

manner in which the Prime Minister was to be elected by the National Assembly.<sup>94</sup> The Chief Minister and the provincial ministers were to be collectively responsible to the Provincial Assembly concerned which could only be dissolved by the Governor on the advice of the Chief Minister. The procedure of vote of no-confidence against a Chief Minister was the same as that for the Prime Minister, meaning thereby that a successor had to be named in a resolution for a vote of no-confidence.<sup>95</sup> The Governor did not have any power to veto any Bill passed by the Provincial Assembly and had to assent to it within seven days, otherwise it would be deemed to have been assented.<sup>96</sup> Governors could dissolve Provincial Assemblies but only on the advice of the Chief Ministers.<sup>97</sup> Various provisions relating to the Parliament or a House thereof were to apply to the Provincial Assemblies with appropriate adjustment of reference to the relevant authorities.<sup>98</sup> The Governor continued to be an appointee of the President and an agent of the central government which could exercise pressure in the provincial politics through the Governors.<sup>99</sup>

## Distribution of Powers and Relations between the Centre and the Provinces

Administrative relations between the centre and the provinces were on the same lines as provided under the previous Constitutions. The federal system showed a marked tendency towards centralized control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance and to ensure that the government of each province was carried on in accordance with the provisions of the Constitution.<sup>100</sup> A provincial government was obliged to exercise its executive authority in such a way as to ensure compliance with the Acts of Parliament and existing laws applying to that province.<sup>101</sup> The federal government was entitled to give direction to a province with regard to the duties of the provincial authority and was further entitled to give directions to a province in the following matters:<sup>102</sup>

- (a) as to the construction and maintenance of communications declared to be of national or strategic importance;
- (b) as to the manner in which the executive authority of the province was to be exercised for the purpose of preventing any grave menace to the peace and tranquility or economic life of Pakistan or any part thereof.

There was one important provision in the Constitution which would enable the federal government to delegate power to the provincial governments as its agents. The federal government might, with the consent of a provincial government, entrust either conditionally or unconditionally to that government, or to its officers, functions relating to any matter to which the executive authority of the federation extended.<sup>103</sup> Similarly, a provincial government, with the consent of the federal government, was also empowered to entrust, either conditionally or unconditionally, some of its executive functions to the federal government or to its officers.<sup>104</sup>

The new Constitution made no material changes regarding the distribution of financial resources between the centre and the provinces. The centre was given the power to levy custom duties, export duties, excise duties, corporation tax, taxes on income other than agricultural income, estate and succession duties regarding property other than agricultural land, tax on capital value of the assets exclusive of agricultural land, taxes on goods or passengers, and taxes on mineral, oil, and natural gas. The principal source of income for the provinces were land revenue and taxes on agricultural income, the capital value of agricultural land, taxes on land and buildings, taxes on mineral rights subject to the federal list, excise on alcohol and drugs, taxes on electricity, taxes on vehicles and advertisements, animals, boats, on professions and trades, and on luxuries.<sup>105</sup>

## The Judiciary

In the new Constitution provisions relating to the judiciary were on the same lines as those in the previous Constitution. However, an effort was made to regulate and confine the powers and jurisdiction of the superior courts. It was clearly stated that no court

should have any jurisdiction except that which was conferred or would be conferred in future, on it by the Constitution or by or under any law.<sup>106</sup> Thus, the courts could not assume unto themselves any jurisdiction or powers which were not expressly conferred on them by the Constitution or a law. This provision was clearly meant to whittle down the concept of inherent powers and jurisdiction of the superior courts.

The Supreme Court continued to be the apex court in the land. The law which it would lay down was binding on all courts in Pakistan.<sup>107</sup> All executive and judicial authorities throughout the country would act in aid of the Supreme Court and all directions, orders, decrees or writs issued by that Court were to be executed as if they were issued by the High Courts of the appropriate province.<sup>108</sup> The Supreme Court was entrusted with the task of interpreting the Constitution. It was specifically given the power to adjudicate in any dispute between any two or more 'governments', which term included the federal government and the provincial government.<sup>109</sup> The Supreme Court had appellate jurisdiction, both criminal as well as civil, over the judgments, decrees, final orders, and sentences passed by the High Courts. The Supreme Court could also hear an appeal from any judgment, decree, order, or sentence of a High Court on grant of leave.<sup>110</sup> The Supreme Court also had advisory jurisdiction on any question of law that the President might consider of public importance and refer it to the Supreme Court.<sup>111</sup> The Supreme Court was conferred with original jurisdiction to make orders on a question of public importance with reference to the enforcement of any fundamental rights.<sup>112</sup> The Constitution of 1973 for the first time provided for administrative courts and tribunals to be set up for the civil servants in relation to the matters of their terms and conditions including disciplinary matters. Appeals against the orders or judgments of such courts or tribunals would lie directly to the Supreme Court and that also on grant of leave to appeal on a substantial question of law of public importance.<sup>113</sup>

The writ jurisdiction of the superior courts which was conferred under the previous Constitutions was retained under the new Constitution. Each of the High Courts was conferred power throughout the territories regarding which it could exercise

jurisdiction to issue to any person or authority, orders in the nature of *habeas corpus*, *mandamus*, prohibition, *quo-warranto* and *certiorari*. The High Courts were also empowered to issue orders for the enforcement of any of the fundamental rights guaranteed under the constitution.<sup>114</sup>

The Supreme Court was to consist of the Chief Justice and as many other judges as might be determined by an Act of Parliament or until so determined, as might be fixed by the President.<sup>115</sup> The Chief Justice was to be appointed by the President and other judges were to be appointed by the President in consultation with the Chief Justice.<sup>116</sup> The qualification for appointment as a judge of the Supreme Court was either five years standing as a judge of a High Court or fifteen years standing as an advocate of a High Court.<sup>117</sup> The retirement age of a Supreme Court judge was fixed at 65 years and he was disqualified from pleading or acting before any court or authority in Pakistan.<sup>118</sup>

A judge could only be removed by the President on the report of the Supreme Judicial Council to the effect that he was incapable of performing the duties of his office or had been guilty of misconduct. Such a report could only be made after due inquiry and affording opportunity to the judge concerned to defend himself.<sup>119</sup> The Supreme Judicial Council would consist of the Chief Justice of Pakistan, two next senior-most judges of the Supreme Court and the two most senior Chief Justices of the High Courts. There was also provision for the appointment of an Acting Chief Justice in the absence of the Chief Justice or when the office of the Chief Justice had become vacant.<sup>120</sup> There were also provisions for acting judges and adhoc judges for the Supreme Court.<sup>121</sup> The seat of the Supreme Court was to be at Islamabad but until such time it was so established, it was to be at a place appointed by the President.<sup>122</sup>

The Constitution provided for three High Courts, initially, one for the province of the Punjab, one for the province of NWFP and a common High Court for the provinces of Sindh and Balochistan.<sup>123</sup> Each High Court was to consist of a Chief Justice and such number of other judges that the President might determine.<sup>124</sup> The Chief Justice of a High Court was to be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the province concerned. In case of appointment of other judges of a High Court, the President would

appoint them in consultation with the aforesaid constitutional functionaries as well as the Chief Justice of that High Court.<sup>125</sup> The retirement age was fixed at 62 years.<sup>126</sup> The qualification for appointment as a judge of a High Court included ten years standing as an advocate of a High Court, ten years service as a member of the civil service of Pakistan including at least three years as a district judge, or holding of a judicial office in Pakistan for at least ten years.<sup>127</sup>

A judge of a High Court could not be removed from his office except by an order of the President made on the grounds of misbehaviour or infirmity of mind or body, if the Supreme Judicial Council, on reference being made to it by the President, reported that the judge ought to be removed on any of those grounds.<sup>128</sup> There was provision for the appointment of an Acting Chief Justice when the office of the Chief Justice became vacant or he was absent or unable to perform his duties.<sup>129</sup> The President had no option in the matter of appointment of Acting Chief Justice. He could only appoint the most senior of the other judges of the High Court to act as Chief Justice. However, transfer of judges from one High Court to another was made subject to the consent of the judge being transferred and subject to consultation with the Chief Justice of Pakistan and both the Chief Justices of the High Court of which he was a judge and to which he was being transferred.<sup>130</sup> The decision of a High Court on a question of law would be binding on all courts subordinate to it,<sup>131</sup> and which each High Court was empowered to supervise and control.<sup>132</sup>

## Islamic Provisions

Islam was declared the state religion of Pakistan.<sup>133</sup> The Islamic way of life was to be promoted including steps like the organization of *zakat*, *auqaf*, and the mosques.<sup>134</sup> Strengthening of bonds with the Muslim world was another principle of policy under the Constitution.<sup>135</sup> The Head of the State, the President, was to be a Muslim.<sup>136</sup> The Prime Minister was also required to be a Muslim member of the National Assembly.<sup>137</sup>

An important Islamic provision declared that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the *sunnah*' and that existing laws 'shall be brought into

conformity with injunctions of Islam as laid down in the Holy Quran and *sunnah*'.<sup>138</sup> The President would appoint within ninety days of the commencement of the Constitution a Council of Islamic Ideology to make recommendations to Parliament and the Provincial Assemblies for bringing the existing laws into conformity with the injunctions of Islam and as to the stages by which such measures should be brought into effect.<sup>139</sup> The Council was also to compile in a suitable form for the guidance of Parliament and the Provincial Assemblies such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within seven years of its appointment and might submit any interim report earlier. The report, whether interim or final, was to be laid before the Parliament and each Provincial Assembly within six months of its receipt and its legislatures, after considering the report, were to enact laws in respect thereof within a period of two years of the final report.<sup>140</sup>

## Emergency Provisions

Under Article 232, if the President was satisfied that a grave emergency existed in which the security of Pakistan or any part thereof was threatened by war or external aggression or by internal disturbances beyond the power of the provincial government to control, he could issue a proclamation of emergency. The effects of a proclamation of emergency under Article 232 are as under:

- (a) the parliament has the power to make laws for a province on those subjects which were not included in the federal or concurrent lists, that is, the Parliament would have power to legislate even in provincial matters.
- (b) the federal executive authority has power to give direction to a province as to the manner in which the executive authority of the province would be exercised.
- (c) the federal government might issue an order assuming unto itself, or directing the Governor of a province to assume on its behalf, all or any powers of the provincial government or any function of the provincial government except that of the Provincial Assembly. The federal government is also empowered to suspend in