CHAPTER ONE

INTRODUCTION: THE HISTORY OF THE OFFICE
AND THE PROVISIONS OF THE CONSTITUTION
Powers are inherent in the office of the Prime Minister but there is a variance in the key to the vast machine can be operated in different ways and styles and at different levels of skill. There can be various approaches to understanding and assessing his power. Berth and Hulls defined 'power' as the probability of imposing one's will or institutional authority on the behaviour of another individual or institution despite resistance. Thus, a powerful man is able to impose his preferences on others. But this process can express itself in a number of ways: through force or co-operation, gentle persuasion or subtle suggestion. Neustadt said that the power of the U.S. President consists in his ability to persuade others. Political sociologists, following Max Weber, try to interpret it in terms of charisma. Power can also be conceived of as victory in conflict, as the beating down of opposition and as the mastery over decision. Power has been in terms of being free to hold options, or in successfully holding the threat of deprivation. Power can be seen in terms of challenge and response. A leader who can read the character of a political situation and move with it and can take his followers along with him, is termed powerful.
The powers and functions of Indian Prime Ministers are said to have grown in recent years, adding new dimensions to the role and changing the style of functioning. Some of the questions often put are whether the powers assumed by the Prime Ministers are against the spirit of the present constitution, or are against the assumptions of the west-minister model. In fact, they are natural by-products of our indigenous conditions.

This will prove that while the makers of the Indian constitution had the British model in mind, during subsequent years of practice, the office has developed a distinct style of its own, partly because of the socio-economic condition of the country and partly because of one party dominance and the personalistic traits in the country's political culture. More pertinent questions pertaining to the powers of the office can be that if these powers seem to have grown today, what has been the quantum of power exercised by the Prime Minister in the past and in the present day; we can achieve a basic understanding of Indian politics and the working of our political systems, because the Prime Ministership is a vantage point from
which one can see the working of the politics of a country. It is precisely for this reason that an attempt has been made to study the office and powers of the Indian Prime Minister in the perspective of the questions that have been posed.

INTRODUCTION

The Indian Prime Minister occupies a position of great power and authority in the country's political system. The office of the Prime Minister is the focal point of national politics and policy-making, and the position one of immense influence and patronage. The hallmark of political leadership consists in the adroit use of influence and intelligent and adept use of prerogatives. The Prime Minister is largely responsible for effecting the structures, processes and outcome of the nation's socio-economic and political values. Besides being the head of the Government and the chief executive of the national administration, he is the leader of his party and the people as well as the chief spokesman for the nation. In the performance of his role, he has to draw upon and combine all these sources of authority. The degree to which one or
another of these sources is emphasised or the manner in which they are combined in particular instances reflect the conditions and imperatives of the political system. In interaction with his personality and character, they shape the 'style' of his leadership. Failure in any of his major tasks may erode one or more of his bases of authority, the weakening of one or more of the latter may result in his inability to perform the totality of his role.

SCOPE AND METHOD OF THE STUDY

This study is an attempt at analysing the various nuances of the role of the Indian Prime Minister, the bases of authority with which he interacts, the style of his functioning and his art of the management of the Government, the party, the nation, the people and the mass media. The position and power of the Prime Minister may be related to the personality of a premier or to his capacity to arrogate power. Situations, other factors may play a role in the exercise of power. We shall examine the problem of Prime Ministerial power from these angles.

The approach preferred for the study is historical, comparative and analytical. It has been influenced largely
by the residence-of-power approach which assumes that regardless of law or structure, the operation of a political entity can be understood if the Prime movers are identified and their interacting roles analysed. In my attempt to penetrate through structural forms into operational realities, newspapers, memoirs, biographies, books and journals.

THE IMPORTANCE OF THE STUDY:

The importance of such a study is obvious in the context of the institutionalisation of the erstwhile personalised powers of the chief executives in the modern world. The concentration of powers in the hands of a single executive has become common to all forms of Government. Changes in time and perspective have inspired the transformation of highly exceptional executive actions into routine practice. Since Woodrow Wilson became the U.S. President, a number of strong presidents have expanded the role of the executive branch of the Government and have increasingly decided great issues without more than a perfunctory reference to the legislature or the judiciary. In the British Parliamentary system also, the Prime Minister's predominance, attained by Churchill, during the
second World War, has persisted even after him and has become a normal feature of the system. In fact, Harold Wilson is said to have acted like a U.S. President.

This elevation of the Chief executive is attributable to many factors. The extensions of the mass franchise, the growth of nation-wide mass parties and the development of the mass media have changed the nature of a general election. It has assumed the character of a plebiscite, a gladiatorial contest between the party leaders, one of whom happens to be the Prime Minister of the country at that time. The necessities of the two world wars prompted the desire to concentrate powers. The rapid industrialisation, growth of trade, science and technology as well as atomic and space research contributed to the growth of power of the national leadership. A period of economic or political upheaval was also sometimes conducive to this trend.

2. Sharma L.N.: The Indian Prime Minister: Office and Power; (The Macmillan Company of India Ltd, Delhi 1976 ) p. 2
In a developing country like India, the concept of social equality and measures to build an egalitarian society, the expanding public sector and control over and threat to private sector have provided opportunities for extension of executive powers. In the U.K., though the public sector is small and static, the public and parliament are quite vigilant over their control and functioning. By comparison, Parliament's control over appointments to various commissions and corporations, and industrial and commercial undertakings in the State sector in India is considered small.

There is thus an acknowledged view that sustained by a majority in parliament dependent upon the Prime Minister for various things, supported by a Cabinet selected by him, able to call upon the resources of a well-trained bureaucracy, informed and assisted by the party hierarchy, the Indian Prime Minister occupies a position to-day unrivalled in some ways even by the President of the United States. The U.S. President is strong to the extent that he is both the head of the State and the Government, but his wings are clipped by the Congress especially the Senate
with which he cannot always have his way. The recent role of the U.S. Congress in the aftermath of Watergate and Vietnam are pointers to this direction. The Russian Prime Minister plays second fiddle to the Party Secretary or the Central Committee unless he combines both party and government under a single leadership pattern. It is suggested that no such corresponding checks are available on the powers of an Indian Prime Minister, so long as he commands the confidence of the legislature. The growing powers of the Prime Minister have come under constant comments in the recent times. There is a view that the Prime Minister has assumed powers neither intended by the framers of the constitution nor permitted by the West-minister model. All these propositions need academic, objective and critical analysis.

REVIEW OF THE LITERATURE:

While there is overwhelming need for a careful and rigorous study of the office of the Indian Prime Minister, there is a dearth of academic literature on the subject. There are volumes on the American Presidency, but there are
only few books on the British Prime Minister and on his Indian counterpart. The Indian student is at a great disadvantage as no Indian Prime Minister or Cabinet Minister wrote memoirs giving there in the experience he acquired as a member of the Cabinet. Jawaharlal Nehru and Rajendra Prasad wrote their autobiographies well before India started the Parliamentary experiment. Maulana Azad’s India Wins Freedom largely covers the freedom movement and the partition. N.V. Godgill’s Government from Inside adds to the knowledge on the working of the Cabinet under Jawaharlal Nehru from 1947 to 1952 only. Morarji Desai’s My Life deals with the period since independence but is not comprehensive. A few letters between Jawaharlal Nehru and Rajendra Prasad have been published by K.M. Munshi in the Pilgrimage to Freedom and Sardar Patel’s Correspondence (1949-50) has been published by the Navajivan publishing House. Mrs. Gyanwati Durbar has published letters written to her by Rajendra Prasad, as President between 1956 and

1958. The interviews of V.K.R. Menon have been published by Michael Brecher who has also written on Jawaharlal Nehru and his succession. They are by no means, a sufficient guide to our understanding of the complex nature of the office and powers of the Indian Prime Minister.

POSITION OF PRIME MINISTER:

The Prime Minister is the most conspicuous figure in British as well as in Indian political life; he is also by all ordinary standards, the most powerful. Ramsay Muir claimed that the "Prime Minister was a "Potentate who appoints and can dismiss his colleagues. He is in fact, though not in law, the working head of the state endowed with such a plenitude of power as no other constitutional ruler in the world possesses, not even the President of the United States." Humphry Berkeley said to the Listener, 25 August 1966 I accept that we are now operating a presidential system; to do otherwise would be unrealistic. Let us concede the Prime Minister's presidential powers and equip ourselves with safeguards.

Sir Anthony Eden also had said that "a Prime Minister is still normally Primus inter pares but in fact his authority is stronger than that. The right to choose his colleagues, to ask for a dissolution of Parliament add up to a formidable total of power".

Lord Butler when he was asked about this specific power said: "I think that on the whole the Prime Minister has tended to stop being an equal among equals. There is a tendency not exactly to dictatorship but to be the leader who does control every thing and things are getting more into his own hands."

Sir Alec Douglas-Home then Lord Home observed "every Cabinet Minister is in a sense the Prime Minister's assistant, There is no question about that. It is the Prime Minister's Cabinet, if the Cabinet, discusses anything it is the Prime Minister who decides what the collective view of the Cabinet is. A Minister's job is to

6. Ibid : p.628
save the Prime Minister all the work he can. But no minister could make a really important move without consulting the Prime Minister, and if the Prime Minister wanted to take a certain step that Cabinet Minister concerned would either have to agree, agree it out in Cabinet or resign.

The present position of the Prime Minister under our Constitution is also more or less similar to British Prime Minister. Mrs. Indira Gandhi, Prime Minister had declared emergency without consulting the ministers.

'The chief reason for the relationship illustrated by the comments are,' says Macintosch, 'party loyalty and patronage. The latter has more force with ministers than with back-benchers because ministers have set their feet on the ladder of promotion and most would prefer to go further. There is the additional point that those committed to certain policies wish to have the Prime

7. Ibid: p.638
Minister's confidence because this gives their proposal the best chance of success. The old idea that a minister who resigns or is dismissed can be a serious threat because he may rally dissident feeling on the backbencher has little force now. As a result men who leave a government soon cease to attract attention: They revert to the status of backbenchers. A final source of strength to the Prime Minister is his opportunities to time and handle his initiatives on public affairs and their reception by the mass media. In fact, he controls, through his press aids, the public relations of the government. As Crossman puts it, the press are 'fed with the Prime Minister's' interpretation of Government policy and ....present him as the champion and spokesman of the whole Cabinet.

These then are the sources of the Prime Minister's strength — party loyalty, patronage, the support of his colleagues and of the machinery of government and his capacity, under most circumstances, to set the pace, tone and direction of activity, to set the terminal date for the government and, throughout its period of office to command

public attention. A Crossman sums it up: In the battle of Whitehall, this man in the centre, this chairman, this man without a department, without apparent power, can exert. When he is successful, a dominating personal control. This explains why a British Cabinet is always called a "Wilson Cabinet" or a "Macmillan Cabinet". It is because every Cabinet takes its tone from the Prime Minister. The way the Prime Minister conducts it and administers it will give it particular tone. Usually it is dominated by his personality.

CHOICE OF PRIME MINISTER ON FALL OF GOVERNMENT:

An exceptional problem in this respect faced King George V in connection with the financial crisis of 1931, which precipitated division within and ultimately the fall of the Labour Government. The Cabinet decided to invite the Prime Minister he assenting to tender to the King the resignation of the Government. Mr. MacDonald went to the palace and submitted the resignation of the Government. But the King, on the advice Mr. MacDonald, brought into

10. Ibid; pp. 71, 72
consultation Mr. Baldwin, Leader of the Conservative Party, and Sir Herbert Samuel, who was acting Leader of the Liberal Party in the absence of Mr. Lloyd George, who was ill and who later disagreed with the line taken by his Liberal colleague.

Sir Herbert Samuel made the suggestion that Mr. Mac Donald should be invited to continue in office as Prime Minister at the head of a Government of personalities or a Coalition. Sir Herbert was a Privy Councillor and had the right to give such advice once the King had brought him into consultations, and the King had a right to receive and consider it. Mr. Baldwin acquiesced in this advice, at any rate to the extent of indicating that he would willingly to co-operate. Mr. MacDonald is said at first to have resisted, but ultimately to have agreed without, however consulting the Labour Cabinet, and this can fairly be construed as giving the King personal advice as Prime Minister though a resigning one to that effect. The King invited Mr. MacDonald to continue as Prime Minister at the head of a coalition or a Government of personalities.

After the general election in February 1974, no party had an over-all majority and the Conservatives who had a majority in the out-going parliament, were narrowly defeated by the Labour Party, although the balance of power was held by the Liberals and other parties. Mr. Heath, the former Prime Minister invited the Liberals to form a coalition which would have enabled him to form a new Ministry but they declined and he resigned. The Queen appointed Mr Wilson, the Labour Prime Minister.

A similar thing happened in our country having lost his majority, the Prime Minister Morarji Desai leader of the Janata Party in the Lok Sabha on 15th July, 1979 tendered resignation of himself and of his Council of Ministers without facing the no confidence motion. His resignation was accepted by the President and he was asked to continue in office till a new Government was formed.

The President then invited Mr. Charan Singh leader of the opposition to form the Government. He informed the President on July 22, that his attempt to form the

government had failed. President then asked Charan Singh, formerly member of Morarji Desai group, and Morarji Desai on the following day to submit lists of their supporters to substantiate their claim to form a stable government. After examining the lists, it was found that Charan Singh was supported by 262 members and Morarji Desai by 258. President then invited Charan Singh on 16th July to form a government, as he enjoyed the support of more members than Morarji Desai although not commanding an overall majority in the Lok Sabha but asked him to have a vote of confidence in Parliament by the third week of August. Charan Singh had secured the written consent of leaders of some parties and was therefore able to convince the President that he enjoyed the support of more members than his rival. Such a support had to be demonstrated in the Lok Sabha and not outside.

President did not ask Charan Singh to demonstrate before the Lok Sabha that he was in a position to form a Government. The President appointed Charan Singh as the Prime Minister on July 28. The President asked Charan
Singh to have a vote of confidence in Lok Sabha by the third week of August. In view of the facts narrated above, it is submitted that the act of the President in appointing Charan Singh as Prime Minister was wrong, when he had no majority in the Lok Sabha.

Charan Singh on 4th August announced that Parliament would meet on August 20. In the morning of August 20, the day on which Charan Singh had to seek a vote of confidence in Lok Sabha, the Congress (I) announced that it would vote against the Government and this meant the defeat of Charan Singh’s Government certain.

In these circumstances Charan Singh tendered his resignation. He advised the President that arrangements may be made for a fresh mandate from the people. On 20th August, 1979, the President accepted the resignation and requested Charan Singh to continue in the office till other arrangements were made.

The question immediately arose as to whether, the President was justified in calling upon Charan Singh to

---

14. Madan Murarka, Charan Singh, 1980 Cal. 95
form the Ministry and advise the President about the formation of the Council of Ministers and also his ability to dissolve the Lok Sabha in other words. Charan Singh and his Council of Ministers, who had never obtained and who had never proved their majority in the House of people, after their resignations had been accepted, could tender advice which will be binding on the President in terms of Article 74(1) of the Constitution. The same question arose in Calcutta, Delhi and Madras High Courts. In Madan Murari v. Charan Singh, Sabhyasachi Mukerjee J. said "Article 75(2) indicates that the Ministers hold office during the pleasure of the President. The President had accepted the resignation of Charan Singh and his Council of Ministers and had asked them to continue in office till other arrangements were made. It is the limited pleasure indicated and in that field only in my opinion Charan Singh and his Council of Ministers could function. There is no mention of any caretaker Government as such in our Constitution or in the constitutional law, though Sir Ivor Jennings has described in his book Cabinet Government, Third Ed., P. 85 the ministry that was formed by Mr. Churchill in England after the war before and pending the General
election in 1945 as caretaker Government. But an extraordinary situation like the present, called for a caretaker Government and therefore, Charan Singh and his Council of Ministers could only carry on day to-day administration in office which were necessary for carrying on "for making alternative arrangements."

At that time it was felt by some that the President should have asked Sri Jagjivan Ram who had in the meantime been elected Leader of the Janata Party, a party whose leader was the Prime Minister and who had resigned because he thought that he lacked the confidence of the House and who had not advised dissolution of the House. Whether the President should have asked the same party by the mere fact that there was change in the leadership to form the Government or accept the advice of the Prime Minister and his Council of Ministers and dissolved the House, is a matter which constitutionally and by convention is within the discretion of the President. But the court said, "He must act on his own assessment. He is not bound constitutionally and legally by the advice given by such a source."

Prime Minister and Council of Ministers nor was he bound to call upon the new leader of the same party which had not faced the vote of confidence to form the Ministry. Whether the President thought it was a futile exercise or whether the President thought that the special provisions of the Constitution for the scheduled castes and scheduled tribes must be continued for some more years by amendment of the Constitution which was not possible with the present composition of the House and as such there was urgent necessity of convening a new House is a matter for the political assessment by the President with which the court is not concerned and competent to judge. In that view of the matter, the advice of the Cabinet was tendered when the Cabinet was functioning in terms of Article 75(3) and under Article 74(1). The President should normally accept such an advice and therefore the advice tendered on 20th of August, 1979 by Charan Singh was not legally and constitutionally improper and the President was, however, free to accept that advice or not to accept that advice. If the President had accepted that advice then the President cannot be said to have acted unconstitutionally, not obliged to accept the advice that Charan Singh and his Council of Ministers
tendered to him except for day-to-day administration and the Council of Ministers and Charan Singh should not make any decisions which are not necessary except for the purpose of carrying on the administration until other arrangements are made. This in effect means that any decision or policy decision or any matter which can await disposal by the Council of Ministers responsible to the House of people must not be tendered by the respondent number 1 and his Council of Ministers. With this limitation the respondent No. 1 and Council of Ministers can only function. And in case whether such advice is necessary to carry on the day-to-day administration till other arrangements are made or beyond that the President is free to judge.

It is true again that this gives the President powers which have not been expressly conferred by the Constitution. But, having regard to the basic principle behind this constitution under Article 75 (3) read with Article 74(1) in the peculiar facts and circumstances of

16. Madan Murari Chaudhari Charan Singh v. 1980 Cal. 95
this was the only legitimate, legal and workable
conclusion that can be made.

THE PRIME MINISTER AND HIS CABINET

"You must have confidence in the judgement of the man
in charge. If he has not got that confidence, he is not
fit to be Prime Minister," said Clement Attlee.

There has to be a central strategy in Cabinet
formation, which must reflect the Prime Minister's broader
political and policy strategy. He should be prepared to
listen advice, especially that of the Leader of the House
and the chief whip, who are in closest touch with back-
benchers, then to keep his counsel, and make his own
decisions. A problem created by over-reliance on advice is
that some may be based on a different strategy or approach;
do not be diverted. My experience supports that of Clement
Attlee when he said, "You may talk it over with other

17. Dinesh Chand V. Chaudhary Charan Singh, 1980 Delhi
114(116)

18. Wilson Harold: The Governance of Britain (Weiden-
P. 21
senior ministers. As a matter of fact, my general experience was that where I accepted advice it was not very good. I did once or twice have people foisted on me. People don’t always understand why a man who seems very clever may not turn out particularly good as a Cabinet Minister.

It cannot be denied that in England relations between the executive and the legislature are quite different from the relations existing a hundred years ago. The capacity of the Commons to remove one government and install another, to amend any legislation, to pick off individual ministers who have failed and to push the government into changes of policy has largely disappeared.

The office of the Prime Minister is what its holder chooses and is able to make it. "In any sphere of action" Winston Churchill once wrote "there can be no comparison between the positions of member one and members two three or four."

Some Prime Ministers have been little more than chairmen of a committee concerned only with securing the greatest possible measure of agreement between more forceful colleagues. Others have been determined to get their own way, it might be by directly dominating the situation at the Cabinet, or it might be as the result of quiet talks outside with those whose opinions carried most weight. Some have been businesslike, have read all the papers up for discussion, and been mainly concerned to get decisions. Some have believed in letting everybody ventilate their troubles and in the value of desultory conversation. Some have been natural listeners disposed to lie low and say nothing either waiting to see what others thought or in order to come in with their own decisive intervention to conclude the debate. Others have been inclined towards government by monologue. Some have tended to be wet blankets and some have been an inspiration. Some have made a point of seeing something of all their colleagues, and even of Junior Ministers, individually. Some have mainly confined their talks to an informal 'inner Cabinet'. Others have seen little of their colleagues except at Cabinet meetings. Some Cabinets have been happy families, others have not.
PRIME MINISTER - HIS INDIVIDUALITY:

"Every Prime Minister" wrote Prime Minister Wilson has a different style, in Cabinet and outside, but the aim should be informality combined with total orderliness. A touch of humour to calm things down, or to stop excessive length and preoccupation with technicalities, is not out of order. The purpose is to get the business through, with full consideration, and to reach a clear decision, with nothing fluffed or obscure and, so far as possible, an agreed decision, with the maximumsemblant to wounded pride. Above all, the Prime Minister must keep his head, when all for some about him are losing theirs. In this respect as in others, Clement Attlee was a prince among Prime Ministers.

In one of the interview with Francis William which made up the book: A Prime Minister Remembers, Attlee summarised his style: "A Prime Minister has to know when to ask for an opinion. He can't always stop some Ministers offering theirs, you always have some people who'll talk on

every thing. But he can make sure to extract the opinion of those he wants when he needs them. The job of the Prime Minister is to get the general feeling—collect the voices. And then, when every thing reasonable has been said to get on with the job and say 'Well, I think the decision of the Cabinet is thus, that or the other. Any objections? Usually there aren't'.

The Attlee Government was not Prime Ministerial. Attlee was a great Prime Minister, but he believed and acted in the spirit of collective Cabinet responsibility and decision. His achievement, in Cabinet terms, was to preside over an administration headed by men of the calibre of Ernest Bevin, Stafford Cripps, Herbert Morrison, Hugh Dalton and Aneurin Bevan, and to keep them together throughout the period of post war transition. He was helped by the fact that Churchill had entrusted great responsibility to Bevin and Morrison and to a smaller extent to Stafford Cripps and Hugh Dalton. While Aneurin Bevan brought an entirely new political dimension into the Cabinet room. But Leo Amery was right when he emphasized

24. Ibid: p. 51
the essential differences between Prime Ministers.

Prof. Mackintosh 26, has described Attlee's conduct of Cabinet perfectly: "At Cabinet, Mr. Attlee's great objective was to stop talk. There is evidence that two ministers rightly talked themselves out of the Cabinet. Discussion was limited by the Premier's habit of putting his questions in the negative. A non Cabinet Minister with an item on the agenda would be called in at the appropriate times simply bursting to make speech. Mr. Attlee would begin: Mr. X your memo says all that could be said - " I do not suppose you have any thing to add to it."It was hard to say anything but 'Not'. Then, "Does any member of the Cabinet oppose this?" Someone would indicate a desire to contribute, and say "An interesting case occurred in 1929 which was similar to this, and I remember then that we.... Do you oppose it..... No.

Very good, that is settled".

26. Mackintosh J.P.: British Cabinet (Stevens & sons Ltd; London, , 1962); p.38
27. Ibid., P.28
DEATH RESIGNATION OF PRIME MINISTER:

Mr. Jawahar Lal Nehru, Prime Minister died on 27th May, 1964. Immediately President Dr. S. Radhakrishnan sworn in Mr. G.L.Nanda Senior Cabinet minister as Prime Minister on interim pending the election of Mr. Jawahar Lal Nehru's successor by the Congress Parliamentary Party. On June 2, 1964 Mr. Lal Bahadur Shastri was elected Prime Minister. The same procedure was followed when Sri Lal Bahadur Shastri died. Smt. Indira Gandhi was elected leader of the Congress Parliamentary Board and was sworn in as Prime Minister of January 24, 1966.

PRIME MINISTER - SELECTION OF HIS MINISTER:

In making appointments, a Prime Minister can use any of four criteria: personal loyalty rewarding friends personal disloyalty bribing enemies representativeness and departmental competence.

Constitutionally, a Cabinet decision takes precedence over the decision of an individual Minister, including the Prime Minister. A Prime Minister does not want to be open to attack from within the party. Unlike the American
President, a Prime Minister is bound to the Cabinet just as much as any other member. To take a position in advance of agreement in the Cabinet and then to find oneself in minority is to risk loss of office. When Harold Wilson did just this, in a Labour Government dispute on industrial relations legislation in 1969, he had to abandon his policy rather than risk government from Downing Street.

There has been a steady accretion to the power of the Prime Minister in appointing ministers, i.e., both in selecting appointees and in allocating to them their duties. But in both tasks he faces strict limitations. The Parliamentary spectrum in a modern democratic party covers an even wider are than the views of the half of the country whose support it claims. So must the Cabinet. Few Prime Ministers, except in war time and rarely then, could dictate to their Cabinets, except on the basis of consultation with their senior colleagues. Prime Minister who has ignored or defied that maxie, particularly if they have refused to appoint anyone who has opposed their views.

28. Pal, R.N.Dr, The Office of the Prime Minister in India (Chanshyam publishers, New Delhi, 1983). P.147
or in any way given offence, and have instituted 'government by crony', have invariably paid the price. Chamberlain was an obvious, but not, the only, example.

The alleged freedom of Prime Minister in Cabinet appointments, except perhaps on first coming into office, bears little relation to reality. There have to be consultations; Cabinet re-shuffles are anything but set-piece movements, on a chess board.

There is a very wild choice given to a newly appointed Prime Minister. No doubt he has to consider the claims and views of leading members of his fresh party in both the Houses. He has a very free hand in shaping his government according to his personal preferences. It is for him to include in it. He may consult a few leading colleagues or the chief whips or his personal cronies. The Prime Minister of England has never been under any sort of direct dictation either from Parliament or from a party Executive outside in making up Government.

29). Amery: Thought on the Constitution, P 22, 23
In our country there is only one instance when after the China War, Jawaharlal Nehru was persuaded rather forced to dismiss Mr. Krishna Menon from his Cabinet.

The power of the Prime Minister to appoint, reshuffle, or dismiss his colleagues continues throughout his term of office.

The Prime Minister is uniquely free in selecting his Cabinet and other members of his ministerial team. He is not fettered, for example, in the sense that an Australian Labour Prime Minister is under the unworkable system adopted there under the guise of democracy. Their 'caucus,' Parliamentary Labour Party elects the members of the Cabinet, and the Prime Minister has to allocate, to a team he has not selected, the various ministerial portfolios. The Australian Labour party elects a certain number of people as ministers, and then they are handed over to the Prime Minister and he's told to fit them into the jigsaw. It's quite possible that some one with particular technical qualifications may get left out because he does not happen to be the popular man.

30. Jadish Swarup: op cit; p. 705
It is not a task that can be done by a group or a selection committee. To quote Clement Attlee again: "In my view, the responsibility of choosing the members of the Government must rest solely with the Prime Minister, though in practice he will consult with his colleagues. If he cannot be trusted to exercise this power in the best interest or affection he is not fit to be a Prime Minister."

RESHUFFLING OF THE CABINET:

Even after the Government is formed and functioning, it is usually not very long before changes become necessary. A reshuffle may become necessary through death or ill health, resignation, family reasons or disagreement with some aspect of government policy, dismissal of a minister, the desire to bring in some younger talent, the creation of a new department, changes in priorities and problems calling for a dynamic minister in the new hot seat—or simply to avoid a minister becoming stale or type-cast.

33. Ibid - P.28
In the major league of re-shuffles, Harold Macmillan's night of the long knives in July 1962 undoubtedly holds the record, and no future Prime Minister will ever wish to be in a position where he has to challenge it.

Suppose, a minister is frequently asked, but he refuses to go. Has the Prime Minister the right to require his resignation, or even to recommend his deletion from the list of ministers? The answer is clear; the minister holds office during the pleasure of the president. In such matters the President accept the advice of the Prime Minister.

MOTIVE OF THE CONSTITUTION-MAKERS:

The Indian constitution-makers were confronted with three alternatives: the U.S. Presidential system, the Swiss elected executive and the British Parliamentary System. The Union powers Committee and the Union Constitution Committee decided that "it would suit the

35. ibid. P.34
36. Constitution of India, Art. 75(2)
37. Wilson Harold op.cit. - P.34
conditions of this country better to adopt the 
parliamentary system of constitution." Vallabhai 
Patel gave "familiarly" with the British pattern as the 
most important reason for this choice. K.M. Munshi 
elucidated that during the last hundred years, our 
traditions had become parliamentary. Under the 
British, self-governing institutions had gradually been 
introduced in the provinces and at the centre. The process 
started as early as 1661 and through the introduction of 
dyarchy in the provinces in 1917 and provincial autonomy in 
1935 reached a definite point in its evolution. Dr. B.K. 
Ambedkar argued that the parliamentary system was preferred 
because it was a responsible as well as an elastic form of 
government. Jawaharlal Nehru later explained that they 
chose this system because it was capable of adjusting to 
the new way of life. The parliamentary system was prefer-
red, for

38. For Vallabhai Patel's description of the decision, 
Constituent Assembly Debates, (Government of India, 
Constituent Assembly, official Report), 1946-50, Vol IV, 
No 2, P. 575
39. Ibid Vol.VII no.23 pp 964-5, 
40. Ibid Vol.VII no.1p.33, 
41. Jawaharlal Nehru's speeches, March 1955 August 1957, 
Vol. III, (Publications Division, Government of India, 
Delhi 1959) p134-5
it embodied the principles of both change and continuity. The country had to reconstruct its economy, to socialise some industries, establish new corporations, create new forms of credit for all of which the daily co-operation of the executive and the legislature was needed. To sum up, parliamentary government was preferred for it promised strength, cohesive action and organised leadership so much required at the time.

Some of the members, however, warned against blind imitation of the British system. According to them, there were some special features of British national life which enabled them to keep their system going. The absence of parochial tendencies, loyalty to a non-partisan king, respect for constitutional norms and high national character were some of those features which would not be possible to develop in India. The British style of governance reflected non-personalistic traits in as much as they could throw out even Churchill in the elections, though he was widely known to have saved his country during the Second

---

World War. But in India, they feared, the parliamentary system might be reduced to one-man government. Moreover, parliamentary democracy also demanded ability, a certain devotion to work, self-discipline, restraint and tolerance-the qualities which were not present in the Indian national character. They argued that the colonial past might lead India to imitate England but it was not possible to imitate it to perfection until the whole national character changed.

The voices against the parliamentary system were, however, drowned by an overwhelming opinion of the leaders and the public in India in favour of the British model. At the same time, this has to be admitted that there also lay in everybody's mind a distrust of autocratic executive power-an experience of the colonial past. Strong Government they wanted but not at the cost of liberties and freedoms. It was in part due to the feared misuse of the executive power that they had rejected the Swiss or American system, which is executive with a limited executive.

44. Ibid : p.964
subject to legislative control. With a view to limiting and controlling executive power the inclusion of an Instrument of Instructions was planned. The establishment of supervisory councils, independent of Council of Ministers, to advise the President and the governors in the exercise of certain functions was also under consideration. The supervisory councils might have curtailed the powers of the Cabinet as they might have emerged as competing groups. The proposals were abandoned later on the plea that written conventions, if not justiciable, would be superfluous, and it would be better to have a constitution that the very proposals for the establishment of some such type of board or council betrayed the anxiety on the part of the members to curb the power of the executive.

All those who supported the British system against rival claims believed that its forms and conventions should be adopted along with the general framework. But the question was whether the conventional forms should be

46. Ambedkar B.R. Dr. had moved an amendment for the inclusion of such instructions in schedule III-A to guide the President of India in the choice of ministers and in the exercise of his other functions Constituent Assembly Debates (Government of India constituent Assembly, Official Report, 1946-50) vol 7, p.1167
written or unwritten. The Cabinet's collective responsibility to the lower house—a major convention of parliamentary Government—became part of the written Constitution. So was the recognition of the office of the Prime Minister and his right 'to aid and advise' and the duty 'to inform' the Head of the State. But other conventions were left unwritten with a tacit assumption that they would be followed in India as in the U.K. Hopes were expressed that such processes would develop in India which would restrict and restrain the government. The running of parliamentary Government was left to convention, to the vigilance of Parliament, and finally, to the will of that power which ... is the true political sovereign of the state—the majority of the electors or the nation.

THE WESTMINSTER MODEL:

Most of the Commonwealth countries, including India, patterned their Constitutions after Britain and while making some modifications to conform to local conditions.

47. Art. 75. The Constitution of India  
adhered to certain basic principles of the Westminster model. The model came to mean a constitutional system in which the Head of State was not the effective Head of Government, enjoyed 'exceptional and peculiar authority'. The linkage between the executive and the legislature, collective responsibility, Cabinet secrecy, the ultimate answerability to the electors and selection generally from one party were some of the common essential features of the system. Party provided homogeneity and the Prime Minister collective responsibility to the Cabinet while each derived strength and position from the electorates. However, the system was to be essentially constitutional and democratic in the sense that Government was to be limited and powers were to be divided.

The character of a constitutional Parliamentary Government, however, is a dynamic process. There have been shifts in the locus of power in the parliamentary system from time to time and as power had passed from monarch to

Parliament and from Parliament to Cabinet in the past, it tended to pass in this century from the Cabinet to the Prime Minister. Richard Crossman has written that after Bagehot's analysis, effective power came to be transferred to the great party machines and the bureaucracy in Whitehall. He stressed the change in a famous passage:

By the turn of the century, when the party caucuses were firmly entrenched, the efficient secret of the constitution was ... the secret links that connected the Cabinet with the party on the one side and with the civil service on the other.

The complexity of Government and want of technical expertise made the Cabinet depend on the party machine or the bureaucracy. Crossman adds that the post-war epoch has seen the transformation of Cabinet Government into 'Prime Ministerial Government'. Under this system, the 'hyphen which joins, the buckle which fastens, the legislative part of the state to the executive part'.

becomes one single man and the Cabinet joins the other
dissolved elements in the Constitution.

There has been quite a lively debate in England as to
whether it is appropriate to call the present system of
government a 'Prime Ministerial Government' or whether the
term 'Cabinet Government' is still the suitable term to
characterise it. While Mackintosh, Crossman, P.G. Richards,
Crick, Hanson and Wiseman are for the use of the term 'Prime
Ministerial Government', G.W. Jones, Chester and
Morrison would like the contemporary British Government to
be still described as 'Cabinet Government'. There are
others who suggest that only in the British Cabinet beco-

53. Ibid. pp. 162 - 3

54. Crossmen, R.H.G. : Ibid and Inside view, (Jonathan Cape,
London, (1973); Jones, G.W. : The Prime Minister's Power,
Parliamentary Affairs, (Spring, 1963). pp. 167-68
Mackintosh, J.P. : The British Cabinet (Stevens & Sons
Ltd, London, 1962) and The Prime Minister and the
pp. 53-68 Chester, D.N. : Who Governs Britain? (Parliamentary Affairs Autumn, 1962) George Jones,
Prime Minister or President, Socialist Commentary,
Minister as an Elected Monarch, Parliamentary Affairs,
Minister and the Cabinet, Parliamentary Affairs,
(Autumn 1962) pp. 461, 84.

ming Prime Ministerial the Prime Minister himself is becoming like the U.S. President. However, the difference is largely limited to "nomenclature". Everybody appreciates that the Prime Minister's position is preeminent but there is a hitch on the extent of that preeminence and pointedly on the use of the term 'Prime Ministerial'. When parliament came to be dominated by the Cabinet, the terms 'parliamentary' or 'cabinet' became synonymous; but the new term 'Prime Ministerial' has not been equated with them and is objected to by many English scholars. Perhaps it can be pointed out that the term 'parliamentary government' is still useful as it broadly presents a classical picture and absorbs all the trends which continue to emerge without necessarily affecting the original concept.

It is quite likely that when the Constituent Assembly of India opted for the parliamentary form of government, its character as a 'Prime Ministerial Government' was neither fully understood nor debated at the time. The powers of the British Prime Minister had not by then been institutionalised; and the wartime powers of the office were being treated as emergency and not normal
powers. Even after some months of governmental experience in India, Nehru and Patel were representing two different conceptions of the office of the Prime Minister. As Prime Minister, Nehru asked for "liberty of direction" and "freedom to act when and how he chooses" to perform his roles of a co-ordinator and supervisor of ministries.

Patel thought that the Prime Minister was first among equals and as a co-ordinator, he had the right to be informed, to be consulted and to advise the ministries on certain matters like the manner of the implementation of a policy. Till as late as 1969 when there was a political crisis in the Congress Party, it seemed that there was disagreement on fundamental questions like the relations between the Prime Minister and the President of the Republic, the Prime Minister and his Cabinet and more particularly between the Prime Minister and the party President.

Many epithets used to describe the office of the Prime

56. Patel's note to Gandhi enclosed with his letter to Nehru dated 12 January, 1948, in ibid., pp 21-4
Minister like Primus inter pares, "Keystone of the Cabinet arch" and inter stellas lunar minores a moon among lesser stars, though picturesque, do not sufficiently express the importance of the office. From the point of view of political power, the phrase "primus inter pares" is now "unsatisfactory and ambiguous". A senior minister of the present Cabinet, in an interview with the author, commented thus on this phrase: "The concept of "first among equals" is a theoretical concept. If he is equal, he will not be first. If he is first, it means that he is not equal. The very fact that somebody is Prime Minister represents not only the Cabinet arch but other arches of the constitutional structure as well. For the sake of phraseology, he could be called the radiant sun rather than a moon. A more important purpose, however, can be served by analysing his powers and functions rather than describing his position through phrases and the best way to

do it is to examine how the office of the Prime Minister has functioned and to what extent the powers were exercised in the past, since independence.

It is to be appreciated that the Westminster Model is not always helpful in an understanding of the role of the Indian Prime Minister. The national needs and aspirations, the peculiar historical, geographical and economic conditions as well as the social and class structure influence the constitutions of countries. Naturally, there are, among countries, differences both institutional as well as human. To seek a broad comparison with India, we find that in Britain, parliamentary system was fitted in a unitary form but India embedded a federal structure. Where as the writ of a King or a Prime Minister was the basis for all administrative action throughout the U.K., in India, we opted for the Union as well as provincial executives with positive restrictions on their independence. With regard to the executive parliamentary executives are divided into the 'dignified' King (Governor-General or President) and the 'efficient' cabinet responsible to the Lower House part, but the actual relationship between the two parts
cannot always be the same in each country at all times. The position of an elected Indian President who is 'impeachable' by Parliament may not, in all circumstances, be like that of a hereditary king who 'does no wrong' as he does not take decisions. Thus the office of the Indian Prime Minister has its own uniqueness.

MODE OF APPOINTMENT OF PRIME MINISTER OF INDIA

The Constitution of India empowers that 'the Prime Minister shall be appointed by the President. But this formal expression is qualified by the subsequent assertion that the Council of Ministers which includes the Prime Minister 'shall be collectively responsible to the House of the people'. This qualification implies that the Indian Prime Minister, like his counterpart in England, has to be the leader of the House of the People, Lok Sabha. In pursuance of the well-established practice of parliamentary government, it is the business of the majority party in the Lok Sabha to decide upon the choice of a leader to head the Government, and the President, when presented with the

58. Article 75(1)
59. Article 75(3)
party choice, designates him as the Prime Minister. Thus, there is hardly any discretion given to the President in the appointment of the Prime Minister. Like the English monarch, he is the registering authority of the will of the house as expressed by the majority party in Parliament.

Dr. B.R. Ambedkar held that the appointment of the Prime Minister to be a "prerogative" of the President of India or generally speaking, of the Head of State. The discretion of the Head of State in the U.K. is, however, most restricted in the matter. The last instance of the use of this prerogative in the U.K. was in 1894 in the appointment of Rosebery. Harold J. Laski, however, contends that in 1932, Mr. Donald became the Prime Minister because he was the King's favourite and not because he was the representative of the Labour Party. But it is by now universally admitted

that the King in the U.K. has practically no prerogative except on rare occasions.

The discretion of the President of India is also limited as regards the appointment of the Prime Minister. But on an occasion when the party position is fluid and no party singly or in coalition is in a clear majority in the Lok Sabha or, for any reason, the majority party is not able to indicate its choice of leader, the President may have to use his discretion. In such circumstances, the President may request the single largest party to form government or alternatively, he may allow a coalition government to be formed. Like the Governors in the Indian States, he may use his discretion only when such situations emerge. In such situations, the President may constitute a government.

The Governors in Indian States have used their discretion in the matter and have acted differently. In 1962, the Congress party had 155 and Samyukt Vidhaya Dal combined opposition 166 out of a total of 251 seats in the Madras Vidhan Sabha. Sri Pralaya, Governor of Madras, invited the single largest party, the congress, to form a government. In 1967, Sampa Panamand, the Governor of Rajasthan, invited the congress party to form a government when the party had only 68 out of 187 seats in the Vidhan Sabha. But the same year, in Bihar and West Bengal, the Congress Party was not invited to form a government, though it was the single largest party and in Punjab, the B.V.D. was invited to form a government only when the Congress refused the offer. Thus, governors have not followed a uniform procedure. Whether the party having absolute majority or a group of parties having absolute majority or the single largest party should be invited to form the government is not clear.
nally 'appoint' the Prime Minister. But his main consideration on such an occasion would be to find a stable ministry in accordance with the letter and the spirit of the Constitution. He should select the Prime Minister from among the members of either House of Parliament after considering the conflicting claims of the aspirants to the office. It will be no good on the part of the President to appoint such a person as the Prime Minister who could be thrown out with disgrace the day he faced the house. In fine, the President, while designating a Prime Minister, must Act as the custodian of which he is also a part. However, the President of India has had no problem so far in the matter of the appointment of the Prime Minister.

65. Art 75(5), Constitution of India provides for the appointment of an outsider as a minister, though such a person is obliged to become a member of either house within six months otherwise he will be discontinued. Here, as elsewhere, the term 'minister' may include the Prime Minister. But this rope to be used by the majority party in extreme situations, may not be open to the President while exercising a 'prescitative'.