CHAPTER – 2

FORMATION OF MINISTRY IN PARLIAMENTARY SYSTEM

A. PARLIAMENTARY SYSTEM VIS-À-VIS PRESIDENTIAL SYSTEM

Every political system operates in its own distinct environment and certain characteristics of its peculiar environment contribute materially towards determining its form of government.[1] The principal components of the environment being the political history, physical geography, social structure and political culture and these components along with others determine the form of government in a political system.

There have been several attempts by the political scientists to create typologies of the forms of government. One of the earliest attempts was made by Aristotle, who classified governments on the basis of dual criteria of 'the number of persons actually possessing supreme power in a state'; and, 'the purpose for which the supreme power is exercised'. Following the first criterion, Aristotle classified governments into three forms: monarchy, aristocracy and polity. According to him, the possession of supreme power by a single person results in monarchy, by a few persons in aristocracy and by many in polity. On the basis of the second criterion of 'the purpose for which the supreme power is exercised', Aristotle classified governments into, what he called, 'normal' and 'perverted' form of government. He further classified 'perverted form of government' into tyranny, oligarchy and democracy.

1 Austin Ranney, *The Governing of Men,* Fourth Edn., The Dyrden Press, Illinois, 1988.

Aristotle's classification, however, does not fit in with the modern situation,[2] as monarchy and tyranny are nowhere to be found today. What obtained in England or Japan was really speaking limited monarchy or crowned democracy, the Crown being transformed into a constitutional figurehead. Similarly the word democracy has a completely different meaning for us today. Governments may, for instance differ in their executive systems; it may also differ in the pattern of power allocation, we have thus parliamentary and presidential forms or unitary or federal types of Governments. Democracy may again be subdivided into limited monarchy[3] and republic. Each of these may again be subdivided into unitary and federal types. Modern classification is sought to be based on what Willoughby[4] calls the structural peculiarities of governmental organization.

Although political scientists have disagreed on some of the details of defining and measuring democracy, the eight criteria proposed by Robert A. Dahl[5] in his seminal book *Polyarcby* still command widespread support: (1) the right to vote, (2) the right to be elected, (3) the right of political leaders to compete for support and votes, (4) elections that are free and fair, (5) freedom of association, (6) freedom of expression, (7) alternative sources of information, and (8) institutions for making public policies depend on votes and other expressions of preference. These requirements are already implied by Abraham Lincoln's simple definition of democracy, rendered by him in his Gettysburg address as government by the people and for the people. For instance, "by the people" implies universal suffrage, eligibility for public office, and free and fair elections; and elections cannot be free and fair unless there is freedom of expression and association both before and between elections. Similarly, "for the

2 Amal Roy and Mohit Bhattacharya, *Political Theory Ideas and Institution,* 1996, Twelfth Edn., World Press, p. 243.

3 O. Hood Phillips, *Constitutional and Administrative Law,* Sixth Edn., Sweet and Maxwell, 1987, p. 25.

4 Willoughby, *The Nature of the State,* quoted in Amal Roy and Mohit Bhattacharya, *Political Theory Ideas and Institution,* 1996, Twelfth Edn., World Press, p. 243.

5 Robert A. Dahl, *Polyarchy,* Yale University Press, 1971.

people" implies Dahl's eighth criterion of responsiveness by the government to the voters' preferences.

On the basis of system of constitutional relationship between the executive and legislature, democratic Governments are classified into two types, i.e. Parliamentary Government (also referred to as Cabinet Government[6], Representative Government[7], responsible government, and Westminster Model) and Presidential Government. Under the cabinet system, the real executive, which is the cabinet, emerges from, is responsible to and is removable by the legislature. Under the presidential system the real executive, who is the President, does not emerge from the legislature neither he is responsible to the legislature nor is removable by the legislature. The parliamentary systems are again divided into British and Continental type[8] or Majoritarian and Consensual.[9]

Douglas V. Verney in his analysis of parliamentary systems in various countries has classified parliamentary systems into two main types, the British and the Continental. He has analysed and identified eleven basic principles as the highest common factors that underlie both the chief types of parliamentary government and then uses these as distinguishing feature of the parliamentary systems as compared to the presidential government. The basic principles of parliamentary system according to him are:

1. **The assembly becomes a Parliament** : It is a political system where the Executive, once separate, has been challenged by the Assembly which is then transformed into a Parliament comprising both Government and Assembly. Parliamentary government has evolved rather than been the product of revolution and there have often been three phases, though the transition from one to the other has not always been perceptible at the time.

6 Walter Bagehot, *The English Constitution,* Chapman and Hall, London, 1867.

7 John Stuart Mill, "Considerations on Representative Government", *Utilitarianism, Liberty, Representative Government (1861),* Dent, London, 1984.

8 Douglas V. Verney, *Analysis of Political Systems*, Routledge, 1998.

9 Arend Lijphart, *Patterns of Democracy*, Yale University Press, 1999.

First there has been government by a Monarch who has been responsible for the whole political system. Then there has arisen an Assembly of members who have challenged the hegemony of the King. Finally the Assembly has taken over responsibility for government, acting as a Parliament, the Monarch being deprived of most of his traditional powers.

2. **The executive is divided into two parts** : The Executive is divided into a Head of State and a Head of Government whose relationship with the Head of State may or may not be precisely formulated. According to Verney, one of the important consequences of the transformation of the assembly into a Parliament is that the executive is now split in two, a Prime Minister or Chancellor becoming head of the Government and the Monarch or President acting as Head of State. Usually the Monarch occupies his throne by hereditary title (though elected monarchies, e.g. in Malaya, are not unknown), while a President is elected by Parliament. It does not follow that the Head of State fills a purely formal or decorative office. Constitutional monarchs still have important prerogatives and even if those which they do not use are left out of consideration there remains a considerable field in which their powers are politically significant.

The earliest exposition of this concept was made by Walter Bagehot[10]. Bagehot emphasised the divide of the Constitution into two components, the Dignified (that part which is symbolic) and the Efficient (the way things actually work and get done), and called the Efficient "Cabinet Government". Although there have been many works since emphasising different aspects of the "Efficient", no one has seriously questioned Bagehot's premise that the divide exists in the Westminster system.

3. **The Head of State appoints the Head of Government** : The value of a divided executive in constitutional monarchies is fairly obvious. For one

10 Walter Bagehot, *The English Constitution,* Chapman and Hall, London, 1867.

thing, the proper business of State can be carried on by a Government responsible to the Legislature while the mystique of Monarchy is preserved. It is in the very nature of the parliamentary system that there shall be two distinct offices, and that the Head of the Government shall be appointed by the Head of State. Were the electorate itself to perform this task, directly or through a special College of electors as in the United States or Finland, the system would become, in this respect at least, presidential in character. It is true that the Head of State is bound by the results of parliamentary elections and must appoint the head of the party which is clearly the victor. But this is the situation only where one party or stable coalition has obtained an absolute majority of seats, which is called appropriately in Scandinavia 'Majority-parliamentarism'. But in many parliamentary systems, especially multi-party systems, no party has an absolute majority and 'minority-parliamentarism' prevails. In selecting the Prime Minister who can best obtain a working majority, the Head of State may have to use his personal discretion. It may be desirable that where the Head of State is a Monarch the selection of the head of the Government shall be a formality but this can by no means be guaranteed in a parliamentary system. Some parliamentary republics, notably Western Germany and the French Fourth Republic, have escaped from this dilemma by the introduction of an element of convention theory whereby selection of a Prime Minister has three stages. The President nominates a candidate, the Assembly shows its approval by electing him (in Germany) or by giving him a vote of confidence (in France) and then the President appoints him as Prime Minister. Parliamentarism, therefore, implies some balance of power even though the separation of institutions still characteristic of presidential government has given way to fusion. It is the creation of a completely new institution in the political system, a Parliament, in which the Assembly and the Government are somehow miraculously blended. The duty of the Head of State to appoint the head of the Government — the third characteristic of parliamentarism — is as necessary to preserve that

balance as the popular election of both President and Assembly is to preserving the balance in presidential systems.

4. **The Head of the Government appoints the ministry** : An interesting feature of parliamentarism is the distinction made between the Prime Minister and other Ministers. The former is appointed by the Head of State; the latter are nominated by the Prime Minister after his appointment. Usually the selection of various Ministers allows a certain amount of personal choice to a head of Government, which cannot usually be said of the appointment of a Prime Minister by the Head of State. Ministers are formally appointed by the Head of State, who may often no doubt exert an informal influence upon appointments — but so may the state of party alignments and factions in the Assembly. It remains a cardinal principle that the Prime Minister alone is responsible for the composition of the Ministry.

5. **The Ministry is a collective body** : The transfer from the monarchical Executive to a Council of Ministers has meant that a single person has been replaced by a collective body. Whereas under ancient regimes it was the King's pleasure, under parliamentarism the Prime Minister is merely first among equals (*primus inter pares*) , though no doubt some Prime Ministers are more forceful than others. In the Presidential system the President is sole Executive, but it is a hallmark of the parliamentary system that the Government shall be collective.

6. **Ministers are usually members of Parliament** : Members of the Government have a double role to play in the parliamentary system. They are not only Ministers but are at the same time members of parliament, elected (unless they are members of the British House of Lords) like the members of the Assembly and equally dependent upon the goodwill of their constituents. The problem of distinguishing between Parliament and Assembly is most acute when this role is analysed. In Britain there is no

law that Ministers must be members of one of the Houses of Parliament (though it is required that at least three members of the Cabinet must be drawn from the House of Lords) but there is a convention that they are in fact always members of one or other. Since Parliament comprises both Government and Assembly, a member of the Government is *ipso facto* a member of Parliament, but by definition he cannot be a member of the Assembly. In fully parliamentary countries such as the United Kingdom where Ministers are members of Parliament it is difficult to make the distinction between Government, Parliament and Assembly clear. Indeed the attempt to make one seems artificial.

7. **The Government is politically responsible to the Assembly** : In parliamentary systems the Government is responsible to the Assembly which may, if it thinks that the Government is acting unwisely or unconstitutionally, refuse to give it support. By a formal vote of censure or by simply not assenting to an important Government proposal the Assembly can force the Government to resign and cause the Head of State to appoint a new Government.

8. **The Head of Government may advise the Head of State to dissolve Parliament** : In Parliamentary system, when the Executive is divided, it is still the Head of State who dissolves Parliament, but he does so on the request, and only on the request, of the head of Government. In the old days a challenge by the Assembly to the Executive did not lead to a change of Executive but to a change of the Assembly. Nowadays a defeat of the Government by the Assembly causes the Prime Minister either to resign or to request a dissolution. But the dissolution is not of the Assembly but of Parliament, that is to say of the Government as well — although the Government stays in power until the new Parliament assembles. The conflict between the two parts of Parliament is left to the electorate to

resolve. The power of the Government to request a dissolution is a distinctive characteristic of parliamentarism.

9. **Parliament as a whole is supreme over its constituent parts, Government and Assembly, neither of which may dominate the other** : The notion of the supremacy of Parliament as a whole over its parts is a distinctive characteristic of parliamentary systems. It is an important feature of parliamentary system that neither of the constituent elements of Parliament may completely dominate the other. The Government depends upon the support of the Assembly if it is to continue in office, but the Assembly is not supreme because the Government can, if it chooses, dissolve Parliament and appeal to the electorate at the polls. Many parliamentary systems have failed because one or other of them has claimed supremacy, and Parliament as a whole has not been supreme over both Government and Assembly. Parliamentarism implies co-operation between the executive and legislative branches, neither dominating the other and both recognizing the supremacy of the larger institution, Parliament as a whole.

10. **The Government as a whole is only indirectly responsible to the electorate**: A parliamentary Government, though directly responsible to the Assembly, is only indirectly responsible to the electorate. The Government as a whole is not directly elected by the voters but is appointed indirectly from amongst the representatives whom they elect to the Assembly. Today the route to the Government lies through elected representatives. It is true that members of the Government, like other members of Parliament, must (unless they are peers) stand before their constituents for election. However, they do so not as members of the Government but as candidates for the Assembly in the ordinary way. The responsibility for transforming them, once elected, into Ministers rests with the Prime Minister alone (and of course with the Monarch in the case of the Prime Minister).

11. **Parliament is the focus of power in the political system** : The fusion of the executive and legislative powers in Parliament is responsible for the overriding ascendancy of Parliament in the political order.

Verney then tried to analyse the peculiarities of the Presidential form of government by re-stating the aforesaid eleven propositions as they apply to presidential government.

1. **The Assembly remains an assembly only** : Parliamentary theory implies that Assembly and Government are fused in a Parliament. Presidential theory on the other hand requires the Assembly to remain separate. The Assembly (Congress in the United States) remains an Assembly only.

2. **The executive is not divided but the President elected by the people for a definite term at the time of Assembly elections** : The retention of a separate Executive in the United States was made feasible because the Executive remained undivided. The presidential Executive is elected by the people. An undivided Executive obviously requires no delineation of the respective functions of Head of State and the Government. The powers of the Executive are defined vis-a-vis the Assembly and the Judiciary and each checks the others to ensure that the balance of power is not unduly disturbed. The President is elected for a definite term of office. This prevents the Assembly from forcing his resignation (except by impeachment for a serious misdemeanour) and at the same time requires the President to stand for re-election if he wishes to continue in office. It seems desirable that the chief Executive's tenure should be limited to a certain number of terms. Equally important for the proper operation of the presidential system is the election of the President at the time of the Assembly elections. This associates the two branches of government, encourages party unity and clarifies the issues.

3. **The Head of the Government is the Head of State** : In the presidential system it is the head of the Government who becomes at the same time the Head of State. In the appointment of a political Executive it is a characteristic of parliamentary systems that the head of Government shall be appointed by the Head of State. The absence of any distinction between the two offices in presidential systems makes such an appointment unnecessary. Nor is the Executive elected by the Assembly since this would be contrary to the doctrine of the separation of powers. It is the mark of presidential government that both Executive and Assembly should be selected by the electorate.

4. **The president appoints heads of departments who are his subordinates** : In parliamentarism the Prime Minister appoints his colleagues who together with him form the Government. In presidential systems the President appoints Secretaries (sometimes called Ministers) who are heads of his Executive departments. Formally, owing to the rule whereby appointments are subject to the confirmation of the Assembly or one of its organs (in the United States the Senate, in the Philippines the Commission on Appointments) his choice may be restricted to persons of whom that body approves. In practice the President has a very wide choice. Whereas in parliamentary systems Ministers are usually selected from those who have served a political apprenticeship in the Assembly, it is by no means customary in presidential systems for heads of Departments (or for that matter the President himself) to have had experience in the legislative branch of government.

5. **The president is sole executive** : In contrast to parliamentary government, which is collective, the Prime Minister being first among equals, presidential government tends to be individual. Admittedly the term 'Cabinet' is used in the United States to describe the meetings of the

President with his Secretaries, but it is not a Cabinet or Ministry in the parliamentary sense.

6. **Members of the assembly are not eligible for office in the administration and vice-versa** : Instead of the parliamentary convention or law whereby the same persons may be part of both the executive and legislative branches of government, it is customary in presidential states for the personnel to be separate. Neither the President nor his aides may sit in the U.S. Congress.

7. **The executive is responsible to the Constitution** : The President is not, like parliamentary Governments, responsible to the Assembly. Instead he is responsible to the Constitution. Acts of the President may, as in the United States, be declared unconstitutional by the Supreme Court, though as Chief Justice Marshall discovered when attempting to protect the rights of the Cherokee Indians, it is one thing to hand down a decision and another to enforce it. However, should a President persist in acting unconstitutionally the Assembly can take action itself and impeach him or his aides. It is usually the Assembly which holds the President ultimately responsible to the Constitution by the impeachment process. This does not imply that he is responsible to that body in the parliamentary sense of depending on its confidence in any political capacity. Impeachment enforces juridical compliance with the constitutional letter of the law and is quite different from the exercise of political control over the President's ordinary conduct of his office. Political responsibility implies a day-to-day relationship between Government and Assembly; impeachment is the grave and ultimate penalty necessary where ordinarily the Executive and Assembly are not mutually dependent. The President may not be dependent on the Assembly for his political survival but he is very dependent on its goodwill for the furtherance of his policies. The Budget, foreign programmes, senior appointments all require its acquiescence. If there is no agreement the

Assembly may decide to take no action. It cannot however replace the President.

8. **The president cannot dissolve or coerce the assembly** : The Assembly cannot dismiss the President. Likewise the President may not dissolve the Assembly. Neither, therefore, is in a position to coerce the other, and it is not surprising that this system is, par excellence, one of checks and balances. In countless ways the presidential system exhibits this mutual independence of the executive and legislative branches of government.

9. **The assembly is ultimately supreme over the others branches of Government and there is no fusion of the executive and legislative branches as in a Parliament** : It was remarked of parliamentary systems that neither the Government nor the Assembly is supreme because both are subordinate parts of the parliamentary institution. In presidential systems such fusion of the executive and legislative powers is replaced by separation, each having its own sphere. Constitutionally the Executive cannot interfere in the proceedings of the Assembly, still less dissolve it, and the Assembly for its part cannot invade the province of the Executive. In practice the relation of the two, at least in the United States, is much more subtle than the theory of the separation of powers and checks and balances would indicate. The President is head of the Government, he controls an immense amount of patronage. He is responsible for the preparation of major legislation and for securing its successful passage through the Assembly. Conversely, to say that Congress cannot invade the province of the Executive does not mean that it cannot obstruct his policies, or, if it so chooses, refuse the appropriations which are usually necessary for their implementation.

10. **The executive is directly responsible to the electorate** : Governments in parliamentary countries are appointed by the Head of State; they are not elected. By contrast the presidential Executive is dependent on a popular

vote and the President alone (and Vice-President if there is one), of all the persons in the political system, is elected by the whole body of electors. It is a distinctive feature of the system that the President should owe his position not, as in parliamentary government, to appointment by the Assembly, but to the electorate at election time. Between elections the President speaks to the voters directly, not indirectly through an Assembly. He cannot, except on special occasions, deliver a speech to the Assembly and unlike Prime Ministers in parliamentary states he may not use it as a forum.

11. **There is no focus of power in the political system** : The political activities of parliamentary systems have their focal point in Parliament. Heads of State, Governments, elected representatives, political parties, interest groups and electorates all acknowledge its supremacy. It is tempting to assume that there must be a similar focal point in presidential systems. This is not so. Instead of concentration there is division; instead of unity, fragmentation.

Verney's eleven salient features of parliamentary form of government in contra-distinction to presidential form of government may be summarized as follows by way of a table:

	Parliamentary System	**Presidential System**
The Assembly	The assembly is transformed into a Parliament	The assembly remains an Assembly only
The Executive	The Executive is divided into (a) Head of State (b) Government	The Executive is not divided but President is elected by the people for a definite term at the time of Assembly elections

The Head of the Government	The head of the Government is appointed by the Head of State	The head of the Government is also Head of State
Appointment of Government and Administration	The head of the Government (the Prime Minister) appoints the Ministry	The President appoints heads of Departments who are his subordinates
Individual and collective responsibility	The Government is a collective body	The President is sole Executive
Separation of executive and legislative personnel	Ministers are usually members of Parliament	Members of the Assembly may not hold office in the Administration and vice-versa
Legal and political responsibility	The Government is responsible politically to the Assembly	The Executive is responsible legally to the Constitution
Dissolution of the Assembly by the Executive	The head of Government may advise the Head of State to dissolve Parliament	The President cannot dissolve or coerce the Assembly
The supreme branch of Government	Parliament as a whole is supreme over its constituent parts, Government and Assembly, neither of which may dominate the other	The Assembly is ultimately supreme over the other branches of government, and there is no fusion of the executive and legislative branches in a Parliament
The Executive and the electorate	The Government as a whole is only indirectly responsible to the electorate	The Executive is directly responsible to the electorate

The focus of power in the political system	Parliament is the focus of power	There is no focus

Muller, Bergman and Strom[11], in their analysis of definitions of parliamentary government provided by various authors have culled out eight distinctive and salient features of parliamentary government. Their eight salient features are:

1. There is a dual executive (split between the Head of Government and the Head of State).
2. Parliament has formal or informal investiture powers.
3. The cabinet is a collective decision making body.
4. The cabinet ministers are also members of Parliament.
5. The cabinet is politically responsible to the parliamentary majority.
6. Parliament has means of control (interpellations, committees of inquiry etc.) over the cabinet.
7. The parliamentary majority can force the cabinet to resign.
8. This power in most cases is balanced by the Prime Minister's power to dissolve Parliament.

Some authors define parliamentary system of government on responsibility or accountability criteria. S.E. Finer[12] defines parliamentary system as "where the government is responsible to the legislature which can force them to retire, or

11 Wolfgang C. Muller, Torbjorn Bergman and Kaare Strom, "Parliamentary Democracy: Promise and Problems", in Kaare Strom, Wolfgang C. Muller and Torbjorn Bergman, eds. *Delegation and Accountability in Parliamentary Democracies,* Oxford University Press, 2003.

12 S.E. Finer, *The History of Government,* Oxford University Press, 1997, p.1590.

if the legislature is very strong, can actually impose them on Monarch". To Strong[13] if the assembly has the power to remove the executive, the regime is parliamentary. To Muller, Bergman and Strom[14] parliamentary system is an institutional arrangement by which the executive is accountable, through a confidence relationship, to any parliamentary majority. They define parliamentary system as, "parliamentary government is a system of government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of Parliament and can be voted out of office by the latter, through an ordinary or constructive vote of no confidence." Thus the characteristic feature according to these definitions is that the cabinet must be tolerated by the parliamentary majority, not that the latter actually plays any direct role in the selection of the cabinet.

Other authors define parliamentary system of government by laying emphasis on the appointment criteria. Arend Lijphart defines parliamentary government as "a form of constitutional democracy in which executive authority emerges from, and is responsible to, legislative authority"[15]. The "emergence" criteria denotes that Prime Ministries are selected by Parliament, though Lijphart includes in this category cases in which the Head of State appoints the Prime Ministers, who "emerge from inter-party bargaining". Similarly, Sartori[16] states that "parliament is sovereign" under parliamentarism and that this regime type requires 'government to be appointed, supported and, as the case may be, dismissed by parliamentary vote'. Stepan and Skach[17] define a parliamentary regime as a system of mutual dependence: (1) The chief executive power must be

13 C.F. Strong, *A History of Modern Political Constitutions,* Putnam's Sons, New York, 1963.

14 Wolfgang C. Muller, Torbjorn Bergman and Kaare Strom, "Parliamentary Democracy: Promise and Problems", in Kaare Strom, Wolfgang C. Muller and Torbjorn Bergman, eds. *Delegation and Accountability in Parliamentary Democracies,* Oxford University Press, 2003.

15 Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensual Government in Twenty-One Countries,* New Haven, Yale University Press, 1984.

16 Giovanni Sartori, *Comparative Constitutional Engineering,* Second Edn., MacMillan, London, 1997.

17 Alfred Stepan and Cindy Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism", *World Politics*, 1993.

supported by a majority in the legislature and can fall if it receives a vote of no confidence, (2) The executive power (normally in conjunction with the Head of State) has the capacity to dissolve the legislature and call for elections.

The crux of all these definitions of party system and enumerations of salient features of parliamentary system is that in a parliamentary system the Parliament has some form of active role in the "emergence" (Lijphart) or "appointment" (Sartori) of the Prime Minister and his cabinet. The salient feature of parliamentary form of government, thus, are that the executive is divided into two parts, viz. Head of State and Head of Government, the Head of State appoints the Head of Government, the Head of Government appoints the Ministry, the Ministry is politically responsible to the Parliament, Parliament can force the cabinet to resign and the Head of Government/ministry may advise the Head of State to dissolve Parliament.

There are broadly two forms of Parliamentary Democracies. The British model which has its birth in the Westminster Palace in London and therefore metaphorically referred to as the Westminster model. The other model which is more prevalent in the continental parliamentary systems viz. Spain, Germany is referred to as Continental model or Western European model. Arend Lijphart[18] on the basis of working of the political processes in these two forms prefers to describe them as "majoritarian" and "consensual" parliamentary systems respectively. Westminster model tends to be found in the Commonwealth countries, although they are not universal within and exclusive to Commonwealth countries. These parliaments tend to have a more adversarial style of debate and the plenary session of parliament is relatively more important than committees. Some parliaments in this model are elected using "First Past the Post" electoral system (Canada, India and Britain), others using proportional representation (Ireland and New Zealand). The Australian House of

18 Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensual Government in Twenty-One Countries,* New Haven, Yale University Press, 1984.

Representatives is elected using the alternative or preferential vote while the Senate is elected using PRSTV. However even when proportional systems are used, the systems used to tend to allow the voter to vote for a named candidate rather than a party list. This model does allow for a greater separation of powers than the Western European Model, although the extent of the separation of powers is nowhere near that of the United States.

Western European Parliamentary Model tends to have a more consensual debating system, and have hemi-cyclical debating chambers. Proportional electoral systems are used, where there is more of a tendency to use party list systems than the first-past-the-post system. The committees of these Parliaments tend to be more important than the plenary chamber. This model of Parliamentarism is sometimes called the West German Model- since it was used in the Parliament of the West German, later united German Parliament.

B. FORMATION OF MINISTRY IN WESTMINSTER SYSTEM

Unlike American presidentialism, parliamentary government was not the product of a deliberate institutional design. Rather it gradually evolved in Britain over several centuries. The process of government formation in this form of government accordingly is also a result of a process of evolution spanning over centuries.

The British Parliament, as we see it today, has its antecedents in the Anglo-Saxon Witan which brought the leading men of the realm periodically together with the King for ceremonial, legislative and deliberative purposes. In its earliest history Parliament was a gathering, an assembly of prominent men, summoned at the will of the King once or twice a year, to deal with matters of state and law. It remained so for much of the 13th century. These assemblies served as the means by which the King could communicate with men who were of standing in their localities and well-informed of local grievances. However, decline in the revenues of the Crown and financial requirements arising out of wars, the tenants-in-chief, who were the principal revenue-payers to the Crown, were elevated as the major component of Parliament because the levy of taxation depended on their consent. But as the 13th century progressed, Crown had increasing need of revenue and accordingly the lesser tenants, i.e. the Commons were also inducted in Parliament. Although this right of consent gave the Commons their place in Parliament, it did not give them any meaningful part in the formulation of the royal policies.[19]

The Tudors era, i.e., the period from 1509 to 1603 is often seen as a period of immense significance for the evolution of Parliament. Laws were enacted which transformed the relationship between the English Crown, the English people and the Church. It is seen as giving a new impetus to Parliament,

19 Institute of Historical Research, London, *The History of Parliament,* available at www.historyofparliament.org.

underlining its centrality to the law and the government of the country. It gave it the status, according to the eminent historian of sixteenth century England, Sir Geoffrey Elton[20], the status of the "supreme legislator, unhampered by other laws" and "dominance over the executors of the law - both crown and courts". Nevertheless, Parliament was still a very occasional event, with long gaps between short meetings.[21]

The English Parliament under the Stuart monarchs (1603 to 1714) was at the centre of politics. After a bitter confrontation between the King and Parliament, Parliament established itself in practice as the ultimate political authority in the country. Philip Norton identifies 1688, the period of the "Glorious Revolution", as the beginning of parliamentary dominance, when Parliament prevailed in its conflict with King James II, who was forced to flee the country. Parliament of England was then in 1689 effectively able to select the new King, William of Orange. William and Mary were confirmed by Parliament as joint Constitutional Monarchs. This was followed by imposition of significant constraints on the powers of Monarchs by Parliament. Parliament was able to enact legislation that limited Monarch's authority and also that of their successors. Parliament enacted the Bill of Rights (1689), the Mutiny Bill (1689), the Triennial Bill (1694), the Treason Act (1696) and the Act of Settlement (1701) known collectively as the Revolutionary Settlement. The Revolutionary Settlement transformed the Constitution and also shifted the balance of power from the Sovereign to Parliament. They also provided the basis for the evolution of the office of Prime Minister, which did not exist at that time. The Revolutionary Settlement gave the Commons control over finances and legislation and changed the relationship between the Executive and the Legislature. For want of money, Sovereigns had to summon Parliament annually and could no longer dissolve or prorogue it without its advice and consent. Parliament became a permanent feature of political life. The veto fell into disuse

20 *Ibid.*

21 *Ibid.*

because Sovereigns feared that if they denied legislation Parliament would deny them money. Treasury officials and other department heads were drawn into Parliament serving as liaisons between it and the Sovereign. Ministers had to present the government's policies, and negotiate with Members to gain the support of the majority; they had to explain the government's financial needs, suggest ways of meeting them and give an account of how money had been spent. The Sovereign's representatives attended Commons sessions so regularly that they were given reserved seats at the front, known as the Treasury Bench. This is the beginning of "unity of powers": the Sovereign's Ministers (the Executive) became leading members of Parliament (the Legislature). Today the Prime Minister (First Lord of the Treasury), the Chancellor of the Exchequer (responsible for the Budget) and other senior members of the Cabinet sit on the Treasury bench and present policies in much the same way Ministers did late in the 17th century. The other preoccupation was the party battle. The 1689 revolution had temporarily confused the old ideological dividing lines, but from the mid-1690s politics was defined in terms of Whig and Tory parties. The Triennial Act of 1694 ensured that elections had to be held for a new Parliament every three years, making politics almost a permanent preoccupation.[22]

The roots of parliamentary government can be traced back to 1693, when the King first appeased the House of Commons by appointing a government out of the party (the Whigs) that enjoyed a majority there. The Tories came to represent and support the Anglican Church, the gentry, and the maintenance of a relatively strong monarchy. On the other hand, the Whigs supported non-Anglicans (notably Presbyterians), wealthy middle class people, and later industrial, mercantile interests. People following the tendencies of Whigs were also generally supportive of the supremacy in parliament's power to govern, while the authority of the monarchy was to be largely decreased. Although the main issue regarding the Exclusion Bill Crisis was the religious affiliation of James II, it is possible that the Whigs desired a notable decrease in the

22 *Ibid.*

monarchy's authority by discontinuing the hereditary custom of passing the throne. The Tories wished the opposite of the Whigs' plans.[23]

During the Glorious Revolution (1688-89) the two parties - Whig and Tory - cooperated in discontinuing the Stuart dynasty and seating William III of Orange on the throne of England, Scotland, and Ireland. It was during this period that the two parties, although their differences were ameliorated to an extent, moved forward another step in fomenting their respective party identities. The idea of a limited constitutional monarchy was generally accepted by people of both parties, in contrast to the absolutism of a king held by divine right. 'Toryism' became identified with Anglicanism and the regional squires, while 'Whiggism' came to represent the wealthy middle class and aristocracy. Until around 1714, political power was contested by both Whigs and Tories, when monarchs favored one political tendency over another such as the case of Queen Anne's initial preference to the Tory party. A group of Whigs known as the Junto Whigs increasingly dominated politics until Queen Anne dismissed the Whig Ministry and replaced them with Tories in 1710. Important further developments occurred in the late eighteenth century when William Pitt Younger based on the solid support in the House of Commons, established the leading role of cabinet vis-à-vis Parliament and, in conducting its daily business, vis-à-vis the Monarch. At that time the cabinet was still that of Monarch, though as a rule cabinets were appointed that could count on the support of the House of Commons. Yet the House of Commons was still dominated by the King and aristocracy, who controlled access to vast majority of seats. [24]

Although the restrictions on Protestant dissenters were lifted in the Toleration Act of 1689, the party struggle continued to focus around religion, particularly the integrity of the Church of England, which Tories felt in danger under governments dominated by Whig ministers. After the death of William of

23 *Ibid.*

24 *Ibid.*

Orange (William III) in 1702 (Mary had already died in 1694) Tories felt that James II's younger sister Anne would be more sympathetic to their views. But as she had no direct heirs, the question of the succession after her death loomed large in the late years of her reign, and split Tories forced to come to terms with the reality that the succession would again be settled by Parliament, under the terms of the 1701 Act of Settlement, this time on the elector of Hanover, Prince George.[25]

The advent of Hanoverians era , i.e. the accession of George I in 1714, marked a change in the ruling party in Great Britain. This transition, the Hanoverian succession, caused a collapse in the political fortunes of the Tory government of Lord Oxford and a revival for their opponents, the Whigs. The Court Whigs, as the ruling oligarchy was known, dominated successive administrations for most of the next century. But Parliament, which had met in annual session uninterruptedly for the previous 25 years, continued to play an authoritative role under the Hanoverian kings.Under Robert Walpole and Henry Pelham, who occupied the position of first or 'prime' minister in the Hanoverians era, Britain enjoyed a long period of internal stability and economic prosperity, in marked contrast to the partisan politics and European wars of the 30 years.[26]

After the Revolution there was a constant threat that non-government members of Parliament would ruin the country's finances by proposing ill-considered money bills. Vying for control to avoid chaos the Crown's Ministers gained an advantage in 1706 when the Commons informally declared, "That this House will receive no petition for any sum of money relating to public service, but what is recommended from the Crown." This non-binding rule of 1713 became Standing Order 66: that "the Commons would not vote money for any purpose, except on a motion of a Minister of the Crown." Standing Order 66 remains in effect today essentially unchanged for three hundred years.

25 *Ibid.*

26 *Ibid.*

Empowering Ministers with sole financial initiative had an immediate and lasting impact. Apart from achieving its intended purpose – to stabilise the budgetary process – it gave the Crown a leadership role in the Commons; and, the Lord Treasurer assumed a leading position among Ministers. The power of financial initiative was not, however, absolute. Only Ministers might initiate money bills, but Parliament now reviewed and consented to them. Standing Order 66 therefore represents the beginnings of Ministerial responsibility and accountability.[27]

The term "Prime Minister" appears at this time as an unofficial title for the leader of the government, usually the head of the Treasury. As stated above, the office of the Prime Minister was not established by any constitution or law but exists only by long-established convention. Since the office was not created, there is no "first" Prime Minister. However, the honorary appellation is traditionally given to Sir Robert Walpole who became First Lord of the Treasury in 1721. In 1720, the South Sea Company, created to trade in cotton, agricultural goods and slaves, collapsed, causing the financial ruin of thousands of investors and heavy losses for many others including members of the royal family. King George I called on Robert Walpole, well known for his political and financial acumen, to handle the emergency. With considerable skill and some luck, Walpole acted quickly to restore public credit and confidence, and led the country out of the crisis. A year later, the King appointed him First Lord of the Treasury, Chancellor of the Exchequer, and Leader of the House of Commons making him the most powerful minister in the government. Ruthless, crude, and hard-working, he had a "sagacious business sense" and was a superb manager of men. At the head of affairs for the next two decades, Walpole stabilised the nation's finances, kept it at peace, made it prosperous, and secured the Hanoverian Succession.[28]

27 *Ibid.*

28 *Ibid.*

Walpole demonstrated for the first time how a chief minister - a Prime Minister - could be the actual Head of the Government under the new constitutional framework. First, recognising that the Sovereign could no longer govern directly but was still the nominal head of the government, he insisted that he was nothing more than the "King's Servant". Second, recognising that power had shifted to the Commons, he conducted the nation's business there and made it dominant over the Lords in all matters. Third, recognising that the Cabinet had become the executive and must be united, he dominated the other members and demanded their complete support for his policies. Fourth, recognising that political parties were the source of ministerial strength, he led the Whig party and maintained discipline. In the Commons, he insisted on the support of all Whig members, especially those who held office. Finally, he set an example for future Prime Ministers by resigning his offices in 1742 after a vote of confidence, which he won by just 3 votes. This slim majority undermined his power even though he still retained the confidence of the Sovereign The position of Prime Minister was not created; it evolved slowly and erratically over three hundred years due to numerous acts of Parliament, political developments, and accidents of history. The office is therefore best understood from a historical perspective. The origins of the position are found in constitutional changes that occurred during the Revolutionary Settlement (1688–1720) and the resulting shift of political power from the Sovereign to Parliament. Although the Sovereign was not stripped of the ancient prerogative powers and legally remained the head of government, politically it gradually became necessary for him or her to govern through a Prime Minister who could command a majority in Parliament. , Walpole was not a Prime Minister in the modern sense. The King—not Parliament—chose him; and the King—not Walpole—chose the Cabinet. Walpole set an example, not a precedent, and few followed his example. For over 40 years after Walpole's fall in 1742, there was widespread ambivalence about the position. In some cases, the Prime Minister was a figurehead with power being wielded by other individuals; in others there was a reversion to the

"chief minister" model of earlier times in which the Sovereign actually governed.[29]

In 1830, however, the House of Commons forced Wellington to resign over his unwillingness, due to deep split among the Tories, to engage in parliamentary reform. Earl Grey's subsequent Whig cabinet persuaded the King to dissolve Parliament and then won the general elections on the issue of parliamentary reform. The reform passed the House of Commons but was held up by the House of Lords. Grey then asked the King to create enough new peers to force the reform through the House of Lords. When the King refused, Grey, backed up by the Whigs, rendered the cabinet's resignation. The King unsuccessfully tried to install a new Wellington cabinet but eventually had to invite the Whigs back into office and accept their terms. In the end, the House of Lords pre-empted the appointment of many Whig peers and passed the Reform Bill – The Representation of the People Act, 1832 – which eliminated or reduced the weight of boroughs, where elections were often corrupt, and created new seats in towns and cities. The electorate increased substantially.[30]

Prior to this the Lords had significant influence, using to their advantage the fact that most citizens were disenfranchised and seats in the Commons were allocated disproportionately. The system was based on legislation passed in 1429 and virtually unchanged for 400 years. In 1832, only 0.44 million met the voter qualifications in a population of 17 million. Although populations shifted, representation in the Commons remained the same. Consequently, some constituencies were over-represented while others under-represented. Through patronage, corruption and bribery, the Crown and Lords had about 30% of the seats (called "pocket" or "rotten boroughs") giving them a significant influence in the Commons and in the selection of the Prime Minister. The greatness of the Great Reform Bill lay less in substance than symbolism. It was not a good Bill,

29 *Ibid.*

30 *Ibid.*

but it was a great Bill when it was passed. Substantively, it increased the franchise 65% to 717,000 with the middle class receiving most of the new votes. The representation of 56 rotten boroughs was eliminated completely and half the representation of 30 others; the freed up seats were distributed to boroughs created for previously disenfranchised areas. However, many rotten boroughs remained and it still excluded millions of working class men and all women. Grey's government is widely credited with setting Britain on the 'road to democracy'. There can be little doubt that the timing of this concession to popular feeling was pivotal in Britain's political development. By extending the franchise and redistributing parliamentary seats, at a time of unprecedented social and economic unrest, Grey's government was able to restore faith in the parliamentary system and re-legitimise the role and authority of the House of Commons. Mass political protests still took place, but in striking contrast with most other European states, Britain avoided revolution and was able to develop its political institutions peacefully, much to the envy of many Continental observers. Symbolically, the Bill exceeded expectations and is now ranked with Magna Carta and the Bill of Rights as one of the most important documents of the British constitutional tradition.[31]

First, the Great Reform Bill removed the Sovereign from the election process and the choice of Prime Minister. Slowly evolving for 100 years, this convention was confirmed two years after the passage of the bill. In 1834 King William IV dismissed Melbourne as Premier, but was forced to recall him when Robert Peel, the King's choice, could not form a working majority. Since then, no Sovereign has tried to impose a Prime Minister on Parliament. Secondly, the Bill reduced the Lords' power by eliminating many of their pocket boroughs and creating new ones where they had no influence. Weakened, they were unable to prevent the passage of more comprehensive electoral reforms in 1867, 1884, 1918 and 1928 when universal equal suffrage was achieved. Ultimately, this erosion of power led to the Parliament Act of 1911 that marginalised the Lords'

31 *Ibid.*

role in the legislative process and crystallised the convention that had developed over the previous century that a Prime Minister cannot sit in the House of Lords. Prior to 1902, the Prime Minister sometimes came from the House of Lords, provided that his government could form a majority in the Commons. However as the power of the aristocracy waned during the 19th century the convention developed that the Prime Minister should always sit in the lower house. As leader of the House of Commons, the Prime Minister's authority was further enhanced by the Parliament Act of 1911 which marginalised the influence of the House of Lords in the law-making process. The Parliament Act 1911 established the supremacy of the Commons. It provided that the Lords could not delay for more than one month any bill certified by the Speaker of the Commons as a money bill. Furthermore, the Act provided that any bill rejected by the Lords would nevertheless become law if passed by the Commons in three successive sessions provided that two years had elapsed since its original passage. The Lords could still delay or suspend the enactment of legislation but could no longer veto it. Subsequently the Lords "suspending" power was reduced to one year by the Parliament Act 1949. Indirectly, the Act enhanced the already dominant position of Prime Minister in the constitutional hierarchy. Although the Lords are still involved in the legislative process and the Prime Minister must still guide legislation through both Houses, the Lords no longer have the power to veto or even delay enactment of legislation passed by the Commons.

Throughout the 19th century, governments led from the Lords had often suffered difficulties governing alongside ministers who sat in the Commons. Grey's bearing changed the Premiership. Often called the first "modern Prime Minister", he set both an example and a precedent for his successors. He was *primus inter pares* (first among equals), as Bagehot said in 1867 of the Prime Minister's status. Using his Whig victory as a mandate for reform, Grey was unrelenting in the pursuit of this goal, using every Parliamentary device to achieve it. Although respectful toward the King, he made it clear that his constitutional duty was to acquiesce to the will of the people and Parliament.

After the 1832 Reform Act, the Crown had scant influence over cabinet appointments or deliberations – and thus became what Bagehot called the "dignified part" of the British Constitution. This led to emergence of the cabinet government. The House of Commons, on the other hand, criticized and could dismiss the cabinet and in most cases also determine cabinet appointments. The Prime Minister had become *primus inter pares* or the first among the equals in the Cabinet and the head of government in the United Kingdom. Cabinet government became a convention of the Constitution. Although subtle issues remained to be settled, the Cabinet system of government is essentially the same today as it was in 1830. The political position of Prime Minister was enhanced by the development of modern political parties, the introduction of mass communication like newspapers, radio and photography. By the turn of the 20th century the modern premiership had emerged; the office had become the pre-eminent position in the constitutional hierarchy vis-a-vis the Sovereign, Parliament and Cabinet. Over the subsequent decades, party government was established, and cabinet came to dominate the House of Commons. This was also in response to heightened electoral competitiveness that Members of Parliament became more active because their re-election increasingly depended on their visibility and constituency service. Yet while parliamentary activism was individually rational, collectively it was self-defeating. Too many active and ambitious MPs seeking positions-taking and credit-claiming opportunities threatened to overburden the parliamentary agenda and induce institutional paralysis. Hence, those procedural rights that had been abused by visibility-seeking MPs were abolished and the cabinet's agenda control strengthened.[32]

Parliamentary behaviour also became more party-based as the larger constituencies required both a different kind of campaigning and greater activity in Parliament. This process accelerated with the Electoral Reform Acts of 1867 and 1884, which enfranchised a much larger electorate. Now the fate of the

32 *Ibid.*

cabinets was no longer decided on the floor of the House of Commons, as it had been during 1832-1867 but by the general electorate. Members of Parliament were gradually relegated to being representatives of that opinion, and their freedom of parliamentary action was correspondingly diminished. Consequently, cabinet members and MPs began to address the general electorate rather than the House of Commons, Procedural reform continued and led to the evolution of a government-managed Parliament.[33]

Under this form of government, called the Westminster System, the Sovereign is Head of State and titular head of Her Majesty's Government. She selects as her Prime Minister the person who is able to command a working majority in the House of Commons, and invites him to form a government. As the actual Head of Government, the Prime Minister selects his Cabinet, choosing its members from among those in Parliament who agree or generally agree with his intended policies. He then recommends them to the Sovereign who confirms his selections by formally appointing them to their respective offices. Led by the Prime Minister, the Cabinet is collectively responsible for everything the government does. The Sovereign does not confer with its members privately about policy or attend its meetings. With respect to actual governance, the monarch has only three constitutional rights: to be kept informed, to advise, and to warn.[34] In practice this means that the Sovereign reviews state papers and meets regularly with the Prime Minister, usually weekly, when she may advise and warn him regarding the proposed decisions and actions of Her Government.

Thus the evolution of Parliamentary government in Britain was the result of a process of gradual evolution for over 800 years from Anglo-Saxon Witan in the 12th, 13th and the 14th century, where the Parliament was merely an assembly of prominent men summoned by the King for ceremonial and deliberative purposes. In Tudors era in the 16th century, Parliament gained in its significance vis-à-vis

33 *Ibid.*

34 *Ibid.*

the King and the Courts, nevertheless Parliament remained King's assembly and convening of Parliament was still a very occasional event, with long gaps between short meetings. The 17th century England under the Stuart monarchs, witnessed the Glorious Revolution when after a bitter confrontation between the King and Parliament, Parliament established itself in practice as the ultimate political authority in the country. This was the beginning of parliamentary dominance, when Parliament prevailed in its conflict with King James II, who was forced to flee the country. Parliament of England was then in 1689 effectively able to select the new King, William of Orange. William and Mary were confirmed by Parliament as joint Constitutional Monarchs. Parliament was then able to impose significant constraints on the powers of Monarchs by Parliament. Parliament was able to enact legislation that limited Monarch's authority and also that of their successors. Parliament enacted the Revolutionary Settlement consisting of the Bill of Rights (1689), the Mutiny Bill (1689), the Triennial Bill (1694), the Treason Act (1696) and the Act of Settlement (1701) which shifted the balance of power from the Sovereign to Parliament and also provided the basis for the evolution of the office of Prime Minister. The Revolutionary Settlement gave the Commons control over finances and legislation and changed the relationship between the Executive and the Legislature. Political parties emerged and politics was defined in terms of Whig and Tory parties. The Triennial Act of 1694 ensured that elections had to be held for a new Parliament every three years, making politics almost a permanent preoccupation. During this period, the seeds of parliamentary government were sown when the King in 1693 succumbed to the House of Commons by appointing a government out of the party (the Whigs) that enjoyed a majority in the House of Commons.

Important further developments occurred in the late eighteenth century when William Pitt Younger based on the solid support in the House of Commons, established the leading role of cabinet vis-à-vis Parliament and, in conducting its daily business, vis-à-vis the Monarch. At that time the cabinet was

still that of Monarch, though as a rule cabinets were appointed that could count on the support of the House of Commons. Yet the House of Commons was still dominated by the King and aristocracy, who controlled access to vast majority of seats.

The advent of the Hanoverian era, i.e. the accession of George I in 1714, marked a change in the ruling party in Great Britain. Under Robert Walpole and Henry Pelham, who occupied the position of first or 'prime' minister in the Hanoverians era, Britain enjoyed a long period of internal stability and economic prosperity. The King appointed Walpole as First Lord of the Treasury, Chancellor of the Exchequer, and Leader of the House of Commons making him the most powerful minister in the government. The term "Prime Minister" appears at this time as an unofficial title for the leader of the government, usually the head of the Treasury. Standing Order 66 was adopted which had sown the seeds of cabinet dominance in terms of money bills and which also marked the beginnings of Ministerial responsibility and accountability.

In 1832, under the leadership of Earl Grey marked passage of the Great Reform Bill – The Representation of the People Act, 1832 – which is widely credited with setting Britain on the 'road to democracy'. The new law extended the franchise and redistributed parliamentary seats and thus restored faith in the parliamentary system and legitimised the role and authority of the House of Commons.

Thus the defining feature of the Westminster model of parliamentary government is existence of dual executive, the Sovereign, and the Cabinet headed by the Prime Minister. Walter Bagehot, in *The English Constitution*, published in 1867, asserted that a constitution needed two parts, 'one to excite and preserve the reverence of the population' and the other to 'employ that homage in the work of government'. The first he called 'dignified' and the second 'efficient'. The monarch was the prime example of "dignity" in this sense

and the cabinet of "efficiency". The famous words of Bagehot succinctly explain this defining feature of the Westminster model of parliamentary government:

> *"No one can approach to an understanding of the English institutions, or of others which, being the growth of many centuries, exercise a wide sway over mixed populations, unless he divide them into two classes. In such constitutions there are two parts (not indeed separable with microscopic accuracy, for the genius of great affairs abhors nicety of division) first, those which excite and preserve the reverence of the population — the dignified parts, if I may so call them; and next, the efficient parts — those by which it, in fact, works and rules. There are two great objects which every constitution must attain to be successful, which every old and celebrated one must have wonderfully achieved every constitution must first gain authority, and then use authority, it must first win the loyalty and confidence of mankind, and there employ that homage in the work of government.*
>
> *"There are indeed practical men who reject the dignified parts of government. They say, we want only to attain results, to do business: a constitution is a collection of political means for political ends, and if you admit that any part of a constitution does no business, or that a simpler machine would do equally well what it does, you admit that this part of the constitution, however dignified or awful it may be, is nevertheless in truth useless. And other reasoners, who distrust this bare philosophy, have propounded subtle arguments to prove that these dignified parts of old governments are cardinal components of the essential apparatus, great pivots of substantial utility; and so they manufactured fallacies which the plainer school have well exposed. But both schools are in error. The dignified parts of government are those which bring it force which attract its motive power. The efficient parts only employ that power. The comely parts of a*

government have need, for they are those upon which its vital strength depends. They may not do any thing definite that a simpler polity would not do better; but they are the preliminaries, the needful prerequisites of all work. They raise the army, though they do not win the battle.

"Doubtless, if all subjects of the same government only thought of what was useful to them, and if they all thought the same thing useful, and all thought that same thing could be attained in the same way, the efficient members of a constitution would suffice, and no impressive adjuncts would be needed. But the world in which we live is organized far otherwise"[35]

The House of Commons, at present has 650 members. Members are elected by territorial parliamentary constituencies by universal suffrage using the first-past-the-post system. The territorial constituencies are known as county constituencies and borough constituencies[36] Currently the United Kingdom is divided into 650 constituencies, with 533 in England, 40 in Wales, 59 in Scotland, and 18 in Northern Ireland.

Under the Westminster model, the Sovereign is the titular Head of State and the real executive power vests in the cabinet headed by the Prime Minister. The Sovereign appoints the Prime Minister, from amongst the members of Parliament, who is the actual Head of Government. As the actual Head of Government, the Prime Minister selects his Cabinet, choosing its members from among those in Parliament who agree or generally agree with his intended policies. He then recommends them to the Sovereign who confirms his selections by formally appointing them to their respective offices. Led by the Prime Minister, the Cabinet is collectively responsible to the House of Commons.

35 Walter Bagehot, *The English Constitution,* Chapman and Hall, London, 1867.

36 There remains a technical distinction between County constituencies and Borough constituencies, but the only effect of this difference is the amount of money candidates are allowed to spend during campaigns.

Though theoretically the Sovereign has unfettered choice in selecting the Prime Minister, it is now fettered by the convention that he must call the leader of that party which commands a majority in the House of Commons, or a person who is capable of commanding such majority, to form a government, because if the Sovereign chooses some other person, the party in majority in the House of Commons may paralyse the government by cutting off supplies.[37] Three British works on the Constitutional and Administrative Law share the same view regarding the appointment of a Prime Minister – S.A. de Smith speaks of a ministry with a reasonable prospect of maintaining itself in office.[38] Bradley suggets that person who is in the best position to receive the support of the majority in the House of Commons.[39] O. Hood Philips' formulation is a "ministry that can hold the majority in the House."[40] According to Halsbury's Laws of England[41], "his retention of that post is in practice dependent on the first place, upon his ability to form an administration". Nominally, the Monarch is unfettered in his choice of the ministers, and may summon whom he pleases to fill the office of the Prime Minister, nevertheless owing to the dependence of the executive upon the support of the House of Commons, the Monarch's choice, except in unusual cases, is in practice, restricted to the person who seems most likely to have the support of stable majority in the House of Commons.

Owing to the fundamental principle of cabinet government that the cabinet must have the confidence of the majority in the House of Commons, the choice

37 Halsbury's Laws of England, 4th Edn., Vol. 8, para 1115.

38 S.A. De Smith, *On Constitutional and Administrative Law,* Penguin Books, 1977, quoted in D.D. Basu, *Commentary on Constitution of India,* Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4621.

39 Bradley, *Constitutional and Administrative Law,* 13th Edn., 2003, quoted in D.D. Basu, *Commentary on Constitution of India,* Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4621.

40 Hood Phillips and Jackson, *Constitutional and Administrative Law,* quoted in D.D. Basu, *Commentary on Constitution of India,* Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4621.

41 Halsbury's Laws of England, 4th Edn., Vol. 8(2), para 394, quoted in D.D. Basu, *Commentary on Constitution of India*, Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4621.

of the Prime Minister by the Crown has become almost automatic in normal circumstances and the King must invite the leader of party or group commanding a majority in the House of Commons to form a ministry. The Crown can no longer impose his personal wishes as against the majority in the House of Commons, in the choice of his ministers. So stated - "the party who command the majority in the House of Commons are *entitled* to have their leader placed in the office with the right to select his colleagues."

In appointing a Prime Minister, the Sovereign must appoint that person who is in the best position to receive support of the majority in the House of Commons. This does not involve the Sovereign in making a personal assessment of leading politicians since no major party could fight a general election without a recognised leader. Where an election produces an absolute majority in the House of Commons for one party, the leader of that party is invited to become the Prime Minister or if already Prime Minister, he or she would continue in office. In these circumstances, "the Sovereign has no choice whom he or she should appoint as Prime Minister, it is obvious who should be called to the palace."

The general rule is that in appointing a Prime Minister, the Queen should commission that person who appears best able to command the support of the stable majority in the House of Commons.... The Queen is unlikely to have to exercise her discretion unless no party has an overall majority in the House of Commons or the formation of a coalition is advised, or a coalition, having been formed, disintegrates. In such situations her duty will be to take such counsel as is proper and expedient to assist in deciding who is the most appropriate person to be invited to form the government with a reasonable prospect of maintaining itself in office. That person would normally, not invariably, be leader of the largest party in the House of Commons. In any event, the procedures now adopted by all major parties for electing their own leaders seems to carry a necessary implication that the Prime Minister, when appointed, shall be a

member of or shall be about to occupy his seat in the House of Commons.[42] According to John Alder, in the unlikely event of a majority not being found, the existing Prime Minister must probably be permitted to form the government. Failing that the Queen should summon the leader of the next largest party. If that fails there is agreement as to what should happen, and in particular, as to whether the Monarch has any personal discretion, the Queen should attempt to find someone else capable of commanding a majority, but it is not clear who, if any one, she should consult. For example, should she consult the outgoing Prime Minister? Alternatively the Queen should dissolve Parliament, causing another election. The guiding principle seems to be that she must try to determine the electorate's preferences.[43] Upon the dismissal or resignation of an administration, the Monarch, follows the recognised constitutional practice and summons to her presence the person whom she considers most fitted for the purpose and upon acceptance of the commission, and kissing the Monarch's hand, the person so chosen becomes the Prime Minister, but his retention of that post is in practice dependent, in the first place upon the ability to form the administration. Nominally the Monarch is unfettered in the choice of the ministers and may summon whom she pleases to fill the office of the Prime Minister; nevertheless owing to the dependence of the executive upon the support of the House of Commons, the Monarch's choice except in unusual cases is in practice restricted to the person who seems most likely to have the support of a stable majority in the House of Commons, or failing such a person, that politician who seem to be able to form an administration with a reasonable prospect of continuing in office. This will usually be the leader of the party which commands a majority in the House of Commons, but if no part commands an overall majority, the party leader who is most likely to be supported by a working majority in that House may be called upon...."[44]

42 S.A. De Smith, *Constitutional and Administrative Law,* Penguin Books, 1977.

43 *See,* D.D. Basu, *Commentary on Constitution of India,* Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4622.

44 *Ibid.*

According to Bradley, where the elections result produces a clear majority for one party, the Sovereign has no discretion to exercise. Where an election does not produce a conclusive result, the Sovereign has no discretion except where the procedure prescribed still fails to establish a government in office; in this case, the Sovereign would have to initiate discussion with and between the parties to discover, for example, whether a government could be formed or whether a coalition government could be formed.[45]

This does not mean, however, that there is no scope for the exercise of the individual judgment by the Crown in the matter under any circumstances whatsoever. On the other hand, the appointment of the Prime Minister, as has been already seen in one of the cases, where the King has still left to him some degree of personal discretion, at least in a marginal sphere,.[46] e.g. where more than one leaders enjoy the confidence of the majority and are capable of forming a ministry.[47] The Sovereign's discretion would, again, effectively increase if, with multiple party system, either party commands an absolute majority in the House. (As happened in 1931), in which case the Sovereign's influence may shape alignment of leaders to form a coalition government. But even the Sovereign should not take interest in any particular party but should maintain his impartial position. According to AW Bradley and KD Ewing, "..... since the election of the new leader may take some weeks, the appointment of an acting Prime Minister might be well needed ..... the outgoing Prime Minister had died and was too ill to continue in office. Presumably a senior member of the cabinet would be so appointed. Moreover, there could be circumstances in which reliance as normal party procedures would not produce an immediate solution. For example, when a party holding office broke up after serious internal dissension or when no party had a majority in the House and there was deadlock between the parties as to who should form the government, or where a coalition

45 *Ibid.*
46 *Ibid.*
47 *Ibid.*

government has broken down. In such situations the Sovereign could not avoid taking initiatives to enable a new government to be formed, for example, by initiating inter-party discussions..... While, therefore, under stable political conditions the Sovereign would not need to exercise a personal discretion in selecting a Prime Minister, circumstances could arise in which it might become necessary for the Sovereign to do so.[48]

Jennings in his *Cabinet Government* has stated, *"It must not be thought, however, in the absence of a strict two-party system, gives the Queen the discretion to summon as Prime Minister whom she pleases. It is an accepted rule that when a government is defeated, either in Parliament or at the polls, the Queen should send for the leader of opposition. This rule is the rule of long practice, although it has hardened into a rule comparatively recently and added. Its basis is in the assumption of the impartiality of the Crown. It is moreover, essential to the belief in the Monarchy's impartiality not only that she should in fact act impartially, but she should appear to act impartially. The only method by which this case be demonstrated clearly is to send at once for the leader of the opposition."*[49]

The conventional rules which guide the selection of the Prime Minister in Britain may be thus summarised:[50]

1. The normal case of vacancy arising after general election is held. In this case, the Crown has little option other than to send for the leader of the party (or group of parties) which has a majority in the House of Commons.

2. The King is bound to invite the leader of the majority if there is a recognised leader. But if there are more than one leader who are able to

48 *Ibid.*

49 *Ibid.*

50 D.D. Basu, *Commentary on Constitution of India*, Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, pp. 4614-16.

command the support of the majority, the King may act on his individual judgment.

But even in this latter case, the discretion of the Crown has practically been eliminated by the fact that in modern times all parties chose their leaders by their parliamentary party election.

3. The Prime Minister must be a member of the House of Commons. Even if a peer is appointed (to which there is no legal bar), he would now renounce his peerage under the Peerage Act, 1963, and get elected to the House of Commons at a bye-election. The need for the Prime Minister to be a member of the House of Commons is that his government is responsible to that House so that be must be there to defend his policy as well as to command his supporters in order to continue in power.

4. If no single party controls a majority in the House of Commons, the King must use his own judgment as to whom he should summons. He would then summon the leader who, in the King's estimate, is capable of controlling a majority by entering into a coalition or compromise with some other party. The Sovereign himself may act as the mediator in finding out the leader amongst the several parties who might be acceptable as the head of the coalition government.

5. Though normally the King takes the advice of the outgoing Prime Minister in the matter of the selection of his successor, he is not bound to invite such advice at all. A retiring Prime Minister is probably not entitled to proffer advice as to his successor, but he can make his views known before hand and anyway, the Sovereign is free to consult him and other members of the government party. Such advice, again, is not physically available where a new cabinet has to be formed on account of the death of a Prime Minister.

6. When a cabinet tenders resignation on the ground of defeat in the House of Commons, the practice is that the King first consults the leader of the

opposition. In such a case, it is also the *duty* of the leader of the opposition to form a government, if asked to do so. Of course, if the leader of the opposition is unable to form a government, he has the option of advising a dissolution. If the Government is defeated at general election, the Prime Minister resigns (and with him the other ministers) and the Sovereign on the advice of the resigning Prime Minister sends for the leader of the opposition. The leader of the opposition is known because both the Labour Party and (since 1964) the Conservative Party in opposition select a leader by ballot and he has statutory salary. The leader of the opposition will accept office if his party commands a majority in the Commons, which it usually will if the government was defeated at a general election.

The first business of the Prime Minister, after he himself is appointed, is the selection of his colleagues. Of course, the appointment is formally made by the King, but a modern King is not expected to interfere with Prime Minister's selection of ministers. Owing to the rule of collective responsibility, the Prime Minister, however, has got a free hand to act according to personal preferences, and in order to make his government strong and stable, he must make it as broadly representative as possible. In the matter of this selection Prime Minister may be said to be influenced by the following considerations: [51]

(a) It is now an established convention that members of the cabinet must be members of the either House of Parliament. By the Ministers of the Crown Act, 1937, the number of ministers who may sit and vote in the House of Commons has been limited to a particular number with the result that *some* of the cabinet ministers must be taken from the House of Lords.

(b) He must see that various parts of the country are geographically represented in the cabinet.

51 D.D. Basu, *Commentary on Constitution of India*, Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4616.

(c) He must try to recruit as much tactical skill as he can command, by taking in men who have served as previous ministers or have been the most effective parliamentary critics of the outgoing ministry.

The Prime Minister presents a list of his proposed ministerial colleagues for the Queen's approval. She may make observations, suggestions and objections, but the Prime Minister is entitled to insist on his own choice. Junior ministers are appointed by the Prime Minister without prior reference to the Queen. The Prime Minister selects his own ministers. The ministers are no doubt appointed by the King, but in actual practice, they are the nominees of the Prime Minister. The King simply receives and endorses the list prepared and presented to him by the Prime Minister. If the Prime Minister has the power to make his ministers, it is also his constitutional right to unmake them. A Party lives on party spirit and as an instrument of government, it preserves its corporate identity and leadership of the Prime Minister. All this accounts for unity and close association between the ministers on one side and the cabinet and the parliamentary majority on the other. "The unity and the corporate character is sustained and maintained by the dominance of the Prime Minister. This is the essence of the ministerial responsibility."[52]

52 *Ibid,* p. 4616.

C. THE POSITION OF THE PRIME MINISTER IN WESTMINSTER FORM OF GOVERNMENT

The Prime Minister is the Head of the Government. He is the leader of the House of Commons. He gains this position as the head of the party in majority in the House of Commons. Theoretically, the position of the PM is only that of *primus inter pares* or 'the first among the equals'. This pre-eminence in the cabinet is not founded on any legal provision but has been evolved by convention like the cabinet system, in its entirety. "The Prime Minister", said John Morley, "is the keystone of the Cabinet arch." It would be more appropriate, says Jennings as the keystone of the Constitution. The phrase is as precise as it is picturesque for, as Jennings again says, "all roads in the Constitution lead to the Prime Minister. From Prime Minister leads the road to the Queen, Parliament, the Ministers and the other members of the Commonwealth, even the Church of England and the Courts of Law." The Prime Minister is by far the most powerful man in the country. He has been the principal beneficiary of the cabinet's growth. The prerogatives lost by the King have fallen for the most part into British Prime Minister's hands. Those which have not been acquired by him have gone to the cabinet. But the Prime Minister "is central to its formations, central to its life, and central to its death". He forms it, he can alter it, or destroy it. The government is the master of the country and he (the prime Minister) is the master of the government. On his actual powers, there are varying views: *primus inter pares* (first among the equals) in the opinion of Lord Morley and Mr. Gladstone, while *luna inter stellas minores* (moon among the lesser stars) in the view of Sir W. Harcourt.[1]

1 *See,* D.D. Basu, *Commentary on Constitution of India,* Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4643.

The superiority of the Prime Minister in the cabinet[2] is due to the following factors: (a) virtual power to appoint and dismiss the other ministers; (b) chairmanship of the cabinet; (c) leadership of the House of Commons; (d) leadership of the party in majority in the House of Commons; (e) power of patronage and granting honours etc; (f) being the channel of communication with the Crown on all important issues; (g) power to advise dissolution of Parliament; (h) power of allocating business to his colleagues and of transferring them from one department to another and of finally securing their dismissal or resignation, individually, if circumstances so demand; in short, the power to construct or reconstruct the cabinet; Prime Minister not only selects ministers and assigns to them their office, but can compel anyone of them to resign. The other ministers virtually hold their office at the pleasure of the Prime Minister; and (i) power to exercise a general supervision over the department and to settle inter-departmental differences and to secure the co-ordination and implementation of the cabinet policy.

2 Halsbury's Laws of England, 4th Edn. Vol. 8(2), para 820, quoted in D.D. Basu, *Commentary on Constitution of India*, Eighth Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2008, p. 4644.

D. FORMATION OF MINISTRY IN OTHER PARLIAMENTARY SYSTEMS

Britain is the birthplace of the parliamentary form of government, and it is first and foremost through the British influence that this form of government spread throughout the world. Parliamentary government spread to other parts of Europe by diffusion. France introduced ministerial accountability to Parliament in 1792. Most of the other European countries followed in the late nineteenth and early twentieth century. Parliamentary government was introduced in Belgium and Luxembourg in 1830, the Netherlands in 1848, Italy in 1867, Spain in 1869, Norway in 1884, Denmark in 1901, with Austria, Finland, Germany, Iceland, and Ireland following after the First World War. Parliamentary government spread overseas organically through the British Empire to British colonies most of which are now Commonwealth countries. In fact there was tidal wave towards the middle of the 20th century and the former British colonies who acquired independence around this time, mostly adopted Parliamentary form of Government.

The defining feature of parliamentary democracies is the fact that the executive emerges from or arises out of the legislature and is politically responsible to the legislature. This implies that the government may terminate at any time before the expiration of a parliamentary term if it loses the confidence of the parliament. However, when the parliamentary form of government spread to the other European countries and to other countries, notably, former British colonies, some variations crept in. The result is that the Parliamentary systems differ with respect to the specific rules in their constitutions that prescribe how their governments form and terminate. These differences include whether the government needs an actual vote by parliament to legally assume office (the so-called *investiture vote*), whether the government must maintain the active support of a parliamentary majority in order to remain in office (called as *positive*

parliamentarism), whether the rules for tabling a vote of no-confidence require an alternative to be pre-specified (called as *constructive vote of no-confidence*), and whether elections to Parliament have to be held at predetermined intervals (called as *fixed inter-election period*). The other important variation is the system of voting adopted, while some have retained the British first-past-the-post system, others have adopted proportional representation system.

FORMATION OF MINISTRY IN GERMANY

Germany is a federal, parliamentary republic. The German political system operates under the framework laid out in the 1949 constitutional document known as the *Grundgesetz* (Basic Law). The President is the head of state and invested primarily with representative responsibilities and powers. President is elected by Parliament consisting of *Bundestag* (Federal Diet) and *Bundesrat* (Federal Council). Federal legislative power is vested in the parliament consisting of the *Bundestag* (Federal Diet) and *Bundesrat* (Federal Council), which together form the legislative body. The *Bundestag* is elected through direct elections, by proportional representation. The members of the *Bundesrat* represent the governments of the sixteen federated states. The head of government is the Chancellor, who is appointed by the President after being elected by the *Bundestag*. The chancellor is the head of government and exercises executive power, similar to the role of a Prime Minister in other parliamentary democracies. The striking feature of the government formation process is that the Chancellor is elected by Federal Diet *(Bundestag)*. The relevant constitutional provisions are as follows:

The Federal Government

Article 62 - Composition

The Federal Government shall consist of the Federal Chancellor and the Federal Ministers.

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.

Article 64 - Appointment and dismissal of Federal Ministers - Oath of office

(1) Federal Ministers shall be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.

(2) On taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in Article 56 before the Bundestag.

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.

(2) Forty-eight hours shall elapse between the motion and the election.

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.

(2) Forty-eight hours shall elapse between the motion and the vote.

Article 69 - Deputy Federal Chancellor - Term of office

(1) The Federal Chancellor shall appoint a Federal Minister as his deputy.

(2) The tenure of office of the Federal Chancellor or of a Federal Minister shall end in any event when a new Bundestag convenes; the tenure of office of a Federal Minister shall also end on any other occasion on which the Federal Chancellor ceases to hold office.

(3) At the request of the Federal President the Federal Chancellor, or at the request of the Federal Chancellor or of the Federal President a Federal Minister, shall be obliged to continue to manage the affairs of his office until a successor is appointed.

The Constitution of Germany thus provides for election of the Prime Minister 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*. 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 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*. The German Basic Law also provides for a Deputy Federal Chancellor who is to be appointed by the Chancellor [Art. 69]. Other ministers are appointed and dismissed by the President upon the proposal of the Chancellor [Art. 64].

The German Basic Law also 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.

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.

The power of dissolution of Parliament is vested in President. The power of dissolution can also be exercised by the President in the eventualities that (a) if the Chancellor proposed by the President is not elected and if the *Bundestag* is not able to elect another Chancellor within next 15 days by a vote of majority, the President has the option to appoint the person who though elected, but without absolute majority, as Chancellor or to dissolve the House, or (b) 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. However, the right of dissolution lapses if the *Bundestag* elects another Federal Chancellor by an absolute majority.

FORMATION OF MINISTRY IN HUNGARY

Hungary is a parliamentary republic. The President of Hungary is the Head of State, who is elected by Parliament (*Orszaggyules*). The Prime Minister is the Head of Government. The Prime Minister is elected by Parliament. National Assembly is elected by first-past-the-post system for four years. The relevant constitutional provisions are as follows:

Article 33.-

(1) The Government consists of

(a) The Prime Minister

(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.

(4) The ministers are proposed by the Prime Minister, and appointed and relieved of their duties by the President of the Republic.

(5) The Government is formed when the ministers have been appointed. After the formation of the Government, its members take their oath of office before Parliament.

Article 33/A.-

The mandate of the Government ends

(a) with the formation of the newly elected Parliament

(b) with the resignation of the Prime Minister, or the Government

(c) with the death of the Prime Minister, or

(d) if, in accordance with the contents of para (1), Article 39/A, Parliament has carried a no-confidence motion in regard to the Prime Minister and elects a new Prime Minister.

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.

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.

(5) 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.

The Constitution of Hungary thus provides for election of the Prime Minister by the members of Parliament upon his nomination by the President [At. 33(3)]. The ministers are proposed by the Prime Minister and appointed by the President [At. 33(4)]. The Government (that is the Prime Minister and the Ministers) in performance of its functions is responsible to Parliament. It is bound to render account of its activities regularly to Parliament[3].

The Constitution of Hungary also provides for constructive no-confidence vote. 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.

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.

3 Art. 39.- (1) In the performance of its functions the Government is responsible to Parliament. It is bound to render account of its activities regularly to Parliament.

(2) The members of the Government are responsible for their work to the Government and to Parliament, and must report on their activities to both. Their legal status, pay and the manner in which they may be impeached are regulated by law.

FORMATION OF MINISTRY IN SPAIN

Spain is a Constitutional Monarchy with a hereditary Monarch and a bicameral Parliament known as *Cortes Generales* consisting of Congress of Deputies (Lower House) and Senate (Upper House). Congress of Deputies is the popular house elected on the basis of proportional representation. The Prime Minister is the Head of Government. The process for appointment of Prime Minister involves an investiture vote by Parliament. The relevant constitutional provisions are as follows:

> *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.*

(5) 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.

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.

Section 101. Resignation of Government.-

(1) The Government shall resign after the holding of general elections, in the event of loss of parliamentary confidence as provided in the Constitution, or on the resignation or death of the President.

(2) The outgoing Government shall continue as acting body until the new Government takes office.

Section 108. Government's Political Liability.- The Government is jointly accountable before the Congress for its conduct of political business.

Section 111 Interpellations and questions to Government.-

(1) The Government and each of its members are subject to interpellations and questions put to them in the Houses. The Standing Orders shall set aside a minimum weekly time for this type of debate.

(2) Any interpellation may give rise to a motion in which the House states its position.

Section 112. Question of Confidence.- The President of the Government, after deliberation by the Council of Ministers, may ask the Congress for a vote of confidence in favour of his or her

programme or of a general policy statement. Confidence shall be deemed to have been obtained when a single majority of the Members of Congress vote in favour.

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.

(4) If the motion of censure is not adopted by the Congress, its signatories may not submit another during the same period of sessions.

Section 114. Government's Resignation.-

(1) If the Congress withholds its confidence from the Government, the latter shall submit its resignation to the King, whereafter the President of the Government shall be nominated in accordance with the provisions of section 99.

(2) If the Congress adopts a motion of censure, the Government shall 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 for the purposes provided in section 99. The King shall appoint him or her President of the Government.

Section 115. Dissolution of Congress, Senate or both Houses.-

(1) The President of the Government, after deliberation by the Council of Ministers, and under his or her sole responsibility, may

propose the dissolution of the Congress, the Senate or the Cortes Generales, which shall be proclaimed by the King. The decree of dissolution shall set a date for the elections.

(2) The proposal for dissolution may not be submitted while a motion of censure is pending.

(3) There shall be no further dissolution until a year has elapsed since the previous one, except as provided for in section 99, subsection 5.

The Constitution of Hungary thus provides for Investiture Vote by Parliament before appointment of the Prime Minister [Sec. 99(3)]. The other ministers are appointed and dismissed by the King at the Prime Minister's proposal [Sec. 100]. The Government is politically responsible to the Congress. [Sec. 108].

The Constitution of Hungary 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. 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 [Sec. 113]. In case the Congress adopts a motion of 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].

The power of dissolution of Parliament is vested in Prime Minister, who may, after deliberation by the Council of Ministers, and under his or her sole responsibility, may propose the dissolution of the Congress, the Senate or the *Cortes Generales* and on receiving such proposal, the King shall dissolve Parliament. The safeguards against this power of prime Minister are provided that (a) a proposal for dissolution cannot be submitted while a motion of censure is pending, and (b) there can be no dissolution until a year has elapsed since the

previous dissolution except as provided under Sec. 99(5). Sec. 99(5) provides for dissolution in case a candidate does not obtain the confidence of congress within two months of the first vote of investiture.

FORMATION OF MINISTRY IN IRELAND

The Republic of Ireland is a parliamentary democracy based on the Westminster model with a written constitution and a popularly elected president who is elected directly by universal suffrage and has mostly ceremonial powers. Parliament consists of the lower House known as the *Dáil* and the upper House the *Seanad*. The Government is headed by a Prime Minister, called as *Taoiseach*, who is appointed by the President on the nomination of the lower house of parliament, the *Dáil*. Members of the government are chosen from both the *Dáil* and the upper house of parliament, the *Seanad*. The process for appointment of Prime Minister involves an investiture vote by Parliament. The relevant constitutional provisions are as follows:

> *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.*
>
> *3° The President shall, on the advice of the Taoiseach, accept the resignation or terminate the appointment of any member of the Government.*
>
> *2. 1° Dáil Éireann shall be summoned and dissolved by the President on the advice of the Taoiseach.*
>
> *2° The President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann.*

Article 28

1. *The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution.*
2. *The executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government.*
3. ....
4. *1° The Government shall be responsible to Dáil Éireann.*

   2° The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.
5. ....
6. ....
7. ...
8. .....
9. ....
10. *The Taoiseach shall resign from office upon 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.*
11. *1° If the Taoiseach at any time resigns from office the other members of the Government shall be deemed also to have resigned from office, but the Taoiseach and the other members of the Government shall continue to carry on their duties until their successors shall have been appointed.*

    2° The members of the Government in office at the date of a dissolution of Dáil Éireann shall continue to hold office until their successors shall have been appointed.

The Eire Constitution thus provides for nomination of the Prime Minister by Parliament (*Dail*) and upon nomination by Parliament, the President appoints the Prime Minister. [Art. 13(1.1)]. 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 Government is politically responsible to the Congress. [Art. 28(4.1 and 4.2)]. The Prime Minister has to resign from office upon 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 power of dissolution of Parliament is vested in President. *Dáil Éireann* shall be summoned and dissolved by the President on the advice of the *Taoiseach* [Art. 13(2.1)]. However, safeguard is provided in Art. 13(2.2) that the President may in his absolute discretion refuse to dissolve *Dail* on the advice of a Prime Minister who has ceased to retain the support of a majority in *Dail.*

FORMATION OF MINISTRY IN THE CZECH REPUBLIC

The Czech Republic is a parliamentary democracy with a bicameral legislature consisting of the Chamber of Deputies and the Senate. The members of the Chamber of Deputies are elected for a four-year term by proportional representation, with a 5% election threshold. The President is the formal Head of State and is popularly elected. During the period from 1993-2012, the President of the Czech Republic was being selected by a joint session of the Parliament for a five-year term, with no more than two consecutive terms. Since 2013 the presidential election is direct. The Head of the Government is Prime Minister. The process for appointment of Prime Minister involves an investiture vote by Parliament. The relevant provisions in the Constitution of the Czech Republic are as follows:

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.

Art. 71

The Government may ask the Chamber of Deputies for a vote of confidence.

Art. 72

(1) The Chamber of Deputies may express no confidence in the Government.

(2) A motion to express no confidence in the Government shall be considered by the Chamber of Deputies only if it is filed in

written form by not less than fifty Deputies. The motion shall be admitted when approved by absolute majority of all Deputies.

Art. 73

(1) The Prime Minister shall submit his resignation to the President of the Republic. Other Members of Government shall submit their resignations to the President of the Republic through the Prime Minister.

(2) The Government shall resign if the Chamber of Deputies rejects its request for a vote of confidence or if it voted no confidence in the Government.

(3) If the Government resigns in accordance with the provision of paragraph 2, the President of the Republic shall accept its resignation.

Art. 74

The President of the Republic shall recall a Member of Government if the Prime Minister proposes so.

Art. 75

The President of the Republic shall recall a Government which has not resigned although required to do so.

Art. 35

(1) Chamber of Deputies may be dissolved by the President of the Republic, if :

(a) the Chamber of Deputies fails to vote confidence in a newly appointed Government the Prime Minister whereof was appointed by the President on the proposal of the Chairman of the Chamber of Deputies;

(b) the Chamber of Deputies has not decided on a Government Bill the consideration whereof the Government tied to the question of confidence;

(c) the session of the Chamber of Deputies has been recessed for a longer than admissible term; and

(d) the Chamber of Deputies has not had a quorum for a period longer than three months although its session was not recessed and although during the said period it had been repeatedly convened to meet.

(2) The Chamber of Deputies may not be dissolved three months prior to the end of its electoral term.

The Constitution of the Czech Republic provides for appointment of the Prime Minister by the President (Art. 68(2)). Other ministers are appointed by the President on the proposal of the 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)]. 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.

The power of dissolution of Parliament is vested in President [Art. 62(c)]. The President has the power to dissolve the Chamber of Deputies in any of the following eventualities, if the Chamber of Deputies fails to vote confidence in a newly appointed Government the Prime Minister whereof was appointed by the

President on the proposal of the Chairman of the Chamber of Deputies; or, if the Chamber of Deputies has not decided on a Government Bill the consideration whereof the Government tied to the question of confidence, or, if, the session of the Chamber of Deputies has been recessed for a longer than admissible term; or, if, the Chamber of Deputies has not had a quorum for a period longer than three months although its session was not recessed and although during the said period it had been repeatedly convened to meet [Art. 35]

FORMATION OF MINISTRY IN SWEDEN

Sweden is a constitutional monarchy with the Crown as the Head of State and the Prime Minister as the Head of Government. Parliament, called as *Riksdag* is unicameral and is a 349 member body elected for a term of four years by proportional representation system. According to the 1974 Instrument of Government, the king's duties are solely of a representative and ceremonial nature. The Head of the Government is Prime Minister. The King no longer formally appoints the Prime Minister; this prerogative is now exercised by the Speaker of the *Riksdag*. The process for appointment of Prime Minister involves voting in *Riksdag*. The relevant provisions in the Constitution of the Czech Republic are as follows:

> *Chapter 1, Art. 6. The Government governs the Realm. It is accountable to the Riksdag.*
>
> ***Vote on the Prime Minister after an election***
> *Chapter 6, Art. 3. No later than two weeks after it has convened, a newly elected Riksdag shall determine by means of a vote whether the Prime Minister has sufficient support in the Riksdag. If more than half of the members of the Riksdag vote no, the Prime Minister shall be discharged. No vote shall be held if the Prime Minister has already been discharged.*

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.

Discharge of the Prime Minister or a minister

Chapter 6, Art. 7. If the Riksdag declares that the Prime Minister, or a member of his or her Government, no longer has its confidence, the Speaker shall discharge the minister concerned. However, if the Government is in a position to order an extraordinary election to the

Riksdag and does so within one week from a declaration of no confidence, the minister shall not be discharged.
Rules concerning discharge of the Prime Minister following a vote on the Prime Minister after an election are laid down in Article 3.

Chapter 6, Art. 8. A minister shall be discharged if he or she so requests; in such a case the Prime Minister is discharged by the Speaker, and any other minister by the Prime Minister. The Prime Minister may also discharge any other minister in other circumstances.

Chapter 6, Art. 9. If the Prime Minister is discharged or dies, the Speaker discharges the other ministers.

The Constitution of Sweden, called as Instrument of the Government provides for election of the Prime Minister by its Parliament. The Speaker of *Riksdag* after formal consultations with representatives from each party group in the *Riksdag*, proposes a name to the R*iksdag*. 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. 4]. 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 [Chapter 6, Art. 6]. 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.

Government is accountable to *Riksdag* [Chapter 1, Art. 6]. If the *Riksdag* declares that the Prime Minister, or a member of his or her Government, no longer has its confidence, the Speaker shall discharge the minister concerned.

However, if the Government is in a position to order an extraordinary election to the *Riksdag* and does so within one week from a declaration of no confidence, the minister shall not be discharged [Chapter 6, Art. 7].

FORMATION OF MINISTRY IN PORTUGAL

Portugal is a parliamentary republic with semi-presidentialism. The President of Italy is the Head of State and is elected directly by "universal, direct, secret suffrage". The Prime Minister is the Head of Government. The President has a supervisory executive role and shares with the Prime Minister key executive powers. The Parliament, known as "Assembly of the Republic" is composed of 230 deputies elected for a four-year term through proportional representation system. The Government is headed by the presidentially appointed Prime Minister, who names a Council of Ministers to act as the government and cabinet. Government is responsible to the President as well as to the Assembly of the Republic. [4]Each government is required to define the broad outline of its policies in a program, and present it to the Assembly for a mandatory debate. The failure of the Assembly to reject the program by a majority of deputies confirms the government in office. The relevant constitutional provisions are as follows:

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.*
2. *The President of the Republic shall appoint the remaining members of the Government upon a proposal from the Prime Minister.*

4 Arts. 190 and 191

Article 188 (The Government's Programme)

The Government's Programme shall set out the main political guidelines and the measures that are to be adopted or proposed in the various areas of governance.

Article 189 (Collective responsibility)

Members of Government shall be bound by the Government's Programme and by decisions taken by the Council of Ministers.

Article 190 (Government responsibility)

The Government shall be responsible to the President of the Republic and the Assembly of the Republic.

Article 191 (Responsibility of members of the Government)

1. *The Prime Minister shall be responsible to the President of the Republic and, within the ambit of the Government's political responsibility, to the Assembly of the Republic.*
2. *Deputy Prime Ministers and Ministers shall be responsible to the Prime Minister and, within the ambit of the Government's political responsibility, to the Assembly of the Republic.*
3. *Secretaries and Under Secretaries of State shall be responsible to the Prime Minister and their Minister.*

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.*

Article 193 (Request for confidence motion)

The Government may ask the Assembly of the Republic to pass a motion of confidence in relation to a statement of general policy or any important matter of national interest.

Article 194 (No confidence motions)

1. *Upon the initiative of one quarter of all the Members in full exercise of their office or of any parliamentary group, the Assembly of the Republic may subject the Government to no confidence motions in relation to the implementation of its Programme or to any important matter of national interest.*
2. *No confidence motions shall only be considered forty-eight hours after they are made, and the debate thereon shall last for no more than three days.*
3. *If a no confidence motion is not passed, its signatories may not make another such motion during the same legislative session.*

Article 195 (Resignation or removal of the Government)

1. *The Government shall resign upon:*
   (a) The beginning of a new legislature;
   (b) Acceptance by the President of the Republic of the Prime Minister's resignation;
   (c) The Prime Minister's death or lasting physical incapacitation;
   (d) Rejection of the Government's Programme;
   (e) The failure of any confidence motion;

(f) Passage of a no confidence motion by an absolute majority of all the Members in full exercise of their office.

2. *The President of the Republic may only remove the Government when it becomes necessary to do so in order to ensure the normal functioning of the democratic institutions and after first consulting the Council of State.*

Article 133 (Responsibilities in relation to other bodies)

In relation to other bodies the President of the Republic shall be responsible for:

(a) Chairing the Council of State;

(b) ..

(c) ...

(d) ...

(e) Subject to the provisions of Article 172 and after first consulting both the parties with seats in the Assembly and the Council of State, dissolving the Assembly of the Republic;

(f) Appointing the Prime Minister pursuant to Article 187(1);

(g) Removing the Government in accordance with Article 195(2), and discharging the Prime Minister from office pursuant to Article 186(4).

(h) ...

(i) ...

The Constitution of Portugal 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. 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 may be rejected by the

Assembly by an absolute majority [Art. 196(4)]. In case the government's programme is rejected by the Assembly, the Government has to resign [Art. 195(1)(d)]. Article 193 provides that the Government may ask the Assembly to pass a motion of confidence in relation to a statement of general policy or any important matter of national interest. Article 194 provides for non-confidence motion. Upon the initiative of one quarter of all the Members the Assembly of the Republic may subject the Government to no confidence motions in relation to the implementation of its Programme or to any important matter of national interest. The government has to resign in the beginning of a new legislature, in case of rejection of the Government's Programme, upon failure of any confidence motion, and in the event of passage of a no confidence motion by the Assembly.

The power of dissolution of the Assembly is vested in the President. Article 133 provides that the President may after first consulting the parties with seats in the Assembly and the Council of State, and subject to the provisions of Article 172, dissolve the Assembly of the Republic. Article 172 provides that the Assembly shall not be dissolved during the six months following its election, during the last six months of the President of the Republic's term of office, or during a state of siege or a state of emergency.

FORMATION OF MINISTRY IN GREECE

Greece is a parliamentary republic [Art.1]. The Head of State is the President who is elected by Parliament for a five-year term. Greece has a unicameral Parliament. The members of Parliament are elected for a four-year term. The Head of the Government is Prime Minister. Government is collectively responsible to Parliament. The relevant provisions in the Constitution of Greece with regard to appointment of the Prime Minister and other ministers, ministers responsibility to Parliament and dissolution of Parliament, are as follows:

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.

Article 38

1. *The President of the Republic shall relieve the Cabinet from its duties if the Cabinet resigns, or if Parliament withdraws its confidence, as specified in article 84. In such cases, the provisions of paragraphs 2, 3 and 4 of article 37 are analogously applied. If the Prime Minister of the resigned Cabinet is also the leader or party spokesman of the party with an absolute majority of the total number of Members in Parliament, then the provision of article 37 paragraph 3, section c is analogously applied.*

2. *Should the Prime Minister resign, be deceased or be unable to discharge his duties due to reasons of health, the President of the Republic shall appoint as Prime Minister the person proposed by the parliamentary group of the party to which the departing Prime*

Minister belongs, provided that this has the absolute majority of the seats in Parliament. The proposal is made within three days at the latest from the resignation or demise of the Prime Minister or from the ascertainment of his inability to discharge his duties. In case no political party has the absolute majority of the seats in Parliament, paragraph 4 is analogously applied, followed by the second section of paragraph 2 and by paragraph 3 of the preceding article. The inability of the Prime Minister to discharge his duties due to reasons of health is ascertained by the Parliament by virtue of a special decision, taken with the absolute majority of the total number of Members of Parliament, following a proposal by the parliamentary group of the party to which the Prime Minister belongs, provided that this has the absolute majority of the seats in Parliament. In every other case, the proposal is submitted by at least two fifths of the total number of Members of Parliament. Until the appointment of the new Prime Minister, the duties of the Prime Minister ar exercised by the first in order Deputy Prime Minister and, in case no Deputy Prime Ministers have been appointed, by the first in order Minister.

Interpretative clause: The provision of paragraph 2 is also applied in the case of replacement of the President of the Republic, as provided in article 34.

Article 41

1. *The President of the Republic may dissolve the Parliament when two Governments have resigned or have been voted down by Parliament and its composition fails to guarantee governmental stability. Elections are held by the Government enjoying the confidence of the dissolving Parliament. In all other cases the third section of paragraph 3 of article 37 is analogously applied.*

2. *The President of the Republic shall dissolve the Parliament on the proposal of the Cabinet which has received a vote of confidence, for the purpose of renewing the popular mandate, in view of dealing with a national issue of exceptional importance. Dissolution of the new Parliament for the same issue is precluded.*

3. *The decree concerning the dissolution of the Parliament, countersigned in the case of the preceding paragraph by the Cabinet, must contain a proclamation of elections within thirty days and the convocation of the new Parliament within another thirty days of the elections.*

4. *The Parliament elected following the dissolution of the previous one, may not be dissolved before the lapse of one year from its opening session except in those cases described in article 37 paragraph 3 and paragraph 1 of the present article.*

5. *The dissolution of the Parliament shall be compulsory in the case specified in article 32 paragraph 4.*

Interpretative clause: In all cases and without any exception, the decree concerning the dissolution of Parliament must contain a proclamation of elections to be held within thirty days and the convocation of the new Parliament within thirty days of the elections.

Article 84 - Relations between Parliament and Government

1. *The Government must enjoy the confidence of Parliament. The Government shall be obliged to request a vote of confidence by Parliament within fifteen days of the date the Prime Minister shall have been sworn in, and may also do so at any other time. If at the*

time the Government is formed, Parliament has suspended its works, it shall be convoked within fifteen days to resolve on the motion of confidence.

2. *Parliament may decide to withdraw its confidence from the Government or from a member of the Government. A motion of censure may not be submitted before the lapse of six months from the rejection by Parliament of such a motion. A motion of censure must be signed by at least one-sixth of the number of Members of Parliament and must explicitly state the subjects on which the debate is to be held.*

3. *A motion of censure may, exceptionally, be submitted before the lapse of six months, if it is signed by the majority of the total number of Members of Parliament.*

4. *The debate on a motion of confidence or censure shall commence two days after the motion is submitted, unless, in the case of a motion of censure, the Government requests its immediate commencement; in all cases the debate may not be prolonged for more than three days from its commencement.*

5. *The vote on a motion of confidence or censure is held immediately after the termination of the debate; it may, however, be postponed for forty-eight hours if the Government so requests.*

6. *A motion of confidence cannot be adopted unless it is approved by an absolute majority of the present Members of Parliament, which however cannot be less than the two-fifths of the total number of the members. A motion of censure shall be adopted only if it is approved by an absolute majority of the total number of Members of Parliament.*

7. Ministers and Undersecretaries who are Members of Parliament shall vote on the above motions.

Article 85

The members of the Cabinet and the Undersecretaries shall be collectively responsible for general Government policy, and each of them severally for the actions or omissions within his powers, according to the provisions of statutes on the liability of Ministers. A written or oral order of the President of the Republic may in no case whatsoever relieve Ministers and Undersecretaries of their liability.

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, a 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. The other ministers and undersecretaries are appointed by the President on the recommendation of the Prime Minister [Art. 37(1)].

The Government is accountable to Parliament [Art. 85] and must enjoy the confidence of Parliament [Art. 84]. The Government is obliged to request a vote of confidence by Parliament within fifteen days of appointment of the Prime Minister. Parliament may decide to withdraw its confidence from the Government or from a member of the Government. A motion of confidence cannot be adopted unless it is approved by an absolute majority of the present Members of Parliament, which however cannot be less than the two-fifths of the total number of the members. A motion of censure may not be submitted before the lapse of six months from the rejection by Parliament of such a motion. A motion of censure must be signed by at least one-sixth of the number of Members of Parliament and must explicitly state the subjects on which the debate is to be held. A motion of censure may, exceptionally, be submitted before the lapse of six months, if it is signed by the majority of the total number of Members of Parliament. The debate on a motion of confidence or censure shall commence two days after the motion is submitted, unless, in the case of a motion of censure, the Government requests its immediate commencement; in all cases the debate may not be prolonged for more than three days from its commencement. The vote on a motion of confidence or censure is held immediately after the termination of the debate; it may, however, be postponed

for forty-eight hours if the Government so requests. A motion of censure is adopted only if it is approved by an absolute majority of the total number of Members of Parliament.

The power of dissolution of Parliament is vested in President [Art. 41]. The President may dissolve the Parliament if two Governments have resigned or have been voted down by Parliament and its composition fails to guarantee governmental stability. Art. 41(2) further provides that the President shall dissolve the Parliament on the proposal of the Cabinet which has received a vote of confidence, for the purpose of renewing the popular mandate, in view of dealing with a national issue of exceptional importance. Dissolution of the new Parliament for the same issue is precluded. However, a Parliament elected following the dissolution of the previous one, cannot be dissolved before the lapse of one year from its opening session except in those cases described in Art. 37(3) and 41(1) [Art. 41(4)]. Dissolution of Parliament, however, is compulsory in the case specified in article 32(4). Article 32 of the Constitution of Greece provides for election of President by Parliament by two-thirds majority. In case, in the ballot, two-thirds majority is not attained by any candidate, the ballot is repeated after five days. If the second ballot also fails to produce a two-thirds majority, the person receiving three-fifths majority is deemed to be elected as President. Art. 32(4) provides that if the third ballot also fails to produce the said qualified majority, Parliament is be dissolved within ten days of the ballot. After election of Parliament, fresh voting is held for election of President.

FORMATION OF MINISTRY IN ITALY

Italy is a parliamentary republic. The President of Italy is the Head of State. The President of the Republic is elected by Parliament in joint session (Art. 83). Election of President is by secret ballot with a majority of two-thirds. In case, third ballot is required, an absolute majority suffices (Art. 83). Parliament is bicameral known as the Chamber of Deputies and the Senate of the Republic.

The Chamber of Deputies is elected by direct and universal suffrage (art. 56) while the Senate is elected on a regional basis (Art. 57) and are elected for five-year term. The Prime Minister, officially called as the "President of the Council of Ministers" is Italy's Head of Government. The Prime Minister and the cabinet are appointed by the President, but must pass a vote of confidence in Parliament to assume office. The relevant constitutional provisions are as follows:

The Council of Ministers

Article 91

The Government of the Republic is made up of the President of the Council and the Ministers who together form the Council of Ministers. The President of the Republic appoints the President of the Council of Ministers and, on his proposal, the Ministers.

Art. 93

Before taking office, the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic.

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.

Art. 95

The President of the Council conducts and holds responsibility for the general policy of the Government.
The President of the Council ensures the coherence of political and administrative policies, by promoting and co-ordinating the activity of the Ministers.
The Ministers are collectively responsible for the acts of the Council of Ministers; they are individually responsible for the acts of their own ministries.
The law establishes the organisation of the Presidency of the Council, as well as the number, competence and organisation of the ministries.

Art. 88
In consultation with the presiding officers of Parliament, the President may dissolve one or both Houses of Parliament.
The President of the Republic may not exercise such right during the final six months of the presidential term, unless said period coincides in full or in part with the final six months of Parliament.

The Constitution of Italy provides for appointment of the Prime Minister by the President [Art. 91]. 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 to obtain a vote of confidence and must receive the confidence of both Houses of Parliament [Art. 94]. The Prime Minister is responsible for the general policy of the Government and the ministers are collectively responsible [Art. 95]. The government can be unseated by Parliament by a vote of no-confidence but 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.

FORMATION OF MINISTRY IN BELGIUM

Belgium is a constitutional monarchy with a parliamentary form of government. The Belgian King is a titular head. Belgium has a bicameral Parliament composed of a Senate and a Chamber of Representatives. Senate, which is the Upper House is a 71 member body and is made up of members elected by Dutch, French, Flemish and German electoral colleges. The Chamber of Representatives, a 150 member body is elected for a four-year term under the proportional voting system. Belgium has compulsory voting. The Prime Minister is the Head of Government. The Prime Minister and the ministers are appointed by the King and are collectively responsible to the Chamber of Representatives. The relevant constitutional provisions are as follows:

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.

Article 46

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

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.

Article 50

Any member of either House appointed by the King as minister and who accepts this appointment ceases to sit in Parliament and takes up his mandate again when the King has terminated his office as minister. The law determines the rules for his replacement in the House concerned.

Article 88

The King's person is inviolable; his ministers are accountable.

Article 101

Ministers are accountable to the House of Representatives.

Article 37

The federal executive power, as regulated by the Constitution, belongs to the King.

Article 61

The members of the House of Representatives are elected directly by citizens who are at least eighteen years of age and who do not fall within the categories of exclusion stipulated by the law. Each elector has the right to only one vote.

Article 63

§ 1. The House of Representatives is composed of one hundred and fifty members.

§ 2. The number of seats in each electoral district corresponds to the result of dividing the number of inhabitants of the electoral district by the federal divisor, which is obtained by dividing the number of the population of the Kingdom by one hundred and fifty. The remaining seats are assigned to the electoral districts with the greatest surplus of population not yet represented.

Article 65

The members of the House of Representatives are elected for four years.

The House is re-elected every four years.

The Constitution of Belgium provides for appointment of the Prime Minister and the ministers by the King [Art. 96]. One interesting feature of the Belgium Constitution is that any member of either House appointed by the King as minister and who accepts this appointment ceases to sit in Parliament and takes up his mandate again when the King has terminated his office as minister [Art. 50]. Ministers are accountable to the House of Representatives [Art. 101].

The Belgian Constitution incorporates the system of Constructive No-Confidence Vote. Art. 96 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 Prime Minister and forms his government.

The power to dissolve Parliament is vested with the President. Article 46 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. In case of dissolution, elections are required to be held within forty days and new Houses convened within two months. Another interesting aspect of the Belgian Constitution is that the Senate which is the upper House, is also not a permanent body and the dissolution of the House of Representatives entails the dissolution of the Senate also [Art. 46].

FORMATION OF MINISTRY IN SLOVENIA

Slovenia is a parliamentary republic. The Head of State is the President of the Republic who is elected by popular vote and has an important integrative role, though ceremonial and representative in nature. Slovenia has a bicameral

Parliament compeising a National Assembly (Lower House) and a National Council (Upper House). The National Assembly is a 90 member body and is elected for a term of four years based on the proportional voting system. The Prime Minister, known as the "President of the Government" is the Head of Government. The Prime Minister is elected by the National Assembly upon the proposal of the President of the Republic. The relevant constitutional provisions are as follows:

Article 110

(Composition of the Government)

The Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly.

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.

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.

Article 112
(Appointment of Ministers)
Ministers are appointed and dismissed by the National Assembly on the proposal of the President of the Government.
Prior to appointment a proposed minister must appear before a competent
commission of the National Assembly and answer its questions.

Article 115
(Termination of Office of the President of the Government and Ministers)
The President of the Government and ministers cease to hold office when a new National Assembly convenes following elections; ministers also cease to hold office whenever the President of the

Government ceases to hold office and whenever such ministers are dismissed or resign; ministers must, however, continue to perform their regular duties until the election of a new President of the Government or until the appointment of new ministers.

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.

Article 117

(Vote of Confidence)

The President of the Government may require a vote of confidence in the

Government. If the Government does not receive the support of a majority vote of all deputies, the National Assembly must elect within

thirty days a new President of the Government or in a new vote express its confidence in the incumbent President of the Government, or failing this, the President of the Republic dissolves the National Assembly and calls new elections. The President of the Government may tie the issue of confidence to the adoption of a law or to some other decision in the National Assembly. If such decision is not adopted, it is deemed that a vote of no confidence in the Government has been passed.

No less than forty-eight hours must elapse between the requirement of a vote of confidence and the vote itself.

Article 118

(Interpellation)

An interpellation with respect to the work of the Government or an individual minister may be initiated in the National Assembly by at least ten deputies.

If, after the debate following such interpellation, a majority of all deputies carries a vote of no confidence in the Government or in an individual minister, the National Assembly dismisses the Government or said minister.

Article 119

(Impeachment of the President of the Government and Ministers)

The National Assembly may impeach the President of the Government or ministers before the Constitutional Court on charges of violating the Constitution and laws during the performance of their office. The Constitutional Court considers the charges in such a manner as determined in Article.

The Constitution of Slovenia provides for election of the Prime Minister. Art. 111 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 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. Other 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.

Art. 115 provides that the Prime Minister and ministers cease to hold office when a new National Assembly convenes following elections; ministers also cease to hold office whenever the Prime Minister ceases to hold office and whenever such ministers are dismissed or resign; ministers must, however,

continue to perform their regular duties until the election of a new Prime Minister or until the appointment of new ministers.

The government as well as the individual ministers are accountable to the National Assembly. The Slovenian Constitution, however, does not talk of collective responsibility, rather it states, "the Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly [Art. 110].

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 Prime Minister on the proposal of at least ten deputies and by a majority vote of all deputies. The incumbent Prime Minister 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 Prime Minister 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 Prime Minister 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 Prime Minister and the vote itself.

Article 117 further provides that the Prime Minister may require a vote of confidence in the Government. If the Government does not receive the support of a majority vote of all deputies, the National Assembly must elect within thirty days a new Prime Minister or in a new vote express its confidence in the incumbent Prime Minister, or failing this, the President of the Republic dissolves the National Assembly and calls new elections. The Prime Minister may tie the issue of confidence to the adoption of a law or to some other decision in the National Assembly. If such decision is not adopted, it is deemed that a vote of no confidence in the Government has been passed.

FORMATION OF MINISTRY IN 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 is not found in South Africa. The President is the Head of State as well as the Head of Government[5] and he is accountable to Parliament and his tenure depends on the confidence of Parliament. Executive authority is vested in the President and he exercises the executive authority along with the cabinet.[6] Parliament is bicameral consisting of National Assembly (Lower House) and National Council of Provinces (Upper House). National Assembly is a 400 member body and is elected on the system of proportional representation for a term of five years. The process for appointment of President involves election in Parliament. The relevant provisions in the Constitution of South Africa are as follows:

> *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.*

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

6 Section 85 Executive authority of the Republic

(1) The executive authority of the Republic is vested in the President.

(2) The President exercises the executive authority, together with the other members of the Cabinet.

Section 87. - Assumption of office by President

When elected President, a person ceases to be a member of the National Assembly and, within five days, must assume office by swearing or affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

Section 88. - Term of office of President

(1) The President's term of office begins on assuming office and ends upon a vacancy occurring or when the person next elected President assumes office.

(2) No person may hold office as President for more than two terms, but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term.

Section 89. - Removal of President

(1) 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.

(2) Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.

Section 91. - Cabinet

(1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.

(2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.

(3) The President –

(a) must select the Deputy President from among the members of the National Assembly;

(b) may select any number of Ministers from among the members of the Assembly; and

(c) may select no more than two Ministers from outside the Assembly.

(4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.

(5) The Deputy President must assist the President in the execution of the functions of government.

Section 92. - Accountability and responsibilities

(1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.

(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.

(3) Members of the Cabinet must –

(a) act in accordance with the Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.

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.

(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.

Section 84 Powers and functions of President

(1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.

(2) The President is responsible for –

(a) assenting to and signing Bills;

(b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality;

(c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;

(d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;

(e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;

(f) appointing commissions of inquiry;

(g) calling a national referendum in terms of an Act of Parliament;

(h) receiving and recognising foreign diplomatic and consular representatives;

(i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;

(j) pardoning or reprieving offenders and remitting any fines, penalties or forfeitures; and

(k) conferring honours.

The Constitution of South Africa provides for election of the President by its Parliament. 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 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)].

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 three years have expired since the Assembly was elected and the Assembly adopts 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. 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. Since the President is the Head of State as well as the Head of Government, the power to assent the bills, summoning the National Assembly and National Council of provinces is vested in the President itself [Art. 84].

FORMATION OF MINISTRY IN JAPAN

Japan is a constitutional monarchy with the Japanese Emperor as the Head of State. As a ceremonial figurehead, he is defined by the Japanese Constitution as "the symbol of the state and of the unity of the people." [7] The Emperor performs his acts in the matter of state as per the advice and approval of the cabinet[8]. The Prime Minister of Japan is the head of government and is appointed by the Emperor after being designated by the *Diet* from among its members. The cabinet is responsible to the *Diet*. Although the Prime Minister is formally appointed by the Emperor, the Constitution of Japan explicitly requires the Emperor to appoint whoever is designated by the *Diet*. Japan's legislative organ is the National *Diet*, a bicameral parliament[9]. The *Diet* consists of a House of Representatives, a 480 member body, elected by popular vote every four years[10], and a House of Councillors, a 242 member body, also elected popularly[11] and half of its members are elected every third year[12]. The relevant provisions in the Constitution of Japan are as follows:

> ***Article 6.*** *The Emperor shall appoint the Prime Minister as designated by the Diet. The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.*

7 Constitution of Japan, Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.

8 Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

9 Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

10 Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

11 Article 43. Both Houses shall consist of elected members, representative of all the people.

12 Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

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.*

Article 65. *Executive power shall be vested in the Cabinet.*

Article 66. *The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law. The Prime Minister and other Ministers of State must be civilians. The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet*

Article 54. *When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election. When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.*

Article 68. *The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet. The Prime Minister may remove the Ministers of State as he chooses.*

***Article 69**. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.*

***Article 70.** When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.*

***Article 7.** The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:*

- *Promulgation of amendments of the constitution, laws, cabinet orders and treaties.*
- *Convocation of the Diet.*
- *Dissolution of the House of Representatives.*
- *Proclamation of general election of members of the Diet.*
- *Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.*
- *Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.*
- *Awarding of honours.*
- *Attestation of instruments of ratification and other diplomatic documents as provided for by law.*
- *Receiving foreign ambassadors and ministers.*
- *Performance of ceremonial functions.*

The Constitution of Japan also provides for election of the President by Parliament. Article 6 of the Japanese Constitution provides that the Emperor shall appoint the Prime Minister as designated by the Diet. 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.

The Prime Minister appoints and removes the other ministers [Art. 68]. However, a majority of the number of ministers must be chosen from among the members of the Diet. The cabinet consisting of the Prime Minister and other ministers constitute the cabinet and the cabinet, in the exercise of executive power, is collectively responsible to the Diet Art. 66]. The House of Representatives, may, pass a non-confidence resolution and may reject a confidence resolution and in such case the cabinet has to resign *en masse*, unless the House of Representatives is dissolved within ten days [Art. 69].

The power of dissolution of the House of Representatives is vested with the Emperor but the Emperor exercises this power with the advice and approval of the Cabinet [Art. 7].

FORMATION OF MINISTRY IN FINLAND

Finland till 2000 was considered to have a semi-presidential form of government. After the 2000 Constitutional Amendment the presidency became largely a ceremonial, non-executive position and the Head of Government is the Prime Minister. The President is also elected through universal suffrage by a single-

stage or two-stage election[13]. Parliament, known as *Eduskunta* is unicameral[14] and is elected for a term of four years using the party-list proportional representation system (D'Hondt method)[15]. The Prime Minister is elected by Parliament. The cabinet is responsible to Parliament[16]. The relevant provisions in the Constitution of Finland are as follows:

> ***Section 60 - The Government***
>
> *The Government consists of the Prime Minister and the necessary number of Ministers. The Ministers shall be Finnish citizens known to be honest and competent.*
>
> *The Ministers are responsible before the Parliament for their actions in office. Every Minister participating in the consideration of a matter in a Government meeting is responsible for any decision made, unless he or she has expressed an objection that has been entered in the minutes.*
>
> ***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*

13 Section 54 - Election of the President of the Republic

The President of the Republic is elected by a direct vote for a term of six years. The President shall be a nativeborn Finnish citizen. The same person may be elected President for no more than two consecutive terms of office.

The candidate who receives more than half of the votes cast in the election shall be elected President. If none of the candidates has received a majority of the votes cast, a new election shall be held between the two candidates who have received most votes. In the new election, the candidate receiving the most votes is elected President. If only one presidential candidate has been nominated, he or she is appointed President without an election.

14 Sec. 24.

15 The D'Hondt method is a highest averages method for allocating seats in party-list proportional representation. The method described is named after Belgian mathematician Victor D'Hondt, who formulated the system in 1878.

16 Section 3 - Parliamentarism and the separation of powers

The legislative powers are exercised by the Parliament, which shall also decide on State finances. The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament.

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.

Section 62 - Statement on the programme of the Government

The Government shall without delay submit its programme to the Parliament in the form of a statement. The same applies when the composition of the Government is essentially altered.

Section 64 - Resignation of the Government or a Minister

The President of the Republic grants, upon request, the resignation of the Government or a Minister. The President may also grant the resignation of a Minister on the proposal of the Prime Minister.

The President shall in any event dismiss the Government or a Minister, if either no longer enjoys the confidence of Parliament, even if no request is made.

If a Minister is elected President of the Republic or the Speaker of Parliament, he or she shall be considered to have resigned the office of Minister as from the day of election.

Section 24 - Composition and term of the Parliament

The Parliament is unicameral. It consists of two hundred Representatives, who are elected for a term of four years at a time. The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held.

Section 25 - Parliamentary elections

The Representatives shall be elected by a direct, proportional and secret vote. Every citizen who has the right to vote has equal suffrage in the elections.

For the parliamentary elections, the country shall be divided, on the basis of the number of Finnish citizens, into at least twelve and at most eighteen constituencies. In addition, the Åland Islands shall form their own constituency for the election of one Representative.

The right to nominate candidates in parliamentary elections belongs to registered political parties and, as provided by an Act, to groups of persons who have the right to vote.

Section 26 - Extraordinary parliamentary elections

The President of the Republic, in response to a reasoned proposal by the Prime Minister, and after having heard the parliamentary groups, and while the Parliament is in session, may order that extraordinary parliamentary elections shall be held. Thereafter, the Parliament shall decide the time when it concludes its work before the elections.

After extraordinary parliamentary elections, the Parliament shall convene in session on the first day of the calendar month that begins ninety days after the election order, unless the Parliament has decided on an earlier date of convocation.

Section 58 - Decisions of the President

The President of the Republic makes decisions in Government on the basis of motions proposed by the Government.

If the President does not make the decision in accordance with the motion proposed by the Government, the matter is returned to the Government for preparation. Thereafter, the decision to submit a government proposal to the Parliament or to withdraw a government proposal from the Parliament shall be made in accordance with the Government's new motion for a decision.

Notwithstanding the provision in paragraph (1), the President makes decisions on the following matters without a motion from the Government:

(1) The appointment of the Government or a Minister, as well as the acceptance of the resignation of the Government or a Minister;

(2) The issuance of an order concerning extraordinary parliamentary elections.....

The Constitution of Finland provides for election of the Prime Minister. 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. The Ministers are responsible to the Parliament for their actions in office. Every Minister participating in the consideration of a matter in a Government meeting is responsible for any decision made, unless he or she has expressed an objection that has been entered in the minutes [Sec. 60]. This is a slight departure from the principle of collective responsibility.

The government must enjoy the confidence of the Parliament and the President shall dismiss the Government or a Minister, if either no longer enjoys the confidence of Parliament. The power to dissolve Parliament is vested in the President, who exercises this power after a reasoned proposal submitted by the Prime Minister and after hearing the parliamentary groups. Sec. 26 provides that the President of the Republic, in response to a reasoned proposal by the Prime Minister, and after having heard the parliamentary groups, and while the Parliament is in session, may order that extraordinary parliamentary elections shall be held. Thereafter, the Parliament shall decide the time when it concludes its work before the elections. Sec. 58(2), however, provides that though the President takes decisions in government based on the motions proposed by the government, in the matters of the appointment and acceptance of resignation of the government or a minister, and issuance of an order concerning extra-ordinary general parliamentary election, the President makes decision without a motion from the government.

E. ADOPTION OF PARLIAMENTARY FORM OF GOVERNMENT IN THE CONSTITUTION OF INDIA

The representatives of the Indian people in July, 1947 took the momentous decision to adopt the parliamentary form of government. The framers of the Constitution accorded preference to the parliamentary form of government over the Presidential form primarily for two reasons; *first,* the working familiarity the Indian polity had with the parliamentary system of government for over a century since its introduction by the Government of India Acts of 1919 and 1935; and *secondly,* the general perception of the framers of our Constitution that the parliamentary form of government is a more responsible form of government as compared to the presidential form. Sardar Vallabh Bhai Patel presenting the Reports of the two Committees set up to determine the 'Principles of a Model Provincial Constitution' and 'The Principles of the Union Constitution' made an announcement in the Constituent Assembly that the Committees came to the conclusion that it would suit the conditions of this country to adopt the parliamentary system of government, the British type of Constitution with which we are familiar.[1]

In a sense some semblance of a parliamentary system began in India in 1853 when with the passage of the Indian Councils Act, something like a small legislative council began almost insensibly to grow up. The Act of 1853 and 1909 further reinforced it.

The Government of India Act of 1919 based on the Montagu-Chelmsford Report took India one step more towards representative government. At the provincial level, part of the administration was transferred to the hands of popularly elected ministers. At the Centre, executive power continued to be

1 S.P. Verma, "Parliamentary Democracy in India – The Genesis" in V. Bhaskara Rao and B. Ventakateshwarlu, eds., *Parliamentary Democracy in India,* Mittal Publications, New Delhi, 1987, p. 3.

exercised by the Governor General and his Executive Council. The Central Legislature was set up as a separate body consisting of two chambers, the Upper House to be called the Council of States and the Lower House to be known as the Legislative Assembly. The strength of the assembly was to be 140 out of which 105 were to be elected and the rest nominated. The Upper House (Council of States) was to be smaller in size, consisting of 60 members out of which 26 were to be nominated and the rest elected. The franchise was very limited. Only the propertied class was enfranchised along with people possessing high educational qualifications or public services like members of a legislature or local government bodies.

The contributions of the 1919 reforms to the parliamentary life in India was immense. Prof. H. Mukerji wrote:

> *"In spite of its many shortcomings, it gave some opportunities for training it citizenship rights as voters, legislators, ministers (however bound by dyarchy's strengths). Some 93 public men acquired experience as ministers, 121 as members of Governor's Executive Council; the number of those who gained experience as legislators at the Centre or in the Provinces was probably between 1000 and 2000."*[2]

With the mounting pressure of public opinion and the various movements under the leadership of Mahatma Gandhi led to a series of Round Table conferences and the report of the Simon Commission. Consequently, some more constitutional reforms were incorporated by the Government of India Act, 1935. The Act envisaged a federal government and legislatures at the Centre in which the native Indian states were also to participate. Provision was made to transfer power to federal administration to the Indian representatives responsible to the

2 H. Mukerji, *India and Parliament,* People's Publishing House, New Delhi, 1962, pp. 74-75.

proposed federal legislature but the Governor General was to continue his hold over important and vital departments like defence and external affairs.

The proposed federation under the Act of 1935 never came into existence and the elections to the central legislature continued to be held under the Act of 1919. In the words of Prof. Morris-Jones:

> *"The 'slave' constitution gave legislative experience to a considerable number of politicians in the provinces; it installed what were in effect fully responsible popular governments; it began to accustom all concerned to a transfer of power. Above all, it gave experience precisely where it was needed; the men who began to learn governmental and parliamentary politics during 1937-39 were to a great extent the men who took over the total responsibility in 1947. Even the unchanged Central Assembly was no wasted institution. It forced an uneasy government to give explanation; it trained a small group of politicians – but trained them intensively – in the discussion of important and complex public issues and if it was not the heart of the political scene, at least it was preparing quietly so to become."*[3]

The Constituent Assembly in deciding the political system of India had three alternatives before it. One was the British model of parliamentary form of government, another was the American Presidential type. The third alternative was to find indigenous institution capable of meeting the needs of the country.

Conditions both for parliamentary and presidential form of government were ripe in the country. The third alternative, in basing the Constitution on the village and its panchayat and enacting upon them a superstructure of indirect, decentralized government did not find favour with the Constitution makers. The national leaders were opposed to the concentration of power and authority in one

3 W.H. Morris-Jones, *Parliament in India,* University of California, Philadelphia, 1957, p. 58.

hand which characterizes the Presidential system. The seeds of parliamentary system were already sown with the various Acts as stated above and the Indian polity had a working familiarity with the Parliamentary system. Ultimately the founding fathers of the Indian Constitution thought that India should have a parliamentary system of government.

Under the terms of the Cabinet Mission Plan, the members of the Constituent Assembly were elected in July, 1946. The members were elected by the Provincial legislatures in the approximate ratio of 1:1 million population.

While introducing the draft constitution in the Assembly on November 4, 1948, Dr. Ambedkar made an exhaustive and authoritative statement about the general character of the executive that the draft constitution provided and about the reasons for the adoption of the type of executive.

> *"The presidential system of America is based on the separation of the executive and the Legislature, so that the president and his secretaries cannot be members of the Congress. The draft Constitution does not recognize this doctrine. The ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of government are, of course, democratic and the choice between the two in not very easy. (1) A democratic executive and (2) It must be a responsible executive. Unfortunately it has not been possible so far to devise a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand, gives you more responsibility but less stability. The reason for this is obvious. The American executive is a non-parliamentary executive which means that it is not dependent for its*

existence upon a majority in the Congress, while the British system is a parliamentary executive which means that it is dependent upon a majority in parliament. Being a non-parliamentary executive, the Congress of the United States cannot dismiss the executive. A parliamentary government must resign the moment it loses the confidence of a majority of the members of Parliament.

"Looking at it from the point of view of responsibility, a non parliamentary executive, being independent of Parliament, tends to be less responsible to the legislature, while a parliamentary executive, more dependent upon a majority in Parliament, becomes more responsible. A parliamentary system differs from a non-parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non parliamentary system, such as the one which exists in the United States of America, the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England where the parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament through questions, resolutions, no confidence resolutions, adjournment motions and debates on addresses. Periodic assessment is done by the electorate at the time of elections which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The draft constitution in recommending the parliamentary system of executive has preferred more responsibility to stability."[4]

4 CAD, Vol. VII, pp. 32-33.

F. FORMATION OF MINISTRY IN INDIA: CONSTITUTIONAL PROVISIONS

The Constitution of India establishes a parliamentary form of government. The parliamentary form of government in India is based on the Westminster model of cabinet government, where the President is the constitutional or formal head of the union government and exercises the powers and functions conferred upon him as per the aid and advice of his council of ministers.

FORMATION OF MINISTRIES AT THE UNION

Art. 53 of the Constitution vests executive power of the Union in the President.[5] Art. 74 of the Constitution provides for a Council of Ministers with the Prime Minister at the head to aid and advise the President.[6] The Prime Minister is to be appointed by the President and the other Ministers are to be appointed by the President on the advice of the Prime Minister.[7] The Prime Minister and the Ministers are members of either House of Parliament and in case any Minister (including the Prime Minister) is not a member of either House of Parliament for any period of six consecutive months, he ceases to be a Minister on expiration of

5 Article 53:

Executive Power of the Union.-(1) The executive power of the Union shall be vested in the President and shall be exercised by him in accordance with this Constitution.

6 Article 74:

Council of Ministers to aid and advise President.-(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice.

7 Article 75:

Other provisions as to Ministers.-

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) ....

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

that period [Article 75(5)]. The Council of Ministers is collectively responsible to the House of the People [Article 75(3)].

Art. 79 of the Constitution provides for constitution of Parliament consisting of the President and the two Houses to be known as the Council of States and the House of the People.[8] Art. 81 provides for composition of the House of the People consisting of not more than five hundred fifty members, not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States and not more than twenty members to represent the Union territories.[9]Art. 80 provides for composition of the Council of States consisting of not more than two-hundred and fifty members, twelve of whom are to be nominated by the President and not more than remaining two hundred and thirty-eight members to be representatives of the States and the Union territories.[10] The Constitution, as such, provides for a bicameral

8 Article 79:

Constitution of Parliament.- There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of the States and the House of the people.

9 Article 81:

Composition of the House of the People.-

(1) Subject to the provisions of Article 331, the House of the people shall consist of-

(a) Not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States; and

(b) Not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

10 Article 80:

Composition of the Council of the States.-

(1) The Council of the States shall consist of-

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(b) Not more than two hundred and thirty-eight representatives of the States and the Union Territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and the Union Territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of the such matters as the following, namely:- literature, science, art and social service.

legislature. Council of States, though theoretically modelled on the lines of the House of Lords in the British Parliament, the same has been totally different from the latter with regard to its constitution and powers. The Council of States, or "the Second Chamber" or "the Upper House" as it is popularly called, is envisaged as a representative body of the constituent States and as an indicator of federalism. The Council is provided as a forum to adequately reflect the interests of the constituent States and to ensure a mechanism of checks and balances against the exercise of power by the union government that might affect the interests of the constituent States.[11]

APPOINTMENT OF THE PRIME MINISTER

The scheme of the Constitution is thus a representative parliamentary democracy with the President as the formal head of the union government with a Council of Ministers headed by the Prime Minister to aid and advise him. The Prime Minister and the other Ministers in the Council of Ministers are members of either House of Parliament. The Council of Ministers is collectively responsible to the House of the People. The Prime Minister is appointed by the President and the other Ministers are appointed by the President on the advice of the Prime Minister [Article 75(1)].

The Prime Minister is appointed by the President. This is one act which the President performs in his discretion without the advice of the Council of Ministers or the Prime Minister. The question of appointment of a new Prime Minister usually arises either after holding a fresh election to Lok Sabha, or when the incumbent Prime Minister dies or resigns. In such a contingency, the President cannot act on the advice of any Prime Minister in the matter of

(4) The representatives of each State in the Council of State shall be elected by the elected members of the legislative Assemble of the State in accordance with the system of proportional representation by means of single transferable vote.

(5) The representatives of the Union Territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

11 *Kuldip Nayar* vs. *Union of India,* (2006) 7 SCC 1.

selection and appointment of the Prime Minister.[12] While the Constitution *prima facie* appears to confer an unfettered discretion on the President to appoint whomsoever he likes as Prime Minister, in practice, it is not so. A few conventions, and a few constitutional provisions indirectly, restrict his choice of a Prime Minister.[13] It is essential that the President appoints a person as the Prime Minister who has the support and confidence of the members of the Lok Sabha, otherwise he will not be in a position to form a stable Ministry and carry the House with him in his policies and programmes and the government cannot function. This means that the leader of the majority party in the Lok Sabha should invariably be invited to become the Prime Minister. This is the principal limitation in practice on the President's choice.

There is neither any specific provision in the Indian Constitution nor a mandatory convention debarring a member of the Rajya Sabha from becoming the Prime Minister. For example Mrs. Indira Gandhi, a member of the Rajya Sabha, became the Prime Minister in 1966. But the fact that she was elected to the Lok Sabha soon thereafter also shows that it is considered desirable that the Prime Minister should belong to the Lok Sabha. This trend, however, was reversed when Dr. Manmohan Singh, a member of the Rajya Sabha, was appointed as the Prime Minister in 2004 and again in 2009 and he occupied the office of Prime Minister for ten years as such without obtaining the membership of the Lok Sabha. Rajya Sabha is not a hereditary chamber like the House of Lords, and has contact with the contemporary public opinion as one-third of its members are indirectly elected every two years.[14] Thus, keeping the best democratic traditions in view and also to ensure smooth working of the governmental machinery, it is preferable that a member of the Lok Sabha rather than that of the Rajya Sabha should be the Prime Minister. In any case, a member

12 M.P. Jain, *Indian Constitutional Law,* Wadhwa, Nagpur, 2005, p. 133.

13 *Ibid.*

14 *Ibid,* p. 134

of the Rajya Sabha on becoming the Prime Minister should seek election to the Lok Sabha at the earliest opportunity.

In the matter of appointment of the Prime Minister, the President thus enjoys some marginal discretion and at critical moments, the choice of the Prime Minister by the President may prove to be extremely crucial. When a party has a clear majority in the Lok Sabha, the President has to induct the acknowledged leader of the party into the Prime Minister's office, and the President's power in such a case is merely formal. If, however, the political situation is not clear and no party has a clear majority, then the President will have some scope to exercise his own judgment as to who amongst the several aspirants to the office has the best chance of forming a stable Ministry and secure confidence of the Lok Sabha. But even here it may be desirable to have some agreed conventions for the guidance of the President, *e.g.,* that he may invite the leader of the largest party in the Lok Sabha to form the government. In the ultimate analysis, however, the President's choice of a Prime Minister is controlled, in practice, by the will of the majority in the Lok Sabha.[15]

Art. 75(1) of the Constitution only provides that "the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister". The Constitution is conspicuously silent on the question as to whom the President shall appoint as the Prime Minister.

FORMATION OF MINISTRIES IN THE STATES

The Constitution of India establishes a parliamentary form of government in the States as well where the Governor is the constitutional or formal head of the state government and exercises the powers and functions conferred upon him by the Constitution as per the aid and advice of his council of ministers.

15 *Ibid,* p. 134.

Art. 154 of the Constitution vests executive power of the State in the Governor.[16] Art. 163 of the Constitution provides for a Council of Ministers with the Chief Minister at the head to aid and advise the Governor.[17] The Chief Minister is to be appointed by the Governor and the other Ministers are to be appointed by the Governor on the advice of the Chief Minister.[18] The Chief Minister and the Ministers are members of Legislature of the State and in case any Minister (including the Chief Minister) is not a member of Legislature of the State for any period of six consecutive months, he ceases to be a Minister on expiration of that period [Article 164(4)]. The Council of Ministers is collectively responsible to the Legislative Assemble of the State [Article 164(2)].

Art. 168 of the Constitution provides for constitution of Legislatures in States consisting of the Governor and the two Houses to be known as the Legislative Council and the Legislative Assembly (in the States of Andhra Pradesh, Bihar, Karnataka, Maharashtra and Uttar Pradesh) and consisting of the Governor and the Legislative Assembly in the other States.[19] Art. 170 provides

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16 Article 154:

Executive Power of the State.-(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

17 Article 163:

Council of Ministers to aid and advise Governor.-(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

18 Article 164:

Other provisions as to Ministers.-

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) ....

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

19 Article 168:

Constitution of Legislature in States.-

for composition of the Legislative Assemblies consisting of not more than five hundred and not less than sixty members chosen by direct election from territorial constituencies in the State.[20] Art. 171 provides for composition of the Legislative Councils (in the States of Andhra Pradesh, Bihar, Karnataka, Maharashtra and Uttar Pradesh) consisting of not more than one-third of the total members in the Legislative Assembly and not less than 40 members.[21]

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(1) For every State there shall be a Legislature which shall consist of the Governor, and-

(a) in the states of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka], and Uttar Pradesh, two Houses;

(b) in other States, one House.

20 Article 170:

Composition of the Legislative Assemblies.-

(1) Subject to the provisions of Article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

21 Article 171:

Composition of the Legislative Councils.-

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State: Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (*a*), (*b*) and (*c*) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (*d*) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

APPOINTMENT OF THE CHIEF MINISTER

The Constitution thus envisages a representative parliamentary democracy with the Governor as the formal head of the State government and the Council of Ministers headed by the Chief Minister to aid and advise him. The Chief Minister and the other Ministers in the Council of Ministers are members of either House of the State Legislature. The Council of Ministers is collectively responsible to the Legislative Assembly of the State. The Chief Minister is appointed by the Governor and the other Ministers are appointed by the Governor on the advice of the Chief Minister [Article 164(1)].

Art. 164(1) of the Constitution only provides that "the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister". The Constitution, in the case of appointment of Chief Minister also, is conspicuously silent on the question as to whom the Governor shall appoint as the Chief Minister. In exercise of this power, the Governor does not also have the advice of his council of ministers and he has act at his own discretion. In *R.A. Mehta*[22], the Supreme Court has held, "*Art. 163(2) of the Constitution provides that it would be permissible for the Governor to act without ministerial advice in certain other situations, depending upon the circumstances therein, even though they may not specifically be mentioned in the Constitution as discretionary functions..... There may even be circumstances where ministerial advice is not available at all i.e. the decision regarding the choice of Chief Minister under Article 164(1) which involves choosing a Chief Minister after a fresh election, or in the event of the death or resignation of the Chief Minister, or dismissal of the Chief Minister who loses majority in the House and yet refuses to resign or agree to dissolution.*"

(5) The members to be nominated by the Governor under sub-clause (*e*) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:- Literature, science, art, co-operative movement and social service.

22 *State of Gujarat* vs. *R.A. Mehta*, (2013) 3 SCC 1.

PREROGATIVE POWER OF THE PRESIDENT IN APPOINTMENT OF THE PRIME MINISTER AND THE GOVERNOR IN APPOINTMENT OF THE CHIEF MINISTER

Art. 75(1) of the Constitution only provides that "the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister". Art. 164(1), similarly, provides that "the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister". The Constitution is conspicuously silent on the questions - as to whom the President shall appoint as the Prime Minister and as to whom the Governor shall appoint as the Chief Minister. The only qualification embodied in Art. 75(3) is that "the Council of Ministers shall be collectively responsible to the House of the People" and in Art 164(2) that "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State".

Whether the principle of collective responsibility embodied in Arts. 75(3) and 164(2), is any guidance to the President or the Governor in the matter of appointment of Prime Minister and Chief Minister has been subjected to varied interpretation. This varied interpretation is due to respective emphasis placed on the two words of the expression "collective" and "responsibility". Those laying emphasis on the word "collective" interpret the expression as meaning "all ministers in the Council of Minister swim and sink together". According to Lord Salisbury[23], the principle of collective responsibility means that "for all that passed in the cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one sense to a compromise while in another he was persuaded by his colleagues". This interpretation of the expression envisages that each minister assumes responsibility for decisions of the Council of Minister. The policies and programmes of the Council of Ministers have to be supported by each minister,

23 Quoted in Sir Ivor Jennings, *Cabinet Government*, Third Edn., Cambridge University Press, 1959, p.277.

even if there may have been differences of opinion within the Council. But once a decision has been taken, it is the duty of each Minister to stand by it and support it both within and outside Parliament.

The Supreme Court while expounding the concept said, "The concept of 'collective responsibility' is essentially a political concept. The country is governed by the party in power on the basis of the policies adopted and laid down by it in the cabinet meeting. 'Collective responsibility' has two meanings: the first which can legitimately be ascribed to it is that all members of a Government are unanimous in support of its policies and would exhibit that unanimity on public occasions although while formulating the policies, they might have expressed a different view in the meeting of the cabinet. The other meaning is that the Ministers, who had an opportunity to speak for or against the policies in the cabinet are thereby personally and morally responsible for its success and failure."[24]

Chandrachud, J., in *State of Karnataka* vs. *Union of India*[25] said, "the history of the principle of collective responsibility in England shows that it was originally developed as against the King. The Ministers maintained a common front against the King, accepted joint and several responsibility for their decisions whether they agreed with them or not, and resigned in a body if the King refused to accept their advice. In relation to the British Parliament, collective responsibility means that the Cabinet presents a common front. In Melbourne's famous phrase, "the Cabinet Ministers must all say the same thing". The principle of collective responsibility perhaps compels Ministers to compromise with their conscience, but in matters of policy they have to speak with one voice, each one of them being responsible for the decision taken by the Cabinet.

24 *Common Cause* vs. *Union of India,* (1999) 6 SCC 667.

25 *State of Karnataka* vs. *Union of India,* (1977) 4 SCC 608.

Beg, C.J., in the aforesaid case said, "each Minister can be and is separately responsible for his own decisions and acts and omissions also. But, inasmuch as the Council of Ministers is able to stay in office only so long as it commands the support and confidence of a majority of members of the Legislature of the State, the whole Council of Ministers must be held to be politically responsible for the decisions and policies of each of the Ministers and of his department which could be presumed to have the support of the whole Ministry. Hence, the whole Ministry will, at least on issues involving matters of policy, have to be treated as one entity so far as its answerability to the Legislative Assembly representing the electors is concerned. This is the meaning of the principle underlying Article 164(2) of the Constitution."

The Gujarat High Court has described the principle as, "collective responsibility means all Ministers share collective responsibility even for decisions in which they have taken no part whatsoever or in which they might have dissented at the meeting of the Council of Ministers. Collective responsibility means the members of Council of Ministers express a common opinion. It means unanimity and confidentiality."[26]

A perusal of the Constituent Assembly Debates shows that this concept was incorporated to strengthen the position of the Prime Minister. According to Dr. B. R. Ambedkar, it means that no person shall be retained as a member of the cabinet if the Prime Minister says that he shall be dismissed, it is only when the members of the cabinet, both in the matter of their appointment as well as in dismissal are placed under the Prime Minister that it shall be possible to realize the ideals of collective responsibility. The principle of collective responsibility of the Council of Ministers to the House of the People as contained in Art. 75(3) or to the Legislative Assembly of the State as contained in Art. 164(2), therefore, does not extend to requiring the Prime Minister to enjoy the confidence of the House of the People and the Chief Minister, that of the Legislative Assembly of

26 *Dattaji Chirandas* vs. *State of Gujarat,* AIR 1999 Guj 48.

the State. It is rather a principle regulating the working of the Council of Ministers after such a Council has been formed.

On the other hand, the authors, who lay emphasis on the word "responsibility" rather than on "collective", view the real purport of this concept as, "the Council of Ministers is collectively responsible to the Parliament and it stays in power, as long as it enjoys its confidence". According to Geoffrey Marshall, there are three principles implicit within the concept of "collective responsibility":[27]

(a) *The confidence principle:* a government can only remain in office for so long as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote.

(b) *The unanimity principle:* perhaps the most important practical aspect is that all members of the government speak and vote together in Parliament, save in situations where the Prime Minister and Cabinet themselves make an exception such as a free vote or an 'agreement to differ'.

(c) *The confidentiality principle:* this recognises that unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within Cabinet and Government.

According to Geoffrey Marshall, from these broad principles can be suggested a number of practical applications of the doctrine, with varying degrees of constitutional certainty within our political and governmental system - that a minister must not vote against government policy; that a minister must not

27 Geoffrey Marshall, *Ministerial Responsibility,* Oxford University Press, 1989, pp. 2-4

speak against government policy; that all decisions are decisions of the whole government; and, that a former minister must not reveal cabinet secrets.

(i) *A minister must not vote against government policy:* this is perhaps the most fundamental point of the doctrine as, ultimately, voting strength in the House of Commons is not only the measure of confidence in and strength of a government, but is the test of its very right to exist. A vote is a clear public expression of a minister's support for the government (whatever that minister's personal opinion, expressed or otherwise). An unauthorised, dissenting vote would be expected to lead to immediate dismissal if there were no voluntary resignation. In general, an unauthorised abstention should lead to the same consequences, as maintenance of the doctrine is said to require not just the absence of dissent but the expression of positive support.

(ii) *A minister must not speak against government policy:* this is similar to the previous category, although a speech or other form of expression may not always be as clear cut as a vote. Ministers can always find ways, if they wish, of outwardly expressing 'loyal support' while sending out contrary signals (as in the 1980s 'wet' *v.* 'dry' argument) by code words or phrases. Again, there is a general implication of positive support, not simply the absence of dissent. Jennings asserts that 'a minister who is not prepared to defend a Cabinet decision must, therefore, resign.'[28] Further 'from the minister's point of view it means only that he or she must ... speak in defence of the Government if the Prime Minister insists'.[29]

(iii) *All decisions are decisions of the whole government:* this does not mean that the identity of the relevant departmental minister is not disclosed. The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions

28 Ivor Jennings, *Cabinet Government,* Third Edn., Cambridge University Press, 1959, p. 277.
29 *Ibid,* p. 278.

reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule. This aspect of confidentiality means, for example, that a Minister should not, without authorisation, attribute policies, proposals, arguments or votes to particular ministers or groups of ministers, especially if the motive of the 'leaking' minister is to distance himself or herself from that particular position or to attack or discredit other ministers or their arguments. 'Competitive' leaking by Ministers as in the Westland affair in 1986, or coded ideological arguments as in the Thatcher Government of the 1980s are ways in which dissenting ministers or those involved in policy or other disputes can seek to fight their corner without explicitly breaching collective responsibility.

(iv) A former minister must not reveal Cabinet secrets: this extended example of confidentiality clearly has less force than revelations when a minister is still in office. As the Crossman diaries episode in the mid-1970s demonstrated, the time factor is crucial to the enforcement of the doctrine. Ministers who resign can if they wish make a public statement in Parliament, and publish a resignation letter explaining the reason for their action. Where resignation statements reveal major policy or personal differences in Cabinet they can have serious consequences for the standing of the Prime Minister and the Government.

The Supreme Court in *R.K. Jain* v. *Union of India*[30] observed:

"Confidentiality has been described as the natural correlative of collective responsibility. The Cabinet as a whole is responsible for

30 (1993) 4 SCC 119, at page 148.

the advice and conduct of each of its members. If any member of the Cabinet seriously dissents from the opinion and policy approved by the majority of his colleagues it is his duty as a man of honour to resign. Cabinet secrecy is an essential part of the structure of government which centres (sic centuries) of political experience have created. To impair it without a very strong reason would be vandalism, the wanton rejection of the fruits of civilisation.

"By operation of Article 75(3) and oaths of office and of secrecy taken, the individual Minister and the Council of Ministers with the Prime Minister as its head, as executive head of the State as a unit, body or committee are individually and collectively responsible for their decisions or acts or policies and they should work in unison and harmony. They individually and collectively maintain secrecy of the deliberations both of administration and of formulating executive or legislative policies. Advice tendered by the Cabinet to the President should be unanimous. The Cabinet should stand or fall together. Therefore, the Cabinet as a whole is collectively responsible for the advice tendered to the President and for the conduct of business of each of his/her department. They require to maintain secrecy and confidentiality in the performance of that duty of office entrusted by the Constitution and the laws. Political promises or aims as per manifesto of the political party are necessarily broad; in their particular applications, when voted to power, may be the subject of disagreement among the members of the Cabinet. Each member of the Cabinet has personal responsibility to his conscience and also responsibility to the Government. Discussion and persuasion may diminish disagreement, reach unanimity, or leave it unaltered. Despite persistence of disagreement, it is a decision, though some members

like it less than others. Both practical politics and good government require that those who like it less must still publicly support it. If such support is too great a strain on a Minister's conscience or incompatible to his/her perceptions of commitment and he/she finds it difficult to support the decision, it would be open to him/her to resign. So the price of the acceptance of Cabinet office is the assumption of the responsibility to support Cabinet decisions. The burden of that responsibility is shared by all."

It is therefore possible to hold that the principle of collective responsibility of council of ministers is a principle regulating the working of council of ministers and it does not extend to requiring the prime minister to seek a vote of confidence in the Lok Sabha. The Supreme Court while expounding the concept has said: "The concept of 'collective responsibility' is essentially a political concept. The country is governed by the party in power on the basis of the policies adopted and laid down by it in the Cabinet meeting. 'Collective responsibility' has two meanings: the first meaning which can legitimately be ascribed to it is that all members of a Government are unanimous in support of its policies and would exhibit that unanimity on public occasions although while formulating the policies, they might have expressed a different view in the meeting of the Cabinet. The other meaning is that Ministers, who had an opportunity to speak for or against the policies in the Cabinet are thereby personally and morally responsible for its success and failure.[31]

On the other hand, constitutional authors like Geoffrey Marshall contend that one of the principal implications of the "collective responsibility" principle is that "a government can only remain in office for so long as it retains the confidence of the House of Commons"[32]

31 *Common Cause* vs. *Union of India,* (1999) 6 SCC 667

32 Geoffrey Marshall, *Ministerial Responsibility,* Oxford University Press, 1989.