

CHAPTER-II

PARLIAMENTARY SYSTEM OF GOVERNMENT

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In primitive societies a single man-the chief or king-could himself supply all the powers of Government. In the fifth century B.C. Herodotus classified all governments as monarchies that are a government by a single person, aristocracies that are a government by

elites and democracies that are a government by all. Slowly, the concept of Democracy originated in larger and more civilized states. Nowadays Democracy is preferred over other forms of the government as in democracy decisions are ultimately controlled by all the members of the society rather than by some specially privileged subgroup or one powerful member.

Almost every one in the world believes in democracy. But there is no agreement as to what 'democracy' is? There are many types of democracies e.g. liberal democracy, people's democracy, guided democracy, proletarian democracy and so on. Many insist that only the particular set of political institutions constitute true democracy. The term 'democracy' has both a descriptive and also a persuasive function.

The meaning of 'democracy' can be summed up in the phrase 'government by the people'. The word Democracy (Greek: demos=people) means a state wherein the supreme power belongs to the people or to their representatives. In his famous address at Gettysberg, Abraham Lincoln described democracy as the "government of the people, by the people and for the people,".¹

According to Daniel Webster "the people's government made for the people, made by the people, and answerable to the people".² Parliament is the chief instrument through which that power is exercised.

The people cannot administer the government. They cannot themselves perform. They cannot normally initiate and propose the necessary legislation. A mass cannot govern. Modern democracies hinge on majority rule. Power of the people is exercised over the people

¹ Mathew K.K.-Democracy,Equality and Freedom,1978.

² Barker Earnest-Essays on Government,p.56

by the people who constitute voting majority. Basic concepts of democracy are: popular sovereignty, equality and self-government.

In a nutshell, as Austin Ranney says the working definition of democracy may be regarded as "a form of government organized in accordance with the principles of popular sovereignty, political equality, popular consultation and majority rule".³

Different countries have adopted different forms of government. The suitability of the one or the other form of Government depends upon different factors like population, economy, social structure, social tensions and consensus and political culture etc. of that country. Every political system operates in an environment, and certain characteristics of the particular environment contribute materially towards determining both its form of government and its policy outputs.

Broadly speaking, forms of democratic government may be summarised into Parliamentary system, Presidential system and Convention type system or combination of any two of these.

2.1. DIFFERENT MODELS OF DEMOCRACY

2.1.1 Communist Model

The followers of Marx and Lenin regard the Communist model as only legitimate democracy. The core of this conception is a regime in which an action of Government always advances the real interests and welfare of the masses. Here democracy is essentially a matter of what Government does; not of how Government decides what to do. That is the reason that our spectrum between democracy and dictatorship seems meaningless to the Communists. The Chinese Communist model of the democracy is very similar to that of former Soviet Union version.

³ Prasad Anirudh-Presidential Government or Parliamentary Democracy, 1981.Chapter-1

2.1.2. The Participatory or Direct Model

The expression 'democracy' indicates a government in which the ruling power resides in the people. It was compounded from two Greek words: 'Demos' means the people, and 'Kratos' means power. In Athens at the time of Pericles, all important decisions were made directly by the **ekklesia**, the general face to face assembly of all the citizens. Athenian democracy had two prime qualities: (i) popular control of public decisions and (ii) maximum popular participation in making the decisions and in holding public office.⁴ **Switzerland** represents direct democracy in the present century. The same may not be feasible in a country covering wide geographical area with a large population.

2.1.3. The Indirect Model

In a country like U.S.A., U.K. or India, it is not possible to adopt direct model of democracy, as it is impossible to ascertain the will of the people on every issues through referenda. In such countries 'indirect' model of democracy operates i.e. the people choose the representatives who rule the country on their behalf. It may also be termed as representative democracy. The idea of election and choice of representatives give birth to party-system and a majority party is allowed to administer the country and therefore it may also be termed as majority government.

Indirect democracy may function either through the parliamentary executive or non-parliamentary or fixed executive. The former is represented by United Kingdom and the latter by the United States of America.

2.1.2. PARLIAMENTARY SYSTEM OF GOVERNMENT

Parliaments are common over the whole of the civilized world. English parliament is the Mother of all Parliaments.

⁴ Ibid.,Chapter-1

2.1.2.1 What is Parliament?

Parliamentary Government has been defined as “Government by talk” or more precisely, “control of Government by talk”. The word “Parle” is a French word and it means “Talk”. Parliament is often described as a mere “Talking shop”. Though this description is used opprobrious, that is what the word ‘Parliament’ means and largely it describes the actual institutions. It is a place where people talk about the affairs of the nation. In the U.K. the Parliament consists of the King, the House of Lords and the House of Commons. All three functionaries join together to complete the actions of Parliament. Both the Houses are in fact two different institutions having different characteristics and different functions.

The earliest document in which the word Parliament is found is the 11th century “Chanson de Roland”,⁵ where it is used simply to refer to a conversation between two persons. However, the word soon acquired a derivative meaning that of an Assembly of persons in which discussions took place. Contemporaries referred to the meeting at Runnymede as the ‘Parliament’ in which King John “gave his charter to the barons. By 1258 ‘Parliament’ had evidently begun to acquire a special meaning. In June of the same year, one of the reforms demanded by the barons at Oxford was three ‘Parliaments’ a year to treat the business of the King and the Kingdom. Therefore, it is clear that the essence of Parliament is discussion and when the word was first applied to the great Councils of the English Kings it was with a view to emphasize its deliberative function.

2.1.2.2 The Origin of Parliament:

The origin of Parliament may be traced to two ideas and both these ideas are of great antiquity.

1. The first is that the King, always sought the advice of a council of the wisest and the most experienced of his subjects,

⁵ Gordon Strathearn- Our Parliament by The Hansard Society London.

2. The second idea is that of representation.

Feeling his way toward an ideal of self-government man has invented various Assembly and Parliament, at many different periods and in many different countries.

The Norman Kings held their courts in different Parliaments of the country and summoned therein the prominent members of the Church, big Landlords and Knights for discussion on national affairs. They were not the representatives of the people in the sense in which today we understand the word 'representative'. It took eight centuries to transform Parliament into a governing body resting on the suffrage of all adult persons in the country. Earlier its form was very different from what it is today. The origin of Parliament can be traced to the Witanegemot and the Great Council.⁶ In 1295, Edward I summoned the ideal Parliament to which attention of the King was drawn to sanction funds for public cause and before which problems of the people were placed. The British King was not empowered to impose taxes without the approval of the Parliament.

In a bloodless revolution in 1688, Parliament attained supremacy. But the Parliament was not democratic in character due to its limited franchise. With the passage of time persons of young age were given the right to vote.

2.1.2.1 The Theory of parliamentary system

There are four things involved in the system of parliamentary democracy.

First is the Parliament of elected representative candidates. The second is a system of Parties, each reflecting some general trend of thought pervading all the society-which will submit to the electorate a number of candidates for its choice and the programme of policy for which the candidates stand. A system of parties is a necessary part of any system of representation. Granted an organised electorate and a

⁶ Ibid.

system of national parties, the third characteristic is a cabinet that guides the parliament, and yet at the same time is itself guided by the parliament. The adjustment of the whole machinery of the representative system of government is very fine and delicate. The last and the foremost characteristic is the idea of representation. Each of the above four concepts has to fit into the other three, each has to play its part and to be content with its part. But practically it is not the easy thing for any of the four to be so content. Every human institution tends naturally to institutionalism. It exaggerates itself. The problem of human government is a problem which can never be solved absolutely. There are certain requisites for this system to be successful. It is said that an ounce of practice is worth a pound of theory. Factionalism or irreconcilable conflict of parties is the one of the saddest defects of a parliamentary system, for the party system is perhaps the most difficult of all the elements. The great merit of the parliamentary system is that it provides a constant training ground for the statesmen, with an arena of peaceful competition in which they can test and measure their powers before a watching and judging world.

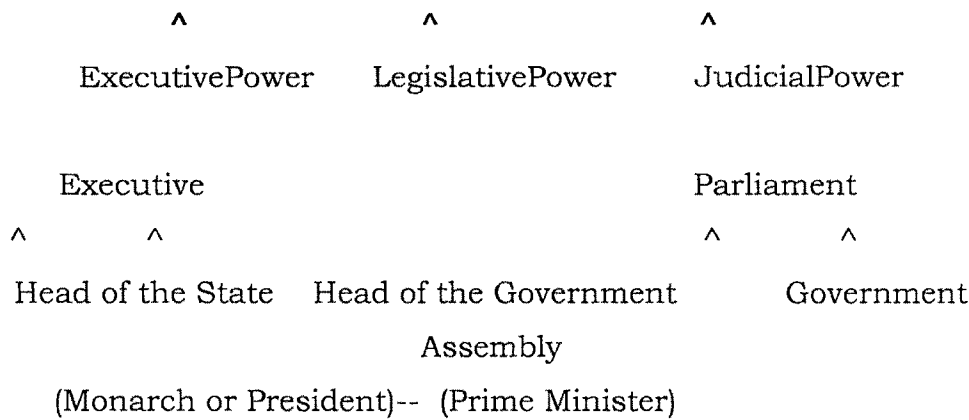
2.1.2.4. Chief Characteristics of Parliamentary System

In the parliamentary system the chief executive of the state (Prime Minister) is not elected directly by the people, but he is normally the leader of the majority party in the Parliament. He chooses his own Cabinet which again, normally should be out of the Parliament only. The entire Cabinet is accountable to the Parliament and as soon as it loses confidence of the Parliament, it has to resign from the office. As against this, in the Presidential system, the chief executive i.e. the President is elected directly by the people for a fixed term and he chooses his own ministers (called 'secretaries' in the U.S.). Neither the President nor the Secretaries are accountable to the Parliament i.e. Congress.

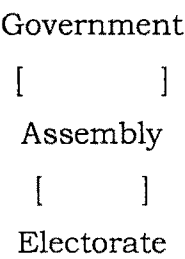
- (1) In a Parliamentary system powers are centered in the Parliament, The Legislature takes the responsibility of government.
- (2) The executive is divided in two parts- Head of the state i.e. Monarch or the President, and the head of the Government i.e. Prime Minister. The former, is the titular head and the latter is the real executive head. Relationship between the two has been regulated in India by the law of Constitution while in England it is left to the operation of flexible conventions.
- (3) The head of the State appoints the head of the Government. In case of Majority Parliamentarianism, the President or the crown has no option but in minority Parliamentarianism the President or the crown may enjoy prerogative in this matter.
- (4) The head of the Government has full say in appointment of his Ministry. Ministers are formally appointed by the crown but Prime Minister alone is responsible for the composition of the Ministry.
- (5) The Ministerial responsibility is collective. It indicates both the cause and the effect of the cabinet solidarity. The Government can remain in office as long as it enjoys the confidence of popular house.
- (6) Collegiate Nature of the executive indicates that a decision making process has been shifted to a collective body.
- (7) Ministers are usually members of the Parliament.
- (8) The head of the Government may advice the head of the State to dissolve the Parliament.
- (9) There is a mutual dependence between the government and the parliament.
- (10) The government as a whole is only indirectly responsible to the electorate.
- (11) Though the ultimate power to control and supervise the executive rests with the Parliament, in practice, it is the Prime Minister who has become all powerful.

(12) This system does not represent truly the principle of separation of powers. There is no separation of personnel between the executive and the legislature.

Parliamentary Executive System



Indirect Relationship between the government and the Electorate



2.1.2.5 BRITISH PARLIAMENTARY SYSTEM IN OTHER COUNTRIES

(a) Monarchies

(i) Non-Communist

Belgium

Canada

Denmark

Ghana

Greece

Jordan

(b) Republics

Federal German Republic

India

Israel

Italy

Lebanon

Pakistan

Lao	Portugal
Libya	Sudan
Liechtenstein	Sri Lanka (1972)
Luxembourg	(ii) Communist
Malaya	Czechoslovakia
Malaya	
Morocco	
Netherlands	
New Zealand	
Norway	
Sweden	
Thailand	
Union of South Africa	
United Kingdom	

The above list shows the countries who have adopted Parliamentary form of government either with Monarchies or Republics. The difference is that the monarch like British Crown is hereditary (however in Burma, he is elected) and President in Republics is an elected official. Barring the case of Ceylonian President who was nominee of the Prime Minister before 1977, Presidents of most of Republics are chosen by both the Houses of Parliament and in fedro-parliamentary-democratic countries both the National Legislature and legislatures of the component states participate in Presidential election. In Monarchial Democracies Crown is permanent whereas in Republican Democracies Presidents have time tenure of five to seven years, having chances of being re-elected once more. In Monarchial Democracies like Britain, the relations between the Crown and Council of Ministers have been left to be evolved by the Conventions, but in others, there has been constitutional demarcation between the powers of the two. The head of the states in all parliamentary democracies are ceremonial and the points of personal irresponsibility of the head of the state has been fused in both the monarchial

democracies and republican cabinet systems the head of the state's action is valid only if it is countersigned by a Minister who owns the responsibility.

India has adopted the Parliamentary system, though we do have a President as the head of the State. But the Indian President is only a titular head and the actual powers of the executive are vested in the Cabinet.

2.2. ORIGIN, GROWTH AND DEVELOPMENT OF THE PARLIAMENTARY SYSTEM IN INDIA

Before proceeding to some of the aspects of working of the Parliamentary system in India in the last fifty years, it will not be out of the place to go into the historical background of the origin and growth of the republics in India.

Constituent Assembly debates refer to the times in the past “when India was studded with republics and even where there were monarchies, they were either elected or limited”. Dr. Radhakrishnan echoed this:

“We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of Deccan asked the question, “Who is your King?” The answer was, “Some of us are governed by assemblies, some of us by kings”.⁷

2.2.1. DEMOCRACY IN ANCIENT INDIA

It is believed that it was India which gave mankind the earliest conception of democracy and the necessary institutions for its appropriate expression. Dr. Kashi Prasad Jaiswal has traced the development of these republics since prehistoric times, for nearly three thousand years before the Christian era, in his famous book

⁷ NCRWC REPORT- II Chapter.

“Hindu Polity”. Several types of republican Constitutions were prevalent in the ‘Gana-Rajya’ of those times.

In the ancient Indian republics every village or town and every area had its own local self-government. The country had legislatures, popularly elected, and detailed procedure to regulate the conduct of their business. Vital features of democratic government are indicated in the Vedic literature. The terms *Sabha* and *Samiti* which were first invented in the *Rig Veda*, indicated the House of the Elders—the Upper House—and the general Assembly of the people respectively. The *Atharva Veda* described these two institutions as the twin daughters of *Prajapati* (the Lord of Creation) who sends them down as his Agents to complete his work of creation, as mere material cosmos, by building up its moral aspects or human factors. Democratic Government is essentially a government by discussion and debate and this vital feature seems to be indicated in the Vedic literature. Rules of debate were also evolved. There is a reference to rebuke administered to the great men of the Sabha for their sins against the assembly. Order was maintained in the Sabha by appropriate officers. It had its Speaker called Sabhapati, its sergeant called Sabhapal and its member a Sabhasad.

As regards decision of democracy by Vote of the Majority, it is indicated by the term *Narishta* applied to the Sabha in the Atharva Veda which Sayana explains as inviolable, because in the Sabha the many meet and speak with one voice which is binding on others.

The Vedic tradition of democracy attained its fuller development in the later polities of ancient India. The Central conception of the State was that its true Sovereign was *Dharma*, Law and Constitution, which was upheld and enforced by the King or the Supreme Executive, called the *Danda*. Thus, Hindu Monarchy was limited, Constitutional Monarchy. At the same time, there was an abundant growth of regular republican States, designated by several terms. For instance, the *Mahabharata*

applies the term *Sangha* to a republic, e.g. the *Vrishnisangha* under *Krishna* described as *sangha Mukhya*. It also uses the term *Gana* in the same sense. Confederation of Republics it calls *Sanghatagana*. The Grammarian Panini takes cognizance of republican developments, indicated by technical terms which he cites as examples of his *Sutras*. He notices the term *Nikava* for religious Assembly, *Sangha* or *Gana* for a republic which was worked by a party system, the party being called a *Varga*. The term *Sangha* indicated a confederation of republics like the *Trigarta Sangha* or *Andhaka Vrishni Sangha*. Panini knows of a federal army, formed by the two republics. In fact, Panini's grammar which dates back to at least B.C. 500 is a mine of material, historical and social, cultural and economic, and had utilized that material in, search of actual examples from life to illustrate its scientific rules of grammar. Together with its *Gana Patha* it had mentioned the existence of as many as eighty republics of ancient India. Some of these republics were quite live institutions, even three centuries later, at the time of Alexander's invasion which they resisted most heroically. Buddhist India is represented by many republics such as *Lichchhavis* a federation, *Sakyas* (of whom was born the Buddha), the *Moriyas*, *Mallas*, and the like.

The working of the Buddhist *Sangha* shows how its procedure corresponded to advanced democratic and even parliamentary practices. The Speaker of the Assembly is called *Vinayadhara*, the whip *Ganapuraka*, Regulator of seats *Asana prajnapaka*, Resolution *Jnapti*, Vote *Chhanda*, Decision by Vote of Majority *Bhuyasika Kriya*. Unanimous decision by the assembly was the ideal. Its possibilities were explored by a committee composed of leaders of Parties whose decision was binding on the Assembly. Such a committee was called *Udyahika Sabha* to carry members over a to decision. A village was also a self governing republic, a centre of life and light through the ages, while further exercises in self-government, which imparted to

the decaying social tissues of people necessary vitality and vigour, were given by making every group self-governing, groups like *Kula* (family), *Jati* (Caste), *Sreni* (guild), *Puga* (village community), *Gana Sangha* and *Samuha* (Municipal Corporation). The State encouraged these natural groupings and associations of the people. Indian polity believed more in decentralization than centralization in administration and the resulting over government of the people.⁸

2.2.2. DEMOCRACY IN MEDIEVAL PERIOD

During medieval period (Sultanate period and Mughal period) the practice of democracy and republics were discontinued and country was governed by dynastic rule. After death of king of Kannauj, Hashvardhana, disintegration had started in north India. Unity could not be continued for two decades. In eleventh and twelfth century, turks started attacking India, taking advantage of the prevalent condition. Mohammad Ghwori was the founder of Muslim dynasty in India. The Turkish conquerors brought with them to India the administrative system of the Abbasid Khalif of Iraq and the Fatimid Khalifs of Egypt, but it was mixed up with Indian practices and customs. South was ruled by small states by different dynasties. There was no concept of unity of Indian States. Afterwards, Ghulam Dynasty and Tughluque Dynasty ruled in most of the part of India. After Sutanate period came Mughal period. Mughal administration was a combination of Indian and Perso-Arabic System in Indian setting. By its nature, the Mughal administrative system was a military rule and centralized despotism that continued till the taking over by British.

2.2.3. DEMOCRACY IN MODERN INDIA

The study of democratic institutions in ancient India, very interesting, has relevance for our present purpose. What we are concerned with is

⁸ Democracy in India, by Dr. Radha Kumud Mukerji, JPI, Lok Sabha Secretariat, Vol.2, 1, p 49

the origin and development of institutions of parliamentary democracy, of the British type, in this country.

We have patterned our democratic polity in the British Parliamentary system with certain important modifications. While tracing the development of the present Parliament in India, we will now see how each of these constituents came to be severally forged bit by bit.

British Crown assumed sovereignty over India from the East India Company in the year 1858, and British Parliament enacted the first statute for the governance was Government of India Act 1858. This Act serves as the starting point because the history up to the making of the Constitution is one of gradual relaxation of imperial control and the evolution of responsible government. It was dominated by the principle of absolute imperial control without any popular participation in the administration of the country. By this Act, the powers of the crown were to be exercised by the Secretary of State for India, assisted by the Council of India. The Council was composed exclusively of people from England, some of whom were nominees of the Crown while others were the representatives of the directors of the East India Company. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor General, assisted by an Executive Council, which consisted of high officials of the Government.

2.2.3.1. GOVERNMENT OF INDIA ACT, 1858: BRITISH CROWN ASSUMED SOVEREIGNTY OVER INDIA FROM THE EAST INDIA COMPANY

The essential features of the system introduced by the Act of 1858 were—

- (a) The administration of the country was not only unitary but rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant-Governor aided by his Executive Council at the head of each of them, the Provincial Governments were

mere agents of the Government of India and had to function under the superintendence, direction and control of the Governor-General in all matters relating to the government of the Province.

- (b) There was no separation of functions, and all the authority for the governance of India, civil and military, executive and legislative, was vested in the Governor-general in council who was responsible to the Secretary of State.
- (c) The control of the Secretary of State over the Indian administration was absolute. The Act vested in him the 'superintendence, direction and control of all acts, operations and concerns which in any wise relate to the Government or revenues of India'. Subject to his ultimate responsibility to the British Parliament, he wielded the Indian administration through the Governor-general as his agent.
- (d) The entire machinery of administration was bureaucratic, totally unconcerned about public opinion in India.

2.2.3.2 THE INDIAN COUNCILS ACT OF 1861: INCLUSION OF NON-OFFICIAL MEMBERS IN THE GOVERNOR GENERAL'S EXECUTIVE COUNCIL

The Indian Councils Act of 1861 introduced a grain of popular element insofar as it provided that the Governor-General's Executive Council, which was so long composed exclusively of officials, should include certain additional *non-official* members, while transacting legislative business as a Legislative Council. But this Legislative Council was neither representative nor deliberative in any sense. The members were nominated and their functions were confined exclusively to a consideration of the legislative proposals placed before it by the Governor-General. It could not, in any manner, criticise the acts of the administration or the conduct of the authorities. Even in legislation, effective powers were reserved to the Governor-general, such as—(a) giving prior sanction to bills relating to certain matters, without which they could not be introduced in the legislative Council;

(b) vetoing the Bills after they were passed or reserving them for consideration of the Crown; (c) legislating by Ordinances which were to have the same authority as Acts made by the legislative council.

2.2.3. THE INDIAN COUNCILS ACT, 1892: PARTITION OF NON-OFFICIAL MEMBERS IN THE WORK OF THE GOVERNMENT

Two improvements upon the preceding state of affairs as regards the Indian and Provincial Legislative Councils were introduced by the Indian councils Act, 1892, namely that (a) though the majority Indian Councils act, 1892 of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial councils were to be nominated by certain local bodies such as universities, district boards, municipalities; (b) the councils were to have the power of discussing the annual statement of revenue and expenditure, i.e., the budget and of addressing questions to the Executive. This Act widened the basis and expand the functions of the Government of India, and gave further opportunities to the *non-official and native elements* in Indian society to take part in the work of the Government.

2.2.3.4. THE INDIAN COUNCILS ACT, 1909: INTRODUCTION OF A REPRESENTATIVE ELEMENT IN THE LEGISLATIVE COUNCILS

The first attempt at introducing a representative and popular element was made by the Morley-Minto reforms which were implemented by the Indian Councils Act, 1909. The size of these Councils was enlarged by including elected non-official members so that the official majority was gone. An element of election was also introduced in the Legislative Council at the Centre but the official majority there was

maintained. The changes relating to the Provincial Legislative Councils were more advanced.

The deliberative functions of the Legislative Councils were also increased by this Act by giving them the opportunity of influencing the policy of the administration by moving resolutions on the budget, and on any matter of public interest, save certain specified subjects, such as the Armed forces, Foreign Affairs and the Indian States.

On the other hand, the positive vice of the system of election introduced by the Act of 1909 was that it provided, for the first time, for separate representation of the Muslim community and thus sowed the seeds of separatism that eventually led to the lamentable partition of the country.

Subsequent to this, the Government of India Act, 1915 was passed merely to consolidate all the preceding Government of India Acts so that the existing governmental provisions relating to the government of India in its executive, legislative and judicial branches could be had from one enactment.

The Morley-Minto Reforms failed to satisfy the aspirations of the nationalists in India in as much as the reforms did not aim at the establishment of a Parliamentary system of government in the country and provided for the retention of the final decision on all questions in the hands of the irresponsible Executive. The Indian National Congress which, established in 1885, was so long under the control of Moderates, became more active during the First World War and started its campaign for self-government (known as the 'Home Rule' movement). In response to this popular demand, the British Government made a declaration that they would increase association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to progressive realization of responsible government in British India.

The then Secretary of State for India (E.S. Montague) and the Governor-general (Lord Chelmsford) were entrusted with the task of

formulating proposals for carrying out the above policy and the Government of India Act, 1919, gave a legal shape to their recommendations.

2.2.3.5. THE GOVT. OF INDIA ACT, 1919.

The next landmark in constitutional development of India is the Montague-Chelmsford Report which led to the enactment of the Government Act, 1919. It was an amending Act, but the amendments introduced substantive changes into the existing system.

The main features of the system introduced by the Government of India Act, 1919, were follows:

(i) *Dyarchy in the Provinces.* Responsible government in the Provinces was sought to be introduced, without impairing the responsibility of the Governor (through the Governor-general), for the administration of the Province, by resorting to a device known as 'Diarchy' or dual government. The subjects of administration were to be divided into two categories—Central and Provincial. The Central subjects were those which were exclusively kept under the control of the Central Government. The Provincial subjects were sub-divided into "transferred" and "reserved" subjects.

The 'transferred subjects' were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which the proportion of elected members was raised to 70 percent. The foundation of responsible government was thus laid down in the narrow sphere of 'transferred' subjects.

The 'reserved subjects', on the other hand, were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.

(ii) *Relaxation of Central control over the Provinces.* A separation of the subjects of administration were made into two categories—Central and Provincial. Subjects of all-India importance were brought under the category 'Central' while matters primarily relating to the administration of the provinces were classified as 'Provincial'. This

meant a relaxation of the previous Central control over the provinces not only in administrative but also in legislative and financial matters. Even the sources of revenue were divided into two categories so that the Provinces could run the administration with the aid of revenue raised by the Provinces themselves and for this purpose, the provincial budgets were separated from the Government of India and the Provincial Legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.

This devolution of power to the Provinces was not **federal** distribution of powers. Under this Act, the Provinces got power by way of delegation from the Centre. The Central Legislature, retained power to legislate for the whole of India, relating to any subject, and it was subject to such paramount power of the Central Legislature that the Provincial legislature got the power to make laws for the peace and good government of the territories for the time being constituting that province.

The control of the Governor-General over Provincial legislation was also retained by laying down that a Provincial Bill, even though assented to by the Governor, would not become law unless assented to also by the Governor-general, and by empowering the Governor to reserve a bill for the consideration of the Governor-general if it related to matters specified in this behalf by the Rules made under the Act.

(iii) The Indian Legislature made more representative-No responsibility was, introduced at the Centre and the Governor-general in Council continued to remain responsible only to the British Parliament through the Secretary of State for India. Nevertheless, the Indian Legislature was made more representative and, for the first, *bicameral*. It was to consist of an Upper House, named the Council of State, composed of 60 members of whom 34 were elected, and a Lower House, named the legislative Assembly, composed of about 144 members of whom 104 were elected. The powers of both the Houses were equal except that the power to vote supply was given exclusively to the Legislative Assembly. The electorates were, however, arranged

on a communal and sectional basis, developing the Morley-Minto device further.

The Governor-General's overriding powers in respect of Central legislation were retained in the following forms—(i) his prior sanction was required to introduce Bills relating to certain matters; (ii) he had the power to veto or reserve for consideration of the Crown any Bill passed by the Indian Legislature; (iii) he had the converse power of certifying any Bill or any grant refused to be passed or made by the Legislature, in which case it would have the same effect as if it was passed or made by the Legislature, in which case it would have the same effect as if it was passed or made by the legislature; (iv) he could make Ordinances, having the force of law for a temporary period, in case of emergency.

The reforms of 1919, however, failed to fulfill the aspiration of the people in India, and led to an agitation by the Congress (then under the leadership of Mahatma Gandhi) for 'Swaraj' or 'self-government', independent of the British Empire, to be attained through 'Non-cooperation'. The **shortcomings** of the 1919 system, were—

- (i) Notwithstanding a substantial measure of devolution of power to the Provinces the structure still remained unitary and centralized with the Governor-general in Council and it is through him that the Secretary of State and, ultimately, Parliament discharged their responsibilities for the peace, order and good government of India. It was the Governor-General and not the Courts who had the authority to decide whether a particular subject was Central or Provincial Legislature could not, without the previous sanction of him, take up for consideration any bill relating to a number of subjects.
- (ii) The greatest dissatisfaction came from the working of Dyarchy in the Provincial sphere. The Governor came to dominate ministerial policy by means of his overriding financial powers and control over the official block in the Legislature. In practice, scarcely any question of importance could arise without affecting one or more

of the reserved departments. The impracticability of a division of the administration into two water-tight compartments was manifested beyond doubt. The main defect of the system from the Indian standpoint was the control of the purse. Finance being a reserved subject, was placed in charge of a member of the Executive Council and not a Minister. It was impossible for any Minister to implement any progressive measure for want of funds and together with this was the further fact that the members of the Indian Civil Service, through whom the Ministers were to implement their policies, were recruited by the Secretary of State and were to implement their policies, were recruited by the Secretary of State and were responsible to him and not the Ministers. Above all was the overriding power of the Governor who did not act as a constitutional head even with respect to the transferred subjects. There was no provision for collective responsibility of the Ministers to the Provincial Legislature. The Ministers were appointed individually, acted as advisers of the Governor, and differed from members of the Executive Council only in the fact that they were non-officials. The Governor had the discretion to act otherwise than in accordance with the advice of his Ministers; he could certify a grant refused by the Legislature or a Bill rejected by it if it was regarded by him as essential for the due discharge of his responsibilities relating to a reserved subject.

Therefore, the introduction of ministerial government over a part of the Provincial sphere proved ineffective and failed to satisfy Indian aspirations.

The persistent demand for further reforms, attended with the inquiry into and report on the working of the Act and in 1929 to announce that dominion Status was the goal of Indian political developments. The Commission, headed by Sir John Simon, reported in 1930. The Report was considered by a Round Table Conference consisting of the delegates of the British Government and of British India as well as of

the Rulers of the Indian States (inasmuch as the scheme was to unite the Indian States with the rest of India under a federal scheme). A White Paper, prepared on the results of this Conference, was examined by a joint Select Committee of the British Parliament and the Government of India bill was drafted in accordance with the recommendations of that Select Committee, and passed, with certain amendments, as the Government of India Act. 1935.

Before analyzing the main features of the system introduced by this Act, it should be pointed out that this Act went another step forward in perpetuating the communal cleavage between the Muslim and the non-Muslim communities, by prescribing separate electorates on the basis of the 'Communal Award' on the ground that the two major communities had failed to come to an agreement. From now onwards, the agreement between the two *religious* communities was continuously hoisted as a condition precedent for any further *political* advance. The Act of 1935, provided separate representation not only for the Muslims, but also for the Sikhs, the Europeans, Indian Christians and Anglo-Indians and thus created a serious hurdle in the way of the building up of national unity, which the makers of the future Constitution found it almost insurmountable to overcome even after the Muslims had partitioned for a separate State.

2.2.3.6. GOVERNMENT OF INDIA ACT, 1935.

The Government of India Act, 1935 had been a land mark symbol in the constitutional history. It can be said that this Act has been proved a more progressive and important document in pre-constitution period. This Act may be regarded as the last efforts by the British rulers to guide the all round system legislative, executive or judicial on the line of federalism.

Main Features:

- (a) *Federation and Provincial Autonomy.* While under all the previous Acts, the government of India was unitary, the Act of 1935 prescribed a federation, taking the provinces and the

Indian States as units. But it was optional for the Indian States to join the Federation; and since the Rulers of the Indian States never gave their consent, the Federation envisaged by the Act of 1935 never came into being.

But though the Part relating to the Federation never took effect, the Part relating to Provincial Autonomy was given effect to since April, 1937. The Act divided legislative powers between the Provincial and Central Legislatures, and within its defined sphere, the Provinces were no longer delegates of the Central Government, but were autonomous units of administration. To this extent, the Government of India assumed the role of a federal government *vis-à-vis* the Provincial Government, though the Indian States did not come into the fold to complete the scheme of federation.

The executive authority of a Province was also exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor was required to act with the advice of Ministers responsible to the Legislature.

But notwithstanding the introduction of Provincial Autonomy, the Act of 1935 retained control of the Central Government over the Provinces in a certain sphere—by requiring the Governor to act ‘in his discretion’ or in the exercise of his ‘individual judgment’ in certain matters. In such matters, the Governor was to act without ministerial advice and under the control and directions of the Governor-General, and, through him, of the Secretary of State.

- (b) *Dyarchy at the centre.* The executive authority of the Centre was vested in the Governor-General (on behalf of the Crown), whose functions were divided into two groups—
 - (i) The administration of defense, external affairs, ecclesiastical affairs, and of tribal areas, was to be made by the Governor-General in his discretion with the help of ‘counselors’, appointed by him, who were not responsible to the Legislature.



as permanent Acts at any time for the discharge of his special responsibilities.

- (iv) No bill or amendment could be introduced in the Legislature without the Governor-General's previous sanction, with respect to certain matters, e.g., if the Bill or amendment sought to repeal or amend or was repugnant to any law of the British Parliament extending to India or any Governor-general's or Governor's Act, or if it sought to affect matters as respects which the Governor-General was required to act in his discretion.

There were similar fetters on the Provincial Legislature.

The Instruments of Instructions issued under the Act further required that Bills relating to a number of subjects, such as those derogating from the powers of a High Court or affecting the Permanent Settlement, when presented to the Governor-general or a Governor for his assent, were to be reserved for the consideration of the Crown or the Governor-General, as the case might be.

- (c) Distribution of legislative powers between the Centre and the Provinces.

Though the Indian States did not join the federation, the federal provisions of the Government of India Act, 1935, were in fact applied as between *the Central Government and the Provinces*.

The division of legislative powers, between the Centre and the Provinces is of special interest to us in view of the fact that the division made in the Constitution between the Union and the States proceeds largely on the same lines. It was not a mere delegation of power by the Centre to the Provinces as by Rules made under the Government of India Act, 1919. The Constitution Act of 1935 itself divided the legislative powers between the Central and Provincial Legislatures and, subject to the provisions mentioned below, neither Legislature could transgress the powers assigned to the other.

A three-fold division was made in the Act—

- (ii) With regard to matters other than the above reserved subjects, the Governor-general was to act on the advice of a 'Council of Ministers' who were responsible to the Legislature. But even in regard to this latter sphere, the Governor-general might act contrary to the advice so tendered by the ministers if any of his 'special responsibilities' was involved. As regards the special responsibilities, the Governor-general was to act under the control and directions of the Secretary of State.

But, in fact, neither any 'Counselors' nor any Council of Ministers responsible to the Legislature came to be appointed under the Act of 1935; the old Executive Council provided by the Act of 1919 continued to advise the Governor-General until the Indian Independence Act, 1947.

- (c) *The Legislature.* The Central Legislature was bicameral, consisting of the federal Assembly and the Council of State.

In six of the Provinces, the Legislature was bicameral, comprising a legislative Assembly and a Legislative Council. In the rest of the Provinces, the Legislature was unicameral.

The legislative powers of both the Central and Provincial Legislatures were subject to various limitations and neither could be said to have possessed the features of a sovereign Legislature. Thus, the Central Legislature was subject to the following limitations:

- (i) Apart from the Governor-General's power of veto, a Bill passed by the Central Legislature was also subject to veto by the Crown.
- (ii) The Governor-General might prevent discussion in the Legislature and suspend the proceedings in regard to any bill if he was satisfied that it would affect the discharge of his special responsibilities.
- (iii) Apart from the power to promulgate Ordinances during the recess of the Legislature, the Governor-General had independent powers of legislation, concurrently with those of the Legislature. Thus, he had the power to make temporary Ordinances as well

1. There was a Federal List over which the Federal Legislature had exclusive powers of legislation. This List included matters such as external affairs; currency and coinage; naval, military and air forces; census.
2. There was a Provincial List of matters over which the Provincial Legislature had exclusive jurisdiction, e.g., Police, Provincial Public Service, education.
3. There was a Concurrent List of matters over which both the federal and Provincial Legislature had competence, e.g., criminal law and procedure, civil procedure, marriage and divorce, arbitration.

The Federal Legislature had the power to legislate with respect to matters enumerated in the provincial List if a Proclamation of Emergency was made by the Governor-General. The Federal Legislature could also legislate with respect to a Provincial subject if the Legislatures of two or more Provinces desired this in their common interest.

In case of repugnancy in the Concurrent field, a Federal law prevailed over a Provincial law to the extent of the repugnancy, but if the Provincial law having been reserved for the consideration of the Governor-General received his assent, the Provincial law prevailed, notwithstanding such repugnancy.

The allocation of residuary power of legislation in the Act was unique, it was not vested in either of the Central or Provincial Legislature but the Governor-general was empowered to authorise either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the Legislative Lists. 'Dominion Status', which was promised in 1929, was not conferred by the Government of India Act, 1935.

3.2.3.7. INDIAN INDEPENDENCE ACT,1947: INDIA CEASED TO BE A DEPENDENCY OF BRITISH CROWN

In pursuance of the Indian Independence Act, the Government of India Act, 1935, was amended by the Adaptation Orders, both in India and Pakistan, in order to provide an interim Constitution to each of the two Dominions until the Constituent Assembly could draw up the future Constitution.

The following were the main results of such adaptations:-

1. Abolition of the Sovereignty and Responsibility of the British Parliament.

As has been already explained by the Government of India Act, 1858, the Government of India was transferred from the East India Company to the Crown. By this Act, the British Parliament became the direct guardian of India, and the office of the Secretary of State for India was created for the administration of Indian affairs, for which the Secretary of State was to be responsible to Parliament. Notwithstanding gradual relaxation of the control, the Governor-General of India and the Provincial Governors remained substantially under the direct control of the Secretary of State until the Indian Independence Act, 1947, so that—

In constitutional theory, the Government of India is a subordinate official Government under His Majesty's Government.

The Indian Independence Act altered this constitutional position, root and branch. It declared that with effect from the 15th August, 1947 India ceased to be a Dependency and the suzerainty of the British Crown over the Indian States and the treaty relations with Tribal areas also lapsed from the date.

The responsibility of the British Government, for administration of India having ceased, the office of the Secretary of State for India was abolished.

2. The Crown no longer the source of authority.

So long as India remained a Dependency of the British Crown, the Government of India was carried on in the name of His Majesty. Under the Act of 1935, the Crown came into further prominence

owing to the scheme of the Act being federal, and the units of the federation, including the Provinces, drew their authority direct from the Crown but under the Independence Act, 1947, neither of the two Dominions of India and Pakistan had to derive its authority from the British.

3. The Governor-General and Provincial Governors to act as constitutional heads.

The Governor-General of the two Dominions became the constitutional heads of the two new Dominions as in the case of the other Dominions. This was a necessary corollary from 'Dominion Status' which had been denied to India by the Government of India Act, 1935, but conceded by the Indian Independence Act, 1947.

According to the adaptations under the Independence Act, there was no longer any Executive Council as under the Act of 1919 or 'counselors' as envisaged by the Act of 1935. The Governor-General or the Provincial Governors was to act on the advice of a Council of Ministers having the Confidence of the Dominion Legislature or the Provincial Legislature, as the case might be. There was now no sphere in which these Constitutional heads could act without or against the wishes of the Ministers. Governors lost extraordinary powers of legislation and his power to suspend the Provincial Constitution was taken away.

The Constituent Assembly was to have a dual function, constituent as well as legislative.

3.2.4. MAKING OF THE CONSTITUTION.

The Constituent Assembly, which had been elected for undivided India, reassembled on the 14th August, 1947, as the sovereign Constituent Assembly for the Dominion of India. Various Committees were made to help in drafting the Constitution. The Drafting Committee, under the Chairmanship of Dr. Ambedkar embodied the decision of the Assembly in the form of a 'Draft Constitution of India'.

After several sessions and consideration of the clauses, the Constitution received the signature of the President of the Assembly on 26 November, 1949 and was declared as passed. Few of the provisions e.g. citizenship, elections were given immediate effect and Constitution came into force on 26th January, 1950.

Indian Constitutional thought before independence was influenced by two models of democratic governments - U.S.A. AND U.K. The impact of the British system was direct and immediate. Besides most of our leaders were educated in Britain and had first hand knowledge of the constitutional and legal usage in that country. In pre-independence period, every installment of Constitutional reform in India was regarded as a step towards the establishment of a democratic and responsible government as it functioned in Britain. It was therefore but natural, that the majority of the framers of our Constitution were in favour of adopting the British Model. On 17 March 1947, B.N.Rao, the Constitutional advisor to the Constituent Assembly issued a questionnaire to the members of the central and the provincial legislatures. It sought their views on the nature of the executive at the Centre. The replies were overwhelmingly in favour of the parliamentary system. On 7th June, 1947 a joint meeting of the Union Constitution Committee and the provincial Constitution Committee, headed by J.L. Nehru and Sardar Patel, decided that India should have the Parliamentary system of Constitution of British type with which we were familiar.

But the Constitutional Assembly also had supporters of Presidential system as its members. Ramnarayan Singh, S.L. Saxena and K.T. Shah were strong advocates of the presidential system. K.M.Munshi and Sir Alladi Krishnaswami Aiyer defended the parliamentary system on behalf of the Assembly's Drafting Committee. Shri Munshi said, "we must not forget a very important fact that during the last 100 years Indian public life has largely drawn upon the traditions of the British Constitutional Law. Most of us and during the last several

generations before us, public man in India have looked up to the British model as the best. For the last thirty or forty years, some of kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become Parliamentary functioning more or less on the British model.”⁹

At the time of the framing of the Constitution, Dr. Ambedkar stated as below for preferring the parliamentary Government:

A democratic executive must satisfy two conditions:

- (1) It must be a stable executive; and
- (2) It must be a responsible executive.

Unfortunately, it has not been possible so far to devise a system, which can ensure both in equal degree. The American and the Swiss system (Presidential), give more stability but less responsibility. The British system on the other hand gives more responsibility but less stability. The draft Constitution in recommending the parliamentary system of executive has preferred more responsibility to more stability.”¹⁰

Dr. H.M. Jain, Prof. and Head of the Department of Political Sciences, Allahabad University has also discussed this subject in detail in his article ‘Quest for an Alternative’. He says, “The Constituent Assembly was merely culmination of a process and evolution which had commenced under the British rule and passed through many stages of development.”¹¹

As it is already mentioned in the earlier part of the chapter an attempt was made to introduce Parliament system in India for the first time in 1892 by the enactment of the Indian Council Act under which a few elected members were provided with the seats in the council. The members were given the right to criticize and to ask questions on financial matters after discussion but they had no right to vote. Thereafter in 1909, for the first time, bicameral Legislative was

⁹ C.A.D. VII,p.32-33.

¹⁰ B.L.Hansaria, - Does India Need a New Constitution, 1998,p.8.

¹¹ Ibid.

introduced at the Centre. Last phase of evolution of Parliament during the British period was the Government of India Act 1935, which introduced many reforms. The present Constitution was thus carried straight from the Government of India Act, 1935.

Another reason was that our political leaders had looked upon the Westminster model as the goal of their constitutional aspirations, and it was little surprising that they opted for the parliamentary system.

The members of the Constituent Assembly from the very start were clear in their minds that the government of which they were going to frame a constitution should be democratic in character. The Assembly decided in favour of the British Cabinet System and this was natural as India had become increasingly familiar with that system since her association with Britain. It also decided to have a President who was to be the constitutional head of the State and was to be elected by means of indirect elections for a term of five years. The fact that Constituent Assembly decided in favour of British Parliamentary system of Government Speaking in the Assembly Munshi observed :¹²

“We must not forget a very important fact that during the last one hundred years Indian public life has largely drawn upon the traditions of the British constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become parliamentary and we have now all our Provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full-fledged Parliamentary Government.”

2.2.5. SELECTION OF PARLIAMENTARY FORM OF GOVERNMENT:

The members of the Constituent Assembly because of their experience during British times entertained suspicion and mistrust of executive

¹² Taken from “Making of the Constitution”- H.R.Khanna.

autocracy. They had much greater faith in the legislature as protector of peoples' rights.

Sapru Report suggested about the Parliamentary type executive. Some of the Muslim members in the Constituent Assembly supported the idea of elected Ministry on the Swiss model. Munshi in his Draft Constitution provided for a Head of State with powers like those of the British monarch and a British Cabinet system with joint responsibility of ministers. The Union Constitution Committee at first thought of making an express provision that the Prime Minister should be a person most likely to command a majority in the Lower House of Parliament. This idea was subsequently given up and it was merely provided that the Council of Ministers should be headed by a Prime Minister to aid and advise the President.

Another proposal which was mooted was to make special provision to ensure greater governmental stability. The Committee decided against this proposal as it thought that the ministries to be formed in future would be Congress Ministries and in view of the great hold of the party over the people, the ministries would not suffer from instability.

The Union Constitution committee decided that the electoral-college for the election of the President should consist of two Houses of Parliament and the Lower Houses of the State Assemblies.

Pandit Nehru in the course of a speech expressed that the President should be a non-party man and he should behave in an impartial manner in his office. Dealing with the suggestion that the President should be elected by adult franchise, Nehru observed that it might result in slight anomaly as they wanted to emphasize the fact that the real power resided in the ministry and the legislature and not in the President as such. Munshi then came out with a suggestion that the President and the Governors be elected by electoral-college directly elected for this purpose.

There was initially some difference on the point as to whether there should be a Vice-president. B.N. Rau did not contemplate the office of Vice President. The Union Constitution Committee decided that besides the President there should also be a Vice-President who too was to be indirectly elected. For the States also they decided in favour of the system of Cabinet Government.

Some Muslim members favoured a directly elected head of the State and an indirectly elected ministry. They believed that this would ensure greater protection for the minorities. Elected ministries, according to the Muslim members, would be more stable considering the diversity of India's religious and other groups. Ministers, according to one suggestion, ought to be elected by the members of the legislature from amongst their own number by proportional representation and ought to have a fixed term of office as in Switzerland. Aziz Ahmed Khan while dealing with the ministers in the States pleaded for their election by the State Assemblies by a single non-transferable vote in order that all the parties on whose behalf the ministers would govern should have a hand in their appointment to secure the confidence of every party. He expressed the view that very few parties were based on political principles and most of them depended upon religious distinctions.

Munshi, while defending the British system observed that ministries elected by a system of proportional representation would make their appeals to groups and this might lead to fragmentation of the political life of the country and would result in a feeble government. Members were also told that the British system surpassed all others in terms of stability and strength. An infant democracy cannot afford under modern conditions to take a risk of perpetual cleavage, feud, or conflict between the legislature and the executive.

Looking at it from the point of view of responsibility, a non-Parliamentary executive, being independent of parliament, tends to be less responsible to the legislature, while a Parliamentary executive,

being more dependent upon a majority in Parliament, becomes more responsible. **The Parliamentary system differs from a non-Parliamentary system** inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the United States of America, the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by Members of Parliament, through questions, resolutions no-confidence motions, adjournment motions and debates on Addresses. Periodic assessment is done by the electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Government has preferred more responsibility to more stability.

Looking in retrospect it can be said that whatever might have been the experience of the United States about the Presidential system, the experience of that system in Asian and African countries has been that hardly any President has gone out of office as a result of election. Only natural death or coup has resulted in the displacement of the President. As against that only in a Parliamentary system could Mrs. Gandhi be forced to step down from the office of the Prime Minister as a result of elections in 1977 and again only in a Parliamentary system could she return to that office in 1980 as a result of elections. One looks in vain for such a precedent in Asian and African countries having Presidential system.

Another question which attracted interest was whether the appointment of the Prime Minister rested on the discretion of the

President. Dr. Ambedkar in this context observed that it is not possible to avoid vesting the discretion in the president but the only other way by which it could be provided for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

It was quite unnecessary. Supposing the President made the choice of a wrong person either because he had not a stable majority in the House, or because he was persona non-grata with the House : the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence against him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

Rau in made a suggestion that the Constitution should provide for a Council of State which would be a sort of Privy Council and whose advice would be available to the President whenever he chose to obtain it in all matters of national importance in which he is required to act in his discretion. According to Rau, this Council, was to consist of the Prime Minister and his deputy, the Chief Justice, the Presiding Officers of the two Houses of Parliament, the Attorney-General, besides all former Presidents, Prime Ministers, Chief Justices and others appointed by the President. The Council was to have a dual role. It could advise the President on the appointment of Judges and in the exercise of other such functions. The Council was also to advise the President in the use of discretionary powers. Rau

contemplated that the President would have special responsibilities like the Governor General under the Government of India Act of 1935. Inspiration for the above proposal of Rau was sought in the Irish Constitution. Munshi suggested for a council of elders to advise the President. According to Munshi the President should be directly elected and the council of elders should comprise ten Vice-Presidents who were to be representatives of different communities and princely States and certain Cabinet ministers. It was only on the advice of this Council that the President could, according to Munshi, dissolve the Parliament, assent or refuse assent to bills and promulgate ordinances. The President could also with the concurrence of six members of the council take action against the will of the Parliament. Munshi's idea was criticised as it would split the executive into two sections. The members of the Union Constitution committee rejected the suggestion of Munshi as well as the proposal of Rau.

Proposal was then mooted for an Instrument of Instruction for the President. The proposal ultimately turned down. The Instrument would enjoin the Head of the State to form an Advisory Board consisting of not less than 15 members of both Houses of Parliament. These members were to be elected to the Board by proportional representation and were to advise the President in the matter of appointments like those of Chief Justices and Judges of the Supreme Court and the High Courts, Ambassadors to foreign States, Auditor General of India, Chairman and Members of the Public Service Commission and Members of the Election Commission. In the event of any dispute between the President and his Advisory board, the matter was not in favour of the unequivocal acceptance of the British Cabinet system. According to Ambedkar the political majority as contemplated by that system, would be nothing more than the communal majority. Such majority would be under no obligation to bring representatives of minority communities into the cabinet. None of these suggestions, found favour and were ultimately turned down.

The members of the Assembly also thought of preventing the Head of the State from serving more than two terms in office. This was in accordance with the provisions of the Irish Constitution. This restriction, though initially accepted was ultimately dropped as it was thought that the matter should be left to convention.

The question as to whether Union Parliament should have an Upper House also evoked considerable interest. Before the liberation of the country, Nehru Report had envisaged an Upper House of Legislature as a part of the federal structure. It was said, such a house would provide an opportunity for reconsideration of legislation in a somewhat cooler atmosphere than that provided in the lower House. This was necessary because of the existence of communal feelings. When the matter came up before the Assembly, Rau, gave arguments both for and against the existence of an Upper House. The arguments in favour of the Upper House were the desire to impose a check on hasty legislation, the desire to provide representation for interests difficult to include in lower House. The arguments against the formation of an Upper House were that it was undemocratic and needlessly slowed down the democratic process. The Union Constitution Committee decided in favour of the Upper House. It rejected the idea of equal representation for each State in the Upper House. No Province or State was to have more than 20 members in the Upper House. The allocation of number of seats to the States and Union territories for the Council of States is now governed by the Fourth Schedule. During last fifty four years Rajya Sabha's **only utility** so far exhibited is that it has offered a safe berth to the abruptly appointed Central Ministers and popularly unwanted but comparatively important Politicians. Due to historical reasons in the U.S. and the U.K., the exodus is from the Lower to the Upper house, the tendency is in the other way in India. There are more people in the Lower House with longer experience than in the Upper House at any time.

Regarding the State legislatures the members were not agreed as to whether there should be a Second Chamber. Some members said that Upper Houses were a good check on the democratic process. Others expressed the view that the Upper Chambers would safe guard the interests of propertied classes and vested interests which had buttressed and bolstered up British rule. Some others said that an upper House introduced an element of sobriety and second thought. As against that view was advanced that the Upper House would act as clogs in the wheel of progress. The question of Upper House for the State legislatures was thereafter left to the Provincial delegations in the Assembly. Most of the Provinces decided to have bicameral legislature. Bombay, Madras, Bihar, East Punjab, U.P and Orissa and West Bengal decided in favour of Second Chamber while Assam and Central Provinces decided against it.

While the general pattern of our Parliament is the same as the British Parliament, and for that reason our study will involve comparison with the British Parliament but we have to note a vital difference in the approach. In England, nobody gave powers to the Parliament, and no Constitution made the Commons (except for the 1911 Act) more powerful than the Lords. These powers were assumed by it because in England Parliament was the instrument through which autocracy of the King was converted into democracy; and this was done because the People slowly realised that the power really belonged to them. Our case is different. We have made certain modification in the British system to suit our federal structure.

2.2.6. COMPARISON WITH THE BRITISH SYSTEM

The Indian Constitution, though primarily modeled on the British parliamentary system, makes certain modifications in view of the huge geographical spread and the federal set up.

1. India has an elected President while British Monarch is hereditary.

The Procedure of election of the President itself indicates sufficient

departure from the British parliamentary system. In France, before the fifth Republic, and in Italy even at present, the President is chosen by both the Houses of the Parliament. Indian President, like that of German Republic is elected by an electoral college consisting of taken in the king's name only on the countersign of the ministers; therefore, the king can't commit any wrong. The Indian constitution provides for impeachment of the President for violation of the Constitution. It shows that President may discharge some of his functions on his own for which he is liable. The federal set up of our polity requires the President to act as protector of the states' interests. The Constitution entrusts more faith in the President in person than the Union Government. The Governors of the States are appointed by the President and hold office during his pleasures. In exceptional cases, the President may assume himself all the powers of the State Government.

2. The President takes an oath to 'faithfully' execute the office of the President and to protect and defend the Constitution.
3. The Constitution provides for certain machineries to advise the President, in addition to the Union Ministry. The Constitution provides for the (i) institution of Attorney General (ii) advisory opinion of the Supreme Court on certain question of fact or law, (iii) determination of the disqualification of a member of Parliament in consultation with the Election Commission, (iv) consultation of justices of the Supreme Court and High Courts and Chief Justice of India in appointments to the Supreme Court bench, (v) consultation of Chief Justice of India, Governor of the concerned state and Chief Justice of the High Court to which appointment is to be made, and (vi) assumption of the powers of a State Government due to breakdown of constitutional machinery in the State on report of the concerned Governor.
4. In England, the allegiance owed to the monarch is derived from tradition, sentiment and history while the position of the President

of India depends upon the power exercised by him within the express provisions of the constitution.

5. The British system has unitary set up with parliamentary supremacy; the Indian Constitution brings the idea of limited government with federal set up and written constitution. Indian Parliament can not claim omnipotence of the British Parliament to make or unmake any law. This reveals that the Indian system of Government is predominantly based on parliamentary system, but it is not replica of that.

2.3 CONSTITUTION AND FUNCTION OF THE INDIAN PARLIAMENT

The Indian Parliament comprises of:

1. The President and the two Houses: -
2. Lok Sabha (House of the People)
3. Rajya Sabha (Council of States)

Parliament is the supreme legislative body of the country.

The President is elected through the system of proportional Representation by means of the single transferable vote. The Constitution provides that the President will act on the advice of the Council of Ministers.

Lok Sabha is constituted for a term of five years through direct election held based on adult franchise. Lok Sabha elects one of its own members as its Presiding Officer and he is called the Speaker. He is assisted by the Deputy Speaker who is also elected by Lok Sabha. The conduct of business in Lok Sabha is the responsibility of the Speaker.

Rajya Sabha constitutes of representatives of each State who are elected by the elected members of the Legislative Assembly of a State and 12 members are nominated by the President. It is a permanent body with one-third of its membership renewed every second year. The tenure of every member is six years. The Vice-President of India is the

ex-officio Chairman of Rajya Sabha. He is elected by the members of an Electoral College consisting of members of both the Houses of the Parliament. Rajya Sabha also elects one of its members to be the Deputy Chairman.

2.3.1. FUNCTIONS OF LOK SABHA AND RAJYA SABHA

The main function of both the Houses is to pass laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the Union List in the Seventh Schedule to the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are Defence, Foreign Affairs, Railways, Transport and Communications, Currency and Coinage, Banking, Customs and Excise Duties. There are numerous other subjects on which both the Parliament and the State Legislatures can legislate. Under this category, mention may be made of economic and social planning, social security and insurance, labour welfare, price control and vital statistics. Besides passing laws, the Parliament can by means of resolutions, motions for adjournment, discussions and questions addressed by members to Ministers exercise control over the administration of the country and safeguard the people's liberties.

2.3.2 JURISDICTION OF THE PARLIAMENT

Parliament is not a sovereign institution in India in as much as it functions within the bounds of a written Constitution. The Indian Constitution believes in the principle of division of power and judicial review. The powers have been distributed in such a way that the Centre has more powers than the states as seen from the Union, State and concurrent Lists. There are 97 subjects included in the Union List and 66 subjects in the State list. The Centre is empowered to make laws in certain special circumstances on the subjects included in the

States List as well. The Parliament can take steps in this direction provided Rajya Sabha declares by resolution supported by special majority that it is necessary or expedient in the national interest to do so. When a proclamation of emergency is in operation, the Legislative competence of Parliament is widened so as to extend to any matter in the State List. Parliament also enjoys the power to legislate for implementing any treaty or agreement with any country. During emergency, Parliament can issue directions to the State Government in the matter of exercising executive powers. In case a State Government cannot be carried on in accordance of the provisions of the Constitution, the Assembly may be suspended or dissolved by the President and Parliament make laws in respect of that State. The Parliament and State Assembly have equal rights to make laws in respect of that State. They have equal rights to make laws in respect of the Concurrent List, but if a law enacted by the State is not in consonance with the laws passed by the Centre, then the law made by the latter will prevail. There are 47 subjects in the Concurrent List. In addition to these three Lists, mention has been made in the Constitution about the residuary powers of the Centre in respect of any matter not enumerated in any of the Lists.

The Constitution empowers the Parliament to make changes in the boundaries of the States and effect changes in the names of existing States. It can create new States by uniting two or more States. It can regulate the citizenship. The Constitution empowers the Parliament to amend the Constitution; and by virtue of this power, it can amend even the process of amending the Constitution. It has been provided that no one can interfere with the proceedings of Parliament. In view of the aforesaid power, it can be said that our Parliament is a sovereign body provided it does not tinker the Basic Structure of the Constitutions. It has to proceed according to the provisions of the written Constitution whenever any provision becomes an obstacle; the

Parliament can amend it suitably as has been done 91 times during last 56 years.

2.3.3 DIFFERENCE BETWEEN THE TWO HOUSES

- (1) Members of Lok Sabha are directly elected by the eligible voters. Members of Rajya Sabha are elected by the elected members of State Assemblies in accordance with the system of proportional representation by means of the single transferable vote.
- (2) The normal life of every Lok Sabha is 5 years only while Rajya Sabha is a permanent body.
- (3) Lok Sabha is the House to which the Council of Ministers is responsible under the Constitution. Money Bills can only be introduced in Lok Sabha. In addition, it is Lok Sabha, which grants the money for running the administration of the country.
- (4) Rajya Sabha has special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all- India services common to the Union and the States.

2.3.4. OUTSTANDING FEATURES OF OUR PARLIAMENT

Our system of Government is the “Parliamentary system” on the British pattern also called the Westminster model. In a Parliamentary system there is no strict separation of powers between the Legislature and the Executive. It involves a fusion of legislative and executive powers than a strict separation of those powers. Executive is divided into two parts-President is the Head of the State who reigns the country and the Prime –Minister is the head of the Government, who governs the country. All the actions are taken in the name of the Head or the President, but responsibility is that of the Councils of Ministers, headed by the Prime Minister.

The executive is drawn from the legislative-majority and can count on automatic endorsement of its programmes. The Ministers are to be members of Parliament. The cabinet enjoying the majority in the

Parliament concentrates in itself the virtual control of both the legislative and executive functions. The executive has the primary responsibility for the formulation of governmental policy and its transmission in to the Law. The responsibility for success or failure of policies is clear and identifiable.

2.3.4.1. POLITICAL PARTIES

Politics in a democracy is about competing claims and the attempts of political parties to construct consent about the way in which decisions should be taken on the claims, and the principles or values which should guide the process by which the decisions are to be taken. The role of political parties in our democracy is not to try to seek out some imaginary general will but to try to measure people's feelings or register their votes on particular issues. Political parties play a great role in the working of the Constitution and its democratic institutions. Parliamentary system of Government essentially rests on party system. It is this system which gives to it solidarity and strength and homogeneity to the cabinet. The members of the cabinet do not oppose each other. Some members of the Legislature, as a rule always support and some other members generally always oppose the measures proposed by the Cabinet members. The majority of members, though they sometimes criticize them in debate, ordinarily always vote for those measures. All these actions are taken in terms of parties. The American and the British constitutions owe their success to their respective party systems. K.C.Wheare attributed the success of the US and the Canadian federal governments to the party system of these countries.

2.3.4.1. Bi-Party System

In the Parliamentary form of government party government is the real name for the Parliamentary democracy. Particularly the party system under the cabinet government finds the best conditions for its operations when there are only two parties, or, at least when two

parties are sufficiently large to provide a clear majority in the legislature. The voice of the government is the voice of the majority party in the Parliament. Another party being in opposition plays a sound check against the authority of the majority party. Another condition is that these parties should be organized on a unitary and homogeneous basis. Under the parliamentary system, the political parties, though vague in their policies, are disciplined parliamentary groups, requiring of their members a high degree of conformity. The leader has a great authority, and there is little room for dissidence. Any type of protest, whether from inside or outside the party, to be effective, must occur from outside the old parties and if it is to be effective, must itself assume the form of a political party. In heterogeneous countries having parliamentary government, a continual process of secession from the old parties and formation of new parties is found. The development of political parties in our own country is a clear proof of this phenomenon. This is a logical outcome of the Parliamentary-system. Political parties are not formed according to text-book theories but grow out of various forces, personalities and historical developments. That all political, legal, economic and social institutions undergo a change with time is now well established. There is a co relation between the social change and the legal change and political parties are no exception to this rule. Political parties are not merely a link between the government and the people; they are also the instrumentalities of social change, social resurrection and transformation. Parliamentary democracy needs parties which are eligible to be elected by the broadest possible strata of the population. The sound party system and especially two-party system is essential for the successful functioning of a democracy and success of a successful party-system depends on the availability of effective and efficient leadership. India has not been altogether fortunate in this respect. Although we have had a few outstanding leaders in the past in comparison with them the present day leadership does not inspire

the people and create in them the enthusiasm and urge for producing better results for democratic spirit and tradition.

2.3.4.1.2 Role of opposition

The effective and successful functioning of Parliamentary democracy depends to a large extent on striking the right balance between the treasury benches and members of the opposition. As Benjamin Disraeli said “no government can be long secure without formidable opposition”.¹³ The opposition has to play very crucial role by keeping a check on any arbitrary action of the Executive. One of the achievements in the process of development of parliamentary norms and conventions in India is that the role of the opposition has been formally recognized and given a statutory status in our political system. Taking into consideration the importance of the role of leader of the opposition in a parliamentary democracy, it was considered necessary that the leader of the opposition in the House of the People and the Council of States should be accorded statutory recognition. With this object in view, the Salary and Allowances of leaders of opposition in Parliament Act, 1977 was added to the statute book. This Act bestowed on the leaders of the opposition in Parliament the status and facilities enjoyed by a Union Cabinet Minister. The leader of the opposition, in fact, enjoys more privileges than a cabinet minister. After the sixth general elections to the Lok Sabha, the Congress Parliamentary Party was recognized as the opposition party in Lok Sabha, and its leader Sri Yashwantrao B. Chavan, as the leader of the opposition in the House. The Seventh and Eighth Lok Sabhas witnessed the absence of any recognized Opposition Party. In Ninth Lok Sabha, the Congress (I) was recognized as the opposition party with its leader, Shri Rajiv Gandhi, as the leader of the opposition. But he ceased to be the leader of the opposition after giving its support to Shri Chandra Shekhar to form a Minority Government. With effect from 24th December 1990, Shri L.K. Advani, Leader of the Bhartiya

¹³ Taken from article prepared by LARRDIS, The Journal of Parliamentary Information, XXXVII, March 1991, p.22.

Janata Party was recognized as the Leader of the opposition in the XII Lok Sabha. With the BJP, coming to power in the XIII Lok Sabha, the 'Leader of Opposition' came to be Congress President Smt. Sonia Gandhi. With the recent elections, Congress has come to power and the post of Leader of opposition would again go to BJP.

2.3.4.1.3. Federalism and Party System

Parliamentary system of government and federal system of organization normally have opposite tendencies. Parliamentary Government works in an ideal way in a two party system, but federal system encourages multi-polarity. Federal organization creates regional political centers which provide opportunity for regional political patronage. Regional interests which form their separate parties have a limited area to fight. They champion regional issues and get regional political patronage and one day control region singly and also enter the national arena. Federal system thus makes it possible for a regional party to gain experience of power, and thus demonstrate its capacity to govern; it has at least a fighting chance for forcing its way into the Central government. There has been multi-party system in Canada for more than four decades. There are at present six major and a few minor parties and since the last decade no single party has been able to achieve an absolute majority in the federal Lower House. The party system of the Commonwealth of Australia has been equally diversified. In India, initially it appeared that there will be only one major party but a plethora of parties has been created and far from appearing as a passing phase the situation appears to be taking permanent root. Like Canada and Australia, in India too the party system is taking regional form. The U.S.A. being a federal state can also have regional parties, as a matter of principle. But because of the Presidential system of governance, power sharing is almost impossible in the U.S. We cannot dream of a coalition consisting of small regional parties, coming to power in the U.S. Thus

in the U.S., the presidential system of government discourages multiplicity of political parties.

The federal system of governmental organization also federalizes the party structure. Federal system postulates regional political centers which provides opportunities for regional political patronage. These regional organizations, after selecting candidates from their region for election to the national legislature, try to control the central organization, instead of being controlled by the central organization. Consequently, the party is federalized and the central organization becomes a collection of regional leaders having divergent outlook and interests and pulling in different directions. Secondly, political parties develop factionalism. The intra-party rivalry and disputes which develop in the process of efforts by different factions for ascendancy lead to intra party fights which destroy party strength and paralyze the organization. The compromises bring ambiguity in issues and blur the policies. While the national defeat coupled with regional victory give strength to the regional leaders and weakens national leaders, regional defeat coupled with national victory also tends to weaken the national organizations and central leaders from these regions. The continuing and effective units of the parties, therefore, remain regional organizations.

Thus, in all major federations having parliamentary government multi-party system and federalized faction-ridden parties appear to have come to stay which is not considered to be conducive to the efficient working of parliament government.

2.3.4.1.4. Background of party-system in India

The development of the political parties in India has followed an altogether different pattern. First, in India, it was the national movement which gave rise to political parties and not vice versa. Secondly, the people of India got adult suffrage suddenly. When in

1885 the Indian National Congress was founded, it was more in the nature of a pressure group than a political party. At that time, it could have hardly visualized that the control of government could be its objective. It was Gandhi ji who engineered and led a nation wide movement of liberation and brought together within the Congress fold practically all segments of Indian society. But at the instigation and by active help of the then British rulers, the people of India got divided on communal lines. Muslims, Sikhs and Anglo-Indians built up their organizations purely on the basis of religion. However, within the Congress there continued to remain people of all communities and religions. The Congress had within its fold, all shades of political opinions, the Socialists, the Marxists, Leftists, Rightists and Centralists. All of them actively participated in the national movement. With achievement of the independence, the Congress got transformed into a political identity with all the diversity of political opinion that it had nurtured and retained, from which it has not been able to come out even now. The Constitution of the Congress Party for the first time in 1950 laid down that its members cannot belong to any other party. Before independence, a person could be a member of socialist party or any other party and yet might be a member of the Congress. All the major political parties (with the exception of the BJP) that exist in India today were at one or other time within the fold of the Congress. With the attainment of the freedom and with the Congress becoming a political party, other political parties emerged with their own Constitutions and separate policies.

In 1951, India witnessed the emergence of a number of political parties, though most of them had an existence even before 1947. Among the centre and left of the centre parties mention may be made of the Congress party, the Socialist party, and the Kisan Majdoor Praja Party. These parties subscribe to the basic democratic and secular principles in the style of western political parties. There were similar parties in this group at regional level, such as the Krishikar Lok Party

in Madras. Among the right of the centre parties, mention may be made of the Jansangh, the Hindu Mahasabha and the RamRajya Parishad. These parties looked at the Indian traditional values rather than the western democratic values. The parties in the third group did not subscribe either to the western values or to the traditional values but advocated the adoption of something akin to the earlier Soviet model, and some of them advocated the wrecking of the Constitution from within. These were leftist parties of all shades such as the CPM, CPIM, the Peasants and the Workers Party and a host of regional parties having local pockets of influence but no all India base. Mention may also be made of some other parties such as the Akali Dal of Punjab, the Jharkhand Party of Bihar,(now Jharkhand), the Timalnad Congress of then Madras, which were parochial parties. These were concerned with the projection of their communal or regional interests. The differences between parties should lie in their stress on different class interests, different methods followed and different orders of precedence regarding values and ideals. India has been unfortunate in this concern since beginning. In the first general election as many as 15 national parties and 50 odd state parties and a large number of independent candidates took part in spite of not having the faintest hope of capturing power at the national level except the Congress. At present almost 552 political parties exist in all.

Under the Constitutional document, there is no specific reference to the political parties excepting in the Twelfth Schedule which deals with defections. The right to form a political party is a right under the common law and is protected article 19(1) of the Constitution. Issues of the organization, functioning, inner-party-democracy, transparency of funding, ethical standards are all matters of vital public concern. Although the Election Commission recognizes 6 political parties as national and 50 as regional but there are as many as 552 political parties in the country at present. Political parties control and run

democratic governments but there is no comprehensive law regulating their functions and operations which are crucial to the welfare of the nation and, to the very survival of the democratic spirit and tradition. There is increasing criminalization of politics and of the electoral process. We have faced periods of instability and inaction due to multi-party system. Since all relevant issues regarding party-system have been discussed in a separate chapter (III Chapter-Part-A) the topic is not being discussed at length here.

2.3.4.2 THE PRINCIPLE OF COLLECTIVE RESPONSIBILITY

It is the hallmark of the parliamentary system that the Government acts collectively. Every decision is taken by the Government (the Cabinet), and all ministers are responsible for that. They may agree or disagree with the decision, they might have expressed their dissent in decision making process, but once the decision is arrived at, all are bound by the decision. Nature of Collective responsibility of the Parliamentary executive indicates two things –

Firstly, it is not one man show, the decision has to be arrived at by the Council of Ministers (or at least the Cabinet);

Secondly, Government solidarity is maintained by collective effort and obligation to uphold the Government decisions.

According to article 75(3) of the Constitution, the Council of Ministers shall be collectively responsible to the House of the People. Speaking on the principle of collective responsibility, in the Constituent Assembly, Dr. B.R. Ambedkar said: “All the members of the house are very keen that the Cabinet should work on the basis of collective responsibility and all agree that it is a sound principle but I do not know how many members of the House realize what exactly is the machinery by which the collective responsibility is enforced. Obviously there cannot be statutory remedy. Supposing a Minister differed from other members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him having committed the

breach of what might be called collective responsibility. The only sanction, through which collective responsibility is endorsed, is through the Prime Minister.

Collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a member of the Cabinet if the Prime Minister says that he should be dismissed. It is only when the members of the Cabinet, both in the matter of their appointment as well as in matter of their dismissal are placed under the Prime Minister, that it would be possible to realize our ideal of collective responsibility..... I do not see any other way of giving effect to that Principle..... collective responsibility can be achieved only through the instrumentality of Prime Minister.”¹⁴

What the term collective responsibility mean? Collective responsibility as such does not exist today. It is not even that for the sins of one Minister, the whole Cabinet would resign; if it were so, the resignations of certain members would not have taken place. Collective responsibility regarding decision on actions which concerned a Department or Ministry does not necessarily come before Cabinet. They would come there if the Prime Minister thought it was necessary, and no doubt, any member could raise it. But in certain circumstances, through consent of the Prime Minister, one Minister may call for the papers of another Ministry but this is not usually done. First of all, each member has his own troubles. Secondly, he does not want to antagonize his colleagues or create difficulties. So collective responsibility, in the sense that a decision once made is everybody's decision is very largely a myth.

Nowadays, Ministers behave in an irresponsible manner. Most of the Cabinet member speaks out of turn and in different voices on leading public issues of the day, causing embarrassment and confusion. One Cabinet member speaks with socialist point of view; another member speaks very much more with emphasis on Gandhi's philosophy, a third one speaks like a Communist party. They should not give their personal opinion since they are not in chair in their personal capacity.

This view that collective responsibility is largely a myth, was also supported by Gulzari Lal Nanda who said: "It is nothing but the sheerest calumny to attribute to me shortcomings and flaws which are built in some of the policies we have pursued and in the manner in which we have implemented them."¹⁵¹⁶ This he wrote when there had been violence in Delhi during the anti-cow slaughter agitation and disclaimed all personal responsibility for this.

N.V. Gadgil, who was a Minister of the Cabinet rank in Nehru's Council of Ministers from 1947-52, however, did not agree with this view. He said, "A Minister has no individual policy once his opinion or view point is accepted by the Cabinet, it becomes the opinion and view point of all of them. If anyone differs, he has either to resign or to accept the majority view. The convention is that he is not entitled to public protest. He has every right to try and get the decision revised, but that too by a resolution in the Cabinet. What emerges from discussions in the Cabinet, might not be the original proposal. Hence, its parenthood is joint and not individual."¹⁷ But this principle applies only to those decisions which are taken in the Cabinet meeting. If a particular decision is taken by the Prime Minister without consulting his colleagues, they can oppose it when it is placed before the Cabinet, as it happened in the case of The Nehru Liaquat Pact of 1950. But Menon is of the view that if the Prime Minister does not refer the

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

matter to the Cabinet, it is his own and his own funeral, if any thing goes wrong.¹⁸

The principle of collective responsibility means that the Ministers answer as one for any action of the government. It does not necessarily mean collective decisions upon every matter. Thus the principle of collective responsibility means that when a decision is taken by the Cabinet and if a particular Minister does not agree with it, he will have only two alternatives, either to reconcile himself with the views of the majority in the Cabinet or quit it. There are numerous instances when Ministers resign due to their differences and disagreement with the Cabinet on certain issues. Dr.Mathai, C.D.Deshmukh, M.C.Chagla, Charan Singh and Rajnarain are some of the Ministers who did or had to resign from the Government for their disagreement with the Cabinet decisions.

Bagehot once said "To people do not trust each other"¹⁹, have developed a hierarchy of secrecy in government. Sometimes, the Prime Minister withholds information from cabinet colleagues. That is surprising because it is difficult to see how collective Cabinet responsibility can have any meaning if Cabinet ministers do not know what is going on because they cannot see Cabinet papers.

If a particular decision is taken by the Prime Minister without consulting his colleagues, they can oppose it when it is placed before the Cabinet. Sometimes the Prime Minister did not take any of his Cabinet Ministers into confidence even while taking some of the most important decisions. For example, this happened when internal emergency was declared on June 25, 1975. The Prime Minister did not consult any one of her colleagues. The Cabinet was merely informed the next day. Even in England there are cases where the Prime

¹⁸ Ibid.

¹⁹ Sedgemore Brian- The Secret Constitution, (Hedder&Stoughton).

Minister took decisions without consulting the Cabinet. Attlee's decision to make the atom bomb and Antony Eden's decision to attack the Suez were taken by them without any reference to the Cabinet.²⁰

One of the expectations on which the makers of our Constitution had depended largely is that the Parliament would be able to control the executive through its instrument of collective responsibility. We have already seen in the previous years how this single instrument on which our Constitution depends so much has signally proved to be out of place in a modern democracy. V.K.Krishna Menon and Guljari Lal Nanda had opined that collective responsibility is largely a myth in the Indian Cabinet.

For all its actions, the Government is accountable to the Lok Sabha. It has to defend its policies there and if it is not able to justify itself or a policy decision is defeated in Lok Sabha, it amounts to no confidence against the Government and the Government may have to quit the office immediately. The President's address chalks out the future Government policy. During the first session after each election, the President addresses jointly both the Houses of the Parliament. If the thanks motion on the presidential address is not passed, it amounts to no confidence in the Government, and the government has to resign. The Government may also be removed at any time by bringing a no confidence motion in the Lok Sabha.

Government dies with the Dissolution of the Lok Sabha. The Government can remain in the office only so long as the House of the People survives. As soon as the Lok Sabha is dissolved, the life of the Government automatically comes to an end. The Government lives and dies with the Lok Sabha.

²⁰ Ibid.

2.3.4.3. CABINET SYSTEM

Cabinet is a small body of persons drawn from the majority party (or the majority coalition) in the legislature. The members of Cabinet are selected by the Prime Minister and it is a body of people sharing the same principles and outlook as those of the Prime Minister.

The Supreme Court of India dealing with the nature of the system of Cabinet Government observed,

“The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity.....

Our Constitution, though federal in its structure, is modeled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

..... In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, “a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part.....

The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions;”²¹

Walter Bagehot said that the “The Cabinet is the hyphen which joins, a buckle which fastens, the legislative part of the State.”²²

In a parliamentary democracy, unlike in the presidential system, there is a degree of fusion of the two organs of the State, the Political Executive and the Legislature. The principle of responsible government has its institutional implications.

²¹ Taken from NCRWC Report. (Ch. II).

²² Ibid.

The conventions of the cabinet system are:

- (1) Members of the cabinet are, as a rule, members of parliament;
- (2) They are necessarily members of the majority, whether of one party or of a coalition;
- (3) They hold office only while parliament and the country do not obviously withdraw their confidence from a minister or the entire cabinet;
- (4) The cabinet acts as unit in face of other governmental bodies and this implies a certain predominance of the Prime minister over his colleagues. The principal collegiate nature of the executive is assured by the prominent position of the Prime Minister who is responsible of ministerial solidarity. Cabinet solidarity is by the rule that a Minister who does not agree with the Cabinet decision has to resign himself or face dismissal.

For almost last two decades, due to minority governments our cabinet system is not working efficiently. The leading constitutional law writer **D.D. Basu** has listed three reasons for our Cabinet system of government having not worked as successfully, as in England. These reasons are (1) we have got a system of multiple parties, some of which are of mushroom growth and have very small following, (2) very few of these parties have any firm or defined policy or ideology which can be presented as an alternative to the that advocated by the ruling party and (3) the tradition of the party system has been destructive because of its origin in the upsurge against the imperial rule.

2.3.4.3.1. Role of Cabinet

The Cabinet's main role or function is to submit the final determination of the policy to the Parliament but detailed work on policy matters is done outside Cabinet meetings; the Cabinet will consider decisions referred to it by extra-Cabinet decision-

makers; there is nothing new in Prime Ministers using a few senior Ministers, rather than the whole Cabinet, to keep a general oversight of the government's progress and to deal with particular questions. Its role perforce is largely to ratify or to disapprove decisions taken by an inner Cabinet. With the passage of time, the Cabinet has developed another function of providing the personnel for Cabinet Committees and similar bodies. The essential quality of a Cabinet committee properly so called is that it is a committee of Ministers established by the Prime Minister, with formal procedures and servicing by the Cabinet Secretariat; there must be prime ministerial authority for a committee's existence. The best-known topic which is routinely and regularly handled for Cabinet discussion is the Budget.

2.3.4.3.2. Ministry Making:

While the factors which weigh with the Prime Minister in the formation of the ministry are more or less the same in Britain as in India, the task of the British Prime Minister is relatively easy for a variety of reasons.

1. The institution of the shadow cabinet in the UK makes the selection of ministers smooth. The party in opposition always has the nucleus of a cabinet in the shadow cabinet which itself is formed after taking in to account all the important considerations. A shadow cabinet is a cabinet-in-waiting and represents the best of talents and experience within the party. It also ensures that there is not much of a breaking in period for the new ministers as they would have acquired adequate knowledge of their subjects well before assuming ministerial responsibilities.
2. The Prime Minister is not subjected to the type of pressures and influences that we find in India from a large number of competing aspirants for berths in the cabinet. Almost every member of our legislature considers himself a potential minister. In order to

buttress his claims for the seat in the cabinet, he can advance regional, sub-regional, communal, caste or sub-caste considerations which a Chief Minister or Prime Minister may find it difficult to ignore. The claims of individual aspirants are often backed by factions and lobbies within the party which have to be taken into account. In the UK the Prime Minister may some times have to face pressures on behalf of particular aspirants to ministerial positions, but such instances are not very common. Even when there are pressures, they are not backed by threats to leave or split the party.

There is not so much pressure for a ministerial office in the UK because the office does not by itself enhance a MP's social prestige and influence. Many MPs feel that they can be useful to their constituencies and to the country without the additional leverage of a ministerial office. Further, for some MPs who are otherwise eminently eligible for appointment as Ministers, a minister ship may involve considerable financial sacrifice because they may have income many times more than that of a minister from their professional occupations. Some of them may be willing to make such a sacrifice, but many may find their present positions in business, industry or academic life far more satisfying than ministerial posts. To be a good MP is a good enough goal for most of them.

The enormous perquisites and power which ministers in India enjoy make their positions highly coveted in the eyes of most legislators. This, in turn, increases the pressure for such posts. The perks which they enjoy in India like well-furnished large bungalows, the services of a large personal staff of private secretaries, personal assistants and peons, free use of cars and telephones are much more than those available to ordinary legislators. Most ministers in the UK do not get such facilities.

The system of administration in India is such that the state touches practically every facet of the life of an ordinary citizen, and this makes the post of a minister one of immense power and influence. In an economy like ours, marked by scarcity and controls, a minister exercises far more powers than his counterpart in other democracies. The power, patronage and influence which ministerial posts carry in India have made them the objects of keen competition and the ultimate goal of political ambition for many Legislators.

A special problem which an Indian Prime Minister has to face and which his British counterpart does not have is to find suitable candidates from within his own party to man all the positions in the cabinet. Jawaharlal Nehru's first cabinet consisted of fourteen members including the Prime Minister, but six of them were from outside the Congress party. Nehru deliberately chose a few members from outside his party because of his desire to make his Government broad-based and also to tap the best talents in the country. The inclusion of persons like Dr. John Matthai, Dr. Ambedkar and Sri R.K. Shanmugham Chetty in Nehru's first cabinet was motivated by his keenness to use the services of the most qualified men for the job, overriding party considerations. Selection of ministers from outside the party by Nehru's successors has become unpopular among party men, who have always considered Ministership as rewards to be reserved only for active and loyal members of the party. Newcomers to politics inducted to ministerial positions are treated as 'outsiders' if not 'intruder' by most politicians.

In Britain, in theory, the Cabinet is the Prime Minister's cabinet, but its formation has never been one man's responsibility or privilege. While the final choice is that of the Prime Minister, he invariably consults some of his senior colleagues in the selection of his ministers and tries to accommodate their suggestions to the extent possible. In India, too, Nehru had close consultations with Sardar Patel in the

selection of his ministers for the first Cabinet and tries to accommodate his suggestions to the extent possible. Later he used to have such consultations with Maulana Ajad. It is now well known that in 1954 he could not include Krishna Menon in his cabinet in spite of his keen desire to do so because of the opposition of Maulana Ajad. Ajad had as strong reservations about Menon because of some allegations of financial regularities against him relating to the period when he was the High Commissioner in the UK. He had informed Nehru that he would resign from the office if he went ahead with his proposal to induct Menon. Nehru shelved the idea at that stage bowing to the views of Ajad.

In India, while the problem at the centre in recent years has been one of not having enough ministers to man all the important portfolios, the problem in some states has been one of having too many. There are complain against some state Chief Ministers that they have jumbo cabinets. The practice of having too many ministers with too little work is not merely a waste of public money but highly detrimental to the efficient conduct of public business.

2.3.4.3.3. Size of the Cabinet

Normally, Cabinet is a small body of persons drawn from the majority party (or the majority coalition) in the legislature. In India over the years the **size** of the Cabinets both in the Union and the States, have tended to increase enormously adding to the cost and clumsiness of Government. Particularly, when a coalition government comes to power, every coalition partner wants a share in the power by acquiring as many ministerial berths as possible. Conversely, the largest party in the Legislature, if it short of clear majority, tries to lure other smaller parties to support it by offering them ministerial berths. Both these tendencies, invariably lead to an increase in the size of the Council of Ministers. The list of Present Council of Ministers is given in Annexure-A(). The accountability of the executive to parliament is

government shall consist of not less than seven and not more than fifteen members. In the 1946 Constitution, France did the same thing that the Council of Ministers is formally appointed only after it has received a vote of confidence from the National Assembly. In Italy also (article 95 of the Constitution) the government presents itself before the Chambers for a vote of confidence within ten days of its formation. In Japan the Diet elects the Prime Minister (article VI of the Constitution). The Swiss Constitution provides for Ministers to be appointed by the two Houses of Parliament (article 96 of the Constitution). Section 65 of the Australian constitution provides that the Ministers of states shall not exceed seven in number, and shall hold such office as the Parliament prescribes. In Switzerland the selection of Ministers is not confined to members of the Parliament but extends to all Swiss citizens eligible for the popular chamber of the Parliament.

2.3.4.3.4 The position of Prime Minister:

The importance and influence of the Prime Minister under the Cabinet-System is ever increasing. To those who speak of the 'Presidential System', the answer of the critics is the increasing 'presidentializing' of the Prime-Minister's office. The only sanction through which collective responsibility can be enforced is through the Prime Minister. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister that it would be possible to realize our ideal of collective responsibility²⁴

Crossman in his introduction to Bagehot's "English Constitution" referring to the increasing importance of the institution of the Prime-Minister said that the 'hyphen which joins, the buckle which fastens' is one single-man, viz. the Prime-Minister. His right to select his own Cabinet and dismiss them at will; his power to decide the Cabinet's

²⁴ C.A.D. Vol.VII.

agenda and announce the decisions reached without taking a note; his control, through the Chief Whip, over patronage – all this had already before 1867 given him near-Presidential powers. Since then his powers have been steadily increased, first by the centralization of the party machine under his personal rule.”²⁵

But the position is held to be different under the Indian Constitution.

In the entire Constitution the words ‘Prime Minister’ occur only in Articles 74, 75 and 78 of our Constitution. They merely provide

- (i) for his appointment by the President,
- (ii) for the appointment of other Ministers by the president on his ‘advice’,
- (iii) that “the Council of Ministers shall be collectively responsible to the House of the People”,
- (iv) that the Prime Minister shall communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for Legislation as the President may call for;
- (v) and that ‘if the President so requires’, he shall ‘submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.”

But, in practice, with the exception of the above immaterial provisions, in all other articles of the Constitution, the word ‘President’ is conceived as actually referring to the ‘Prime Minister’. What is invisible is supposed to be real, and what is visible is dismissed as a mere formality. The Prime Minister avails himself of an extraordinary power because of inadequate and ambiguous provisions in the Constitution.

In most of the Constitutions the powers of the President or Prime Minister are defined and limited by constitutional provisions.

In US Constitution the principal provision is contained in section 2(2) of article II.

²⁵

French Constitution also make similar claim. In relevant articles no room is left for the interpretation that what remains unsaid belongs, by implication, to the President or the Prime Minister. These articles are 7, 27, 9, 12, article 83, 84, 30, 105, 106, 107, 109, 110 and 135 of the French Constitution.

Japanese Constitution makes a cumbersome provision in its attempt to deny the exclusiveness of appointments to the Ministry in Article LXXIX.

The Parliamentary system of Government, which India has adopted from Britain, has, over the years, evolved into a Prime Ministerial system of Government in Britain itself. The Prime Minister in the earlier years of British Parliamentary democracy was seen as only just the first among equals. However with the vast expansion in the areas of administration and the growing need for not only providing coordination but also direction in administration, the institution of Prime Minister has acquired a degree of influence and power far above the level of his ministerial colleagues.

A Prime Minister who does not exercise his authority effectively will be seen as an anachronism in the British Parliamentary system today. When John Morley described the Prime Minister as the 'key stone of the cabinet arch' it was seen then as an exaggerated tribute. Now this description is recognized as grossly inadequate and the Prime Minister is correctly described as the 'key stone of the constitution'. The power wielded by Winston Churchill during the war years was great. It was not merely the exigencies of the war or the dominating personality of Churchill which contributed to the strengthening of the institution of Prime Ministership. Subsequent developments like the active involvement of the Prime Minister in the conduct of foreign affairs and international relations and the growing importance of 'summit' meetings have served to further enhance the power and influence of

the Prime Minister. A Prime Minister wields an authority by solid party backing and confidence among party leaders that a Roman Emperor might envy or a modern dictator strives in vain to emulate. This may sound to be exaggerative, but it shows how much importance the institution of Prime Ministership had acquired in the Parliamentary system over the years.

2.3.4.3.4 Decision-Making

The basic difference between a Parliamentary system of Government and other systems is that in the former decisions are taken jointly after deliberations in the Cabinet, and once a decision has been taken, every member of the Cabinet is bound by it irrespective of his personal opinion on the subject. Resort to voting has been rare in the long history of Parliamentary Government in Britain. Decision by consensus however does not mean that the Prime Minister, who presides over the cabinet, functions only as the chairman of a meeting. He is expected to play the role of a leader and to steer, where necessary, the discussions towards a consensus. It is seldom that a cabinet takes a stand on any issue patently opposed to that of the Prime Minister. The Cabinet, whose members are selected by the Prime Minister, is supposed to be a body of people sharing the same principles and outlook as those of the Prime Minister. Decisions of such a cabinet would invariably reflect the views and convictions of the Prime Minister on every major issue.

Of course, the system by itself cannot guarantee the effective exercise of prime ministerial powers and responsibilities. The degree of effectiveness will depend mainly on the personality and ability of the Prime Minister himself and the support and the standing he enjoys in his own party.

The position of a Prime Minister in a developing country like ours is far more important and crucial than that of his counterparts in developed countries like Britain or Canada. Ours is a highly complex

nation of vast size facing the basic problem of national integration and development. The Parliamentary system of Government has proved to be durable and suitable in countries like Britain, Canada, Australia and New Zealand where the Government does not have to play the predominant role in development programmes as in India. The Prime Minister in the developed countries is more the leader of a Parliamentary party than the leader of a national movement for development. If even in such countries the role of the Prime Minister as an effective and undisputed leader of the Government is accepted as proper and necessary, it should be much more so in a country with our problems and in our stage of development.

Claims about a new style of decision-making or commitment to democratic norms may be necessary to put a theoretical gloss over what is seen by most people as a potentially dangerous process of reducing the importance of the institution of Prime-Ministership. Public expression of dissent or criticism of the Prime Minister's actions and pronouncements in derisive and contemptuous language by his own cabinet colleagues cannot be easily explained away as tolerance for differences of opinion or respect for democratic practices. Such tolerance may be necessary for a Government to survive, but what is important is not how a particular Government survives, but how well the institutions of democracy survive. If a Prime minister's role is reduced to one of seeking consensus in decision-making among all those whose support is necessary for survival in power or seen primarily as one of 'managing contradictions', it can only lead to the devaluation of the institution of Prime-Ministership and the whole system of parliamentary Government.

2.3.4.3.6. Ascendancy of Prime-Minister in the Cabinet

In Britain, the Prime Minister's position and authority, rests mainly on convention. In India, Prime Minister is the creation of the Constitution, which gives formal recognition to his pre-eminent

position by laying down that “there shall be a Council of Minister at the head...”. He is not only the head of the Council of Ministers but also the President’s Principle adviser. The high position invests him with the special responsibility to see that the institution functions as a team.

According to Jawaharlal Nehru “he is a lynch-pin of the Government.”²⁶ He is the manager –in –chief of the Government’s business and in a real sense, he carries on his shoulders the responsibility for the formulation and execution of Government policy. Consequently, he has the right to exercise general supervision on individual Ministers. It is the Prime Minister who coordinates the activities of the different Ministers and in the last resort, irons out differences among them. He is the court of appeal for ministers who cannot see eye to eye with each other. The coordination and settlement of inter-ministerial differences is an important part of the Prime Minister’s multifarious duties. With the passage of time, the office has acquired new dimensions of power which provoked H.V.Kamat to say that “ the power of the Prime Minister has increased, is increasing and must be decreased.”²⁷ This observation was made by Kamat when Mrs.Indira Gandhi was infact not so powerful as she thought her to be. But as time passed, the observation came out to be substantially true.

The powers and the position of the Prime Minister vis-a vis the Council of Ministers, the President and Parliament depends upon situations and political circumstances, prevailing at a particular time. So far as the Prime Minister’s position in the Council of Ministers is concerned, it depends upon several factors, such as

1. Party Position in the Lok Sabha;
2. Position and hold of the Prime Minister in her/his own party.

²⁶ Taken from “The Prime Minister of India: Powers and Functions”- Hansa Mehta Library..

²⁷ Ibid.

If none of the political parties has a clear majority in the Lok Sabha, and if a coalition Ministry is in the office, the position of the Prime Minister in the Lok Sabha as well as in the Council of Ministers will be comparatively weak. In such a situation, he will not much say so far as the appointment and dismissal of Ministers is concerned. Even the allocation of portfolios may be decided by intra-party agreement e.g. previous NDA Government of Shri A.B.Vajpeyi and present U.P.A.Government.

On the other hand, if one of the political parties has a clear majority in the Lok Sabha, the position of the Prime Minister would largely depend upon his /her standing in the party. We know from experience, the Prime Minister's standing in the Cabinet varies with the political situation, not only from party to party but within the same party. Indira Gandhi who presided over the Cabinet from 1966 to 1969 was vastly different from the one who lorded over it from 1972 to 1977, having secured a firm position in the interregnum (1969-72).

If there is someone in the party to challenge his/her leadership, this may to that extent, affect his/her position. Such a situation existed between 1947-52 when Nehru was the Prime Minister, and Patel was in the position to challenge his leadership. Situation was more or less such between 1964-67, as a result Morarji Desai has to be appointed as the Deputy Prime Minister. When there is no one in the party to challenge the leadership, there are other factors that condition's the Prime Minister's choice and even in some ways even limit it. The delay in the formation of Council of Ministers by Morarji Desai in March 1977 explains the difficulties which the Janata Prime Minister had to encounter in reconciling the claims of the various constituent units. It is worthwhile to recall Ramsay Macdonald that "it is easier to create a revolution than to make a cabinet."²⁸

²⁸ Rodney Brazier-"Constitutional Practice, Oxford-94.

The powers and position depends upon his/her standing in the party also. The situation between 1950-64 and again between 1971-77 in this respect was fundamentally different because within these periods, the leadership of Prime Minister was unchallengeable. Nehru however, had a high regards for his old colleagues and not only gave them due respect but also looked to them for advice and guidance.

But Mrs. Gandhi adopted a different approach in this respect. Between 1971-77 when she was an undisputed leader of the Congress party the ministers were shivering in their shoes, and none of the proved indispensable. Prime Minister had almost become a supreme Commander.

A Prime Minister's authority depends on his relationship with the party. Attlee could brutally tick off Harold Laski, the Chairman of the Labour Party. "You have no right whatever to speak on behalf of the government and a period of silence on your part would be welcome." Few Prime Ministers would use such language.²⁹

The position of the **Prime Minister in relation to Parliament** is largely determined by the party-position in the Lok Sabha. Whether his party has an absolute majority in the Lok Sabha or not, will make a qualitative difference. In case his party does not have a majority, the Prime Minister's recommendations about the summoning and proroguing of Parliament, and dissolving of Lok Sabha may not always be accepted.

The situation will be entirely different if the Prime Minister's party has an absolute majority in the Lok Sabha. It is true that according to the Constitution, the Council of Ministers remains in office so long as it enjoys the confidence of the Lok Sabha and it remains collectively responsible to it. But the President can still dismiss it if he comes to the conclusion that the Prime Minister is maintaining his majority by

²⁹ Article The Modern Prime Minister by A.G. Noorani in Frontline, issue 19, Sep. 2001.

practicing a fraud on the Constitution, or the Lok Sabha does not represent the will of the people. On this very basis as many as nine States Assemblies were dissolved under article 356 during 1977. Again, nine State Assemblies were dismissed during in 1980, on very similar considerations. Such a possibility of dissolution at the Centre may not be completely ruled out in future.

From the point of view of relations between the Prime Minister and Parliament, it is interesting to note that, in practice the working of Government in India during all these years, has undergone a subtle but gradual transformation, i.e., from Parliamentary to Cabinet system, and from Cabinet system to Prime Ministerial Form of Government, giving new dimensions to the office of the Prime Minister. Between 1950 to 1969, it was the Cabinet system, and between 1969 to December 1970, the form was Parliamentary, and after 1971, the system became Prime Ministerial.³⁰ A Parliamentary system usually transforms itself into a Cabinet System when one of the political parties has a majority in the Lower House because in that situation, it is the Cabinet that dominates. If the Cabinet is dominated by the Prime Minister and there is none in the Council of Ministers to challenge him, the system becomes Prime Ministerial. Between 1971-77, there was such a system in India because the Prime Minister had almost acted like a supreme leader the same pattern emerged again in 1980 when Mrs. Gandhi got back to the office of Prime Minister. During Janata Party rule at the Centre, Morarji Desai Government from May 1977 to July 1979 was an example of Cabinet System. Since 1991 to 1996 Cabinet was dominated by then Prime Minister Shri Rajiv Gandhi. Later, in time of Sri Narasimha Rao, it was the Cabinet system. Hung parliaments changed the scenario. During NDA Government Atal Behari Vajpayee gave every indication that he wields less authority over his Cabinet. Every Prime Minister has to reckon with his party, with Parliament and with the national mood. But a

³⁰ A.G. Noorani, The Indian Express, September 25, 1969.

Prime Minister from the Bharatiya Janata Party has to reckon additionally with the mentors of the party, the Rashtriya Swayamsevak Sangh (RSS). Now it will be a testing time for the present Prime Minister Dr. Manmohan Singh.

Speaking of the British Cabinet and power to recommend dissolution of the House, C.F. Strong observes, "As Walter Bagehot acutely pointed out, the Cabinet is a creature, but, unlike all other creatures, it has the power of destroying its creator, i.e. the House of Commons. For if the Cabinet is defeated in the Commons it can, instead of resigning, advise the Queen to dissolve the assembly upon which it depends. Then the electorate decides whether the party from which the appealing Cabinet is drawn shall return with a majority or not."³¹

In India, also, the British convention of dissolving Lok Sabha, on the recommendation of the Prime Minister has been largely followed. Thus, in 1977, Sixth Lok Sabha was dissolved on the recommendation of then Prime Minister Choudhary Charan Singh, even though he had never proved his majority in the Lok Sabha. Chandra Sekhar's recommendation to dissolve that Lok Sabha was also accepted by the President. However, this convention is not considered sacrosanct in our country, because of the coalition governments, throwing up P.M.s without clear cut majority of their own in the Lok Sabha. A minority party's P.M., being supported from 'outside' by a bigger party, obviously lacks the moral authority to recommend dissolution of the Lok Sabha. A new tradition is now forming in our country, where the President, instead of dissolving the House on the recommendation of minority P.M., first tries to find out possibility of formation of an alternative government. This is what happened after the resignation of A.B. Vajpayee in 1996 and Deve Gowda in 1998.

³¹ NCRWC Report.

2.3.4.4. ACCOUNTABILITY V/S STABILITY

Democracy without accountability is meaningless. Accountability requires:

1. that those who represent others can be replaced by democratic processes, including and especially elections;
2. that those who elect others to represent them at whatever level should know what problems are under discussion by their representatives before decisions are taken;
3. that there are arrangements by which people can make their views known to their representatives before decisions are taken; and
4. that those who wish to contribute to the decision-taking process should have full access to all the information they need to enable them to come to their judgments and to put forward their arguments.

In short democracy is a continuous process and not a system of government based exclusively on trust where citizens go to sleep or are forgotten between elections. In broad terms it represents the struggles between the unelected Upper House and the elected Lower House, between the executive and the bureaucracy, between Parliament and the executive, between party political representatives and those who work for them and vote for them.

On the other hand, need for political stability has to be seen in two emerging contexts: that in administering any economy in the global context, a reasonable degree of stability of Government and strong governance is important. Secondly, the economic and administrative costs of political instability might reach unaffordable levels.

In the Parliamentary system, if there is **conflict between accountability** on the one hand and stability on the other, the latter must necessarily yield. But accountability and stability need not necessarily and always be mutually conflicting. Instability introduced by personal ambitions in opportunistic politics and unprincipled defections would need to be provided against. There are also those who do not subscribe to this instability argument. It is pointed out that only

on 5 occasions out of 13, the Lok Sabha was dissolved before completing its full term and during the 53 years since Independence, just four Prime Ministers ruled for 40 years - two of them for 30 years between them. One political party alone was in power for 45 years out of 50 years.

A Parliamentary system, unlike the Presidential system, lays emphasis on accountability. Any emphasis of the preponderance on stability, as against accountability, would negate certain basic assumptions :

- the political relationship between the Parliament and the Cabinet,
- and would 'presidentialise' the Prime Minister's office.

At the time of the framing of the Constitution, Dr. Ambedkar stated as below for preferring the parliamentary Government:


“ a democratic executive must satisfy two conditions: (1) it must be a stable executive; and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. The American and the Swiss systems (Presidential) give more stability but less responsibility. The British system, on the other hand gives you more responsibility but less stability.”³²

The Prime Minister had become the focal point of public attention and governmental power in Britain. In an article written for the American bicentennial review, Arther M. Schlesinger, recognizes the trend in the Parliamentary system towards stability. He said:

“The parliamentary system is to be defined by a fusion rather than by a separation of powers. The executive is drawn from the legislative majority and can count on automatic enactment of its program. No one doubts where responsibility lies for success or failure. But while the parliamentary system formally assumes legislative supremacy, in fact it assures the almost unassailable dominance of the executive over the legislature.” ³³

³² C.A.D. Vol. VII,p.32-33.

³³ Taken from NCRWC Report. Ch-II.



During the framing of the Constitution, we all dreamt that we would make a success of Parliamentary democracy and the British Cabinet system. It must be confessed that for last two decades this system is not working efficiently due to minority governments. As early as in 1965, need for Presidential form of government was felt by many and a resolution was moved in the session of the AICC for seeking to change the Constitution by having directly elected executive both at the Centre and the States. In November 1966 the India International Centre hosted a seminar on the '*parliamentary v/s presidential of government*' in which eminent academics and publicists participated. The collapse of the coalitions (Samyukt Vidhayak Dal) regimes in the States after the 1967 general elections led to the consequent fear of similar occurrences at the Centre (a fear which has unfortunately become a reality as we see since the V.P. Singh government.). In the interest of safeguarding our democracy we must change, without delay, where the head of the government is not dependent on vagaries of the legislators who can not topple the government by defecting from one party to another.

2.3.4.2 THE INDIAN PRESIDENT

The President of India is a symbol of the nation.

The President of India is the executive Head of State and Supreme Commander of Armed Forces. The election of the President is done by an Electoral College as per the provisions laid down in the Constitution. The President is elected indirectly by the members of an Electoral College, consisting of:

1. Elected members of both houses of Parliament; and
2. Elected members of Legislative Assemblies of States.

Nominated members of either House of Parliament or State Assemblies are not eligible to be included in the Electoral College.

The election is held under a system of proportional representation by means of a single transferable vote, conducted by a secret ballot.

2.3.4.5.1. Powers, Duties and Functions of the President

The powers and duties of the president are specified in different parts of the Constitution. The various powers that are included within the expression (executive, legislative and judicial power) are formulated in all the chapters of part 5 as well as in many other parts of the Constitution e. g. especially in part 18 (Emergency provisions) and part 20 (Amendment of the Constitution). Article 74 (1) speaks of “aid and advice” and does not speak of the President’s exercise of his rights and powers. These powers have been classified by political scientists under the following head:

- (a) Administrative power; i.e. Execution of the laws and administration of the department of government. Article 112, 113, 117 and 274.
- (b) Military power: i.e., the command of the armed forces and the conduct of war. Article 352, 356, 359, and 360.
- (c) Legislative power: i.e., the summoning and prorogation of the Legislature, initials of the assent to legislation etc. Article 85, 86, 87, 80, 87 and 111 and 123.
- (d) Judicial power: i.e., power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence, including sentence of death (Article 72) President is conferred absolute immunity from judicial process, both civil and criminal (Article 361).

The Indian Constitution by its various provisions vests power in the hands of the President under each of the above heads, subject to the some constitutional limitations.

Firstly, he must exercise these powers according to the Constitution (Article 53 (1))

Secondly, the executive powers shall be exercise by the president of India in accordance with the advice of council of ministers. Article 74(1), 75, 77(3), 78 and 352(3) of Indian Constitution.

2.3.4.5.1.1. Head of the State appoints the Head of Government

Article 75 specifically provides that the Prime Minister shall be appointed by President and the other ministers shall be appointed by President on the advice of the Prime Minister. Where there is a clear majority, he has no option but to appoint the leader of the majority party. In case of fluid political situations where no party has clear majority, he may exercise his discretion. In earlier years, choice of leader had created no serious problem but since 1996, the situation has been highly complicated because of Hung Parliaments. In such a situation, the tradition has been to call the leader of the party with the maximum members to form the government. However, various alliances and 'fronts' formed from time to time have been presenting quite a confusing scenario in this regard. Some times, the President has asked for names and written consent of the MPs supporting a particular 'front' or the 'alliance', sometimes the President has gone by the simple 'single largest party' rule e.g. Shri Vajpayee was called to form the government after the 1996 elections, though he failed to prove his majority on the floor of the house and had to resign after 13 days only.

In appointments of other Ministers, the Prime Minister has the real say. The President cannot refuse any appointment in which the Prime Minister is interested nor can he induct anybody in ministry whom the Prime Minister does not want. After all, it is the Prime Minister's team. The President is the appointing authority only in a formal sense.

2.3.4.5.1.2. Dissolution of Lok Sabha

It is the President who can dissolve the Lok Sabha. How should the President exercise this power is not very clear and it is left to conventional development. However, on analogy of British System, this power is to be exercised by the President on the advice of the Prime Minister. Smt. Indira Gandhi got the Lok Sabha dissolved one year earlier in December 1970, in order to seek fresh mandate from the people to fulfil her program of 'Garibi Hatao'. If the Government fails

in the Lok Sabha on policy issue or no confidence motion is passed by Lok Sabha against the government, the Prime Minister has to resign. He may choose to either resign and pave way for the President to choose a new leader who may form new government with the support of majority of the House or he may suggest President to dissolve the Lok Sabha. In 1979, Morarji Desai could not face the house and resigned, but Charan Singh, in a similar situation resigned and suggested dissolution of Lok Sabha and Neelam Sanjeev Reddy dissolved the Lok Sabha for fresh election. In 1998 when BJP Government could not prove its majority, the President did not immediately dissolve the Lok Sabha. It was only after Mrs. Sonia Gandhi, the Congress party leader, failed to prove her majority, that was dissolved Lok Sabha.

2.3.4.5.1.3. President is a Titular Head

The President of India, like the British Monarch is merely a nominal or titular head. The real power is vested in the Council of Ministers. The Supreme Court had, in a number of decisions, expressly accepted this position of the President. The Court had held in *Ram (Jawaya V. Punjab)*³⁴, that our constitution had adopted the English system of a Parliamentary executive and the President was a constitutional head of the executive and the real power lay in the Cabinet. In *(U.N.R. Rao V. Indira Gandhi)*³⁵, the Supreme Court had stated that the formal provisions of the Indian Constitution should be read in the light of conventions operating in England governing the relationship between the Crown and the Ministers. In *(R.C. Cooper V. India)*³⁶, the Supreme Court said that the President being the constitutional head, normally acts in all matters including the promulgation of an Ordinance on the advice of his Council of Ministers. After the Supreme Court decision in *(Shamsher Singh Vs State of Punjab)*³⁷ it has become mandatory for

³⁴ AIR 1955 SC 549.

³⁵ AIR 1971 SC 1002.

³⁶ AIR 1955 SC 549.

³⁷ AIR 1974 SC 2192.

the President to act on the advice of the Council of Ministers. A future amendment, however, made some concession by giving the President, power to refer back the decision to the Council of Ministers (44th Amendment Act) for reconsideration. But if the Cabinet resubmits it, the President has no option but to grant assent.

2.3.4.5.2. THE 'AID' AND 'ADVICE' DOCTRINE

The phrase "aid and advice" should be literally construed. It is nowhere said that the President must accept that advice. Where the President has to accept the advice it is specifically stated so e.g. Article 75(1) where the President has to appoint other ministers on the advice of Prime Minister. The aid and advice, is in respect of the exercise of the President's executive functions. It does not mean rights and powers. There is distinction between executive powers and executive functions.

According to Shri V.G. Ramachandran, The word 'aid' essentially means assisting and 'advice' follows the word 'aid' the rule of Eiusdem Genres construction may be resorted to. The word 'and' is conjunctive of the aforesaid two words. Consequently the word 'advise' has to be taken as genera of aid and necessarily to fulfill a purpose as done by 'aid'. So the word 'advice' is of assisting nature and not of a compulsory variety.³⁸

He gives salient factors against this theory of the Cabinet's advice being binding on the President :

1. The proposal to incorporate Instrument of instructions that the President will be bound by the advice of the Ministers was deleted by the Constituent assembly. So was omitted the proposal to follow the Irish Constitution and provide specific Article to the effect that the President should accept the advice of the Ministers.

³⁸ Indian Bar Review, Feb.&May,1977. Article by V.G. Ramachandran.

2. Article 78 giving specific powers to the President for eliciting information and to refer the matter to the Cabinet shows that he has specific duties cast upon him.
3. There are certain spheres where the cabinet cannot advise him e.g.
 - Dismissal of a Prime Minister who does not command the confidence of his party.
 - Dismissal of a Ministry in which Parliament has no confidence.
 - Dissolution of the House itself, if it has lost, according to the President, the confidence of the people.
 - The exercise of his powers as supreme commander in National emergency, particularly when Ministry of Defense has failed to defend the country.
 - The power to issue ordinances when Parliament is not in session or during emergency. (This is Legislative power).
 - There are certain other factors also as for instance-
 - The President is vested with real powers as Supreme Commander of the Defense Force. In such a capacity, he is bound not by any Cabinet decision but only by law enacted by Parliament.
 - Many duties are cast on the President which is a sort of trust reposed in him. He is therefore bound to exercise his own discretion in relation to that duty or trust, whatever advice he may get from anyone.
 - Article 368 has to be the satisfaction of the President and not to that of Cabinet. It is open to the President to question Prime Minister's advice and act on his own independent decision.

Thus in various circumstances, the President wields enormous powers. He becomes the sole unitary Government when he suspends the Constitution during national emergencies. Therefore, according to Ramchandran the Indian President is not a mere figurehead.

2.3.4.5.2.1. Various Views on the Status and position of the President

Mr. M.C. Chagla, M.P. and Ex-Chief Justice of India observed in a seminar on President's powers as "with regard to powers of the President there are two schools of thought. One school of thought envisages the President as merely a rubber stamp, a figure head, one who should attend social functions, inaugural exhibitions, deliver non controversial speeches and the more he effaces himself the President better he is. The other school of thought consider the president as one who can over-ride the government, of the cabinet if necessary; initiate measures and give a stimulus to the various activities in the country and to try to solve these problems. Actually, the truth lies somewhere in between".³⁹

Hon'ble Justice S.K. Das who took part in the same seminar pointed out to the divergent views and said" one view is that the President's position is similar to that of the sovereign in England. The second view is that he is charged with the duty of defending the Constitution. He can, if he considers it necessary over-ride the aid and guidance of his Council of Ministers. A third view steers the middle course. That view states that in all normal occasions the President is bound by the aid and advice of his council of ministers. There is a fourth view, which is still more restricted. It says that the President is bound by the aid and advice of his Council of Ministers but where in the Constitution itself, the provision is so worded that by necessary implication it says that the President can act own his own. The third and fourth views particularly the fourth view is not so vocal yet. Dr. K. M. Munshi, Shri K.Santhanam, Justice P.B. Mukherjee and Justice S.M. Ismail also opine that the advice given under Article 74 to the President is not always binding on him.⁴⁰

³⁹ Taken from above mentioned Article.pg.86.

⁴⁰ Ibid.

Shri H.M. Seervai refers to the following three views;⁴¹

1. That the President's position was similar to that of the British Monarch. This view is shared by Shri Bengal Rama Rao⁴² and also Mr. Granville Austin⁴³
2. The second view was that the President swears to defend and he is charged with the duty of defending the Constitution which enables him to hold the unity of the nation by enjoying certain powers to over-ride the Council of Ministers. This view is a sort of compromise between these two extremes. This according to M.M. Sankhdher and Shri Rasheed Talib makes the Indian President different from the British Monarch by virtue of the fact that he is elected and "capable of bearing some though not all of the powers that derive ultimately from the sovereign will of the people."

Sri H.M. Seervai's own opinion approximates to the third view. In his opinion the existence of the Council of Ministers responsible to the House of the People and therefore removal by it, makes it impossible for the President to ordinarily over-ride the Government. However, in the very unlikely event of our Council of Ministers being bent upon subverting the Constitution, the President has certain reserve power and is obliged by his oath to exercise them. He can dissolve Parliament and press an appeal to the electorate but unless the electorate supports him he must give way and face an impeachment.

A controversy regarding President's actual position was raised as early as by the first President of India who had himself presided over the deliberations of the Constituent Assembly.

On September 18, 1951 Dr. Rajendra Prasad wrote to Prime Minister Nehru, stating that, he wanted to act on his own judgement independent of the Council of Ministers, when giving his assent to Bills, sending messages to Parliament and returning Bills for

⁴¹ H.M.Seervai, The Constitutional Law of India,

⁴² Indian Constitution in the Making by Bengal Rama Rao, taken from supra 39.

⁴³ The Indian Constitution- Cornerstone of a Nation p.140.

reconsideration by Parliament. This attitude on the part of the President was provoked by the Hindu Code Bill, which has then been introduced in the provisional Parliament. The President's action raised a challenge to the conventions that governed parliamentary system of Government in India, as in England. The President raised the same issue in a speech delivered in November 1960, while laying the foundation stone of the building of the Indian Law Institute in New Delhi. If he had succeeded in this, the country would certainly have faced an unprecedented Constitutional crisis. Prime Minister Nehru consulted Alladi Krishnaswamy and M.C. Setalwad, then Attorney General, on the issue raised by the President. They refuted the stand taken by the President and express the firm view that the British Constitutional conventions applied in India with equal force and that, they could not be contravened without serious danger to Constitutional Government.⁴⁴

The Supreme Court had occasion to consider the import of Articles 73 and 75 of the Constitution in **Ram Jawaya v. State of Punjab**⁴⁵ and it reached the following conclusion: "The President has thus been made a Constitutional head of the executive and the real executive powers are vested in the Minister or the cabinet." In **Samsher singh v. state of Punjab**⁴⁶ the Supreme Court affirmed the same view in the following words, "we hold that the President as well as Governor was on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers".

It is gratifying to note that, over the past decades, successive Presidents have strictly adhered to the conventions applicable in Parliamentary Government in India but there is considerable

⁴⁴ Granville Austin, *The Indian Constitution-Cornerstone of a Nation* 140.

⁴⁵ AIR 1955 SC 549 at 556.

⁴⁶ AIR 1974 SC 2192 at 2209.

controversy regarding the rights of the President of India. First President of India, Dr. Rajendra Prasad bore that office with dignity inspite having different views from Prime Minister on vital issues (viz. Hindu Code Bill). He gave in often to the Prime Minister's views as it was backed by a majority in Parliament. Dr. Radhakrishnan as next president followed his footsteps. We can say that unless political parties make up their minds to elect a proper person as President it will be very difficult to work the Constitution in the manner in which the founding fathers wanted. So long as the political parties want total powers for themselves and would prefer a dummy to be the President, the Indian Constitution cannot be worked out in a proper manner. In the period of 1969 to 1972, Indira Gandhi eclipsed the party and it was difficult for the President Shri V.V. Giri to play even the role of his predecessors. The dominance of cabinet theory had been carried to such an extreme that the Article 368 by the 24th Constitutional Amendment was so amended that the right of the President to remit back a Bill to Parliament for a second scrutiny before he could give his assent was reduced to one of compulsory assent by the President to the bill as passed by the Parliament. The 42nd Constitutional Amendment made the Aid and Advice mandatory for the President although it was reversed by the 44th Constitutional Amendment but certainly these did not augur well for the future role, the President has to play in the National affairs. The controversy regarding the President's position was again raised in the time of Prime Minister Rajeev Gandhi. His relationship with the then President Shri Giani Zail Singh was the subject of controversy .It aroused due to the mistrust created by the Prime Minister 's not meeting the President frequently and keeping him informed about the affairs of the government and particularly about the defence deal involving Boforce Gun. The controversy mainly centred on the Article 78 and 74, Article 78 obliges the Prime Minister to furnish information regarding the affairs of his Government to the President. Article 74 provides that the Prime Minister is appointed by the President and he can be dismissed

by the President. On this basis it was argued that since the Prime Minister had failed to supply necessary information on Boforce Gun Deal as required by the President, he could dismiss the Prime Minister. The differences between the Prime Minister and the President have, thus, always existed. Sri Venkataraman, and Sri K. R. Narayan, have perceived their customary duty to caution and advice the nation on the eve of the Republic Day, quite unlike some of his predecessors. The present President even exhorted the nation on the eve of the general elections, to vote contentiously. Taking a dim view of the Government's plan to set up a Commission to revamp the Constitution, the then President Sri K.R.Narayan openly expressed to **consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution.** He said the defects in the character of the people entrusted with running the system can not be obviated by Constitutional changes or provisions.

The present President Dr. Abdul Kalam is a scientist, and command a very special respect in the Indian public, because of his contribution towards the Indian nuclear programme. He has freely given vent to his opinions, which may or may not be palatable to some in the government. But then he is not a conventional textbook President as born out by some of his action, ranging from standing in the queue to vote in a Parliamentary election to delivering a full fledged lecture to a seminar. Whether one agrees with him or not, he has the courage of conviction to state what he believes in. His warning is not only against restricted franchise and indirect election but also against over emphasising stability at the cost of responsibility. He is against any development that widens existing inequalities and creates new forms of inequality. Whether one sees the president's speech as a critique of government policies or not, the advantage of having a saner voice to caution the rulers against political and administrative adventurism cannot be over emphasised.

Restoration of ethical values and moral standards in political life by political parties can alone solve the issue and put the President in his appropriate place of authority and dignity. According to Mr. M.M. Shankhder "If Nehru's charismatic personality and the vast majority in his support kept the Presidency eclipsed there is no reason to believe that the office will remain dormant for all time. With a weak Prime Minister and a lean majority behind him, the roles may be reversed. No Constitutional impropriety shall however be involved if the Presidency comes on its own"⁴⁷. Today, we see that he was right saying this as our present President is playing a true role and not a dummy.

2.3.4.5.2.2. Non-recognition of President's powers Effect

Institutions do not work on their own. The history of the Constitutional development of the last fifty years clearly shows that though the Constitution was drafted with utmost care and skill, in its working, on some occasions it failed because some constitutional provisions were not implemented in their true spirit by the constitutional functionaries. For example the issue of proclamation of emergency in the country on June 26, 1975. The Highest constitutional functionary, namely, the President, signed at midnight the Proclamation of Emergency only on the advice of the P.M., Mrs. Gandhi. This emergency was declared on the ground of 'internal disturbance'. In fact, there was no internal disturbance in the country. The other Ministers of the Council were not consulted before declaration of the emergency. The President of India could have refused to sign or he could have resigned or he could have temporarily withheld the signing of the Proclamation and consulted the important cabinet Ministers. But he did not. When the next morning the Cabinet Ministers who were not consulted came to know about the imposition of emergency during night hours, they did not protest; they could have

⁴⁷ Indian Bar Review, Feb-May, 1977, Article by V.G. Ramchandran.

quit the Ministry on the ground of flagrant violation of the letter and spirit of the Article 352 but instead, they silently acquiesced in.

Such Presidential Proclamation of Emergency delivered a severe blow to the parliamentary democracy. If we take note of President's rule, on 11 occasions, the term of such rule has been more than one year; 17 terms lasted between six months and one year, 20 between two and six months. Even if we discount the 9 occasions when Article 356 was used by incoming Janata Government in 1977 on the basis that the incumbent Congress Government did not enjoy the confidence of the legislature and the 9 further occasions when the returning Congress (I) Government in 1980 turned this Janata strategy against its inventor, there still remain 60 occasions when Article 356 was used. Virtually each case is controversial, with the nonsense of political opportunism. On each occasion, even the semblance of constitutional discipline is sadly missing.

The President was a convenient tool to get over party debacles. This is nothing but gross misuse of the Constitutional power of the President by the Prime Minister.

2.3.4.5.2.3. Safeguards against dictatorship

Once Dr. K.M. Munshi observed that "the threat of Cabinet dictatorship may endanger the quasi-federal structure of the Union, as well as the democratic processes and freedoms guaranteed by the Constitution. This would arise in every case when the cabinet forces the President to accept the Ministerial advice, regardless of his point of view. This can be avoided by: -

1. The President's scrupulous exercise of his powers and functions vested in him by the Constitution.
2. By his readiness whenever necessary to fulfill the responsibility vested in him by his oath for the well being of the people of India and for the defence of the country;

3. By a vigilant and vigorous opposition inside and outside the Parliament to see that the Constitutional status and authority of the President is not overshadowed”⁴⁸.

2.3.4.5.3. COMPARISON WITH SOME OTHER COUNTRIES

2.3.4.5.3.1. Britain

There is a vast difference between the British Monarch and the Indian President. In Britain, the King is not a creation of the British Constitution. The difference between the two is apparent from five essential features pertaining to the President e.g.

1. The oath he has to take.
2. His election,
3. The basis of allegiance of the people,
4. His impeachability before Parliament, and
5. The powers specifically conferred to be exercised solely in his discretion.

Our founding fathers whenever they wanted British convention to be followed clearly expressed them in very provisions of the Constitution. e.g. Article 75(3), 75 (5), 77, 78, 109 (2), 110 105 (2) and 194 (3) OF THE Constitution..

2.3.4.5.3.2. United States of America

All the executive powers of the Union are vested in the President of India, who is provided with formidable powers. That is the reason why Henry W. Holmes, Jr. argues⁴⁹ that a point is made that the structure of the **Indian presidential** position is very similar to that of an equivalent position under the presidential form of government. Some of the powers vested in the Indian President; e.g., the military power is analogous to those of the American President. The President of India, therefore, although the ceremonial head in a parliamentary system, is clothed in the garb of a powerful head of a

⁴⁸ Supra 47.

⁴⁹ Ibid.

presidential system. One constitutional jurisprudent has gone to the extent of arguing that the ambitious President of India could assume all authoritarian powers without violating the Constitution.⁵⁰

Safeguards provided against Presidential Dictatorship:

However, there are certain safeguards provided against possible misuse of his powers. These are:

- Where the Council of Ministers presents a united front;
- Where it is difficult to find an alternative Prime Minister to form a stable ministry;
- Where there is danger of a possible adverse vote of the Parliament;
- Where there is popular adverse opinion, which will compel him to resign.

In these cases, the President cannot act against the cabinet's advice, if he discards the people's wishes, they may refuse to re-elect him. Under Article 61, the President has to face an impeachment for violation of the Constitution and possibly removal from office if the charges are proved.

Though the Constitution of India vests in the President formidable powers, our system significantly differs from that of the U.S.A.:

Firstly, in U.S.A. the President is both head of the state as well as head of the Government, while in India President is head of the State but not the head of the Government.

Secondly, Presidential system in U.S.A. is mainly based on the principle of separation of powers, in India in place of 'separation of powers' the theory of 'fusion of powers' is applied.

Thirdly, The U.S. President may consult or may not consult his cabinet, but the Indian President has to act on the aid and advice of the 'Council of Ministers'.

⁵⁰ Ibid.

Fourthly, The American President is elected by members who are specifically elected to choose the President, whereas the Indian President is elected by members of the national and state legislatures who are initially elected as legislators and not to elect the President.

The study of this part reveals that Indian system of government is predominantly based on parliamentary system, but it is not replica of that. The President has to exercise certain powers without the advice of the ministry in his discretion in certain exigencies. The role of the Indian President is neither ceremonial nor similar to the role of the American President, but a composite of both. "A democratic structure of Government would be undermined," says Henry W Holmes, "if the 'aid and advice', clause is not construed as a basis for parliamentary authority"⁵¹. At the same time, he maintains that, "if the President, on the other hand, were always bound by ministerial advice, the provision rendering him responsible 'for the maintenance and protection of the constitution' would be anomaly. The stability of the system would be undermined if in times of crisis and disruption a unifying, central force would be unable to exercise discretion". The compromistic constitutional formula may be that in normal functioning of the government parliamentary system will prevail and the Head of the State should act as ceremonial head, but in exceptional circumstances Presidential system should prevail and the President should exercise his discretion. The Indian system of Government, therefore, lies some where between the Westminster model and White House model, though more nearer to the former, but having some trappings of the latter too.

In ensuing chapters we will see whether our founding fathers made a mistake in adopting the British Parliamentary system in India? Were the Britishers right when they said the British system is neither

⁵¹ Ibid.

suitable nor desirable for India? ⁵² Parliamentary system assumes a number of conditions for its successful operation. The most important thing it requires is the existence of mainly two political parties, each with a coherent set of policies and preferences that distinguish it from the other. In the next chapter we will see where the Indian party system stands.

⁵² Law World-Jan-Feb 2001-"50 years of Parliament".