

## CHAPTER - 6

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### ALTERNATIVE MODELS OF FORMATION OF MINISTRY IN FRACTURED ELECTORAL VERDICTS

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The defining feature of the parliamentary form of government is that the ministry emerges from Parliament. Ministry is politically responsible to Parliament and must enjoy the confidence of Parliament and it may terminate any time before the expiration of the term of Parliament if it loses the confidence of Parliament.

Parliamentary democracies, however, are quite diverse with respect to the specific rules in their Constitutions with regard to formation, continuance, and termination of the ministry. The institutional features in Constitutions are widely diverse. These institutional features can be broadly categorised into the following four categories: *First*, whether the ministry needs an actual vote by parliament, in the nature of ‘Investiture Vote’, to legally assume office; *secondly*, whether the ministry must maintain the active support of a parliamentary majority in order to remain in office, referred to as ‘positive parliamentarism’; *thirdly*, whether the rules for tabling a vote of no-confidence require an alternative to be pre-specified in the motion itself, referred to as ‘Constructive No-confidence Vote’; and *fourthly*, whether elections have to be held at predetermined intervals, referred to as ‘fixed interelection period’ or ‘fixed-term Parliaments’.<sup>1</sup>

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1 Daniel Diermeier, Hulya Eraslan and Antonio Merlo, “A Structural Model of Government Formation”, *Econometrica*, Vol. 71, No. 1 (January, 2003), 27–70

## A. ALTERNATIVE MODELS OF FORMATION OF MINISTRY

The first institutional feature is with regard to the process of formation of ministry. In some countries, the Prime Minister and/or his ministry needs an actual vote by the parliament to legally assume office. This is called as 'Investiture Vote'. In other countries, the Prime Minister and/or his ministry can simply assume office after being appointed by the Head of State (i.e., either the Crown or the President). In countries with the system of Investiture Vote, again, some countries require that the Prime Minister be actually elected by Parliament. This is referred to as "*ex ante*" investiture. Other countries only require that after a new Prime Minister is appointed and he forms his ministry, it has to be approved by a parliamentary majority. This is called as "*ex post*" investiture<sup>2</sup>. In countries that do have the system of parliamentary vote to elect the Prime Minister, and the choice of Prime Minister rests with the Crown or the President, some countries have a mechanism of special emissaries and envoys who aid and assist the Crown or the President in choosing a Prime Minister by consulting, negotiating and facilitating talks between political parties and finding out an acceptable Prime Minister. Such a special envoy can be the Speaker of the House. It may even be an *informateur*, as is done in some European continental monarchies. The *informateur* aids and assists the Crown in choosing a *formateur*. The *formateur* is then appointed as the Prime Minister and he is asked to present his programmes and policies before Parliament and subject his ministry as well as his programmes and policies to vote in Parliament. If the Prime Minister succeeds in garnering support of Parliamentary majority, he continues in power, and if not, he submits his resignation and the process of appointment of new Prime Minister starts.

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2 Jose Antonio Cheibub, Shane Martin, and Bjorn Erik Rasch, "The Investiture Vote and the Formation of Minority Parliamentary Governments", paper presented at the workshop on the Importance of Constitutions: Parliamentarism, Representation, and Voting Rights, Istanbul, Turkey, October 23-25, 2013. available at <http://www.sv.uio.no/isv/english/research/projects/evolution-parliamentarism/events/seminars/istanbul-cheibub-martin-rasch.pdf>, retrieved on 10 March 2014.

## B. ELECTION OF THE PRIME MINISTER BY PARLIAMENT

Some constitutional parliamentary democracies provide for election of the Prime Minister by Parliament. After a person is so elected by Parliament, the Head of State (the Monarch or the President, as the case may) then appoints the person as the Prime Minister. The prominent examples are Germany, Hungary, Spain, Ireland, Sweden, Slovenia, South Africa, Japan, Finland and Lesotho.

### GERMANY

*Grundgesetz*, the Basic Law of Germany, provides for election of the Federal Chancellor by the members of Parliament (*Bundestag*) upon the proposal of the President. Article 63 of the Basic Law of Germany provides that the Chancellor shall be elected by the *Bundestag*.<sup>3</sup> The person who receives the votes of a majority of the members of the *Bundestag* shall be elected. The person elected shall be appointed by the Federal President. If the person proposed by the President is not elected, the *Bundestag* may elect a Federal Chancellor within fourteen days after the ballot by the votes of more than one half of its Members. If no Federal Chancellor is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of

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3 Article 63 - Election of the Federal Chancellor

- (1) The Federal Chancellor shall be elected by the *Bundestag* without debate on the proposal of the Federal President.
- (2) The person who receives the votes of a majority of the Members of the *Bundestag* shall be elected. The person elected shall be appointed by the Federal President.
- (3) If the person proposed by the Federal President is not elected, the *Bundestag* may elect a Federal Chancellor within fourteen days after the ballot by the votes of more than one half of its Members.
- (4) If no Federal Chancellor is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of votes shall be elected. If the person elected receives the votes of a majority of the Members of the *Bundestag*, the Federal President must appoint him within seven days after the election. If the person elected does not receive such a majority, then within seven days the Federal President shall either appoint him or dissolve the *Bundestag*.

votes shall be elected. If the person elected receives the votes of a majority of the Members of the *Bundestag*, the Federal President must appoint him within seven days after the election. If the person elected does not receive such a majority, then within seven days the Federal President shall either appoint him or dissolve the *Bundestag*.

## HUNGARY

The Constitution of Hungary also provides for election of the Prime Minister by the members of Parliament upon his nomination by the President. Art. 33(3) of the Hungarian Constitution provides that the Prime Minister is elected by a simple majority vote of the Members of Parliament. Parliament decides on the election of the Prime Minister and on acceptance of the Government programme at the same time.<sup>4</sup>

## IRELAND

The Eire Constitution also provides for nomination of the Prime Minister by Parliament (*Dáil Éireann*) [Art. 13(1.1)].<sup>5</sup> The other ministers are appointed by the President upon the nomination by the Prime Minister and previous approval by Parliament [Art. 13(1.2)]. The Prime Minister has to resign from office upon

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4 Constitution of Hungary:

Article 33.-

(1) The Government consists of (a) The Prime Minister and (b) The Ministers

(2) The Prime Minister's substitute is the minister he has designated.

(3) The Prime Minister is elected by a simple majority vote of the Members of Parliament. Parliament decides on the election of the Prime Minister and on acceptance of the Government programme at the same time.

5 Constitution of the Eire:

Article 13

1. 1° The President shall, on the nomination of *Dáil Éireann*, appoint the Taoiseach, that is, the head of the Government or Prime Minister.

2° The President shall, on the nomination of the Taoiseach with the previous approval of *Dáil Éireann*, appoint the other members of the Government.

his ceasing to retain the support of a majority in *Dáil Éireann* unless on his advice the President dissolves *Dáil Éireann* and on the reassembly of *Dáil Éireann* after the dissolution the *Taoiseach* secures the support of a majority in *Dáil Éireann* [Art. 28(10)].

The process of selecting a *Taoiseach* (Prime Minister) begins with the presiding officer accepting nominations. Members are given the opportunity to make short speeches on the nominee(s). Once the presiding officer has received all nominations the formal voting process begins. To be nominated *Taoiseach*, the first candidate must receive more 'Yes' votes than 'No' votes. When a candidate is successfully nominated for appointment as *Taoiseach*, the process ends and no vote takes place on the nomination of any other candidates. If the first nominated candidate fails to receive more votes for than against, the second nominated candidate, if any, is then considered. The same requirements apply, to be nominated *Taoiseach* the candidate must receive more votes for than against. The voting continues until either a *Taoiseach* is elected or no more candidates remain to be voted on. Where a candidate for *Taoiseach* has secured the necessary support, she then departs the chamber to travel the short distance to the residence of the President of Ireland who makes the formal appointment. The investiture of a new *Taoiseach* is also necessary when the incumbent *Taoiseach* dies, resigns, is removed or is otherwise deemed incapacitated. In such cases the same investiture process as described above occurs.

## SWEDEN

The Constitution of Sweden, called as Instrument of the Government also provides for election of the Prime Minister by its Parliament. Chapter 6, Art. 4 of the Swedish Constitution provides that the Speaker of *Riksdag* (Swedish Parliament) after formal consultations with representatives from each party group in the *Riksdag*, proposes a name to the *Riksdag*. If more than half the members of the *Riksdag* vote against the proposal, it is rejected. In any other case, it is

adopted. When *Riksdag* adopts the proposal, the Prime Minister informs the *Riksdag* about the names of other ministers. Thereafter the Speaker issues a letter of appointment for the Prime Minister on the *Riksdag*'s behalf.<sup>6</sup> If the *Riksdag* rejects the Speaker's proposal, the procedure laid down in Article 4 is repeated.

## SLOVENIA

The Constitution of Slovenia also provides for election of the Prime Minister. Art. 111 of the Slovenian Constitution stipulates that the President of the Republic, after consultation with the leaders of parliamentary groups, proposes to the National Assembly a candidate for Prime Ministership. The Prime Minister is elected by secret ballot by the National Assembly by a majority vote of all deputies. If such candidate does not receive the necessary majority of votes, the President of the Republic may after renewed consultation propose within fourteen days a new candidate, or the same candidate again, and candidates may

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### 6 Constitution of Sweden:

#### Formation of the Government

Chapter 6, Art. 4. When a Prime Minister is to be appointed, the Speaker summons for consultation representatives from each party group in the *Riksdag*. The Speaker confers with the Deputy Speakers before presenting a proposal to the *Riksdag*. The *Riksdag* shall vote on the proposal within four days, without prior preparation in committee. If more than half the members of the *Riksdag* vote against the proposal, it is rejected. In any other case, it is adopted.

Chapter 6, Art. 5. If the *Riksdag* rejects the Speaker's proposal, the procedure laid down in Article 4 is repeated. If the *Riksdag* rejects the Speaker's proposal four times, the procedure for appointing a Prime Minister is abandoned and resumed only after an election to the *Riksdag* has been held. If no ordinary election is due in any case to be held within three months, an extraordinary election shall be held within the same space of time.

Chapter 6, Art. 6. When the *Riksdag* has approved a proposal for a new Prime Minister, the Prime Minister shall inform the *Riksdag* as soon as possible of the names of the ministers. Government changes hands thereafter at a Council of State before the Head of State or, in his or her absence, before the Speaker. The Speaker is always summoned to attend such a Council.

The Speaker issues a letter of appointment for the Prime Minister on the *Riksdag*'s behalf.

also be proposed by parliamentary groups or a minimum of ten deputies. If within this period several candidates have been proposed, each one is voted on separately beginning with the candidate proposed by the President of the Republic, and if this candidate is not elected, a vote is taken on the other candidates in the order in which they were proposed. If no candidate is elected, the President of the Republic dissolves the National Assembly and calls new elections, unless within forty-eight hours the National Assembly decides by a majority of votes cast by those deputies present to hold new elections for Prime Minister, whereby a majority of votes cast by those deputies present is sufficient for the election of the candidate. In such new elections a vote is taken on candidates individually in order of the number of votes received in the earlier voting and then on the new candidates proposed prior to the new vote, wherein any candidate proposed by the President of the Republic takes precedence. If in such elections no candidate receives the necessary number of votes, the President of the Republic dissolves the National Assembly and calls new elections.<sup>7</sup> Other

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7 Constitution of Slovenia

Article 111

(Election of the President of the Government)

After consultation with the leaders of parliamentary groups the President of the Republic proposes to the National Assembly a candidate for President of the Government.

The President of the Government is elected by the National Assembly by a majority vote of all deputies unless otherwise provided by this Constitution. Voting is by secret ballot.

If such candidate does not receive the necessary majority of votes, the President of the Republic may after renewed consultation propose within fourteen days a new candidate, or the same candidate again, and candidates may also be proposed by parliamentary groups or a minimum of ten deputies. If within this period several candidates have been proposed, each one is voted on separately beginning with the candidate proposed by the President of the Republic, and if this candidate is not elected, a vote is taken on the other candidates in the order in which they were proposed.

If no candidate is elected, the President of the Republic dissolves the National Assembly and calls new elections, unless within forty-eight hours the National Assembly decides by a majority of votes cast by those deputies present to hold new elections for President of the Government, whereby a majority of votes cast by those deputies present is sufficient for the election of the candidate. In such new elections a vote is taken on candidates individually in order of the number of votes received in the earlier voting and then on the new candidates proposed prior to the new vote, wherein any candidate proposed by the President of the Republic takes precedence.

ministers are appointed and dismissed by the National Assembly on the proposal of the Prime Minister [Art. 112]. Prior to appointment a proposed minister must appear before a competent commission of the National Assembly and answer its questions.

## **SOUTH AFRICA**

South Africa is a Parliamentary Republic. However, the system of dual executive, i.e. existence of a Head of State and a Head of Government as prevalent in other parliamentary systems does not exist in South Africa and the South African President is the Head of State as well as the Head of Government.<sup>8</sup>

The Constitution of South Africa provides for election of the President by its Parliament<sup>9</sup>. The National Assembly, at its first sitting after the election, or whenever vacancy arises, elects one of its members to be the President [Art. 86(1)]. Elections are held in the supervision of the President or other designated judge of the Constitutional Court of South Africa. Upon being elected as the President, the incumbent ceases to be a member of the National Assembly [Art. 87]. A person cannot hold office of President for more than two terms [Art. 88(2)]. Art. 89 provides for removal of the President by the National Assembly

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If in such elections no candidate receives the necessary number of votes, the President of the Republic dissolves the National Assembly and calls new elections.

8 The Constitution of South Africa

Section 83.- The President is the Head of State and head of the national executive.

9 The Constitution of South Africa

Section 86. - Election of President

- (1) At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the President.
- (2) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President.
- (3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional Court, but not more than 30 days after the vacancy occurs.

and states that the National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of (a) a serious violation of the Constitution or the law; or (b) serious misconduct; or (c) inability to perform the functions of office. The president appoints the Deputy President and other ministers and has the power to dismiss them [Art. 91]. The members of the cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions [Art. 92(2)].

## JAPAN

The Constitution of Japan also provides for election of the Prime Minister by Parliament. Article 6 of the Japanese Constitution provides that the Emperor shall appoint the Prime Minister as designated by the *Diet*<sup>10</sup>. Article 67 provides that the Prime Minister shall be designated from among the members of the *Diet* by a resolution of the *Diet*. This designation shall precede all other business. If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the *Diet*. The Emperor shall appoint him as the Prime Minister.<sup>11</sup>

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10 Constitution of Japan:

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

11 Constitution of Japan:

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business. If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

## FINLAND

The Constitution of Finland provides for election of the Prime Minister<sup>12</sup>. Sec. 61 of the Constitution of Finland stipulates that Parliament elects the Prime Minister, who is thereafter appointed to the office by the President. Other ministers are appointed by the President in accordance with a proposal made by the Prime Minister. Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political programme and composition of the Government. On the basis of the outcome of these negotiations, and after having heard the Speaker of the Parliament and the parliamentary groups, the President informs the Parliament of the nominee for Prime Minister. The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament. If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected.

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12 Constitution of Finland:

Section 61 - Formation of the Government

The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister.

Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political programme and composition of the Government. On the basis of the outcome of these negotiations, and after having heard the Speaker of the Parliament and the parliamentary groups, the President informs the Parliament of the nominee for Prime Minister. The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament.

If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected.

**SPAIN**

The Constitution of Spain provides for investiture vote by Parliament before appointment as the Prime Minister. Sec. 99(3) of the Spanish Constitution stipulates that the King, after consultation with the political leaders in Parliament, nominates a candidate for the Presidency of the Government. The candidate so nominated then submits to the Congress his political programme and seeks the confidence of the House. If the Congress, by vote of the overall majority of its members, grants to the said candidate its confidence, the King shall appoint him or her as the Prime Minister. If overall majority is not obtained, the same proposal shall be submitted for a fresh vote after forty-eight hours. In this case, confidence of the House is deemed to have been secured if granted by single majority.<sup>13</sup> The other ministers are appointed and dismissed by the King at the Prime Minister's proposal.<sup>14</sup>

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13 Constitution of Spain:

Section 99. Appointment of Prime Minister.-

- (1) After each renewal of the Congress and in the other cases provided for under the Constitution, the King shall, after consultation with the representatives appointed by the political groups with parliamentary representation, and through the Speaker of the Congress, nominate a candidate for the Presidency of the Government.
- (2) The candidate nominated in accordance with the provisions of the foregoing subsection shall submit to the Congress the political programme of the Government he or she intends to form and shall seek the confidence of the House.
- (3) If the Congress, by vote of the overall majority of its members, grants to said candidate its confidence, the King shall appoint him or her President. If overall majority is not obtained, the same proposal shall be submitted for a fresh vote forty-eight hours after the previous vote, and confidence shall be deemed to have been secured if granted by single majority.
- (4) If, after this vote, confidence for the investiture has not been obtained, successive proposals shall be voted upon in the manner provided for in the foregoing paragraphs.

If within two months of the first vote for investiture no candidate has obtained the confidence of the Congress, the King shall dissolve both Houses and call for new elections, with the countersignature of the Speaker of the Congress.

- 14 Section 100. Appointment of other members of the Government.- The other members of the Government shall be appointed and dismissed by the King at the President's proposal.

### C. APPOINTMENT OF PRIME MINISTER BY WAY OF INVESTITURE VOTE

An investiture vote means a formal vote among members of Parliament on who should be invited to form the new government. The rules of investiture, however, differ. In some countries, investiture vote precedes appointment of Prime Minister. The Hungarian Constitution provides for such mechanism. While, in others, investiture vote is *post facto*, after the prime Minister is appointed. Italy, Portugal and the Czech Republic provide for such *post facto* investiture vote. Investiture vote, in a way, denotes existence of the system of positive parliamentarism in that the ministry must have positive support of a majority in Parliament.

#### ITALY

The Constitution of Italy provides for *post facto* vote of investiture. Article 91 provides that the Prime Minister shall be appointed by the President. Other ministers are appointed by the President on the proposal of the Prime Minister. However, after the Prime Minister is appointed, he must come before Parliament within 10 days of his appointment to obtain a vote of confidence and must receive the confidence of both Houses of Parliament [Art. 94].<sup>15</sup>

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15 Constitution of Italy

Art. 94

The Government must receive the confidence of both Houses of Parliament.

Each House grants or withdraws its confidence through a reasoned motion voted on by roll-call.

Within ten days of its formation the Government shall come before Parliament to obtain confidence.

An opposing vote by one or both the Houses against a Government proposal does not entail the obligation to resign.

A motion of no-confidence must be signed by at least one-tenth of the members of the House and cannot be debated earlier than three days from its presentation.

## PORTUGAL

The Constitution of Portugal also provides for *post facto* vote of investiture. Article 187 of the Portuguese Constitution provides for appointment of the Prime Minister by the President, who is required to appoint the Prime Minister after consulting the parties with seats in Assembly of the Republic and in the light of the electoral results. The President appoints other ministers upon a proposal from the Prime Minister.<sup>16</sup> Within ten days of appointment, the Prime Minister is required to submit his government's programme to the Assembly of the Republic for consideration. The government's programme can be rejected by the Assembly only by an absolute majority [Art. 192(4)].<sup>17</sup> In case the government's programme is rejected by the Assembly, the Government has to resign [Art. 195(1)(d)].

## THE CZECH REPUBLIC

The Constitution of the Czech Republic also provides for post facto vote of investiture. Article 68(2) provides for appointment of the Prime Minister by the President. Other ministers are appointed by the President on the proposal of the

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16 Constitution of Portugal:

Article 187 (The Government Formation)

1. The President of the Republic shall appoint the Prime Minister after consulting the parties with seats in Assembly of the Republic and in the light of the electoral results. The President of the Republic shall appoint the remaining members of the Government upon a proposal from the Prime Minister.

17 Constitution of Portugal:

Article 192 (Consideration of the Government's Programme)

1. Within at most ten days of its appointment, the Government shall submit its Programme to the Assembly of the Republic for consideration, by means of a Prime Ministerial statement.
2. In the event that the Assembly of the Republic is not in full session, its President shall obligatorily call it for this purpose.
3. The debate shall not last for more than three days, and until it is closed, any parliamentary group may make a motion rejecting the Programme, and the Government may request the passage of a confidence motion.
4. Rejection of the Government's Programme shall require an absolute majority of all the Members in full exercise of their office.

Prime Minister. Within thirty days of appointment, the Prime Minister is required to obtain a vote of confidence from the Chamber of Deputies [Art. 68(3)].<sup>18</sup> If the newly appointed Prime Minister fails to secure a vote of confidence from the Chamber of Deputies, the President for a second time appoints another time and the Prime Minister has to obtain a vote of confidence within thirty days in terms of Art. 68(3). If he also fails to secure a vote of confidence from the Chamber of Deputies, the President appoints a Prime Minister on the proposal of the Chairman of the Chamber of Deputies [Art. 68(4)]. The Government is accountable to the Chamber of Deputies [Art. 68(1)]. The Prime Minister has to resign from office if the Chamber of Deputies rejects its request for a vote of confidence or if it voted no confidence in the Government.

#### **D. APPOINTMENT OF PRIME MINISTER: CONSTITUTIONS WITH DETAILED GUIDANCE**

There are Constitution which prescribe in detail as to whom the Head of State should appoint as the Prime Minister. Though the power to appoint is vested with the Head of State, but to eliminate the discretion, the Constitution prescribes detailed procedure in the form of prescription, the process the Head of State is

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18 Constitution of the Czech Republic:

Art. 68

- (1) The Government shall be accountable to the Chamber of Deputies.
- (2) The Prime Minister shall be appointed by the President of the Republic who shall appoint on the Prime Minister's proposal the other members of the Government and shall entrust them with the direction of individual ministries or other agencies.
- (3) Within thirty days after its appointment the Government shall present itself to the Chamber of Deputies and shall ask it for a vote of confidence.
- (4) If a newly appointed Government fails to win the confidence of the Chamber of Deputies, the procedure specified in paragraphs 2 and 3 shall be followed. If a thus appointed Government again fails to win the confidence of the Chamber of Deputies, the President of the Republic shall appoint a Prime Minister on the proposal of the Chairman of the Chamber of Deputies.
- (5) In other cases the President of the Republic shall appoint and recall on the proposal of the Prime Minister the other members of the Government and shall entrust them with the direction of ministries or other agencies.

required to follow in choosing the Prime Minister. The Constitution of Greece provides such an alternative model.

## GREECE

The Constitution of Greece provides for appointment of the Prime Minister by the President [Art. 37]. Art. 37 provides in detail, as to whom the President shall appoint as the Prime Minister. Art. 37(1) stipulates that the leader of the party having the absolute majority of seats in Parliament shall be appointed Prime Minister. If no party has the absolute majority, the President shall give the leader of the party with a relative majority an exploratory mandate in order to ascertain the possibility of forming a Government enjoying the confidence of the Parliament. If this possibility cannot be ascertained, the President shall give the exploratory mandate to the leader of the second largest party in Parliament, and if this also proves to be unsuccessful, to the leader of the third largest party in Parliament. Each exploratory mandate shall be in force for three days. If all exploratory mandates prove to be unsuccessful, the President summons all party leaders, and if the impossibility to form a Cabinet enjoying the confidence of the Parliament is confirmed, he shall attempt to form a Cabinet composed of all parties in Parliament for the purpose of holding parliamentary elections. If this fails, President entrusts the President of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Audit to form a Cabinet as widely accepted as possible to carry out elections and dissolves Parliament. In case a mandate to form a Cabinet or an exploratory mandate is given, the proposal for the assignment of a mandate must occur within three days of the Speaker's or his Deputy's communication to the President about the number of seats possessed by each party in Parliament; the aforesaid communication must take place before any mandate is given. Further, as far as exploratory mandates are concerned, when parties have an equal number of seats in Parliament, the one having acquired more votes at the elections, precedes the other. A recently formed party with a parliamentary group, as provided by the Standing Orders of

Parliament, follows an older one with an equal number of seats. In both these instances, exploratory mandates cannot be given to more than four parties.<sup>19</sup> The other ministers and undersecretaries are appointed by the President on the recommendation of the Prime Minister [Art. 37(1)]. The Government is obliged to request a vote of confidence by Parliament within fifteen days of appointment of the Prime Minister.

Thus the Greek Constitution does not leave any leeway to the President, as it stipulates that he should first nominate the leader of the largest party in

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19 Constitution of Greece

Article 37

1. The President of the Republic shall appoint the Prime Minister and on his recommendation shall appoint and dismiss the other members of the Cabinet and the Undersecretaries.
2. The leader of the party having the absolute majority of seats in Parliament shall be appointed Prime Minister. If no party has the absolute majority, the President of the Republic shall give the leader of the party with a relative majority an exploratory mandate in order to ascertain the possibility of forming a Government enjoying the confidence of the Parliament.
3. If this possibility cannot be ascertained, the President of the Republic shall give the exploratory mandate to the leader of the second largest party in Parliament, and if this proves to be unsuccessful, to the leader of the third largest party in Parliament. Each exploratory mandate shall be in force for three days. If all exploratory mandates prove to be unsuccessful, the President of the Republic summons all party leaders, and if the impossibility to form a Cabinet enjoying the confidence of the Parliament is confirmed, he shall attempt to form a Cabinet composed of all parties in Parliament for the purpose of holding parliamentary elections. If this fails, he shall entrust the President of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Audit to form a Cabinet as widely accepted as possible to carry out elections and dissolves Parliament.
4. In cases that a mandate to form a Cabinet or an exploratory mandate is given in accordance with the aforementioned paragraphs, if the party has no leader or party spokesman, or if the leader or party spokesman has not been elected to Parliament, the President of the Republic shall give the mandate to a person proposed by the party's parliamentary group. The proposal for the assignment of a mandate must occur within three days of the Speaker's or his Deputy's communication to the President of the Republic about the number of seats possessed by each party in Parliament; the aforesaid communication must take place before any mandate is given.

Interpretative clause: As far as exploratory mandates are concerned, when parties have an equal number of seats in Parliament, the one having acquired more votes at the elections, precedes the other. A recently formed party with a parliamentary group, as provided by the Standing Orders of Parliament, follows an older one with an equal number of seats. In both these instances, exploratory mandates cannot be given to more than four parties.

Parliament, and if he fails to form a government, the leader of the second largest party is given a chance and so on.<sup>20</sup>

### **E. APPOINTMENT OF PRIME MINISTER THROUGH THE PROCESS OF INFORMATEUR**

*Informateur* is a special emissary or envoy who aids and assists the Monarch in choosing a Prime Minister by consulting, negotiating and facilitating talks between political parties and finding out an acceptable Prime Minister. Such a special envoy can be the Speaker of the House. It may even be an Informateur, as is done in some European continental monarchies. An informateur is usually a trusted elder statesman.<sup>21</sup>

In some parliamentary democracies, after a fractured electoral mandate, when the search for the prime Minister is less self-evident and several alternatives are available, a specific institutional device has been developed to clarify this matter, without formally involving the Monarch. On such occasions the Monarch appoints an “*informateur*”, usually a seasoned politician who is in good terms with all parties and candidates for potential government office. In the name of Monarch, he or she explores the viability of different coalitions under different prime ministerial candidates. Sometimes, the Monarch will give some broad indications with regard to the type of coalition that seems desirable. Once the Informateur has sounded out the potential coalition parties, he advises the Monarch on the formation of a particular type of coalition, headed by a particular government formateur. If the advice is straightforward, the Monarch, in most cases, acts accordingly and appoints the formateur as the Prime Minister.<sup>22</sup>

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20 Lieven De Winter, “The Role of Parliament in Government Formation”, in Herbet Doring, ed., *Parliaments and Majority Rules in Western Europe*, St. Martin’s Press, 1995.

21 Rudolf Plehwe, “The Role of the Crown in the Hung Parliament”, *The Australian Journal of Political Science*, Vol. 24(2)1989 p. 1.

22 *Ibid.*

**F. ALTERNATIVE MODELS OF CONTINUANCE OF MINISTRY:  
NEGATIVE AND POSITIVE PARLIAMENTARISM**

The second institutional feature is with regard to the continuance of ministry. The parliamentary principle, requiring that the ministry must enjoy the confidence of Parliament, may take slightly different forms by way of positive and negative parliamentarism. Positive parliamentarism means that the ministry must be actively supported by a majority of the members of Parliament. Under negative parliamentarism, it is enough for the ministry not to be actively opposed by a majority of the members of Parliament.<sup>23</sup>

In some countries, the Prime Minister and his ministry in order to remain in government, need continued and explicit support of a parliamentary majority. This is referred to as 'positive parliamentarism'. In other countries, the Prime Minister and his ministry do not need continued and explicit support of a parliamentary majority. What they need is the lack of opposition by a parliamentary majority. This is referred to as 'negative parliamentarism'. In the system of negative parliamentarism, as long as the Prime Minister and his ministry are tolerated by a parliamentary majority, they can continue in power. In other words, in positive parliamentarism, the ministry requires a positive vote of confidence by parliamentary majority, while in negative parliamentarism, the Prime Minister and the ministry, after they are appointed by the Crown or the President, are presumed to enjoy the confidence of the House and do continue to remain in office until Parliament expresses its lack of confidence by an opposition vote of no-confidence in Parliament.

Though, theoretically, when we say that the ministry must enjoy the confidence of Parliament, it invariably means that the ministry, in order to remain in power, must enjoy support of a majority in Parliament. But, the

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23 Torbjorn Bergman, "Formation Rules and Minority Governments", *European Journal of Political Research*, 23(6), pp. 55-66.

recurrence of fractured electoral mandate has caused a change in this proposition. Countries have adopted the system of negative parliamentarism in which all that the ministry needs, in order to remain in power, is that there is no active opposition of a majority in Parliament. This has huge significance in case of hung Parliaments inasmuch as there are always political parties which prefer to take a neutral position and do abstain at the time of voting on a confidence motion and a no-confidence motion in Parliament. Another explanation for existence of negative parliamentarism forwarded by Ben Seyd<sup>24</sup> is that negative rules are more likely to be found in countries with a monarchy, since their provisions reflect the role of the Monarch, as opposed to Parliament, in appointing the Prime Minister.

#### **G. ALTERNATIVE MODELS OF TERMINATION OF MINISTRY**

The third institutional feature is with regard to termination of ministry. This pertains to as to whether the government can simply be voted out of office through a no-confidence vote in the Parliament, or whether it needs to be immediately replaced by an alternative government also. This system is referred to as 'Constructive No-Confidence Vote'. In all parliamentary democracies, each party represented in Parliament can at any time table a vote of no-confidence. The ministry has to resign if the Parliament expresses its no-confidence in the ministry and thereafter the process of formation of new ministry starts. Some countries have incorporated the system of 'Constructive No-Confidence Vote' under which a parliamentary majority must not only depose the current government but also simultaneously elect an alternative government which must be specified before the vote takes place. Thus in case the incumbent Prime Minister is voted out, the alternative candidate named in the motion of no-confidence is appointed as the Prime Minister.

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24 Ben Seyd, "*Coalition Government in Britain: Lessons from Overseas*", The Constitution Unit, University College, London, 2002, p. 38.

## GERMANY

The German Basic Law provides for Constructive No-Confidence Vote, which means that a no-confidence motion can only be initiated against an incumbent government by electing a successor. Art. 67 provides that the *Bundestag* may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected. Art. 67 further provides that forty-eight hours shall elapse between the motion and the election. This provision is made apparently to give enough time to the members to deliberate and come to a conclusion before the actual voting takes place.<sup>25</sup>

Art. 68 further provides for a vote of confidence by the Chancellor and states that if a motion of the Federal Chancellor for a vote of confidence is not supported by the majority of the Members of the *Bundestag*, the Federal President, upon the proposal of the Federal Chancellor, may dissolve the *Bundestag* within twenty-one days. The right of dissolution shall lapse as soon as the *Bundestag* elects another Federal Chancellor by the vote of a majority of its Members. It also provides that forty-eight hours shall elapse between the motion and the vote.<sup>26</sup>

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25 Constitution of Germany:

Article 67 - Vote of no confidence

(1) The *Bundestag* may express its lack of confidence in the Federal Chancellor only by electing a successor by the vote of a majority of its Members and requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected.

40 Forty-eight hours shall elapse between the motion and the election.

26 Constitution of Germany:

Article 68 - Vote of confidence

(1) If a motion of the Federal Chancellor for a vote of confidence is not supported by the majority of the Members of the *Bundestag*, the Federal President, upon the proposal of the Federal Chancellor, may dissolve the *Bundestag* within twenty-one days. The right of dissolution shall lapse as soon as the *Bundestag* elects another Federal Chancellor by the vote of a majority of its Members.

## HUNGARY

The Constitution of Hungary also provides for constructive no-confidence vote. As provided under Art. 39/A, a constructive no-confidence vote may be launched, with the designation of a new preferred candidate for Prime Minister, on written proposal of at least one-fifth members of Parliament and if the majority of the Members of Parliament express no-confidence in the motion, the candidate named as the choice for the new Prime Minister must be regarded as elected. It also provides for a motion of confidence by the Prime Minister and if Parliament does not vote in favour of the government's confidence motion, the Government must resign.<sup>27</sup>

## SPAIN

The Constitution of Spain also provides for constructive motion of censure. The Congress may require political responsibility from the Government by adopting a motion of censure by overall majority of its Members. Art. 113 of the Spanish Constitution stipulates that the motion of censure must be proposed by at least one tenth of the Members of Congress and shall include a candidate for the office of the Presidency of the Government. In case the Congress adopts a motion of

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<sup>26</sup> Forty-eight hours shall elapse between the motion and the vote.

<sup>27</sup> Constitution of Hungary:

Article 39/A.-

- (1) A no-confidence motion may - with the designation of the preferred candidate for Prime Minister - be launched against the Prime Minister on the written proposal of at least one fifth of the Members of Parliament. A no-confidence motion against the Prime Minister is to be regarded as a no-confidence motion against the Government. If the majority of the Members of Parliament have expressed no-confidence in the motion, the candidate named as the choice for the new Prime Minister must be regarded as elected.
- (2) The debate and voting on the motion must be held three days after it has been submitted at the soonest, and after eight days at the latest.
- (3) Through the Prime Minister, the Government may propose a vote of confidence in compliance with the time limits set in para (2).
- (4) Through the Prime Minister, the Government may also recommend that the voting over the proposal it put forward should be at the same time a vote of confidence.
- (5) If Parliament does not vote its confidence to the Government as laid down in paragraphs (3) and (4), the Government must resign.

censure, the Government has to submit its resignation to the King, and the candidate proposed in the motion of censure shall be deemed to have the confidence of the House and the King shall then appoint him as the Prime Minister [Sec. 114].<sup>28</sup>

## **BELGIUM**

The Belgian Constitution also incorporates the system of Constructive No-Confidence Vote. It provides that if the House of Representatives, by an absolute majority of its members, adopts a motion of no-confidence proposing a successor to the Prime Minister for appointment by the King or proposes a successor to the Prime Minister for appointment by the King within three days of the rejection of a motion of confidence, the incumbent government has to resign and the King then appoints the proposed successor as the Prime Minister and forms his government.<sup>29</sup>

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### 28 Constitution of Spain:

#### Section 113. Motion of Censure.-

- (1) The Congress may require political responsibility from the Government by adopting a motion of censure by overall majority of its Members.
- (2) The motion of censure must be proposed by at least one tenth of the Members of Congress and shall include a candidate for the office of the Presidency of the Government.
- (3) The motion of censure may not be voted until five days after it has been submitted. During the first two days of this period, alternative motions may be submitted. If the motion of censure is not adopted by the Congress, its signatories may not submit another during the same period of sessions.

### 29 Constitution of Belgium:

#### Article 96

The King appoints and dismisses his ministers.

The Federal Government offers its resignation to the King if the House of Representatives, by an absolute majority of its members, adopts a motion of no-confidence proposing a successor to the prime minister for appointment by the King or proposes a successor to the prime minister for appointment by the King within three days of the rejection of a motion of confidence. The King appoints the proposed successor as prime minister, who takes office when the new Federal Government is sworn in.

## SLOVENIA

The Slovenian Constitution also incorporates the system of Constructive No-Confidence Vote. Article 116 provides that the National Assembly may pass a vote of no confidence in the Government only by electing a new President of the Government (Prime Minister) on the proposal of at least ten deputies and by a majority vote of all deputies. The incumbent President of the Government is thereby dismissed, but together with his ministers he must continue to perform his regular duties until the swearing in of a new Government. Where a President of the Government has been elected on the basis of the fourth paragraph of Article 111 a vote on no-confidence is expressed in him if on the proposal of at least ten deputies, the National Assembly elects a new President of the Government by a majority of votes cast. It also provides that at least forty eight hours must elapse between the lodging of a proposal to elect a new President of the Government and the vote itself.<sup>30</sup>

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30 Constitution of Slovenia

Article 116 (Vote of No Confidence)

The National Assembly may pass a vote of no confidence in the Government only by electing a new President of the Government on the proposal of at least ten deputies and by a majority vote of all deputies. The incumbent President of the Government is thereby dismissed, but together with his ministers he must continue to perform his regular duties until the swearing in of a new Government.

No less than forty-eight hours must elapse between the lodging of a proposal to elect a new President of the Government and the vote itself, unless the National Assembly decides otherwise by a two-thirds majority vote of all deputies, or if the country is at war or in a state of emergency.

Where a President of the Government has been elected on the basis of the fourth paragraph of Article 111 a vote on no confidence is expressed in him if on the proposal of at least ten deputies, the National Assembly elects a new President of the Government by a majority of votes cast.

## H. ALTERNATIVE MODELS OF DISSOLUTION OF PARLIAMENT

The fourth institutional feature is with regard to the time horizon faced by the government. Some parliamentary democracies provide for Fixed-term Parliaments with fixed interelection periods. In these countries parliamentary elections must be held at predetermined intervals. Other parliamentary democracies admit the possibility of dissolving Parliament before the expiration of the parliamentary term and starting a new term by calling early elections. The countries which admit possibility of early dissolution of Parliament, again, differ in the process by which Parliament is dissolved. Some parliamentary democracies vest this power to recommend dissolution to Parliament itself, which can by a majority vote resolve to dissolve Parliament. Others vest this power in the Head of State. In countries that vest this power in the Head of State again, some countries provide for exercise of this power by the Head of State at his own discretion completely, while others provide for exercise of this power as per the aid and advice of the cabinet.

Robert Hazell<sup>31</sup>, in his analysis has observed that fixed-term parliaments are not uncommon across the parliamentary democracies. However, most of the parliamentary democracies which provide for fixed interelection period, except Norway, also have some kind of “safety valves” providing for pre-mature dissolution. Based on the presence and absence and effectiveness of safety valve, Hazell has categorised parliamentary democracies into four categories, completely fixed, nominally fixed, semi-fixed and completely flexible. Hazell has placed the United Kingdom in the category of completely flexible. However, in 2011, after the Fixed-term Parliaments Act was enacted in the United Kingdom, with mechanism to allow the dissolution before the scheduled election date, the House of Commons also falls in the category of semi-fixed.

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31 Robert Hazell, *Fixed Term Parliaments*, The Constitution Unit, University College, London, 2010, p. 20.

Category	Characteristics	Countries
Completely Fixed	No provision for calling an election before the scheduled date	Norway
Nominally Fixed:	Safety valves being used in practice to undermine fixed term	Germany Sweden South Africa
Semi-fixed	Mechanisms in place to allow for dissolution before the scheduled election date	Canada France Italy
Completely Flexible	Length of term decided at the discretion of the executive	United Kingdom Australia New Zealand Ireland

The more important question, from the perspective of government formation in hung parliaments is as to who has the effective power to dissolve Parliament. Whether it is retained as a prerogative power of the Head of State, or whether the Head of State exercises this power as per the aid and advice of his Prime Minister or his Council of Ministers or whether this power is vested effectively in Parliament itself, who, by a resolution in Parliament recommend dissolution of Parliament and the Head of State is bound by such parliamentary recommendation.

#### DISSOLUTION OF PARLIAMENT IN HUNGARY

Under the Constitution of Hungary, the power of dissolution of Parliament is vested in Parliament which may proclaim its dissolution before the expiry of its terms. The power of dissolution can also be exercised by the President after consultation with the Prime Minister, the Speaker of Parliament and with the heads of the factions of the parties in the eventualities that (a) Parliament has at least four times within twelve months during its own mandate withdrawn its confidence from the Government, or (b) in case the mandate of the Government had ended, Parliament failed to elect within forty days after the date of the first

nomination, the candidate prime-minister put up for the office by the President of the Republic.<sup>32</sup>

### DISSOLUTION OF PARLIAMENT IN BELGIUM

The power to dissolve Parliament, in normal circumstances, is vested with the King. Article 46 of the Constitution of Belgium provides that the King has the right to dissolve the House of Representatives only if the House of Representatives, with the absolute majority of its members, (a) either rejects a motion of confidence in the Federal Government and does not propose to the King, within three days of the day of the rejection of the motion, the appointment of a successor to the prime minister; or (b) adopts a motion of no confidence with regard to the Federal Government and does not simultaneously propose to the King the appointment of a successor to the prime minister. The King may also dissolve the House of representatives, in case of resignation of the incumbent government and if the King receives an agreement from the members of the House of Representatives expressed by the absolute majority of its members.<sup>33</sup>

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32 Constitution of Hungary:  
Article 28.-

- (1) The mandate of Parliament commences with its constituent meeting.
- (2) Parliament may proclaim its dissolution even before the expiry of its mandate.
- (3) The President of the Republic may dissolve Parliament simultaneously with setting the dates for the new election if
  - (a) Parliament has at least four times within twelve months during its own mandate withdrawn its confidence from the Government, or
  - (b) in case the mandate of the Government had ended, Parliament failed to elect within forty days after the date of the first nomination, the candidate prime-minister put up for the office by the President of the Republic.
- (4) Before dissolving Parliament, the president of the Republic is bound to consult with the Prime Minister, the Speaker of Parliament and with the heads of the factions of the parties that have representatives in Parliament.

<sup>33</sup> Within three months after the expiry of the term of parliament, its dissolution or its being dissolved, a new Parliament has to be elected. Parliament operates until the constituent meeting of the new Parliament.

33 Constitution of Belgium

Article 46

The King has the right to dissolve the House of Representatives only if the latter, with the absolute majority of its members:

## DISSOLUTION OF PARLIAMENT IN SOUTH AFRICA

Under the South African Constitution, the effective power to dissolve National Assembly is vested in National Assembly itself, although the formal power is vested in the President, who otherwise also is both the Head of State as well the Head of Government. The power of dissolving the National Assembly is vested in the President and when there is no President, in the Acting President. Art. 50(1) provides that the President must dissolve the National Assembly if the Assembly adopts a resolution to dissolve with a supporting vote of a majority of its members and three years have expired since the Assembly was elected. Art. 50(2) provides that the Acting President must dissolve the National Assembly if there is a vacancy in the office of President and the Assembly fails to elect a new President within 30 days after the vacancy occurred. The relevant constitutional provisions in the Constitution of South Africa are as follows:

*Section 50 Dissolution of National Assembly before expiry of its term*

*(1) The President must dissolve the National Assembly if -*

- (a) the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members; and*
- (b) three years have passed since the Assembly was elected.*

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1° either rejects a motion of confidence in the Federal Government and does not propose to the King, within three days of the day of the rejection of the motion, the appointment of a successor to the prime minister;

2° or adopts a motion of no confidence with regard to the Federal Government and does not simultaneously propose to the King the appointment of a successor to the prime minister;

The motions of confidence and no confidence can only be voted on forty-eight hours after the tabling of the motion.

Moreover, the King may, in the event of the resignation of the Federal Government, dissolve the House of Representatives after having received its agreement expressed by the absolute majority of its members.

The dissolution of the House of Representatives entails the dissolution of the Senate.

The act of dissolution convenes the electorate within forty days and the Houses within two months.

- (2) *The Acting President must dissolve the National Assembly if –*
- (a) *there is a vacancy in the office of President; and*
  - (b) *the Assembly fails to elect a new President within 30 days after the vacancy occurred.*

## **DISSOLUTION OF PARLIAMENT IN THE UNITED KINGDOM**

After the enactment of the Fixed-Term Parliaments Act, 2011, the effective power of dissolving the House of Commons is vested in the House of Commons. Sec. 1(3) of the Act provides that parliamentary elections must be held every five years, beginning in 2015. The Act further provides that early parliamentary general election will take place and the House of Commons will be dissolved in two circumstances- (a) a positive vote for an election by two-thirds of the membership of the House of Commons, and (b) a no-confidence resolution being passed in the House of Commons, and no new Prime Minister and government being formally endorsed by a vote of confidence in the House of Commons within 14 days. The relevant provisions are as follows:

### *Sec. 2 Early parliamentary general elections*

- (1) *An early parliamentary general election is to take place if -*
- (a) *the House of Commons passes a motion in the form set out in subsection (2), and*
  - (b) *if the motion is passed on a division, the number of members who vote in favour of the motion is a number equal to or greater than two thirds of the number of seats in the House (including vacant seats).*
- (2) *The form of motion for the purposes of subsection (1)(a) is -*  
*“That there shall be an early parliamentary general election.”*
- (3) *An early parliamentary general election is also to take place if -*

- (a) the House of Commons passes a motion in the form set out in subsection (4), and*
- (b) the period of 14 days after the day on which that motion is passed ends without the House passing a motion in the form set out in subsection (5).*
- (4) The form of motion for the purposes of subsection (3)(a) is -  
"That this House has no confidence in Her Majesty's Government."*
- (5) The form of motion for the purposes of subsection (3)(b) is -  
"That this House has confidence in Her Majesty's Government."*
- (6) Subsection (7) applies for the purposes of the Timetable in rule 1 in Schedule 1 to the Representation of the People Act 1983.*
- (7) If a parliamentary general election is to take place as provided for by subsection (1) or (3), the polling day for the election is to be the day appointed by Her Majesty by proclamation on the recommendation of the Prime Minister (and, accordingly, the appointed day replaces the day which would otherwise have been the polling day for the next election determined under section 1).*

*Sec. 3. Dissolution of Parliament*

- (1) The Parliament then in existence dissolves at the beginning of the 17th working day before the polling day for the next parliamentary general election as determined under section 1 or appointed under section 2(7).*
- (2) Parliament cannot otherwise be dissolved.*