





# THE CONSTITUTION OF PAKISTAN



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THE CONSTITUTION  
OF  
PAKISTAN

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## PREFACE

The main object of writing the Constitution of Pakistan is to complete my book entitled *Select Modern Governments*. I had already included in that book the Constitutions of England, the United States, Switzerland, the Soviet Union, India, France, Japan, Ireland, Australia, Canada and the Union of South Africa. It was considered desirable to include the Constitution of a neighbouring country with which we are very much interested.

The Constitution of Pakistan has many interesting features and it is hoped that it will be read with great interest.

III M 10 Lajpat Nagar,  
New Delhi-14  
October 2, 1962

VIDYA DHAR MAHAJAN



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# THE CONSTITUTION OF PAKISTAN

## CHAPTER I

### MAKING OF THE CONSTITUTION

The Indian Independence Act of 1947 established the Dominions of Pakistan and India. The Act also made a division of the Constituent Assembly. The members representing the Pakistan areas were formed into a separate Constituent Assembly for the Dominion of Pakistan. A provision for the adaptation of the Government of India Act, 1935 was also made to serve as a Constitution for Pakistan.

The Constituent Assembly of Pakistan could not make much headway in the direction of constitution-making for about two years on account of many difficulties. However, in March 1949, an Objectives Resolution was passed by the Constituent Assembly. It was stated therein that sovereignty belongs to God, but it will be exercised in Pakistan by the people according to the dictates of the Quran and Sunnah. Pakistan was to be a federation. Principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, were to be fully observed. The State was to exercise its power and authority through the chosen representatives of the people. The rights and legitimate interests of the minorities were to be protected and the minorities were to be free to profess and practise their religion and develop their culture. All the citizens of Pakistan were to be granted equal fundamental rights to be incorporated in the Constitution. The legitimate interests of the backward and depressed classes were to be safeguarded. The judiciary was to be independent.

After the passing of the Objectives Resolution, the Constituent Assembly set up a committee to frame an outline of and the main principles of the new Constitution. The committee was known as the Basic Principles Committee. The latter set up four sub-committees such as Fundamental Rights Sub-Committee, Judiciary Sub-Committee, etc. On 21st November, 1950 the interim report of the Basic Principles Committee was submitted to the Constituent Assembly. It was recommended in the report that there should be a Head of the State elected by a joint session of both the Houses of the Central Legislature. It was not necessary that the Head of the State of Pakistan must be a Muslim. There was to be a Central Legislature consisting of two Houses, the House of Units and the House of Peoples. The Cabinet was made responsible to the Federal Legislature. The Head of the State was given the power to suspend the whole or a part of the Constitution. The Interim Report was severely criticised by the leaders and people of East Bengal. Their main contention was that the majority of East Bengal was permanently transformed into a minority.

On 22nd December 1952, the Report of the Basic Principles Committee was presented to the Constituent Assembly by Khwaja

Nazimuddin, who had succeeded Mr. Liaqat Ali Khan as Prime Minister. It was recommended that the legislature of Pakistan was to consist of two Houses : the House of Units and the House of Peoples. The Boards of Ulemas were to be set up. Their duty was to see that the laws passed by the Federal and Provincial Legislatures were in conformity with the principles of Islam as enunciated in the Quran and the Sunnah. The Cabinet was to be responsible only to the Lower House of the Federal Legislature.

The Report of the Basic Principles Committee was criticized from all quarters. The anti-Ahmadiya agitation could not be tackled by the ministry in power. The food crisis threatened the country. Taking advantage of all these factors, Mr. Ghulam Mohammad, the then Governor-General of Pakistan, dismissed Khwaja Nazimuddin and his cabinet. There was a lot of confusion, and ultimately Mr. Mohammad Ali of Bogra was appointed Prime Minister of Pakistan.

The new Prime Minister was able to solve successfully the question of distribution of seats between East Pakistan and West Pakistan. East Pakistan was given 183 seats in both Houses of the proposed Federal Parliament and all the provinces of West Pakistan were also given 183 seats in the Federal Legislature. Although East Bengal was given only 10 seats in the Upper House, parity was maintained in both Houses taken collectively. Both Houses of Parliament were to have equal powers and a deadlock was to be resolved by a joint sitting. The necessary majority in a joint session had to include 30 per cent of the members of each wing.

Elections were held in Pakistan and the Muslim League was defeated in East Pakistan. The result was that the representative character of the first Constituent Assembly became doubtful and suggestions were made for the dissolution of the Constituent Assembly or the replacement of the members from East Pakistan. There were also differences amongst the members of the Muslim League (which was ruling at that time) over the important provisions of the proposed constitution. There was a demand for the dissolution of the Constituent Assembly. In order to avoid the intervention of the Governor-General, Mr. A. K. Brohi introduced on 3rd August 1954 an Act called the Constitution Amendment Act of 1954. The object of that Act was to declare the absolute sovereignty of the Constituent Assembly for purposes of constitution-making. All courts of Pakistan, including the Federal Court, were rendered incompetent to question, directly or indirectly, or declare invalid any provisions affecting the Constitution framed by the Constituent Assembly. Many laws were passed by the Constituent Assembly with a view to curtail the powers of the Governor-General and thereby render him ineffective against the Constituent Assembly.

After curtailing the powers of the Governor-General, the Constituent Assembly adopted the amended Basic Principles Committee Report by 29 to 11 votes. It was declared by the Prime Minister that discussion on the draft constitution would be finished by 25th December 1954 and the new constitution would be adopted on Qaid-i-Azam's birthday. He also declared that Pakistan would become a republic on 1st January, 1955. After these declarations,

the Constituent Assembly was adjourned till 27th October, 1954. The Report of the Basic Principles Committee was sent to the Drafting Committee of constitutional experts. On 16th October 1954, the draft constitution was sent for printing so that it would be in the hands of the members of the Constituent Assembly on 27th October 1954.

However, on 24th October, 1954, the Constituent Assembly was dissolved by the Governor-General by means of a proclamation. It was declared in the proclamation made by the Governor-General that the Constituent Assembly had lost the confidence of the people and hence there was the necessity of fresh elections. Mr. Mohammad Ali of Bogra formed a new cabinet on the invitation of the Governor-General and men like Iskander Mirza, H. S. Suhrawardy, and Dr. Khan Sahib were included in the cabinet. Maulvi Tamizuddin Khan, President of the dissolved Constituent Assembly, challenged the legality of the proclamation of the Governor-General in the Chief Court of Sind. A full bench of the Chief Court of Sind decided the case in favour of Maulvi Tamizuddin Khan. The government went in appeal to the Federal Court of Pakistan which reversed the decision of the Chief Court of Sind.

To begin with, the Governor-General decided to call a Constitutional Convention to frame the Constitution for Pakistan. However, on the advice of the Federal Court of Pakistan, the idea of calling a Constitutional Convention was given up and orders were passed on 28th May 1955, for electing members of the Second Constituent Assembly of Pakistan. The new Constituent Assembly was to consist of 80 members who were equally divided among the two wings of Pakistan. On the occasion of new elections, the Muslim League did not do well. It was able to capture only 25 seats in the new Constituent Assembly. 16 seats were won by the United Front and 13 by the Awami League, 11 by the minority communities and 7 members of the Constituent Assembly were independent. There was a lot of tussel between the Muslim League on the one side and the other parties on the other. There was a coalition government between the Muslim League and the United Front at the Centre. All the provinces and states of West Pakistan were merged into one unit.

The first session of the second Constituent Assembly was held in July 1955 at Murree. However, no work was done on account of the various difficulties facing the Constituent Assembly. The second session of the Constituent Assembly was held in August 1955. On 8th January 1956, the Constitution Bill was published by the government. It was piloted in the Constituent Assembly by Mr. I. I. Chundrigar, the Law Member at that time. The Constitution was adopted on 29th February 1956. It was also decided to enforce the new constitution on 23rd March 1956, the Pakistan Day, and the constitution actually came into force from 23rd March 1956.

### **Constitution of Pakistan (1956)**

(1) The Constitution of Pakistan of 1956 had a Preamble. It was declared therein that the people of Pakistan had decided to

constitute the people of Pakistan into a sovereign peoples' State based on Islamic principles of social justice. The aims of the new State were described to be to secure for all citizens the freedom, equality, tolerance and social justice as enunciated by Islam. It was also declared that sovereignty belongs to the Almighty alone. The authority of the people was a sacred trust from *Allah* to be exercised within the limits prescribed by Him. Legislative and executive action was liable to be impugned for repugnancy to the fundamental rights which formed a part of the new constitution.

(2) A provision was made in the constitution for directive principles of State policy. Their provisions could not be enforced in any court, but those were declared to be binding on all organs of government and all persons holding public office.

(3) The Governor-General was replaced by an elected President. Special restrictions were placed on the legislative and executive powers of the Federation of Pakistan and the provinces constituting the federation. The two units of the Federation of Pakistan were put on a footing of equality. Provision was made for further accessions to the territory of Pakistan but not for cessation.

(4) Provision was made for a National Economic Council and a Finance Commission. Both the Federal Government and the Provincial Governments were given representation on the National Economic Council and the Finance Commission. It was to be the duty of the National Economic Council to formulate an economic policy for Pakistan. The Finance Commission was to decide how the proceeds of distributable taxes were to be apportioned between the Centre and the provinces.

(5) A provision was made for three legislative lists providing for the division of powers between the Federal Government and the provinces. The residuary powers were given to the provinces. All legislatures were to be unicameral. It was for the Parliament to decide whether there was to be any communal representation or not, and ultimately it was decided in the negative.

(6) Provision was made for the Supreme Court of Pakistan and the High Courts of the provinces. The courts were empowered to issue prerogative writs. The courts were made the guardians and interpreters of the constitution. They were given the power to declare void all acts which violated the constitution. Although a federal form of government was set up in Pakistan, actually Pakistan came to have a unitary State. Too many powers were given to the President to be exercised at the time of emergency.

(7) The form of government provided for was the parliamentary form of government. It was the duty of the President of Pakistan to act on the advice of his ministers.

(8) Provision was made for only one citizenship of Pakistan and there was no provision for a separate citizenship of a constituent state of Pakistan. In America, we have a dual citizenship. An individual is a citizen of his own state and at the same time a citizen of the United States. Provision was made for a single integrated judiciary, uniform civil and criminal law and common all-Pakistan services. Provision was made for giving all the powers to

the President at the time of a national emergency. On such an occasion, the Federal Government was to become all-powerful.

(9) The Constitution of Pakistan was not rigid. The Constitution could be amended by making some of the Articles of a temporary duration to remain in force until Parliament by law otherwise provided. Provision was also made for conferring concurrent powers of legislation both to the Centre and the Provinces.

(10) Provision was made in the Constitution for fundamental rights. The fundamental rights guaranteed by the Constitution were the right to equality, protection against retrospective offences or punishment, safeguards against arrest and detention, freedom of speech, freedom of assembly, freedom of association, freedom of movement, right to hold and dispose of property, freedom of trade, business or provision for cultural and educational rights, right against exploitation and the right to constitutional remedies. Regarding these fundamental rights, A. K. Brohi has observed thus: "These rights are fundamental not only in the sense that they have been mentioned in and guaranteed by the Constitution but are such as neither the Legislature nor the Executive can in any manner curtail or diminish. These rights limit legislative and executive power and are a clog on the 'temporary' will of the 'simple' majority in the Legislature. They embody a permanent and paramount law which cannot be disturbed by the will of Legislature or Executive. It can only be undone by the Nation and the People by recourse to the extraordinary method of effecting constitutional amendment as provided in Art. 216 of our Constitution.

"These fundamental rights that have been constitutionally guaranteed operate like a double-edged sword: they not only destroy those portions of 'existing law' which are in conflict with these rights but they operate also to render void any State action (whether in the legislative or executive field) what after the coming into force of the Constitution has the effect of taking away or abridging any of the fundamental rights. Any law passed in contravention of the rights preserved by Part II of our Constitution to the extent of such contravention, would be void'".

The Pakistan Constitution of 1956 did not work satisfactorily. There were complaints from all quarters. The result was that on 7th October 1958, the Government was taken over by Field Marshal Mohammad Ayub Khan. Martial law was declared all over the country and every effort was made to cleanse the politics of Pakistan.

On 17th February 1960, a Commission was appointed by Field Marshal Mohammad Ayub Khan to examine the progressive failure of the parliamentary government in Pakistan leading to the abrogation of the Constitution of 1956, to determine the causes and the nature of the failure, to consider how best the said or like causes could be identified and their recurrence prevented, and also to make recommendations regarding the future Constitution of Pakistan. After a lot of labour, the Commission submitted its report on 29th April 1961. A Constitution was drafted for Pakistan and the same came into force on 8th June 1962.

## CHAPTER II

### SALIENT CHARACTERISTICS OF THE CONSTITUTION (1962)

(1) The Constitution of Pakistan has a **Preamble**. It is stated therein that sovereignty over the entire universe belongs to Almighty *Allah* alone and the authority exercisable by the people is a sacred trust. Quaid-i-Azam Mohammad Ali Jinnah declared that Pakistan should be a democratic State based on Islamic principles of social justice. The territories included in Pakistan form a federation in which the provinces enjoy such autonomy as is consistent with the unity and interests of Pakistan as a whole. It is the will of the people of Pakistan that the State should exercise its power and authority through representatives chosen by the people. The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, should be fully observed in Pakistan. The Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the teachings and requirements of Islam. The legitimate interests of the minorities in Pakistan, including their religious and cultural interests, should be adequately safeguarded. The fundamental human rights, including the rights of equality before law, freedom of thought, expression, belief, faith and association and social, economic and political justice, should, consistently with the security of the State, public interest and requirements of morality, be preserved. The independence of the judiciary should be ensured. It is specifically stated in the Preamble that the Constitution has been enacted by Field Marshal Mohammad Ayub Khan, President of Pakistan, in exercise of the mandate given to him by the people of Pakistan.

(2) The State of Pakistan is a republic. It consists of the two provinces of East Pakistan and West Pakistan and such other States and territories as may be included in Pakistan, whether by accession or otherwise.

(3) Pakistan has a federal form of government. The powers given to the Federal Government alone are given in **Third Schedule** of the Constitution. Those subjects are the defence of Pakistan, external affairs, admission of persons into and departure of persons from Pakistan including immigration and emigration, citizenship, naturalisation, and aliens, trade and commerce between the provinces and with other countries, national economic planning and national economic co-ordination, currency, coinage and legal tender, foreign exchange and negotiable instruments, central banking, public debt of the Centre, stock exchanges and futures market with objects of business not confined to one province, insurance, incorporation, regulation and winding up of corporations, copyright, patents, designs, inventions, trade marks and merchandise marks, navigation and shipping, air navigation and aircrafts, lighthouses

and other provisions of safety of shipping and aircraft, declaration and delimitation of major ports and constitution and powers of port authorities, standards of weights and measures, posts including post office savings bank, tele-communications, including broadcasting and television, fishing and fisheries outside territorial waters, nuclear energy, mineral oil and natural gas, industries owned wholly or partly by the Central Government or by a corporation set up by the Centre, property of the Centre, wherever situated, and the revenue from such property, Survey of Pakistan, including geological surveys, meteorology and meteorological observation, national libraries and museums, central agencies and central institutions for the promotion of special studies and specially research, ancient and historical monuments declared to be of national importance, census, central intelligence and investigating organisations, preventive detention for reasons connected with defence, external affairs or the security of Pakistan, elections to the office of President, National Assembly and provincial assemblies, powers, privileges and immunities of the National Assembly, the Supreme Court, the Central Public Service Commission, All-Pakistan Services, and services and posts connected with the affairs of the Centre, tourism, relief and rehabilitation of refugees, duties and taxes such as customs, excise, corporation taxes, estate and succession duties, taxes on sales and purchases, etc. It is to be observed that the Constitution makes the Federal Government very strong. The models of Canada and India have been followed in this respect.

However, an attempt has been made to reconcile the regional demands of East Pakistan which resents the domination of West Pakistan. The Constitution provides for the establishment of the seat of the National Assembly at Dacca as against the headquarters of the Government of Pakistan at Islamabad in West Pakistan.

Dacca has also been made the second capital of Pakistan. Both Bengali and Urdu have been made the national languages of Pakistan in order to give satisfaction to the people of East Pakistan. Both East Pakistan and West Pakistan have been given equal representations in the National Assembly. Article 16 specifically provides that "Parity between the provinces in all spheres of the Central Government should as nearly as practicable, be achieved".

### **Principles of Law-making**

(4) The Constitution of Pakistan provides for what are known as the **principles of law-making**. It is the responsibility of each legislature to ensure that no law is made by it if it disregards, violates, or is otherwise not in accordance with these principles. The responsibility for deciding whether a proposed law does or does not disregard or violate or is not otherwise in accordance with the principles of law-making, is that of the legislature concerned. However, the National Assembly, the Provincial Assembly, the President or the Governor of a province may refer to the Advisory Council of Islamic Ideology for advice any question that arises whether a proposed law disregards or violates or is otherwise not in accordance with these principles. The validity of a law shall not be



called in question on the ground that the law disregards, violates or is otherwise not in accordance with the principles of law-making.

The principles of law making include that no law shall be repugnant to Islam. All citizens shall be equal before the law, be entitled to equal protection of the law and be treated alike in all respects. This principle can be departed from where in the interest of equality itself, it is necessary to compensate for existing inequalities, whether natural, social, economic or of any other kind. The same is the case where in the interest of the proper discharge of public functions, it is necessary to give to persons performing public functions powers, protections or facilities that are not given to other persons or to impose on persons performing public functions, obligations or disciplinary controls that are not imposed on other persons, or where it is necessary in the interests of the security of Pakistan or otherwise in the interest of the State to depart from this principle. When this principle is departed from, it should be ensured that no citizen gets an undue preference over another citizen and no citizen is placed under a disability, liability or obligation that does not apply to other citizens of the same category.

No law should impose any restriction on the freedom of a citizen to give expression to his thoughts. The exceptions can be made in the interest of the security of Pakistan, for the purpose of ensuring friendly relations with foreign States, for the purpose of ensuring the proper administration of justice, in the interest of public order, for the purpose of preventing the commissioning of offences, in the interest of decency or morality, for the purpose of granting privilege in appropriate cases to particular proceedings, or for the purpose of protecting persons in relation to their reputation.

No law should impose any restriction on the freedom of citizens to assemble peacefully and without arms or to form associations or unions. Exceptions can be made to this principle in the interest of the security of Pakistan, in the interest of public order, for the purpose of preventing the commission of offences, in the interest of decency or morality, and for the purpose of protecting persons in relation to their health or property.

No law should impose any restriction on the freedom of a citizen to move throughout Pakistan or to reside or settle in any part of Pakistan. Likewise, no restriction should be imposed on the freedom of a citizen to acquire, hold or dispose of property in any part of Pakistan. However, this principle can be departed from where it is necessary so to do in the public interest.

No law should impose any restriction on the freedom of a citizen to engage in any profession, trade, business, occupation or employment, or otherwise to follow the vocation of his choice. This principle can be departed from in the interest of the security of Pakistan, and decency or morality. Likewise, restrictions can be imposed for the purpose of regulating any profession or trade by a licensing system, for ensuring, in the public interest, that where a profession or trade requires any special qualifications or skill only persons possessing those qualifications or skill shall engage in the

profession or trade. Restrictions can also be imposed for the purpose of ensuring, in the public interest, that a trade, business, industry or service may be carried on by or on behalf of the State or an organ of the State to the exclusion, in whole or in part, of other persons, or for the purpose of ensuring the development of Pakistan and its resources and industries.

No law should prevent the members of a religious community or denomination from professing, practising or propagating or from providing instruction in, their religion, or from conducting the institutions for the purpose, or in connection with their religion. No law should require any person to receive religious instruction or attend a religious ceremony or religious worship, relating to a religion other than his own. No law should impose on any person a tax the proceeds of which are to be applied for purposes of a religion other than his own. No law should discriminate between religious institutions in the granting of exemptions or concessions in relation to any tax. No law should authorise the expenditure of public moneys for the benefit of a particular religious community or denomination except moneys raised for that purpose.

A law authorising the arrest or detention of persons should ensure that a person arrested or detained under the law is informed of the grounds of his arrest or detention at the time he is arrested or detained or as soon thereafter as is practicable. He should also be taken before the nearest magistrate within a period of 24 hours after he is arrested or detained, excluding the time necessary to convey him to the magistrate. He should be released from custody at the expiration of that period unless further detention is authorised by a magistrate. He should be at liberty to consult and to be represented and defended by a legal practitioner of his choice. However, this principle does not apply to a law authorising the arrest or detention of enemy aliens or providing for preventive detention, but a law providing for preventive detention should be made only in the interest of the security of Pakistan or of public safety. It should ensure that the person detained under the law is informed of the grounds of detention at the time he is detained or as soon thereafter as is practicable. It should ensure that a person is not detained under the law for a period longer than three months without the authority of a Board consisting of a judge of the Supreme Court and other senior officers in the service of Pakistan nominated by the President in the case of a Central Law and a judge of the High Court of the province concerned and another senior officer in the service of Pakistan nominated by the Governor of the province, in the case of a provincial law.

No law should authorise the punishment of a person for an act or omission that was not punishable by law at the time the act was done or the omission was made. Likewise, no law should authorise the punishment of a person for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

No law should authorise the compulsory acquisition or the compulsory taking possession of property except for a public pur-

pose. A law that authorises compulsory acquisition or the compulsory taking possession of the property should provide for the payment of compensation for the property and either fix the amount of the compensation or specify the principles on which and the manner in which the compensation is to be determined. These principles may be departed from for the purpose of permitting the destruction, the acquisition or the taking possession of property in order to prevent or reduce danger to life, health or property, for the purpose of ensuring the proper management, for a limited period, of any property for the benefit of its owner, or in relation to property which is or is deemed to be an evacuee property under any law. The term 'public purpose' includes the purpose of acquiring, in the public interest, any industrial, commercial or other undertaking which is of benefit to the public, any interest in such an undertaking or any land for use in connection with such an undertaking.

No law should permit forced labour in any form. This principle may be departed from in relation to the punishment of persons for offences against the law and the compulsory service of persons for public purposes or otherwise in the public interest (whether by way of conscription or in any other way). No law should, on the ground of race, religion, caste or place of birth, deprive any citizen of the right to attend any educational institution that is receiving aid from public revenues. This principle may be departed from for the purpose of ensuring for a class of citizens that is educationally backward, shares in available educational facilities.

No law should deny to any person access to a public place (other than a place intended solely for religious purposes) on the ground of race, religion, caste or place of birth. No law should prevent any section of the community from having a distinct language, script or culture of its own. No person should permit or in any way facilitate the introduction into Pakistan of slavery in any form. No law should permit or in any way facilitate the introduction into Pakistan of the practice of untouchability in any form.

### **Principles of Policy**

(5) The Constitution of Pakistan also provides for what are known as the **principles of policy**. It is the responsibility of each organ and authority of the State and of each person performing functions on behalf of an organ or authority of the state, to act in accordance with these principles in so far as they relate to the functions of the organ or the authority. In so far as the observance of any particular principle of policy may be dependent upon resources being available for the purpose, the principle shall be regarded as being subject to the availability of resources. The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the principles of policy is that of the organ or authority of the State or of the person concerned. The validity of an action or of a law shall not be called in

question on the ground that it is not in accordance with the principles of policy and no action shall lie against the State, any organ or authority of the State or any person on such a ground.

One of the principles of policy is that the Muslims of Pakistan should be enabled, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and should be provided with facilities whereby they may be able to understand the meaning of life in accordance with those principles and concepts. The teachings of the Holy Quran and Islamiat to the Muslims of Pakistan should be compulsory. Unity and the observance of Islamic moral standards should be promoted amongst the Muslims of Pakistan. The proper organization of zakat, wakfs and mosques should be ensured.

Parochial, racial, tribal, sectarian and provincial prejudices amongst the citizens should be discouraged. The legitimate rights and interests of the minorities should be safeguarded and the members of minorities should be given due opportunity to enter the service of Pakistan. Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas. Steps should be taken to bring on terms of equality with other persons the members of under-privileged castes, races, tribes, and groups, and to this end, the under-privileged castes, tribes and groups within a province should be identified by the government of the province and entered in a schedule of under-privileged classes.

The people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan. Illiteracy should be eliminated and free and compulsory primary education should be provided for all, as soon as practicable. Just and humane conditions of work should be provided and children and women should not be employed in vocations unsuited to their age and sex, and maternity benefits should be provided for women in employment.

The well-being of the people, irrespective of caste, creed or race, should be secured by raising the standard of living of the common man, by preventing the undue concentration of wealth and means of production and distribution in the hands of a few, to the detriment of the interest of the common man and by ensuring an equitable adjustment of rights between employers and employees and between landlords and tenants.

All citizens should have the opportunity to work and earn an adequate livelihood and also to enjoy reasonable rest and leisure. All persons in the service of Pakistan or otherwise employed should be provided with social security by means of compulsory social insurance or otherwise. The basic necessities of life such as food, clothing, housing, education and medical treatment should be provided for citizens who, irrespective of caste, creed or race, are permanently or temporarily unable to earn their livelihood on account of infirmity, disability, sickness, or unemployment.

Administrative offices and other services should, so far as practicable, be provided in places where they will best meet the convenience and requirements of the public. No citizen should be denied entry into the service of Pakistan on the grounds of race, religion, caste, sex or place of residence or birth. This principle may be departed from where, in the public interest, it is desirable that a person who is to perform functions in relation to a particular area should be a resident of that area and a person who is to perform functions of a particular kind should be of a particular sex. The principle is also to be departed from if it is necessary to do so for the purpose of ensuring that, in relation to Central Government, persons from all parts of Pakistan, and in relation to a provincial government, persons from all parts of the province concerned, have an opportunity of entering the service of Pakistan. Disparity in the remuneration of persons in the various classes of the service of Pakistan should, within reasonable and practicable limits, be reduced.

Parity between the provinces in all spheres of the Central Government should, as nearly as practicable, be achieved. Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan. *Riba* (usury) should be eliminated. Prostitution, gambling, and the taking of injurious drugs should be discouraged. The consumption of alcohol liquor (except for medicinal purposes and in the case of non-Muslims for religious purposes) should be discouraged. The bonds of unity amongst Muslim countries should be preserved and strengthened, international peace and security should be promoted, goodwill and friendly relations amongst all nations should be fostered. The settlement of international disputes by peaceful means should be encouraged.

(6) The new Constitution of Pakistan provides for a unicameral legislature at the Centre known as the National Assembly. This has been done although the Constitution Commission had recommended the establishment of two Houses of the legislature known as the Senate and the House of the People. Provision has also been made for unicameral legislatures in the provinces.

(7) Part XI of the Constitution deals with the method of amendment of the Constitution. According to it, the Constitution can be amended by an Act of the Central Legislature. A bill to amend this Constitution shall not be presented to the President for assent unless it has been passed by the votes of not less than two-thirds of the total number of the members of the National Assembly. The President shall, within 30 days after a bill to amend this Constitution is presented to him, assent to the bill, declare that he withholds assent from the bill, or return the bill to the National Assembly with a message requesting that the bill or a particular provision of the bill, be reconsidered and that any amendments specified in the message be considered. If the President fails to do any of these things within the period of 30 days, he shall deem to have assented to the bill at the expiration of that period.

If the President declares that he withholds assent from the Bill, the National Assembly shall be competent to reconsider the

Bill and, if the Bill is again passed by the Assembly, with or without amendment, by the votes of not less than three-quarters of the total number of members of the Assembly, the Bill shall again be presented to the President for assent. If the President returns the Bill to the National Assembly, the Assembly shall reconsider the Bill and if the Bill is again passed by the Assembly, without amendment or with the amendments specified by the President in his message or with amendments which the President has subsequently informed the Speaker of the Assembly are acceptable to him, by the votes of not less than two-thirds of the total number of members of the Assembly, or the Bill is again passed by the Assembly by the votes of not less than three-quarters of the total number of members of the Assembly, the Bill shall again be presented to the President for assent. When the Bill is again presented to the President for assent, the President shall, within ten days after the Bill is presented to him, assent to the Bill or cause to be referred to a referendum the question whether the Bill should or should not be assented to. However, if within the period of ten days, the President fails to do either of these things, and the Assembly is not dissolved, the President shall be deemed to have assented to the Bill at the expiration of that period. If at a referendum conducted in relation to a Bill, the votes of the majority of the total number of members of the Electoral College are cast in favour of the Bill being assented to, the President shall be deemed to have assented to the Bill on the day on which the result of the referendum is declared.

Article 210 provides that a Bill to amend the Constitution which would have the effect of altering the limits of a province shall not be passed by the National Assembly unless it has been approved by a resolution of the Assembly of the province passed by the votes of not less than two-thirds of the total number of members of that Assembly.

(8) Part X of the Constitution deals with Islamic Institutions. There is a mandatory provision for the establishment of an **Advisory Council of Islamic Ideology**. The Council shall consist of such number of members being not less than five and not more than 12, as the President may determine. The members of the Council shall be appointed by the President on such terms and conditions as the President may determine. The President shall, in selecting a person for appointment to the Council, have regard to the person's understanding and appreciation of Islam and of the economic, political, legal and administrative problems of Pakistan.

A member of the Council shall hold office for a period of three years from the date of his appointment. However, if a resolution recommending his removal is passed by a majority of the total number of members of the Council, the President may remove him from office, but he shall not otherwise be removed from office. A member of the Council may resign his office by writing under his hand addressed to the President. The President shall appoint one of the members of the Council to be its Chairman.

The functions of the Council shall be to make recommendations to the Central Government and the Provincial Governments

as to the means of enabling and encouraging the Muslims of Pakistan to order their lives in all respects in accordance with the principles and concepts of Islam, and to advise the National Assembly, a Provincial Assembly, the President or a Governor on any question referred to the Council under Article 6. That question relates to the fact whether a proposed law disregards or violates or is otherwise not in accordance with the principles of law-making. When such a question is referred to the Advisory Council of Islamic Ideology for advice, the latter shall within 7 days therefrom inform the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice. Where the Assembly, the President or the Governor, as the case may be, considers that in the public interest, the making of the proposed law in relation to which the question arises should not be postponed until the advice is furnished, the law may be made before the advice is furnished.

The proceedings of the Council shall be regulated by the rules of procedure to be made by the Council with the approval of the President of Pakistan.

Article 207 provides that there shall be an organisation to be known as **Islamic Research Institute** which shall be established by the President. The function of the Institute shall be to undertake Islamic Research and instruction in Islam for the purpose of assisting in the reconstruction of Islamic society on a truly Islamic basis.

(9) Article 215 provides that the national languages of Pakistan are Bengali and Urdu. However, this Article shall not be construed as preventing the use of any other language. Particularly, the English language can be used for official and other purposes until arrangements for its replacement are made. In the year 1972, the President shall constitute a Commission to examine and report on the question of the replacement of the English language for official purposes.

(10) Article 211 provides that the capital of the Republic of Pakistan shall be Islamabad, situated in the district of Rawalpindi in the province of West Pakistan at the site selected for the capital of Pakistan before the enactment of the Constitution. The area of the capital shall be determined by the Central Legislature, but shall not be less than 200 square miles. There shall be a second capital of the Republic at Dacca in the province of East Pakistan. The principal site of the National Assembly shall be at Dacca and that of the Central Government at Islamabad. Until provision is made for establishing the Central Government at Islamabad, the principal seat of that government shall be at Rawalpindi.

(11) Part IX of the Constitution provides for the Comptroller and Auditor-General of Pakistan to be appointed by the President. His terms and conditions of service shall be determined by an Act of the Central Legislature. Before he enters upon his office, he shall make before the Chief Justice of the Supreme Court an oath in the prescribed form. He shall hold office until he attains the age of 60 years. He shall be liable to be removed from office in

the manner provided for the removal of the Judges of the Supreme Court or High Court. He, however, may resign his office voluntarily by writing to the President.

He shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services. A person who has held office as Comptroller and Auditor-General shall not hold any office of profit in the service of Pakistan before the expiration of two years after he ceased to hold that office.

At any time when the office of Comptroller and Auditor-General is vacant, or he is absent or is unable to perform the functions of his office due to illness or some other cause, such other person as the President may direct shall act as Comptroller and Auditor-General and perform the functions of that office.

The Comptroller and Auditor-General shall perform such functions and exercise such powers and prepare such reports in relation to the expenditure and accounts of the Centre and of the provinces as may be provided or required by Act of the Central Legislature. The accounts of the Centre and of the provinces shall be kept in such form as the Comptroller and Auditor-General, with the approval of the President, may determine.

The reports of the Comptroller and Auditor-General relating to the accounts of the Centre shall be submitted to the President who shall cause them to be laid before the National Assembly. His reports relating to the accounts of a province shall be submitted to the Governor of a province, who shall cause him to be laid before the Assembly of a province.



## CHAPTER III

## PRESIDENT OF PAKISTAN

The Constitution provides for a President of Pakistan. No person can be elected as President of Pakistan unless he is a Muslim, has attained the age of 35 years and is also qualified to be elected as a member of the National Assembly.

**Election**

The President is to be elected by the Electoral College of Pakistan. Each province in Pakistan is divided into not less than 40,000 territorial units known as electoral units. The number of electoral units in each province has to be the same. An Electoral Roll has to be established and maintained for each electoral unit. Any citizen who is not less than 21 years of age, is not of unsound mind and is a resident or is deemed by law to be a resident of an electoral unit, is entitled to be enrolled on the electoral roll for that electoral unit. The persons enrolled on the electoral roll for an electoral unit are required to elect from time to time from amongst themselves a person who is not less than 25 years of age and he is known as elector for that unit. The electors for all territorial units in both provinces together constitute the Electoral College of Pakistan and the electors are known as the members of the Electoral College. It is the members of this Electoral College of Pakistan who elect the President of Pakistan.

The Constitution provides that an election for the President of Pakistan shall be held within the period of 120 days immediately preceding the day on which the term of office of a President is due to expire and the results of the election shall be declared not less than 14 days before that date, but the person elected shall not enter upon the office of the President before that office is vacant. When a President dissolves the National Assembly, an election for the office of the President shall be held within the period of 120 days after the dissolution, but polling at the election shall not take place until 60 days have elapsed from the date of the dissolution. When a President ceases to hold office before the expiration of his term of office, an election for the office of President shall be held within the period of 90 days after he ceases to hold office. When a person, having been elected as President, fails to enter upon his office, an election to elect another person in his place shall be held as soon as is practicable.

The term of office of President is the period commencing on the day on which he enters upon his office and ending five years after his predecessor ceased to hold office. Where his predecessor as President ceased to hold office before completing his term of office, his term of office is to end on the day on which his predecessor's term of office was due to expire and if the unexpired portion of his predecessor's term of office was less than 180 days, five years after his predecessor's term of office was due to expire. Where his

predecessor as President ceases to hold office following a dissolution of the National Assembly, the term of office is to end after five years and 60 days after the commencement of the term of the National Assembly elected in place of the Assembly that was dissolved. The President can also resign his office by writing to the Speaker of the National Assembly.

The person who is and has for a continuous period of more than 8 years, been holding office as President, is not eligible to be re-elected as President. If such a person is a candidate for election to the office of President, the Chief Election Commissioner shall inform the Speaker of the National Assembly of the candidature and the Speaker shall forthwith convene a joint sitting of the members of the National Assembly and of the Provincial Assemblies to consider the candidature. If the majority of the members present at the joint sitting, by secret ballot, approve of the candidature, the President shall be eligible for re-election.

If the number of candidates for election to the office of President exceeds three, the Chief Election Commissioner shall inform the Speaker of the National Assembly of the fact and the Speaker shall forthwith convene a joint sitting of the members of the National Assembly and of the Provincial Assemblies to select three of the candidates for election. The members present at the joint sitting shall, by secret ballot, select three of the candidates for election and any candidate not selected shall not be eligible for election. A candidate may address the members present at the joint sitting and may be questioned by any of those members. Where the person holding office as President is a candidate for election, his candidature shall not be disregarded for purposes of Article 167. Article 167 also does not apply if a Provincial Assembly stands dissolved.

### **Removal**

Provision has been made in the Constitution for the removal of the President on grounds of incapacity. It is provided that not less than one-third of the total number of the members of the National Assembly may give a written notice signed by each of them to the Speaker of the Assembly for the removal of the President from office on the ground of his physical or mental incapacity. The notice shall set out the particulars of the alleged incapacity. The Speaker shall forthwith cause a copy of the notice to be transmitted to the President, together with a request by the Speaker that the President submit himself to an examination by a Medical Board. The resolution shall not be moved in the Assembly earlier than 14 days or later than 30 days after notice of the resolution was given to the Speaker. If it is necessary to summon the National Assembly in order to enable the resolution to be moved within that period or to be considered by the National Assembly, the Speaker shall summon the National Assembly. The President shall have the right to appear and be represented before the National Assembly during the consideration of the resolution by the Assembly. If the President has not submitted himself to an examination by the Medical Board before the resolution is moved in the National

Assembly, the resolution may be voted upon and, if it is passed by the Assembly by votes not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office. If before the resolution is moved in the National Assembly, the President has submitted himself to an examination by the Medical Board, the resolution shall not be voted upon until the Medical Board has been given an opportunity of putting its opinion before the Assembly. If after consideration by the National Assembly of the resolution and the opinion put before the National Assembly by the Medical Board, the resolution is passed by the Assembly by votes not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office. If, where the President has submitted himself to an examination by the Medical Board, less than one-half of the total number of members of the National Assembly vote in support of the resolution, the members who gave notice of the resolution to the Speaker of the Assembly shall cease to be members of the Assembly forthwith after the result of the voting on the resolution is declared.

### **Impeachment**

Provision has also been made in the Constitution for the impeachment of the President before the National Assembly. It is provided that not less than one-third of the total number of members of the National Assembly may give a written notice signed by each of them to the Speaker of the Assembly when they intend to move a resolution in the Assembly for the removal of the President from office on a charge that he has wilfully violated the Constitution or has been guilty of gross misconduct. The notice shall set out particulars of the charge. The Speaker shall forthwith cause a copy of the notice to be transmitted to the President. The resolution shall not be moved in the National Assembly earlier than 14 days or later than 30 days after notice of the resolution was given to the Speaker. If it is necessary to summon the National Assembly in order to enable the resolution to be moved within that period, or to be considered by the Assembly, the Speaker shall summon the National Assembly. The President shall have the right to appear and be represented before the National Assembly during the consideration of the resolution by the Assembly. If after consideration by the National Assembly of the resolution, it is passed by the Assembly by votes of not less than three-quarters of the total number of members of the Assembly, the President shall forthwith cease to hold office and shall be disqualified from holding public office for a period of 10 years from the passing of the resolution. If less than one-half of the total number of members of the National Assembly vote in favour of the resolution, the members who gave notice of the resolution to the Speaker of the Assembly shall cease to be members of the Assembly forthwith after the result of the voting on the resolution is declared.

### **Powers**

The executive authority of the Republic of Pakistan is vested in the President of Pakistan, and shall be exercised by him either

directly or through officers subordinate to him, in accordance with the Constitution and the law. The President may specify the manner in which orders and other instruments made and executed in pursuance of any authority or power vested in the President shall be expressed and authenticated. The President may regulate the allocation and transaction of the business of the Central Government and establish divisions of that Government.

To assist him in the performance of his functions, the President may, from amongst persons qualified to be elected as members of the National Assembly, appoint persons to be members of a Council of Ministers, to be known as the President's Council of Ministers.<sup>1</sup> Before he enters upon his office, a minister appointed by the President, shall make before the President an oath in a prescribed form. The President may, from amongst members of the National Assembly, appoint persons (not exceeding in number the number of divisions of the Central Government established by the President) to be Parliamentary Secretaries and persons so appointed shall perform such functions in relation to those divisions as the President may direct.

The President shall appoint a person who is qualified to be appointed as a judge of the Supreme Court of Pakistan, to be Attorney General for Pakistan. The latter shall perform such duties as the President may direct. In the performance of his duties, the Attorney General shall have the right of audience in all courts in Pakistan.

The Supreme Command of the Defence Services of Pakistan is vested in the President to be exercised by him subject to law. Without limiting the generality of this power, the President has power, subject to law, to raise and maintain the Defence Services of Pakistan and the Reserves of those Services. He can also grant commissions in those Services. He can also appoint chief commanders of those services, and also determine their salaries and allowances.

The President has power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

Certain legislative powers have also been given to the President. When a Bill has been passed by the National Assembly, it has to be presented to the President for his assent. The President shall, within 30 days after a Bill is presented to him, assent to the Bill, or declare that he withholds his assent from the Bill or return the Bill to the National Assembly with a message requesting that

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There is a similar provision in the French Constitution. Article 23 provides that members of Government may not belong to Parliament. The underlying assumption on formulated by Prof. Duverger is that as long as the Deputies can hope that by overthrowing a Cabinet they can become Ministers themselves, they will overthrow Cabinets. There is less possibility of their doing so, if in order to become Ministers, they must give up their seats as Deputies. As a result of the public pressure put on him, the President of Pakistan issued on 14-6-62 an order enabling the members of the National and Provincial Assemblies to be appointed members of the Council of Ministers of the President or the Governor without loss of their seats in the Assembly.

the Bill or a particular provision of the Bill, be reconsidered and that any amendments specified in the message be considered. If the President fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. The President has the authority to dissolve the National Assembly at any time. If at any time, a conflict with respect to any matter arises between the President and the National Assembly and the President considers that it is desirable that the matter should be referred to a referendum, the President may cause the matter to be referred to a referendum in the form of a question that is capable of being answered either by a 'Yes' or 'No'. A referendum under this Article shall be conducted amongst the members of the Electoral College.

The President may address the National Assembly and send messages to the Assembly. A member of the President's Council of Ministers and the Attorney General shall have the right to speak in and otherwise take part in the proceedings of the National Assembly or any of its committees. However, he shall not be entitled to vote. No bill or amendment of a bill providing for or relating to preventive detention shall be introduced or moved in the National Assembly without the previous consent of the President.

Certain legislative powers have been given to the President to be exercised by him at a time when the National Assembly is not in session. It is provided that if at any time the National Assembly is not in session or stands dissolved and the President is satisfied that circumstances exist which render immediate legislation necessary, he may make and promulgate such ordinances as circumstances appear to him to require. Any such ordinance shall have the same power of law as an Act of the Central Legislature. The Ordinance thus made and promulgated shall, as soon as it is practicable, be laid before the National Assembly. If before the expiration of the prescribed period, the National Assembly, by resolution, approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. However, if before the expiration of that period, the National Assembly, by resolution, disapproves of the ordinance, it shall cease to have effect and shall be deemed to have been repealed upon the passing of the resolution. If the National Assembly has not approved or has not disapproved of the ordinance, and it has not been repealed by the President before the expiration of the expired period, it shall cease to have effect and shall be deemed to have been repealed upon the expiration of that period. The power of the President to make laws by making and promulgation of ordinances extends only to the making of laws within the legislative competence of the Central Legislature. The prescribed period in relation to an ordinance means the period ending 42 days after the first meeting of the National Assembly following the promulgation of the ordinance or the period ending 180 days after the promulgation of the ordinance, whichever is shorter.

Certain legislative powers have been given to the President to be exercised by him at the time of an emergency. The Constitution provides that if the President is satisfied that a grave emergency exists in which Pakistan or any part of Pakistan is threatened by war, or external aggression, or in which the security or economic life of Pakistan is threatened by internal disturbances beyond the power of a Provincial Government to control, the President may issue a proclamation of emergency. Such a proclamation has to be placed before the National Assembly as soon as it is practicable. The President shall, when he is satisfied that the ground on which he issued the proclamation of emergency has ceased to exist, revoke the proclamation. If at a time when a proclamation of emergency is enforced, the President is satisfied that immediate legislation is necessary to assist in meeting the emergency that gave rise to the issue of the proclamation, he may make and promulgate such ordinances as appear to him to be necessary to meet the emergency and any such Ordinance shall have the same powers of law as an Act of the Central Legislature. The ordinance thus made and promulgated shall, as soon as it is practicable, be laid before the National Assembly. The National Assembly shall have no power to disapprove of the Ordinance, but if before the ordinance ceases to have effect, the National Assembly, by resolution, approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. An ordinance made under this Article shall, unless it has been sooner approved by the National Assembly or repealed by the President, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation of Emergency by virtue of which it was made, is revoked. The power of the President to make laws by the making and promulgation of ordinance extends only to the making of laws within the legislative competence of the Central Legislature.

Article 116 provides that no criminal proceedings whatsoever shall be instituted or conducted against the President while he is in office. No civil proceedings in which relief is claimed against the President shall be instituted while he is in office and in respect of anything done or not done or purporting to have been done or not done, by him in his personal capacity, whether before or after he entered upon his office, unless at least 60 days before the proceedings are instituted, notice in writing has been delivered to him or sent to him in the manner prescribed by law, stating the nature of the proceedings, the cause of action, name, description and place of residence of the party by whom the proceedings are to be instituted and the relief which he claims. No process whatsoever shall issue from any court or tribunal against the President whether in a personal capacity or otherwise while he is in office.

Article 117 provides that neither the President nor a Minister shall, except in respect of anything done or not done by him in contravention of the law, be answerable to any court or tribunal for the exercise of the powers, or the performance of the duties of his office, or for any act done or purporting to be done by him in the exercise of those powers or in the performance of those duties.

This Article shall not be construed as restricting the right of any person to bring appropriate proceedings against the Central Government or a Provincial Government.

Article 118 provides that a Governor, a Minister or a Parliamentary Secretary appointed by a President, and the Attorney General shall hold office during the pleasure of the President and may be removed from office at any time by the President without any reason being assigned for his removal. Article 119 provides that a Governor shall not remove a Minister from office without the concurrence of the President.

Article 121 provides that if in the opinion of the President, a Governor or a Minister appointed by the President has been guilty of such gross misconduct in relation to his duties that he should be disqualified from holding public office, the President may, in addition to removing him from office, inform him, in writing, that he has the option of agreeing to disqualification from holding public office for such period, not exceeding five years, as is fixed by the President, or of having the matter referred to a Tribunal for enquiry. If within seven days after he is so informed, the Governor or Minister, by writing address to the President, agrees to the disqualification, he shall be disqualified from holding public office for the period fixed by the President. If the Governor or Minister does not agree to the disqualification, the President shall forthwith refer the matter for enquiry to a Tribunal consisting of a Judge of the Supreme Court appointed by the President after consultation with the Chief Justice of the Supreme Court. The Tribunal shall enquire into the matter in such a manner as is prescribed by law. If the Tribunal finds that the Governor or Minister has been guilty of gross misconduct in relation to his duties, his removal from office as Governor or Minister shall be regarded as dismissal from office, and he shall be disqualified from holding public office for a period of five years from the date on which the President took action in relation to him under this Article.

Article 214 provides that the remuneration and privileges of the President shall be the same as the remuneration and privileges to which, immediately before the commencing day, the President of Pakistan was entitled.

## CHAPTER IV

## THE CENTRAL LEGISLATURE

The Constitution of Pakistan provides for a unicameral central legislature known as the National Assembly of Pakistan. It has 156 members, half of which are elected from East Pakistan and the other half from West Pakistan. Three seats from each province are reserved exclusively for women. Unless it is sooner dissolved, the National Assembly can continue for a term of five years from the declaration of the result of its members or the expiration of the term of the previous National Assembly, whichever last occurs. On the expiration of the term of a National Assembly, it automatically stands dissolved.

The President may, from time to time, summon the National Assembly and also prorogue the same. The Speaker of the National Assembly may, at the request of not less than one-third of the total number of members of the Assembly, summon the Assembly and, when the Speaker has summoned it, he may prorogue it. In the event of each of the offices of the President and the Speaker and Deputy Speaker of the National Assembly being vacant, the Chief Justice of the Supreme Court may summon the National Assembly. When the National Assembly is summoned, the date, time and place of meeting shall be specified.

The President may, at any time, dissolve the National Assembly. However, he shall not dissolve the National Assembly at any time when the unexpired portion of the National Assembly is less than 120 days. If notice of a resolution is given to the Speaker of the National Assembly, the President shall not dissolve the National Assembly before the resolution has been voted upon by the Assembly or before the expiration of 30 days after the expiry of the period within which it may be moved, whichever first occurs. When the President dissolves the National Assembly, he shall cease to hold office upon the President elected as his successor entering upon his office or upon the expiration of 120 days after the date of the dissolution.

If at any time a conflict with respect to any matter arises between the President and the National Assembly, and the President considers that it is desirable that the matter should be referred to a referendum, the President may cause the matter to be referred to a referendum by the members of the Electoral College of Pakistan.

The President may address the National Assembly and also send messages to it. A member of the President's Council of Ministers and the Attorney General of Pakistan shall have the right to speak in and otherwise take part in the proceedings of the National Assembly or any of its committees, but shall not be entitled to vote. No Bill or amendment of a Bill, providing for or relating to preven-



tive detention shall be introduced or moved in the National Assembly without the previous consent of the President.

When a Bill has been passed by the National Assembly, it shall be presented to the President for assent. Within 30 days after a Bill is presented to him, the President shall assent to the Bill, declare that he withholds assent from the Bill or return the Bill to the National Assembly with a message requesting that the Bill or a particular provision of the Bill be reconsidered, and that any amendments specified in the message be considered. If the President fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. If the President declares that he withholds assent from the Bill, the National Assembly shall be competent to reconsider the Bill. If the Bill is again passed by the National Assembly with or without amendment by a two-thirds majority of its total membership, the Bill shall again be presented to the President for assent. If the President returns a Bill to the National Assembly, the latter shall consider the Bill and if the Bill is again passed by the National Assembly, without amendment or with the amendments specified by the President in his message, or with amendments which the President has subsequently informed the Speaker of the Assembly are acceptable to him, by the votes of a majority of the total number of members of the Assembly, the Bill shall again be presented to the President for assent. The Bill is also presented to the President for his assent if it is passed by the Assembly by the votes of not less than two-thirds of the total members of the Assembly. When a Bill is thus presented to the President for his assent, he shall, within 10 days of the presentation of the Bill to him, assent to the Bill or cause the same to be referred to a referendum by the Electoral College of Pakistan. If within the period of 10 days, the President fails to do either of those things and the Assembly is not dissolved, the President shall be deemed to have assented to the Bill at the expiration of that period. If at the referendum, the votes of the majority of the total number of members of the Electoral College are cast in favour of the Bill being assented to, the President shall be deemed to have assented to the Bill on the day on which the result of the referendum is declared. When the President has assented to or is deemed to have assented to a Bill passed by the National Assembly, it shall become law and shall be called an Act of the Central Legislature.

The President has also been given legislative powers when the National Assembly is not in session. This is done when the President is satisfied that circumstances exist which render immediate legislation necessary. In that case, the President can make and promulgate such ordinances as the circumstances may appear to him to require. Such an ordinance has the force of law as an Act of the Central Legislature. Such an ordinance has to be placed before the National Assembly as soon as it is practicable. If the National Assembly approves of the ordinance, it becomes an Act of the Central Legislature. However, if the National Assembly disapproves of the ordinance, it ceases to have effect. If the ordinance is neither approved nor disapproved by the National Assem-

bly, it ceases to have effect upon the expiration of the period for which the ordinance is passed. The period for which an ordinance lasts is the period ending 42 days after the first meeting of the National Assembly following the promulgation of the ordinance or the period ending 180 days after the promulgation of the ordinance, whichever is shorter.

The President of Pakistan has also legislative powers to be exercised in times of emergency. Article 30 authorises the President to issue a Proclamation of Emergency if he is satisfied that Pakistan or any part of Pakistan is threatened by war or external aggression or the security and economic life of Pakistan is threatened by internal disturbances beyond the power of a Provincial Government to control. The Proclamation of Emergency has to be placed before the National Assembly as soon as it is practicable. If at a time when a Proclamation of Emergency is in force, the President is satisfied that immediate legislation is necessary to assist in meeting the emergency, he may make and promulgate such ordinances as appear to him to be necessary to meet the emergency, and any such ordinance shall have the same force of law as an Act of the Central Legislature. Such an ordinance has to be placed before the National Assembly as soon as it is practicable. The National Assembly shall have no power to disapprove of the ordinance. However, if before the ordinance ceases to have effect the National Assembly approves of the ordinance, the ordinance shall be deemed to have become an Act of the Central Legislature. An ordinance made under this Article shall, unless it has been sooner approved by the National Assembly or repealed by the President, cease to have effect and shall be deemed to have been repealed at the time when the Proclamation of Emergency by virtue of which it was made, is revoked. The President can make ordinances only regarding those matters which are within the legislative competence of the Central Legislature.

Article 40 provides that the President shall, in respect of every financial year, cause to be laid before the National Assembly the Annual Budget Statement of the estimated receipts into and the estimated expenditure from, the Central Consolidated Fund for that year. The Annual Budget Statement shall distinguish expenditure on revenue account from other expenditure. It shall show separately the sums required to meet expenditure charged upon the Central Consolidated Fund and the sums required to meet other expenditure, distinguishing recurring expenditure from expenditure that is not recurring expenditure and showing the extent to which that other expenditure is new expenditure. The Annual Budget Statement shall also indicate the sources from which the estimated receipts will be derived.

So much of an Annual Budget Statement as relates to expenditure charged upon the Central Consolidated Fund may be discussed in the National Assembly but it shall not be voted upon. The expenditure other than that charged upon the Central Consolidated Fund, shall be submitted to the National Assembly in the form of demands for grants. A demand for a grant in respect of a sum

that is not shown in an Annual Budget Statement as new expenditure may be discussed in the National Assembly, but the demand shall not be submitted to the vote of the Assembly and the Assembly shall be deemed to have assented to the demand at the expiration of 14 days after the statement was laid before the Assembly or at the commencement of the financial year to which the statement relates. The National Assembly may, with the consent of the President, reduce a demand for a grant, and in that event, the Assembly shall be deemed to have assented to the demand as so reduced. The National Assembly may assent to or refuse a demand for a grant in respect of a sum that is shown in the Annual Budget Statement as new expenditure, or may assent to the demand in respect of such lesser sum as the Assembly may specify. A demand for a grant shall not be made except on the recommendation of the President.

The Annual Budget Statement or a Supplementary Budget Statement in respect of a financial year may specify the estimated expenditure for projects extending over several years. The National Assembly may approve or disapprove of the expenditure for any such subsequent year or may approve of such lesser expenditure for that year as is specified in the resolution.

Following consideration by the National Assembly of the Annual Budget Statement in respect of a year, the President shall cause to be prepared a schedule known as the Schedule of Authorised Expenditure, and shall authenticate the Schedule by his signature. No moneys shall be withdrawn from the Central Consolidated Fund except under the authority of the Schedule of Authorised Expenditure as authenticated by the President. The Schedule of Authorised Expenditure shall be laid before the National Assembly for its information.

Article 44 provides for Supplementary and Excess Budget Statements. Article 45 provides for unexpected expenditure. Article 46 relates to expenditure from Central Consolidated Fund pending authentication of Schedule of Authorised Expenditure by the President.

Article 47 provides that except on the recommendation of the President, no Bill or amendment shall be introduced or moved in the National Assembly if it would, if enacted and brought into operation, involve expenditure from the revenues or other moneys of the Central Government. The same is the case if the Bill makes provision for any of the matters or any matter incidental to any of the following matters :—

- (1) The imposition, abolition, remission, alteration or regulation of any tax.
- (2) The borrowing of money or the giving of any guarantee by the Central Government or the amendment of the law relating to the financial obligations of the Central Government.
- (3) The imposition of a charge upon the Central Consolidated Fund or the abolition or alteration of any such charge.

- (4) The custody of the Central Consolidated Fund, the payment of moneys into or the issue of moneys from that Fund.
- (5) The custody, receipt or issue of any other moneys of the Central Government.
- ( ) The audit of the accounts of the Central Government or of a Provincial Government.

Article 48 provides that no tax shall be levied for purposes of the Central Government except by or under the authority of an Act of the Central Legislature.

It is to be observed that the National Assembly is not an impotent institution. As it is elected by the same Electoral College which elects the President, it can afford to assert itself even against the President on the ground that it has as much mandate from the people as the President himself has. The National Assembly can make lives of the Ministers and Parliamentary Secretaries a hell by criticising their policies and by refusing to pass legislation which may be considered necessary by the executive. It may also become difficult for the Government to defend its policies in the National Assembly. The members of the National Assembly are free to move adjournment motions against the Ministers. They can also pass votes of no-confidence against them. All this will put the Government on the defensive and that is not a desirable thing at all. It is true that the President can threaten the members of the National Assembly that he would dissolve the Assembly itself but in such a case, he himself has to take the consequences which may not be palatable to him. If there is a conflict between the President and the National Assembly, the same can be referred to a Referendum but that in itself does not weaken the position of the National Assembly. The National Assembly has also been given the power to impeach the President and also remove him from office. All these factors taken together make the position of the National Assembly sufficiently strong.

## CHAPTER V

## THE JUDICIARY IN PAKISTAN

The Constitution provides for a Supreme Court of Pakistan. It is to consist of a Chief Justice and as many other judges as may be determined by law or, until so determined, as may be fixed by the President. The Chief Justice of the Supreme Court shall be appointed by the President and the other judges shall be appointed by the President after consultation with the Chief Justice. A person shall not be appointed as a judge of the Supreme Court unless he is a citizen of Pakistan and he has for a period of not less than five years been a judge of a High Court in Pakistan, or has for a period of not less than 15 years been an advocate or pleader of a High Court in Pakistan.

Before he enters upon his office, the Chief Justice of the Supreme Court shall make before the President, and any other judge of the Supreme Court shall make before the Chief Justice, an oath in the prescribed form. A judge of the Supreme Court shall hold office until he attains the age of 65 years unless he sooner resigns or is removed from office in accordance with the Constitution. At any time when the office of the Chief Justice of the Supreme Court is vacant or the Chief Justice is absent or unable to perform the functions of his office due to illness or some other cause, such other judge of the Supreme Court as the President may appoint, shall act as the Chief Justice.

If at any time the office of a judge of the Supreme Court is vacant or a judge of the Supreme Court is absent or is unable to perform the functions of his office due to illness or some other cause, the President may appoint a judge of a High Court who is qualified for appointment as a judge of the Supreme Court to act temporarily as a judge of the Supreme Court. An appointment of an acting judge shall continue in force until it is revoked by the President.

Provision has also been made for the appointment of *ad hoc judges*. It is provided that if at any time it is not possible for want of a quorum of judges for the Supreme Court to hold or continue any sittings of the Court, or for any other reason it is necessary to increase temporarily the number of judges of the Supreme Court, the Chief Justice of the Supreme Court may (with the approval of the President and consent of the Chief Justice of the High Court concerned), require a judge of High Court qualified for appointment as a judge of the Supreme Court to attend sittings of the Supreme Court as an *ad hoc judge* for such period as may be necessary, and while so sitting, such *ad hoc judge* shall have the same power and jurisdiction as a judge of the Supreme Court.

#### Seats of Supreme Court

The permanent seat of the Supreme Court shall be at Islama-

bad, but it shall sit in Dacca at least twice in every year for such periods as the Chief Justice of the Supreme Court may consider necessary. The Supreme Court may, from time to time, sit in such other places as the Chief Justice of the Supreme Court, with the approval of the President, may appoint. Until provision is made for establishing the Supreme Court at Islamabad, the seat of the Court shall be at such place as the President may appoint.

### **Original Jurisdiction**

As regards the jurisdiction of the Supreme Court, it shall, to the exclusion of every other court, have original jurisdiction in any dispute between one of the Governments and one or both of the other Governments. While exercising this jurisdiction, the Supreme Court shall pronounce declaratory judgments only. The term 'Governments' means the Central Government and the Provincial Governments.

### **Appellate Jurisdiction**

The Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of a High Court. An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court shall lie as of right where the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution, or the High Court has sentenced a person to death or to transportation for life, or the High Court has imposed punishment on a person in pursuance of the power conferred on the Supreme Court by Article 123. Article 123 provides that the Supreme Court shall have power to punish any person who abuses, interferes with or obstructs the process of the court in any way or disobeys any order of the Supreme Court, or scandalises the court or otherwise does anything which tends to bring the court or a judge of the court into hatred, ridicule or contempt, or does anything which tends to prejudice the determination of a matter pending before the court, or does any other thing which, by law, constitutes contempt of the court. It is also provided that an appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which Article 58 (2) does not apply, shall lie only if the Supreme Court grants *leave to appeal*.

### **Advisory Jurisdiction**

The Supreme Court of Pakistan has advisory jurisdiction. It is provided that if at any time the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court shall consider the question so referred and report its opinion on the question to the President.

### **Additional Jurisdiction**

Provision has been made for additional jurisdiction to be given to the Supreme Court. Article 60 provides that in addition to the jurisdiction conferred upon it by the Constitution of Pakistan,

the Supreme Court shall have such other jurisdiction as may be conferred on it by law.

### **Processes of Supreme Court**

Article 61 provides that the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any cause or matter pending before it, including an order for the purpose of securing the attendance of any person or discovery or production of any document. Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a province, be executed as if it had been issued by the High Court of that Province. If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final.

### **Power of Review**

The Supreme Court has also been given the power of review. Article 62 provides that the Supreme Court shall have power, subject to the provisions of any Act of the Central Legislature and of any Rules made by the Supreme Court, to review any judgment pronounced or any order made by it.

Article 63 provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based on or enunciates a principle of law, be binding on all other courts in Pakistan. Article 64 provides that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court. According to Article 65, the Supreme Court may, with the approval of the President, make rules regulating the practice and procedure of the Supreme Court.

It is to be observed that the Constitution does not make the Supreme Court of Pakistan strong. It does not enjoy the same position with regard to judicial review of legislation as is the case in the United States and India. President Ayub Khan has himself given many reasons for not allowing the Courts to be the final arbiters in these matters. His view is that such cases are taken to courts only by men who have a lot of money in their pockets. They alone can afford to pay and engage eminent lawyers. Such a provision is of no use to the common man. Moreover, if the laws of Pakistan were to hang in the air like a parachute and never become firm or final merely because they can be challenged in a Court of Law, a new country like Pakistan cannot hope to move forward. Most of the laws in a society like that of Pakistan hit many powerful vested interests and past traditions. If they remain vulnerable to challenge, that is bound to obstruct all progress. Moreover, instead of trusting one Judge or two Judges, or five Judges, it is preferable to trust 156 legislators who are chosen by the people, who are not outsiders and who are anxious to be re-elected. They are answerable to the people. As a matter of fact, it is extremely difficult to get any laws passed by such a body unless those are reasonable and sensible. In spite of this vigorous defence of the system established in Pakistan, it is pointed out that

the National Assembly which is to pass laws, has not been made sovereign in its sphere and too much power has been put in the hands of the President himself. The President has been given the power of appointing and dismissing the judges of the Supreme Court. He can manage to appoint only those persons who will be agreeable to him. He can pack the Supreme Court with his own supporters and camp-followers. All that may not be desirable at all.

### High Courts

Articles 91 to 102 of the Constitution deal with the High Courts of Pakistan. There is a provision for a High Court in each province of Pakistan. A High Court shall consist of a Chief Justice and as many other judges as may be determined by law or fixed by the President.

A judge of a High Court shall be appointed by the President after consultation with the Chief Justice of the Supreme Court, the Governor of the province concerned, and except where the appointment is that of Chief Justice, with the Chief Justice of the High Court. A person shall not be appointed a judge of a High Court unless he is a citizen of Pakistan and he has for a period of not less than 10 years been an advocate or pleader of a High Court or he is or has for a period of not less than 10 years been a member of a civil service and has for a period of not less than three years served as or exercised the functions of a District Judge in Pakistan, or he has for a period of not less than 10 years, held a judicial office in Pakistan.

A judge of a High Court shall hold office until he attains the age of 60 unless he sooner resigns or is removed from office in accordance with the Constitution. Provision has been made for an Acting Chief Justice and Additional Judges.

The permanent seat of the High Court of East Pakistan shall be at Dacca. However, the High Court may, from time to time, sit in such other places as the Chief Justice of the Court, with the approval of the Governor of a province, may appoint. The permanent seat of the High Court of West Pakistan shall be at Lahore. There shall also be permanent seats of that Court at Karachi and Peshawar. However, the High Court may from time to time sit in such other places as the Chief Justice of the Court with the approval of the Governor of a Province may appoint. A judge of the High Court of the province of West Pakistan shall not be transferred from a permanent seat of that court to another permanent seat of that court without the approval of the President first being obtained. A judge of that Court who has served for less than five years at a permanent seat of that court shall not, without his consent, be transferred to another permanent seat except where the transfer is necessary in order to ensure that the functions of the court are properly carried out.

Article 98 of the Constitution deals with the jurisdiction of High Courts in Pakistan. It is provided that a High Court shall have such jurisdiction as is conferred on it by the Constitution or by law. A High Court of a Province may, if it is satisfied that no



other adequate remedy is provided by law, make an order directing a person performing in the Province functions in connection with the affairs of the Centre, the Province or a local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is not required to do by law, or declaring that any act done or proceedings taken in a province, performing functions in connection with the affairs of the Centre, the Province or a local authority has been done or taken without lawful authority, and is of no legal effect. The High Court may also make an order directing that a person in custody in province be brought before the High Court so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner. The High Court may also require a person in the province holding or purporting to hold a public office to show under what authority of law he claims to hold that office. However, no such order shall be made on an application made by or in relation to a person in the Defence Services of Pakistan in respect of his terms and conditions of service or of any matter arising out of his service or in respect of any action taken in relation to him as a member of the Defence Services of Pakistan. The same applies to applications made by or in relation to any other person in the service of Pakistan in respect of his terms and conditions of service. Where an application is made to a High Court for an order of the nature mentioned above and the High Court has any reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the High Court shall not make an interim order unless the prescribed Law Officer has been given notice of the application and the High Court, after the Law Officer has been given an opportunity of being heard, is satisfied that the making of the interim order would not have any adverse effect.

The President may transfer a judge of a High Court from one High Court to another High Court. However, no judge shall be so transferred except with the consent and after consultation by the President with the Chief Justice of the Supreme Court and the Chief Justices of both High Courts. When a judge is so transferred, he shall, during the period for which he serves as a judge of the High Court to which he is transferred, be entitled to such compensatory allowance, in addition to his salary as the President may by order determine.

Article 100 provides that any decision of a High Court shall, to the extent that it decides the question of law or is based upon or enunciates a principle of law, be binding on all other courts that are subordinate to it.

Article 101 provides that a High Court of a province with the approval of the Governor may make rules regulating the practice and procedure of the High Court or of any other court subordinate to it. Article 102 provides that each High Court shall supervise and control all other courts that are subordinate to it.

Article 124 provides that remuneration and other terms and conditions of service of judges of the Supreme Court or of High

Courts shall be as provided in the Second Schedule to the Constitution. That Schedule provides that the Chief Justice of the Supreme Court shall be paid a salary of Rs. 5,500 per mensem and other judges shall be paid Rs. 5,100 per mensem. Every judge of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may be determined by the President, and until so determined, to the privileges, allowances and rights to which immediately before the commencement of the Constitution, the judges of the Supreme Court of Pakistan were entitled. The Chief Justice of a High Court shall be paid a salary of Rs. 5,000 per mensem and the other judges a salary of Rs. 4,000 per mensem. The judges of the High Court shall be entitled to such privileges and such rights in respect of leave of absence and pension as may be determined by the President, and until so determined, to the privileges, allowances and rights to which immediately before the commencing day, the judges of the High Court of the Province were entitled.

Article 126 provides that a judge of the Supreme Court or a High Court shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of the services. However, this clause shall not be construed as preventing a judge from holding or managing his private property. A person who has held office as judge of the Supreme Court or a High Court shall not hold any office of profit in the service of Pakistan before the expiration of two years after he ceases to hold that office.

### **Supreme Judicial Council of Pakistan**

Article 128 provides that there shall be a **Supreme Judicial Council of Pakistan**. This Council shall consist of the Chief Justice of the Supreme Court, the two next most senior judges of the Supreme Court and the Chief Justice of each High Court. If at any time the Council is inquiring into the capacity or conduct of a judge, who is a member of the Council or a member of the Council is absent or is unable to act as a member of the Council, due to illness or some other cause, the judge of the Supreme Court who is next in seniority shall act as a member of the Council in his place. The Council shall issue a code of conduct to be observed by the judges of the Supreme Court and the High Court. If, on information received by the Council or from any other source, the President is of the opinion that a judge of the Supreme Court or of a High Court may be incapable of properly performing the duties of his office by reason of physical or mental incapacity, or may have been guilty of gross misconduct, the President shall direct the Council to inquire into the matter. If after inquiry into the matter, the reports to the President that it is of opinion that the judge is incapable of performing the duties of his office or has been guilty of gross misconduct, and that he should be removed from office, the President may remove the judge from office. A judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

Article 129 provides that there shall be, in addition to the Supreme Court and High Courts, such other courts as are established by law. A court so established shall have such jurisdiction as is conferred on it by law. Article 130 provides that no court shall have any jurisdiction that is not conferred on it by this Constitution or by or under the law.

## CHAPTER VI

**RELATIONS BETWEEN THE CENTRE AND PROVINCES.**

Pakistan has a federal form of government and no wonder Part VI consisting of Articles 131 to 146 of the Constitution deals with the relations between the Centre and the Provinces.

Article 131 provides that the Central Legislature shall have exclusive power to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan with respect to any matter enumerated in the Third Schedule of the Constitution. It is also provided that where the national interest of Pakistan in relation to the security of Pakistan, including the economic and financial stability of Pakistan, planning or coordination, or the achievement of uniformity in respect of any matter in different parts of Pakistan, so requires, the Central Legislature shall have powers to make laws for the whole or any part of Pakistan with respect to any matter not mentioned in the Third Schedule. It is also provided that if it appears to the Assembly of a Province to be desirable that a matter not enumerated in the Third Schedule should be regulated in the province by an Act of the Central Legislature and a resolution to that effect is passed by the Provincial Assembly, the Central Legislature shall have power to make laws having effect in the province with respect to that matter, but any law made in pursuance of that power may be amended or repealed by an Act of the Provincial Legislature. The Central Legislature shall have power (but not exclusive power) to make laws for the Islamabad Capital Territory and the Dacca Capital Territory with respect to any matter not enumerated in the Third Schedule. The Central Legislature also shall have power to make laws for any part of Pakistan not forming part of a Province with respect to any matter.

Article 132 provides that a Provincial Legislature shall have power to make laws for the province with respect to any matter other than a matter enumerated in the Third Schedule. Article 133 provides that the responsibility of deciding whether a legislature has power under the Constitution to make a law is that of the legislature itself. The validity of a law shall not be called in question on the ground that the legislature by which it was made had no power to make the law. When a Provincial Law is inconsistent with a Central Law, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid (Art. 134).

Article 135 provides that the executive authority of the Republic of Pakistan extends to all matters with respect to which the Central Legislature has exclusive power to make laws, laws made by the Central Legislature and administered by the Central Government, and to all matters in relation to a part of Pakistan not forming part of a province.

Article 137 provides that the Central Government shall not, in respect of its property or income, be liable to taxation under any Provincial Law, and a Provincial Government shall not in relation to its property or income, be liable to taxation under a Central Law or a Provincial Law of the other province. If a trade or business of any kind is carried on by or on behalf of the Government of a province outside that province, that Government may, in respect of any property used in connection with trade or business or any income arising from that trade or business, be taxed under a Central Law or under a Provincial Law of the other province. Nothing in this Article shall prevent the imposition of fees for services rendered.

Article 138 provides that the Central Legislature may by law make grants-in-aid of the revenues of a Provincial Government that may be in need of assistance. Article 139 provides that the executive authority of the Central Government extends to borrowing upon the security of the Central Consolidated Fund within such limits, if any, as may be determined by Act of the Central Legislature, and to the giving of guarantees within such limits, if any, as may be so determined.

Article 140 provides that the executive authority of a province extends to borrowing upon the security of the Provincial Consolidated Fund within such limits as may be determined by Act of the Provincial Legislature, and to the giving of guarantees within such limits as may be so determined. A Provincial Government shall not, without the consent of the Central Government, borrow outside Pakistan or raise any loan at a time when there is outstanding any part of a loan made to the province concerned by the Central Government or any other loan raised by the province in respect of which a guarantee has been given by the Central Government. The Central Government may, subject to such conditions as it may think fit to impose, make loans to a Provincial Government and, within such limits as may be fixed by Act of the Central Legislature, give guarantees in respect of loans raised by a Provincial Government, and any sum required for the purpose of making loans to a Provincial Government shall be charged upon Central Consolidated Fund. A consent made under this Article may be granted subject to such conditions as the Central Government may think fit to impose. However, no such consent shall be unreasonably withheld, nor shall the Central Government refuse, if sufficient cause is shown to make a loan to or to give a guarantee in respect of a loan raised by a Provincial Government or seek to impose in respect of any of the matters aforesaid any condition that is unreasonable. If any dispute arises whether a refusal of consent or a refusal to make a loan or to give a guarantee or any condition insisted upon, is or is not justifiable, the dispute shall be referred to the National Assembly for consideration.

Article 141 provides that a Provincial Law may impose taxes not exceeding such limits as may from time to time be fixed by Act of the Central Legislature, on persons engaged in professions,

trades, callings or employments, and no such Provincial Law shall be regarded as imposing a tax on income.

Article 142 provides that the legislature of a Province shall not have power to make any law prohibiting or restricting the entry into or the export from, the province of any goods, or to impose a tax which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former goods, or which in the case of goods manufactured or produced outside the province, discriminates between goods manufactured or produced in any locality in Pakistan and similar goods produced in any other locality in Pakistan. No Provincial Law which imposes any reasonable restriction in the interest of public health, public order or morality or for the purpose of protecting animals or plants from disease or preventing or alleviating any serious shortage in the province of an essential commodity shall, if it was made with the consent of the President, be invalid by reason of this Article.

Article 143 provides that the President may, with the consent of a Provincial Government, entrust either conditionally or unconditionally to that Government, or to any officer or authority of that Government, functions in relation to any matter to which the executive authority of the Republic extends. An Act of the Central Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties, or authorise the conferment of powers and the imposition of duties upon a Provincial Government or officers or authorities of a Provincial Government. Where, by virtue of this Article, functions have been entrusted to or powers and duties have been conferred or imposed upon, a Provincial Government or officers or authorities of a Provincial Government, there shall be paid by the Central Government to the Provincial Government, such sums as may be agreed in respect of any extra costs incurred by the Provincial Government in connection with the performance of those functions, the exercise of those powers or the discharge of those duties.

### **National Finance Commission**

Article 144 provides for the establishment of a National Finance Commission by the President from time to time. The President shall constitute a National Finance Commission not later than 15 months before the expiration of the period specified by the National Economic Council. The Commission shall consist of the ministers in charge of the portfolios of Finance in the Central and Provincial Governments and such other persons as, after consultation with the Governors of the Provinces, the President may appoint.

The Commission shall make recommendations to the President with respect to the distribution between the Central Government and the Provincial Governments of the proceeds of the following taxes :—

- (1) Taxes on income, including corporation taxes, but not

including taxes on income consisting of remuneration paid out of the Central Consolidated Fund.

- (2) Taxes on sales and purchases.
- (3) Export duty on jute and cotton and such other export duties as may be specified by the President.
- (4) Such duties of excise imposed under a Central Law as may be specified by the President.
- (5) Such other taxes as may be specified by the President.

The Commission shall also make recommendations to the President with respect to the making of grants-in-aid by the Central Government to the Provincial Governments, the exercise by the Central Government and the Provincial Governments of the borrowing powers conferred by the Constitution, and any other matter relating to finance referred to the Commission by the President. As soon as it is practicable after receiving the recommendations of the Commission, the President shall, after considering the recommendations, specify by order the share of the Central Government and the Provincial Governments out of the proceeds of the taxes.

The National Finance Commission is also required to submit to the President, not later than six months before the expiration of the plan period during which the Commission is set up, a report on the progress made during that period in advancing the object referred to in Article 145 (4) and recommendations as to the manner in which that object should be achieved in the next succeeding plan period. The President shall furnish a copy of the report and the recommendations submitted to him to the National Economic Council which shall take into consideration those recommendations in formulating its plans. Any recommendations of a National Finance Commission furnished to the President shall, together with an explanatory memorandum as to the action taken on them, be laid before the National Assembly, and before each of the Provincial Assemblies.

### **National Economic Council**

Article 145 provides that as soon as it is practicable after the commencing day (8th June, 1962), the President shall constitute a Council known as the National Economic Council. The Council shall consist of such persons as are appointed to the Council by the President and they shall be the members of the Council during the pleasure of the President.

The Council shall, from time to time, and whenever so directed by the President, review the overall economic position of Pakistan, formulate plans with respect to finance, commerce and economic policies and the economic development of Pakistan and inform the Central and Provincial Governments of those plans. The primary object of the Council in formulating the plans shall be to ensure that disparities between the provinces and between different areas within a province, in relation to income per capita, are removed, and that the resources of Pakistan are used and allocated in such manner as to achieve that

object in the shortest possible time, and it shall be the duty of each Government to make an utmost endeavour to achieve that object. The plans formulated by the Council in relation to the economic development of Pakistan shall be formulated with respect to periods specified by the Council. The Council may, from time to time, appoint such committees or bodies of experts as it considers necessary to assist it in the performance of its functions. Nothing in this Article shall affect the exercise of the executive authority of the Central Government or of a Provincial Government. The Council shall submit every year to the National Assembly a report on the results obtained and the progress made in the achievement of the object and a copy of the report shall also be laid before each Provincial Assembly.

Article 146 provides that any property that has no rightful owner, shall, if located in a province, vest in the Government of that province, and in every other case in the Central Government. All lands, minerals and other things of value underlying the ocean within the territorial waters of Pakistan shall vest in the Central Government.



## CHAPTER VII

**THE PROVINCIAL GOVERNMENTS**

Pakistan is divided into two provinces of East Pakistan and West Pakistan. There is a Governor for each province. He is appointed by the President and is subject to the directions of the President in the performance of his duties. No person can be appointed a Governor of a Province unless he is qualified to be elected as a member of the National Assembly. Provision has been made for an Acting Governor in case a Governor is absent from Pakistan or is unable to perform his duties as a Governor due to illness or some other cause. The Acting Governor is appointed by the President and he has to act according to the directions of the President while performing his duties.

The executive authority of a province is vested in the Governor and shall be exercised by him, either directly or through officers subordinate to him, in accordance with the Constitution, the law and the directions of the President. The Governor of a province may specify the manner in which orders and other instruments made and executed in pursuance of any authority or power vested in the Governor shall be expressed and authenticated. He may regulate the allocation and transaction of the business of the Government of the province and establish departments of that Government.

To assist him in the performance of his functions, the Governor of a Province may, with the concurrence of the President, from amongst persons qualified to be elected as members of the Assembly of the Province, appoint persons to be members of a Council of Ministers, to be known as the Governor's Council of Ministers for the Province. Before he enters upon his office, a minister appointed by a Governor shall make before the Governor an oath in the prescribed form. The Governor of a Province may, from amongst the members of the Assembly of a Province, appoint persons (not exceeding in number the number of departments of the Government of the Province established by the Governor) to be Parliamentary Secretaries, and persons so appointed shall perform such functions in relation to those departments as the Governor may direct.

The Governor of a Province shall appoint a person who is qualified to be appointed as a Judge of a High Court to be Advocate-General for the Province. The Advocate-General shall perform such duties as the Governor may direct.

**Provincial Legislature**

Each Province of Pakistan has a Legislature of one House known as the Assembly of the Province. The Assembly of each Province consists of 155 members. Five seats in each Province are reserved for women. However, women can contest other seats also.

Unless it is sooner dissolved, an Assembly of the Province shall continue for a term of five years from the declaration of the result of the election of its members, or the expiration of the term of the previous Assembly, whichever last occurs. On the expiration of the term of an Assembly of the Province, it shall stand dissolved.

The Governor of a Province may from time to time summon the Assembly of the Province and except when it has been summoned by the Speaker, may prorogue it. At the request of not less than one-third of the total members of Assembly, the Speaker of the Assembly may summon the Assembly and when he has summoned it, he may prorogue it. When the Assembly of a province is summoned the date, time and place of meeting shall be specified.

The Governor may dissolve the Assembly of the Province where a conflict on a matter has arisen between him and the Assembly, the conflict has been referred to the National Assembly in accordance with this Article for his decision, the National Assembly has decided the conflict in favour of the Governor, and President has concurred in the dissolution of the Provincial Assembly by the Governor. If at any time a conflict with respect to any matter arises between the Governor of a Province and the Assembly, either the Governor or Speaker of the Assembly or both may request the President in writing, to refer the conflict to the National Assembly for decision. A copy of the request shall, at the time it is made, be sent to the Speaker where the request is made by the Governor and to the Governor where it is made by the Speaker. The President shall, upon receipt of the request, forthwith send copy of the request to the Speaker of the National Assembly. The conflict shall be considered by the National Assembly and a resolution deciding the conflict shall be passed not later than 30 days after copy of the request is received by the Speaker of the National Assembly and if it is necessary to summon the Assembly in order to enable the conflict to be so considered and decided, the President, or if he fails to do so, the Speaker, shall summon the National Assembly. The Governor of a Province shall not dissolve the Assembly of the Province except as provided in this Article (Article 74).

The Governor of a Province may address the Assembly of the Province and also send messages to it. A member of the Governor's Council of Ministers for a Province and the Advocate-General for the Province shall have the right to speak in and otherwise take part in the proceedings of the Assembly of the Province or any of its committees but shall not be entitled to vote. No Bill or amendment of a Bill providing for or relating to Preventive Detention shall be introduced or moved in the Assembly of the Province without the previous consent of the Governor of the Province.

When a Bill has been passed by the Assembly of a Province, it shall be presented to the Governor of the Province for assent. The Governor shall, within 30 days after a Bill is presented to him, assent to the Bill, declare that he withholds assent from the Bill, or return the Bill to the Assembly with a message that the Bill or a particular provision of the bill be reconsidered and any amend-

ments specified in the message be considered. If the Governor fails to do any of those things within the period of 30 days, he shall be deemed to have assented to the Bill at the expiration of that period. If the Governor declares that he withholds assent from a Bill the

not approved or has not disapproved of the ordinance and it has not been repealed by the Governor before the expiration of the prescribed period, it shall cease to have effect, and shall be deemed to have been repealed upon the expiration of that period. The power of the Governor of a Province to make laws by the making and promulgation of ordinances extends only to the making of laws within the legislative powers of the legislature of the Province. The prescribed period in relation to an ordinance means the period ending 42 days after the first meeting of the Assembly of the Province following the promulgation of the ordinance or the period of 180 days after the promulgation of the ordinance, whichever is shorter.

Article 86 provides that all revenues received and all loans raised by a Provincial Government and all moneys received by a Provincial Government in repayment of a loan, shall form part of one consolidated fund to be known as the Provincial Consolidated Fund of the Province concerned. The custody of the fund, the payment of moneys into and the withdrawal of money from that fund and all other transactions relating to that fund, shall be regulated by or under an Act of the Provincial Legislature or by rules made by the Governor of the Province.

The following expenditure is charged upon the Provincial Consolidated Fund of a Province :—

- (1) Remuneration payable to the Governor of the Province and other expenditure relating to his office.
- (2) Remuneration payable to the Speaker, the Deputy Speakers and other members of the Provincial Assembly, Judges of the High Court of the Province, members of the Governor's Council of Ministers, Parliamentary Secretaries appointed by the Governor and the members of the Public Service Commission of the Province.
- (3) The administrative expenses of the Provincial Assembly, High Court of the Province and Public Service Commission of the Province.
- (4) Debt charges for which the Provincial Government is liable, including interest, sinking fund charges, the redemption or amortisation of capital and other expenditure in connection with the raising of the loan and the service and redemption of debt on the security of the Provincial Consolidated Fund.
- (5) Sums required to satisfy any judgment, decree or award against the Province by any Court or Tribunal.
- (6) Other sums declared by an Act of the Provincial Legislature to be so charged.

Article 89 provides that the provisions of Articles 40 to 47 of the Constitution shall apply to and in relation to a Province. The only difference is that for the term 'President' the term 'Governor' shall be read, and for the term 'National Assembly', the term 'Provincial Assembly' shall be read. Article 40 deals with Annual Budget Statement of the Central Government. Article 41 relates to the procedure of the National Assembly in relation to Annual

Budget Statement. Article 42 deals with estimates for projects extending over several years. Article 43 gives a Schedule of the Authorised Expenditure. Article 44 deals with Supplementary and Excess Budget Statements. Article 45 provides for unexpected expenditure. Article 46 deals with expenditure from Central Consolidated Fund pending authentication of Schedule of Authorised Expenditure.

Article 90 provides that no taxes shall be levied for purposes of a Provincial Government except by or under the authority of an Act of the Provincial Legislature.

CHAPTER VIII

THE SERVICES OF PAKISTAN

Part VIII of the Constitution of Pakistan consisting of Articles 174 to 190 deals with the services of Pakistan. Article 174 provides that the appointment of persons to and the terms and conditions of service of persons in the service of Pakistan may be regulated by law.

Article 175 provides that a person who is not a citizen of Pakistan shall not be eligible to hold any office in the service of Pakistan. However, a person who, immediately before the commencing day, was in the service of Pakistan, shall not be disqualified from continuing in the service of Pakistan by reason only that he is not a citizen of Pakistan.

Article 176 provides that a person who is a member of an All-Pakistan Service, of any Defence Services of Pakistan or of a civil service of the Centre, or who holds a post connected with defence or a civil post in connection with the affairs of the Centre, shall hold office during the pleasure of the President. A person who is a member of a civil service of a province or who, except as a member of an All-Pakistan Service, holds a civil post in connection with the affairs of a province, shall hold office during the pleasure of the Governor of the Province.

Article 177 provides that a person who is a member of an All-Pakistan Service or of a civil service of the Centre or of a Province, or who holds a civil post in connection with the affairs of the Centre or of a Province, shall not be dismissed or removed from service, or reduced in rank by an authority subordinate to that by which he was appointed unless that subordinate authority has been expressly empowered to do so by an authority not so subordinate. Moreover, he shall not be dismissed or removed from service or reduced in rank unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken with respect to him. This Article shall not apply where a person is dismissed or removed from service or reduced in rank on the ground of conduct which has led to his conviction, entailing imprisonment, on a criminal charge, or where an authority empowered to dismiss or remove a person from service or to reduce a person in rank considers that in the circumstances of the case, it is not practicable to give to the person an opportunity of showing cause or that it would be prejudicial to the security of Pakistan for the person to be given such an opportunity.

Article 178 provides that subject to the Constitution and law, appointments to an All-Pakistan Service or to a civil service of the Centre or to a civil post in connection with the affairs of the Centre, shall be made by the President or a person authorised by the President in that behalf. Appointments to a civil service of a Province, or to a civil post in connection with the affairs of a Province,

shall be made by the Governor of a Province, or a person authorised by the Governor in that behalf. The terms and conditions of service of persons serving in a civil capacity in the service of Pakistan shall be as prescribed by rules made by the President or by a person authorised by the President in that behalf in the case of a person who is a member of an All-Pakistan Service or who is serving in connection with the affairs of the Centre. In the case of a person who is serving in connection with the affairs of a Province, those rules shall be made by the Governor of a Province or by a person authorised by the Governor in that behalf. Those rules shall be so framed as to ensure that the terms and conditions of service of a person relating to remuneration or age fixed for superannuation are not varied to his disadvantage. Where an order is made which punishes or formally censures a person, alters or interprets to the disadvantage of a person any rule effecting his terms or conditions of service or terminates the employment of a person otherwise than upon his reaching the age of superannuation, he shall, except where the order is made by the President or a Governor, have at least one appeal against the order. Where the order is made by the President or a Governor, he shall have the right to apply to the President or the Governor for a review of the order.

Article 179 provides that the President, in relation to the affairs of the Centre and the Governor of a Province in relation to the affairs of Province, may authorise the temporary employment of persons in the service of Pakistan and may make rules for regulating such temporary employment. Articles 175 to 178 shall not apply to or in relation to the temporary employment of persons in the service of Pakistan.

### **Public Service Commissions**

Article 180 provides that there shall be a Central Public Service Commission for the Centre and a Provincial Public Service Commission for each Province. Article 180 provides that in the case of the Central Public Service Commission the President, and in the case of a Provincial Public Service Commission the Governor of the Province concerned, may by order determine the number of members of the Commission and the number of members of the staff of the Commission and their terms and conditions of service. Article 180 provides that the members of the Central Public Service Commission shall be appointed by the President and the members of the Provincial Public Service Commission shall be appointed by the Governor of the Province concerned. The terms and conditions of service of a member of the Central Public Service Commission shall be determined by Act of the Central Legislature, or, until so determined, by the President. The terms and conditions of service of a member of a Provincial Public Service Commission shall be determined by an Act of the Provincial Legislature concerned or until so determined, by the Governor of the Province. Not less than one-half of the members of a Commission shall be persons who are, at the time of appointment, or who have been at some time before appointment, in the service of Pakistan. Where a person appointed as a member

of a Commission was, immediately before his appointment, in the service of Pakistan, his rights as a person in the service of Pakistan, shall not, subject to his appointment and service as such a member, be affected.

Article 184 provides that a member of a Commission shall hold office for a term of three years from the date upon which he enters upon his office. A member of a Commission shall not be removed from office except in the manner prescribed for the removal from office of a Judge of a High Court or Supreme Court. A member of a Commission may resign his office by writing under his hand addressed to the President in the case of Central Public Service Commission and to the Governor of the Province concerned in the case of a Provincial Public Service Commission.

Article 185 provides that the functions of the Central Public Service Commission shall be to conduct tests and examinations for the selection of suitable persons for appointment to the All-Pakistan Service, the civil services of the Centre, and civil posts connected with the affairs of the Centre, to advise the President on any matter on which the Commission is consulted or which is referred to the Commission by the President, and such other functions as may be prescribed by law. Except to the extent that the President, after consulting the Commission, may provide otherwise by order, the President shall, in relation to the All-Pakistan Services, the civil services of the Centre, and civil posts connected with the affairs of the Centre, consult the Central Public Service Commission with respect to matters relating to qualifications for, and methods of recruitment to, services and posts, the principles on which appointments and promotions could be made, the principles on which persons belonging to one service should be transferred to another, matters affecting the terms and conditions of service and proposals adversely affecting pension rights and disciplinary matters.

Article 186 provides that the functions of a Provincial Public Service Commission shall be similar to those of the Central Public Service Commission. The only difference is that the Provincial Public Service Commission deals with the services of the Province, and the Governor is substituted in place of the President. Article 187 provides that the Governor of a Province may, with the approval of the President, refer to the Central Public Service Commission a matter relating to the services of the province or posts connected with the affairs of the Province.

Article 188 provides that where the President or a Governor does not accept the advice of a Commission, he shall inform the Commission accordingly. Article 189 provides that each Commission shall, not later than 15th day of January in each year, prepare a report on its activities during the year ending on the previous 31st day of December and submit the report to the President in case of the Central Public Service Commission and to the Governor of the Province in the case of the Public Service Commission of a Province. The report shall be accompanied by a memorandum setting out so far as is known to the Commission, the cases, if any, in which its advice was not accepted, and the reasons why the



advice was not accepted, and the cases where the Commission ought to have been consulted but was not consulted, and the reasons why it was not consulted. The President or the Governor, as the case may be, shall cause the report and memorandum to be laid before the National Assembly or the Provincial Assembly, as the case requires, at the first meeting of the Assembly held after the 31st day of January in the year in which the report was submitted.

## CHAPTER IX

## CRITICISM

The new Constitution of Pakistan has been criticised on many grounds. It is pointed out that Pakistan has neither a parliamentary form of government<sup>1</sup> nor a presidential form of government. The President of Pakistan is not a constitutional head as he would have been if Pakistan had a parliamentary form of government. His ministers are not responsible to the National Assembly and they cannot be voted out of power by an adverse vote in the Central Legislature. The American pattern has also not been strictly followed as the Ministers in Pakistan are required to be something more than what the various secretaries in the United States are.

Pakistan has started a novel experiment of unicameral legislatures both at the Centre and in the Provinces. It is still to be seen as to how a unicameral system can work successfully in a country where a federal form of government is intended to be worked. It is also to be seen how in the absence of a second chamber, the interests of the units of the federation can be adequately safeguarded. The framers of the Constitution have ignored altogether the various advantages which a country gets by having a bicameral system. No big country in the world has a unicameral legislature like the National Assembly of Pakistan and the experiment of Pakistan will be watched with great interest by the students of politics all over the world.

It is true that Pakistan has been given a federal form of government, but actually some sort of a unitary government has been set up in the country. The Centre has been made all powerful. The Constitution does not specify the field in which the provinces are going to be completely autonomous. The Third Schedule to the Constitution contains only those matters in respect to which the Central Legislature has exclusive powers to make laws. It appears that more emphasis has been put on the unity and interests of Pakistan as a whole than on the autonomy of the Provinces. The Central Government has been given the right to interfere even in those matters which are purely provincial, and the National Assembly is given the power and authority to arbitrate in matters in which there is a dispute between the Assembly of the Province and the Governor of the Province.

It is true that Part II of the Constitution provides for what are known as Principles of Law-making, but those are no good

1. Field Marshall Ayub Khan has criticised parliamentary form of government in these words: "An average villager with little or no education has no means of gaining any personal knowledge about a candidate who is mixed up in a population of 100,000 or more, spread over a large area without any advanced means of communication or contact. Votes cast under these circumstances cannot but be vague, wanton and responsive to fear, coercion, temptation and other modes of misguidance. Conditions such as these reduce the practice of democracy to a farce".

substitute for the fundamental rights which the citizens of Pakistan should have a right to possess. No power has been given to the courts in Pakistan to enforce the fundamental rights.

The experiment of limited democracy introduced by the new Constitution may not be to the liking of the people. All power has been put in the hands of an Electoral College of Pakistan, which cannot be a substitute for the 94 million people of Pakistan.

It is pointed out that "The new Constitution seeks to consolidate the power of the generals and bureaucrats and to perpetuate authoritarian Government".

The Islamic character of the Republic will give a handle to the ultra-religious and fanatical sections of the people of Pakistan to create confusion in the country and distract the people from their social and economic problems. As Pakistan is an Islamic Republic, it is logically against some of the provisions of the Constitution which guarantee equality of rights and other opportunities to all without regard to race, religion, caste, or place of birth. The result would be that the non-Muslim citizens of Pakistan would be reduced to the status of second-class citizens.

The system of indirect elections is based on a distrust of democracy. The personal view of President Ayub Khan is that if legislators are elected "by broad masses of people, driven into the polling booths and beaten or coerced or tempted into casting their votes in God knows what manner, then what obligations the man elected is going to have to the voters and what can the voters expect from a man they so elect?" Again, "Has our society by and large developed to that stage when they can determine individually as to who should be their President? Can they be expected to say 'so and so is better than so and so'? Is it their fault if they do not know it? Have they been educated enough yet? Have they been—say, 80 per cent to 85 per cent of them—dealing with problems outside their immediate normal sphere? Can you blame them if they can't distinguish between you and I? You cannot blame them. And so, if they cannot make a decision themselves then what happens? Then somebody has got to go and make a decision for them or induce them to make a decision if the people had education and necessary sophistication to be able—to create public opinion, to be able to defend the Constitution, then a lot of these lapses would not have occurred. When in 15 to 20 years time—education becomes universal in Pakistan, I hope there will be much larger middle class in the country and what appears to be difficult today would be possible then".

However, it is pointed out that there is no guarantee that the members of the Electoral College will always make sober and independent decisions. As a matter of fact, it may be easier to influence and even buy the votes of the members of the Electoral College whose number is very much limited. The system introduced in Pakistan is against the view that the evils of democracy can be removed by having more democracy and not less as it is easier to buy a few hundred or a few thousand voters than to buy millions of voters if every individual is given the right to vote. It is also

pointed out that the members of the Electoral College may not represent the current public opinion as they might have been elected very much earlier. In that case, the National Assembly or the Provincial Legislatures would not be the true mirrors of the public opinion outside.

It is also pointed out that a study of the Constitution of Pakistan shows that the balance of authority is tilted in favour of the State and against the individual. Too many restrictions have been put on the individual. Even if we take one example, as many as eight restrictions have been put on the individual. The freedom of expression can be interfered with in the interest of the security of Pakistan, for the purpose of ensuring friendly relations with foreign States, for the purpose of ensuring the proper administration of justice, in the interest of public order, for the purpose of preventing the commission of offences, in the interest of decency or morality, for the purpose of granting privileges, in proper cases, to particular proceedings and for the purpose of protecting persons in relation to reputation. The same is the case with regard to the other freedoms provided in the Constitution of Pakistan.

Critics also find fault with the procedure of impeachment and removal of the President. The Constitution provides that if less than one-half of the total number of members of the National Assembly vote in support of the motion of impeachment or removal of the President, the members who had given notice of the resolution to the Speaker of the National Assembly shall cease to be members of the National Assembly forthwith after the result of the voting on the resolution is declared. It is true that the object of this provision is "to ensure that promiscuous and irresponsible attacks are not made on the President", "that he is not illegitimately harassed" and "so that they act responsibly and respectably". However, the actual result of this provision can be that the members of the National Assembly will not have the courage to move such a resolution. As a result, the power of the National Assembly to put a check on the President and his Ministers will be very much lessened.

It is also pointed out that the provision in the Pakistan Constitution that the President must include in his Cabinet a Defence Minister who has held a prescribed rank in the Defence Services of Pakistan, not less than that of a Lieutenant-General or an equal rank, to advise him in relation to the defence of Pakistan, is not desirable. This will make the military very strong in the Cabinet and otherwise may not be conducive to the growth of democratic institutions in Pakistan.

According to Mr. Z. H. Lari, democracy would start functioning in Pakistan only when political parties are revived, fundamental rights are made justiciable and direct elections to Parliament are devised. Political education will not be adequately possible unless human rights are assured. Free thinking and free association grow only in an atmosphere which is not surcharged with apprehension. The continued detention of the people without trial or scrutiny by a High Court is a negation of law and

democracy. Recent elections have conclusively shown that the basic democrats cannot be entrusted with the task of electing representatives to Parliament. The fear that corruption would vitiate the elections in many a case, has been more than justified.

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