

democracies, ministers are appointed by the President though on the recommendation and nomination of the Prime Minister. These provisions, however, established the office of a super prime minister to befit the concept, personality, and the ambitions of Bhutto.

The President, subject to the advice of the Prime Minister, was entrusted with multifarious functions. Some of the key appointments, such as those of the Chief Justices and judges of the Supreme Court and the High Courts, the Governors of the provinces, the Attorney-General and the Chiefs of Staff of the Armed Forces, the Chief Election Commissioner, Auditor-General, and the Chairman and members of the Islamic Ideology Council were to be made by the President.⁵⁰ He could constitute the National Economic Council, the National Finance Commission, the Council of Common Interests, and the Islamic Ideology Commission for bringing the existing laws into conformity with the injunctions of Islam.⁵¹ He also had the power to issue proclamations of political or financial emergency and could suspend a provincial government.⁵² The President was empowered to raise and maintain the naval, military, and air forces of Pakistan.⁵³ He was also given powers to grant pardon and reprieve, and to remit, suspend or commute a sentence passed by any court, tribunal, or any other authority.⁵⁴ All these powers were exercisable on the advice of the Prime Minister.

Similarly, the President was given certain legislative functions to be exercised on the advice of the Prime Minister. He could summon, prorogue, and dissolve the Parliament on his advice.⁵⁵ The President could address the National Assembly and send messages to it.⁵⁶ When a Bill was passed by the National Assembly, he could not withhold his assent for more than seven days. After the expiry of seven days, the Bill would automatically become an Act of Parliament.⁵⁷ When the National Assembly was not in session, the President possessed the positive power of making laws by ordinances which were to be laid before the National Assembly and would cease to operate at the expiration of four months from its promulgation, or at such time as a resolution of disapproval was passed by either House of the Parliament.⁵⁸

The Federal Government

Another basic feature of the new Constitution was the federal form of the government like the previous Constitutions. A clear distribution of powers between the national and provincial governments was provided and the principle of decentralization was accepted.

As for the distribution of legislative powers between the centre and the provinces, the powers were enumerated in two lists, federal and concurrent.⁵⁹ The extent of the federal laws was extended to the whole or any part of Pakistan, including the power to make laws having extra-territorial operations.⁶⁰ The power of a provincial legislature extended to the whole of that province or any part thereof.⁶¹ The subjects given to the centre included foreign affairs comprising all matters which would bring Pakistan into relation with any foreign country, defence, currency, citizenship, foreign and inter-provincial trade and commerce, census, leisure, taxes and duties of excise and customs, copyright, trade mark, designs, maritime shipping and navigation, central bank, postal and all forms of telecommunications, minerals, oil and gas, and others. The federal legislative list consisted of two parts. Part I had fifty-nine items and Part II eight items.

The concurrent list comprised forty-seven items and was justified on the grounds that there were certain matters which could not be given exclusively either to the centre or to the provinces because, although such matters might normally be dealt with by the provinces, an occasion might arise when it would be desirable and necessary to deal with these matters on a national level. The list dealt with such matters as civil and criminal law, marriage and divorce, adoption, bankruptcy, arbitration, trusts, transfer of property and registration, preventive detention, arms and explosives, drugs, population planning, electricity, tourism, trade union, and other matters of common interest. With regard to subjects in the concurrent list, the precedence of federal legislation over the provincial legislation was guaranteed. A provincial law, to the extent of repugnancy with the federal law on the same subject, was to be void.⁶²

The Constitution did not provide for a separate provincial legislative list and Provincial Assemblies were extended power to make laws on the residuary

subjects, that is, matters not enumerated in either the federal or in the concurrent list.⁶³

The Chief Justice of Pakistan was assigned an important role in the settlement of disputes between the federal government and a provincial government under a federal law conferring powers on provincial governments. He was to appoint an arbitrator to settle such a dispute⁶⁴ and was empowered to appoint an arbitrator to settle disputes between the federal government and a provincial government arising out of refusal by the federal government to entrust functions to a provincial government regarding broadcasting and telecasting or due to any conditions imposed by the federal government in this behalf.⁶⁵

There was also provision for a Council of Common Interests which the President could set up in relation to matters enumerated in Part II of the Federal Legislative List or the Concurrent Legislative List or regarding exercise of supervision and control over related matters.⁶⁶ This was meant to be an important body for the provinces to air their grievances against the federation or other provinces and for redressal of such grievances. If the federal government or a provincial government was dissatisfied with the decision of the Council, it could refer the matter to parliament in joint sitting, whose decision would be final.⁶⁷

There was provision in the Constitution whereby the federal legislature could make laws on any provincial matter. There were, however, two processes which would enable the parliament to legislate on a provincial subject. The first applied when a provincial legislature would authorize parliament to make laws in any matter within its competence. An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.⁶⁸ While legislation by the federal legislature under this provision was voluntary, the second process which would enable the federal government to intervene

in provincial matters, was of far-reaching importance. While a proclamation of emergency was in operation, parliament was empowered to make laws for a province concerning any matter not enumerated in the federal or in the concurrent lists.⁶⁹

The Federal Legislature (The Parliament)

Unlike the Constitutions of 1956 and 1962, the 1973 Constitution provided for a bicameral system. As discussed earlier, under the draft constitution made by the first Constituent Assembly, there was provision for a second chamber. The reasons for and the advantages of having a second chamber are, however, not confined to its utility as an instrument of representation of the units in a federation. From the standpoint of checks and balances, the second chamber is considered very useful and has a restraining as well as a sobering effect on the other chamber.

The 1973 Constitution is distinguishable from the earlier Constitutions particularly in two respects: the federation now had four provinces or federating units rather than the earlier two, and the principle of parity had ceased to be effective. Thus, in the chamber of the people (the National Assembly), where the representation is made on population basis, the small provinces like Balochistan would be meagrely represented. Therefore, the Upper House or House of States/Provinces would be meant for checks and balances. By allowing equal representation to all the provinces in the Upper House, regardless of their size and population, the smaller provinces were given a greater voice and larger role in the national affairs. The Upper House thus becomes a bulwark for the protection of smaller provinces against the brute majority commanded by the larger provinces in the Lower House. This situation is all the more pronounced in Pakistan (or what is left of Pakistan) where one province, the Punjab, holds an absolute majority of the population and the other three provinces put together are in minority. Thus, the unicameral system would necessarily result in the dominance of the Punjab. The bicameral system had, therefore, become a necessity and the Upper House, called the Senate, was introduced in the Constitution of 1973.

Members of the National Assembly were to be elected under an electoral system to be provided for by the parliament. The matters to be decided regarding elections included allocation of seats, delimitation of constituencies, preparation of electoral rolls, the conduct of elections and election petitions, matters