

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 An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.⁶⁸ While legislation by the federal legislature under this provision was voluntary, the second process which would enable the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

relating to corrupt practices in the elections, and so on.⁷⁰ In the electoral laws that followed, the system of joint electorate was enforced.

A person was entitled to vote for the National Assembly (as well as a Provincial Assembly), if he was a citizen of Pakistan, not less than 18 years old, had not been declared by a court to be of unsound mind and his name had appeared in an electoral roll.⁷¹

A candidate for election to the National Assembly had to be at least 25 years of age and had to be qualified to vote. The Election Commission, on reference from the Speaker of the National Assembly, could decide questions of disqualification of a member and its decision was to be final.⁷² No one was to be allowed to be a member of the National Assembly from more than one constituency, though a person could seek election from as many seats as he wished.⁷³ A member of the National Assembly could lose his seat if he remained absent for forty consecutive sitting days without leave of the House.⁷⁴ No one was allowed to be a member simultaneously of the National Assembly and of the Senate (of a federal house) and a Provincial Assembly.⁷⁵ The National Assembly would elect its Speaker and Deputy Speaker from amongst its members in its first meeting.⁷⁶ The term of the National Assembly was fixed at five years, on the expiration of which it would stand dissolved, if not dissolved earlier.

The Senate was to consist of sixty-three members, of whom fourteen were to be elected from each province by the members of the Provincial Assembly of that province in accordance with the system of proportional representation by means of a single transferable vote. Five members were to be elected by the National Assembly members from the Federally Administered Tribal Areas, and two were to be chosen from the Federal Capital in a manner prescribed by the President. The Senate was meant to be a permanent House not subject to dissolution. The term of office of its members was to be four years, half of them retiring every two years. However, the term of office of a person elected or chosen to fill a casual vacancy was to be the unexpired term of the member whose vacancy he had filled.⁷⁷ Like the National Assembly, the Senate also had to elect its Chairman and Deputy Chairman at its first session, from amongst its own members. However, the term of the office of Chairman or the Deputy Chairman

was to be two years from the date of assumption of office.⁷⁸

As discussed above, the 1973 Constitution introduced bicameral legislation for the first time in Pakistan. The federal legislature was given the name of Parliament and its two Houses were to be known as the National Assembly and the Senate.⁷⁹ The President was empowered to summon and prorogue the parliament.⁸⁰ There were to be at least two sessions of the National Assembly each year and not more than one hundred-and-twenty days were to intervene between any two sessions.⁸¹ There was a similar provision for the Senate.⁸² Every federal minister and minister of state and the Attorney-General had the right to speak and take part in the proceedings of either House of the Parliament but not the right to vote unless he were a member of that House.⁸³

Either House of the Parliament was empowered to frame its own rules of procedure and the conduct of its business.⁸⁴ No member of the National Assembly could be made liable in any proceedings in court regarding anything said or any vote given by him in the assembly or its committees.⁸⁵ The privileges of the National Assembly, committees, the members thereof, and persons entitled to speak therein could be determined by an Act of Parliament.⁸⁶ In keeping with the principle of separation of powers, no court could enquire into the proceedings of Parliament.⁸⁷ Correspondingly, no discussion could take place in Parliament concerning the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.⁸⁸

The financial procedure provided by the Constitution was similar to that of the previous ones. No tax, for instance, could be levied for federal purposes except by or under the authority of an Act of Parliament.⁸⁹

In the budget, the financial statement was divided into two parts; one showing the expenditure charged upon the consolidated fund, the expenditure which the National Assembly could discuss but not vote upon; the other part showing the sums required for the estimated expenditures of the various departments for the ensuing financial year. Expenditures charged upon the consolidated fund included; (a) remuneration and pension of the President, salaries of judges of the Supreme Court, members of the

Federal Public Service Commission, the Speaker and the Deputy Speaker, the Attorney General, the Chief Election Commissioner, Chairman and Deputy Chairman of the Senate, and (b) the administrative expenses of the Supreme Court, the Federal Public Service Commission, the department of the Auditor-General, the office of the Election Commission, the Senate and the National Assembly; and (c) the debt charges binding on the federal government and sums required to satisfy any judgment, decree, or award against Pakistan by any court or tribunal, and any other sum declared by the Constitution or by Act of Parliament.⁹⁰

The introduction of bicameral legislature at the centre had its effect on the legislative procedure. It has been discussed earlier that the competence of the parliament to make laws was extended to the federal and concurrent legislative lists. The federal legislative list, as stated before, was divided into two parts: Part I and Part II. The scheme of this division appears to be that the subjects enumerated in Part I were purely federal subjects and the subjects enumerated in Part II were subjects in which the provinces had special interest like the railways; minerals, oil and natural gas; Council of Common Interests, and others. The subjects enumerated in the concurrent list were, of course, of common interest and importance for the federation and the provinces. This being the case, it became imperative that the Senate, being a House of provinces, should be given greater role and voice in legislation on the subjects enumerated in Part II of the federal legislative list and the concurrent legislative list. Thus, different legislative procedures were given in the constitution for legislation on the subjects enumerated in Part I of the federal legislative list on the one hand and the subjects enumerated in Part II of the federal legislative list on the other.

A Bill relating to matters in Part I of the federal list could only originate in the National Assembly and if it was passed, it was transmitted to the Senate for consideration. If the Senate passed it without amendment or did not reject it or amend it within ninety days of transmission to it, then it would be deemed to have been passed. However, if the Senate rejected the Bill or passed it with amendment, then it would be presented to the National Assembly for reconsideration and if after such reconsideration, the National Assembly passed it again, with or without

amendments proposed by the Senate, it would be deemed to have been passed and presented to the President for his assent.⁹¹ A Bill relating to matters in Part II of the federal list or the concurrent list could originate in either House and if it was passed by one House, it would be transmitted to the other House. If the Bill was passed by the other House without amendment, it was presented to the President for his assent. In case the other House rejected it or passed it with amendment, the Bill, at the request of the House where it originated, had to be considered in a joint sitting of the two Houses of the Parliament which the President would summon.⁹² If the Bill was passed by the votes of the majority of the total membership of the two Houses, then the same would be presented to the President for assent.

The purpose of different legislative procedures for the passing of the Bill relating to Part II of the federal list and the concurrent list was to give greater weightage to the Senate which could exercise a temporary veto against a Bill passed by the National Assembly on any such matters. Nevertheless, the National Assembly could override such a veto in a joint sitting because it initially had 210 members compared to sixty-three in the Senate and a majority in the joint sitting meant 137 votes which the National Assembly alone could procure.

The Money Bills could only originate in the National Assembly and, if passed, they would be presented to the President for assent, without transmission to the Senate. If a question arose as to whether a Bill was a Money Bill or not, the decision of the Speaker of the National Assembly thereon should be final.⁹³

Provincial Governments and Legislatures

The provincial legislatures and executives were small replicas of the institutions at the national level. The provincial legislature remained unicameral and directly elected by the people through universal adult franchise under the electoral laws common for the federal and provincial legislatures. The relationship between the provincial Governor, provincial Chief Minister and the Provincial Assembly closely resembled that between the President, the Prime Minister, and the Parliament. A Chief Minister was to be elected by the Provincial Assembly in the same