardian Council.



2. the supreme judicial authority of the country.
3. the head of the radio and television network of the Islamic Republic of Iran.
4. the chief of the joint staff.
5. the chief commander of the armed forces of the country
6. the supreme commanders of the armed forces.

7. Resolving differences between the three wings of the armed forces and regulation of their relations.
8. Resolving the problems, which cannot be solved by conventional methods, through the Nation's Expediency Discernment Council.
9. Signing the decree formalizing the elections in Iran for the President of the Republic by the people.
10. Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after an impeachment vote of the Islamic Consultative Assembly (Parliament) testifying to his incompetence on the basis of Article 89 of the Constitution.
11. Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation (to that effect) from the head of the Judiciary. The Supreme Leader may delegate part of his duties and powers to another person.

Assembly of Experts

The Assembly of Experts is a deliberative body of eighty eight (88) Mujtahids (Islamic theologians) that is charged with electing and removing the Supreme Leader of Iran and supervising his activities. Members of the assembly are elected from lists of candidates by direct public vote for eight-year terms. The number of members has ranged from 82 elected in 1982 to 88 elected in 2016. Current laws require the assembly to meet for at least two days every six months. All candidates to the Assembly of Experts, the President and the Majlis (Parliament), must be approved by the Guardian Council, which half of its members are selected by the Supreme Leader of

Iran. As such, the Assembly has never questioned the Supreme Leader.

According to the Iranian Constitution, the assembly is in charge of supervising, dismissing and electing the Supreme Leader. In the event of his death, resignation or dismissal, the Experts shall take steps within the shortest possible time to appoint a new Leader. "Whenever the Leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in the Constitution, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed. The assembly has never dismissed a sitting Supreme Leader, and as all of their meetings and notes are strictly confidential, the assembly has never been known to challenge or otherwise publicly oversee any of the Supreme Leader's decisions.

To choose the Supreme Leader, the Experts are to review qualified candidates and consult among themselves. Constitutionally the criteria of qualification for the office of the Supreme Leader include "Islamic scholarship, justice, piety, right political and social perspicacity, prudence, courage, administrative facilities and adequate capability for leadership." In the event that they find one of the jurists better versed in Islamic regulations, in fiqh, or in political and social issues, or possessing more general popularity or special prominence than any of their members, they shall elect that person as Supreme Leader. Otherwise, in the absence of such a candidate, the Experts shall elect and declare one of their own as Supreme Leader.

The Guardian Council

The **Guardian Council of the Constitution** is an appointed and constitutionally-mandated 12-member council that wields considerable power and influence in the Islamic Republic of Iran.

The Iranian constitution calls for the council to be composed of six Islamic faqihs (expert in Islamic Law), "conscious of the present needs and the issues of the day" to be selected by the Supreme Leader of Iran, and six jurists, "specializing in different areas of law, to be elected by the Majlis (the Iranian Parliament) from among the Muslim jurists nominated by the Head

of the Judicial Power (who, in turn, is also appointed by the supreme leader).

It is charged with interpreting the Constitution of Iran,[5] supervising elections of, and approving of candidates to, the Assembly of Experts, the President and the Majlis,[6] and "ensuring ... the compatibility of the legislation passed by the Islamic Consultative Assembly [i.e. Majlis] ... with the criteria of Islam and the Constitution".

The Council has played a central role in allowing only one interpretation of Islamic values to inform Iranian law, as it consistently disqualifies reform-minded candidates—including the most well-known candidates—from running for office, and vetoes laws passed by the popularly elected Majlis.

Legislative functions

The Majlis has no legal status without the Guardian Council.[14] Any bill passed by the Majlis must be reviewed and approved by the Guardian Council to become law.

According to Article 96 of the constitution, the Guardian Council holds veto power over all legislation approved by the Majlis. It can nullify a law based on two accounts: being against Islamic laws, or being against the constitution. While all the members vote on the laws being compatible with the constitution, only the six clerics vote on them being compatible with Islam.

If any law is rejected, it will be passed back to the Majlis for correction. If the Majlis and the Council of Guardians cannot decide on a case, it is passed up to theExpediency Council for a decision.

The Guardian Council is uniquely involved in the legislative process, with equal oversight with regards to economic law and social policy, including such controversial topics as abortion.

Electoral authority

Since 1991, all candidates of parliamentary or presidential[20] elections, as well as candidates for the Assembly of Experts, have to be qualified by the Guardian Council in order to run in the election. For major elections it typically disqualifies most candidates, for example in the 2009 election, 476

men and women applied to the Guardian Council to seek the presidency. and four were approved.

Criticism

Increases the role of the army in everyday life

The Council favors military candidates at the expense of reform candidates. This ensures that the ideological Army of the Guardians of the Islamic Revolution (separate from the Iranian army) holds a commanding influence over the political, economic, and cultural life of Iran.[12]

Arbitrarily disqualifies candidates from elections

Hadi Khamenei, the brother of Supreme Leader Ali Khamenei and an adviser in the administration of reformist former President Mohammad Khatami, said the Guardian Council's vetting of candidates threatens Iranian democracy. He believes some reformist candidates are wrongly kept from running.[31] In 1998, the Guardian Council rejected Hadi Khamenei's candidacy for a seat in the Assembly of Experts for "insufficient theological qualifications."

After conservative candidates fared poorly in the 2000 parliamentary elections, the Council disqualified more than 3,600 reformist and independent candidates for the 2004 elections.

In the run-up to the Iranian Assembly of Experts election, 2006, all women candidates were disqualified.

The Council disqualified many candidates in the 2008 parliamentary elections. One third of them were members of the outgoing parliament it had previously approved. The Iranian Ministry of the Interior gave nebulous, arbitrary reasons for disqualifying the majority of the candidates, including narcotics addiction or involvement in drug-smuggling, connections to the Shah's pre-revolutionary government, lack of belief in or insufficient practice of Islam, being "against" the Islamic Republic, or having connections to foreign intelligence services.

Rule by unelected leaders

This unelected Council frequently vetoes bills passed by the popularly-elected legislature. It repeatedly vetoes bills in favor of women's rights, electoral reform, the prohibition of torture and ratification of international human rights treaties.

Political system of Malaysia

Malaysian Parliament

The **Parliament of Malaysia** is the national legislature of Malaysia, based on the Westminster system. The bicameral parliament consists of the Dewan Rakyat(House of Representatives) and the Dewan Negara (Senate). The Yang di-Pertuan Agong (King) as the Head of State is the third component of Parliament.

As the ultimate legislative body in Malaysia, the Parliament is responsible for passing, amending and repealing acts of law. It is subordinate to the Head of State, the Yang di-Pertuan Agong, under Article 39 of the Constitution.

Dewan Rakyat. Lower House: House of Representatives

The Dewan Rakyat consists of 222 members of Parliament (MPs) elected from single-member constituencies drawn based on population in a general electionusing the first-past-the-post system. A general election is held every five years or when Parliament is dissolved by the Yang di-Pertuan Agong on the advice of the Prime Minister. Suffrage is given to registered voters 21 years and above, however voting is not compulsory. The age requirement to stand for election is 21 years and above. When a member of Parliament dies, resigns or become disqualified to hold a seat, a by-election is held in his constituency unless the tenure for the current

Parliament is less than two years, where the seat is simply left vacant until the next general election.

Dewan Negara. Upper House: Senate

The Dewan Negara consists of 70 members (Senators); 26 are elected by the 13 state assemblies (2 senators per state), 4 are appointed by the Yang di-Pertuan Agong to represent the 3 federal territories (2 for Kuala Lumpur, 1 each for Putrajaya and Labuan). The rest 40 members are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. Senators must be 30 years or above, and are appointed to a three-year term for a maximum of two terms. The dissolution of the Parliament does not affect the Dewan Negara.

The *Dewan Negara* usually reviews legislation that has been passed by the lower house, the *Dewan Rakyat*. All bills must usually be passed by both the *Dewan Rakyat* and the*Dewan Negara* (the Senate), before they are sent to the King for royal assent. However, if the *Dewan Negara* rejects a bill, it can only delay the bill's passage by a maximum of a year before it is sent to the King. Like the *Dewan Rakyat*, the *Dewan Negara* meets at the Malaysian Houses of Parliament in Kuala Lumpur.

The Government:

The executive government, comprising the Prime Minister and his Cabinet, is drawn from the members of Parliament and is responsible to the Parliament. The Yang di-Pertuan Agong appoints the Prime Minister, who is the Head of Government but constitutionally subordinant to His Royal Highness, from the Dewan Rakyat. In practice, the Prime Minister shall be the one who commands the confidence of the majority of the Dewan Rakyat. The Prime Minister then submits a list containing the names of members of his Cabinet, who will then be appointed as Ministers by the Yang di-Pertuan Agong. Members of the Cabinet must also be members of Parliament, usually from the Dewan Rakyat. The Cabinet formulates government policy and drafts bills, meeting in private. The members must accept "collective responsibility" for the decisions the Cabinet makes, even if some members disagree with it; if they do not wish to be held responsible for Cabinet decisions, they must resign. Although the Constitution makes

no provision for it, there is also a Deputy Prime Minister, who is the *de facto* successor of the Prime Minister should he die, resign or be otherwise incapacitated.[5]

If the Prime Minister loses the confidence of the Dewan Rakyat, whether by losing a no-confidence vote or by failing to pass a budget, he must either submit his resignation to the Yang di-Pertuan Agong, or ask His Royal Highness to dissolve the Parliament. If His Royal Highness refuses to dissolve the Parliament (one of the Yang di-Pertuan Agong discretionary powers), the Cabinet must resign and the Yang di-Pertuan Agong will appoint a new Prime Minister.

Constitutional King of Malaysia: Yang di-Pertuan Agong

The **Yang di-Pertuan Agong** is the monarch and head of state of Malaysia. The office was established in 1957 when the Federation of Malaya(now Malaysia) gained independence from the United Kingdom. Malaysia is a constitutional monarchy with an elected monarch as head of state. The *Yang di-Pertuan Agong* is one of the few elected monarchs in the world. His queen consort is called *Raja Permaisuri Agong* (Queen Lady Consort). The couple are addressed in English as "His Majesty" and "Her Majesty"

Election:

The Yang di-Pertuan Agong is formally elected to a five-year term by and from among the nine rulers of the Malay states (nine of the thirteen states of Malaysia that have hereditary royal rulers), who form the Conference of Rulers (*Majlis Raja-raja*). After a ruler had served as the Yang di-Pertuan Agong, he may not stand for election until all rulers of the other states have also stood for election.

In the event of a vacancy of the office (by death, resignation, or deposition by a majority vote of the rulers), the Conference of Rulers elects a new Yang di-Pertuan Agong as if the previous term had expired. The new Yang di-Pertuan Agong is elected for a full five-year term. After his term expires,

the Conference holds a new election, in which the incumbent would not be re-elected.

Powers and functions:

. In Malaysia's constitutional monarchy, *Yang di-Pertuan Agong* has extensive powers within the constitution. The constitution specifies that the executive power of the Federal government is vested in the Yang di-Pertuan Agong and is exercised by him on the advice of the federal Council of Ministers. The latter is headed by the Prime Minister, appointed by the Yang di-Pertuan Agong from among the elected members of Parliament. Among them, Yang di-Pertuan Agong has discretionary powers to choose who he wants as the Prime Minister and is not bound by the decision of the outgoing PM if no party has won a majority vote (Article 40). It, however, does not afford him the right and authority to dismiss the PM. He also can dismiss or withhold consent to a request for the dissolution of Parliament (Article 40).[1] He may discontinue or dissolve Parliament (Article 55) but he can only dissolve Parliament at the request of the PM (Article 43). He can reject any new laws or amendments to existing laws but if he still withholds permission, it will automatically become law after 30 days from the initial submission to him (Article 66).[2]

The Yang di-Pertuan Agong appoints numerous high-ranking office holders in the Federation under the terms of the Constitution and various Acts passed by Parliament. The constitution established procedures for such appointments. He also appoints 44 members of the Dewan Negara, the Malaysian Senate.