

Prime Minister, of course subject to his obtaining a vote of confidence later on. The Prime Minister had to be elected immediately after the election of Speaker and Deputy Speaker by the National Assembly with the votes of the majority of its membership.³⁶ The President's veto over legislation was completely done away with. He had only seven days to give his assent to a Bill passed by the parliament and if he failed to do so within such a period, the Bill would become law.³⁷ The President was required to act on the advice of the Prime Minister which was binding on him. Such advice was made non-justiciable.³⁸ The President was also without power to dissolve the National Assembly which could only be dissolved on the advice of the Prime Minister. In case he failed to act on the advice, the National Assembly would automatically stand dissolved on the expiration of forty-eight hours from such advice.³⁹

- (b) The procedure for a vote of no-confidence against the Prime Minister was made difficult and cumbersome. A resolution for a vote of no-confidence could not be moved in the National Assembly unless, in that very resolution, the name of another member of the assembly was put forward as the successor. If the resolution was by a majority of the total membership of the assembly, then the President had to call upon the person named in the resolution as successor to assume office as Prime Minister. However, for the first ten years, a provision was made in order to prevent floor crossing to the effect that the vote of a member, elected to the National Assembly as candidate or nominee of a political party, in favour of the resolution would be disregarded if the majority of the members of that political party in the National Assembly had cast its votes against such a resolution.⁴⁰ However, on the failure of such a resolution, no further resolution for a vote of no-confidence could be moved in the National Assembly for a period of six months.

The President and the Cabinet

As discussed above, the President was reduced to merely a figurehead under the new Constitution. The executive authority of the federation was to be

exercised in the name of the President by the federal government consisting of the Prime Minister and the federal ministers.⁴¹ The qualifications of being elected as President were that he was required to be a Muslim of not less than forty-five years of age and qualified to be elected as a member of the National Assembly.⁴² The President was to be elected by an electoral college comprising members of the parliament in joint sitting in accordance with provisions of the second schedule.⁴³ His term of office was five years and no one could hold the office for more than two consecutive terms.⁴⁴ The President could resign or might, on charges of violating the Constitution or gross misconduct or on the ground of physical or mental incapacity, be removed by the parliament in a joint sitting by a two-thirds majority of the total membership of the parliament.⁴⁵ The President was required to act on and in accordance with the advice of the Prime Minister which was binding on him.⁴⁶ However, the Prime Minister was supposed to keep the President informed on matters of internal and foreign policy and on all legislative proposals that the federal government intended to bring before the parliament.⁴⁷

The Prime Minister and the federal ministers were collectively responsible to the National Assembly.⁴⁸ Federal ministers and ministers of state were to be taken from the parliament and were appointed by the Prime Minister. No more than one-fourth of such federal ministers and ministers of state could be taken from the upper House, the Senate.⁴⁹ It is noticeable that in the new Constitution, the word 'Cabinet' was carefully avoided. In its place, expressions like 'federal government' or 'the Prime Minister and the federal ministers' were used. Theoretically, the parliamentary system postulates Cabinet and the joint responsibility of the Cabinet. The Prime Minister is part and parcel of the Cabinet and not separate or different from it. He is regarded as first amongst equal members of the Cabinet. But in the new Constitution, the Prime Minister's position, powers, and responsibilities were separately and expressly described. He was clearly the boss of the federal ministers and Chief Executive of the federal government. Another departure from the peculiarities of the parliamentary system was the appointment of the ministers by the Prime Minister and not by the President. Generally, in parliamentary

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