Chapter VI

Constituent Assembly, British Conventions and Parliamentary Government in India
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CONSTITUENT ASSEMBLY, BRITISH CONVENTIONS AND PARLIAMENTARY GOVERNMENT IN INDIA

The Constituent Assembly decided to adopt parliamentary system of government of the British type. How to adopt the principles of parliamentary government from the British constitutional system was a big challenge to the framers of the constitution of India. This was mainly due to the fact that the constitution of the United Kingdom is an unwritten constitution. The principles of parliamentary system of government in England are dependent upon the conventions of the constitution. The question is whether it was possible for the Constituent Assembly to codify these conventions into the Indian Constitutional System. This chapter evaluates the efforts of the Constituent Assembly of India to frame a parliamentary constitution and in particular to codify the important British conventions of parliamentary government in the Constitution of India.

In fact the leading members of the Constituent Assembly had plans to incorporate British conventions in the Constitution of India. Efforts were made in that direction at the beginning of the proceedings
of the Constituent Assembly of India. The Provincial Constitution Committee and the Union Constitution Committee of the Constituent Assembly, which were assigned the responsibility of reporting on the form of government to be adopted by the Constituent Assembly, decided in favor of 'Parliamentary System of Government'. But least effort had been made by both the committees in the direction of codification of the British conventions. They were only interested in copying the provisions of the Government of India Act of 1935 regarding responsible government in the provinces. During the debate in the Constituent Assembly, on the reports of these committees the main focus was on the form of government. The opponents of the parliamentary form of government wanted presidential system of government. Very few members like K. Santanam, Jawaharlal Nehru, K. M. Munshi, T. T. Krishnamachary, A. Krishnaswamy Iyar, Sardar Vallabhbhai Patel and B. R. Ambedkar proved themselves to be knowledgeable about the working of Conventional System of British Parliamentary Government.

The Constitutional Adviser B. N. Rau, who was assigned the responsibility of preparing the first draft of the Constitution based on the decisions of the Constituent Assembly and the reports and minutes
of the Committees of the Assembly, reproduced most of the provisions of the Act of 1935. The Drafting Committee headed by B. R. Ambedkar, in its meetings revised the first draft and placed it before the Constituent Assembly on 14th November, 1948. After the brief general discussion, which may be called the first reading of the constitution, there was a second reading or consideration of the clauses of the Draft Constitution which commenced on 15th November 1948 and terminated on 17th October, 1949. The Constituent Assembly again sat on 14th November, 1949 for the third reading, which was finished on 26th November, 1949, on which day the Constitution received the signatures of the President and members of the Constituent Assembly and was declared passed.

The framers of the Constitution of India barrowed freely provisions from other constitutions. During the course of debate on the 'Draft Constitution', some members were critical of this. Replying to the criticism B. R. Ambedkar who, as Chairman of the Drafting Committee, was sponsoring the Draft Clauses observed that it was impossible to frame a constitution which is absolutely new or original at this hour in the history of the world.¹
The Parliamentary System of Government is adopted from the unwritten constitution of the United Kingdom. It is obvious therefore, that the essentials of that system would be reduced into writing in India and the conventions of parliamentary government are to be found in the provisions of the Constitution of India. Here below is an analysis of the efforts of the Constituent Assembly to incorporate the British Conventions into the Constitution of India.

The pattern of the executive functions within the Westminster system is quite complex. The most important feature of this model is a clear-cut distinction between the nominal executive and the real executive. In Britain the sovereign (the term King / Queen / Monarch / Crown are also used interchangeably) or 'Head of the State' is the nominal or theoretical holder of executive power and holds numerous reserve of powers. In practice, such a figure does not actually exercise the executive powers, even though executive authority may be exercised in his/her name. The real executive is headed by the Prime Minister who is officially appointed by the 'Head of the State'. The Prime Minister, who is the 'Head of the Government', will ideally have the support of a majority in the responsible/ popular House.
In course of time, the principle of parliamentary executive as it had evolved in Britain was transmitted to certain of her colonies by the grant of responsible government. The Act of 1867, establishing the Dominion of Canada, brought into existence the parliamentary system. The principle of responsible government had been granted to New Zealand and to the separate colonies of Australia.  

The British Government transmitted institutions of responsible government to India also during their rule in India. Countries repudiating monarchical form of government have had to create an office serving the purpose which the King of England does. Once decided to adopt Westminster system of parliamentary government, the Constituent Assembly faced the problem of creating an office similar to the office of the British Monarch as a necessary adjunct to the parliamentary system of government. In agreement with the 20th century trend of attempting to install uncrowned King, the Constituent Assembly decided to place at the Head of the Union the Elected President in the Union and the appointed governor in the provinces (States).

The central government of India, before the transfer of power, was carried on by the Governor General in Council consisting of the
Governor General and members of Executive Council all of whom were appointed by the King of the United Kingdom. The provincial governments were carried on by the Governor in Council consisting of the Governor and Members of the Executive Council.

Moving the historic resolution on aims and objects of the Constituent Assembly Prime Minister Jawaharlal Nehru, on 13th December 1946, made it clear that a free India can be nothing but a republic. Nehru was not speaking on his own behalf but was speaking on behalf of the Indian National Congress behind him. The resolution was adopted on January 22nd, 1947 declaring India an Independent Sovereign Republic.

Accordingly the Union Constitution Committee recommended parliamentary system of government with elected President of India as 'Head of the State'. Commenting on India's decision, Ivor Jennings said that the long conflict between the Congress and the Government of India and the sense of frustration produced by the almost equally bitter conflict between the Congress and the Muslim League perhaps made it inevitable that the rule of the King-Emperor should be replaced in India by republican institutions.
India's desire to remain in the commonwealth despite its adoption of republican form was fulfilled by Attlee Declaration of April 27th, 1948. India was introduced as a first republican member of the commonwealth. Today there are more that 30 such members.

India had a federal parliamentary system. The parliamentary structure and institutions at the centre have their counterparts at a state level. British East India Company consolidated its power in India after the battle of Buxer in 1764. The territories acquired by the company have been divided into three Presidencies: Bengal, Madras and Bombay, each with a Governor and Council responsible to the company in London, each entirely independent of the other two. The Regulating Act of 1773 created a sort of central government by creating the position of Governor General in Council. More provinces were created as the company expended its territory. The revolt of 1857 resulted in the enactment of Government of India Act 1858 which provided for taking over of the company rule in India by the government of Great Britain.

The 1919 act established partial responsible governments in the provinces and the Act of 1935 granted autonomy to the provinces with full responsible governments. The effort of the 1935 Act to create 'All
India Federation' failed. The Indian leaders wanted to establish a federal state in India. The objectives resolution of the Constituent Assembly contemplated that, 'The territories in India shall possess and retain the status of autonomous units. But latter, in the light of the experiences of the partition, the Union Constitution Committee on 5th July, 1947 opted for a strong Centre leading to the creation of a federation with strong Centre.

The Constituent Assembly of India decided to frame a single constitution both for the Union as well as the Provinces (States). At the time of independence, in addition to British territories consisting of Governor's provinces and Chief Commissioner's provinces, there were 562 Princely States (also called Indian/ Native States). Most of them were dependents of the provincial governments of British India. They were governed by an Indian ruler under British suzerainty or paramountcy. Integration of these Indian States was a Herculean task. Deputy Prime Minister, Sardar Vallabhbhai Patel was able to unify most of the States in 18 months' of independence. All States, except Junagarh, Hyderabad, Jammu and Kashmir and Tripura acceded to India. All the provinces and States have been categorized into four groups in the first scheduled to the constitution as part A,B,C and D.
States Part A and B States are given the same status as for as the structure of the government is concerned. The only essential difference being that the Governor nominated by the President of India in Part A states is replaced by the RajPramukh or Maharaja recognized by the President of India in part B States. The pattern of government in these States is the same as the Union, that is, parliamentary system. Part C and D states do not enjoy the status of the Federal Units. Originally the Provincial Constitution Committee of the Constituent Assembly had recommended that the Governor should be directly elected by the people of the respective State.

Once the decision was taken in favor of federal republican parliamentary system of government efforts were made to prepare the framework of governmental machinery. Article 53 and 154 relate to the formal vesting of the executive power of the Union and the States respectively. The Articles quoted in this chapter are as in the original Constitution.

**Article 53:**

(1) *The executive power of the Union shall be vested in the President and shall be exercised by him either*
directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defense Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall....

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

Article 154:

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall....
(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) Prevent parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Both these articles create the nominal executive in whom the executive power is vested. The Constituent Assembly had succeeded in providing the statutory status to the practice prevalent in the United Kingdom.

In the following pages 29 well-known British Constitutional Conventions of parliamentary government are quoted one by one followed by Articles of the Constitution of India, if there is/ are any, to discuss how far the British Convention had been codified. Since India is a federal parliamentary system, Article/s relating to the federal Government is followed by Article/s relating to the State Governments.

1. British Convention: "The monarch should exercise the prerogative powers on and in accordance with the ministerial advice save in a very special situation."
Though legally the prerogatives are vested in the monarch, by convention there was transference of the royal prerogative to the Cabinet. Today the monarch confines himself/herself to take the advice of the ministers. The advantage of the figurehead is that the Head of the State is free from party ties.

**Article 74 :**

(1) *There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.*

(2) *The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.*

**Article 163 :**

(1) *There shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.*

(2) *If any question arises whether any matter is or is not a matter as respects which the Governor is by or*
under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

When the question of the powers of the President of India under the constitution was discussed there was a proposal before the Constituent Assembly to embody the conventions in writing. But that idea was eventually dropped. B.R. Ambedkar speaking in the Constituent Assembly on the motion on the Draft Constitution observed as follows:

"In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of Government prevalent in America and the form of
Government proposed under the Draft Constitution. The American form of Government is called the Presidential System of Government. What the Draft Constitution proposes is the Parliamentary System. The two are fundamentally different.

Under the Presidential System of America, the President is the Chief Head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the executive. He represents the Nation but does not rule the nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the Untied States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do any thing without their advice. The President
of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so as long as his Ministers command a majority in Parliament”.

This view reflected a distrust of executive power nurtured by the colonial experience, but the constitutional convention regulating the relationship between the King and the Cabinet in Great Britain was not easily translated into written form. Although there were no specific provisions in the constitution Rajendra Prasad expressed the hope in the Constituent Assembly that the conventions under which in England the King Acts always on the advice of his ministers will be established in this country also.

It will be remembered that the Draft of the Indian Constitution originally contained a schedule of instructions to the President and an Article, one of whose clause provided that, in the exercise of his functions under the constitution; he must be generally guided by these instructions. The instructions provided among other things that he must act on ministerial advice. Ultimately the instructions as well as the clause were omitted as unnecessary. Number of members objected to the omission because they thought that it was not at all clear how for the conventions of the British Constitution would be binding under the
Indian Constitution. But the Law Minister B.R. Ambedkar was emphatic that they would be. He was specifically asked, 'If in any particular case the President does not act upon the advice of his council of ministers, will that be tantamount to a violation of the constitution and will he be liable to impeachment?' His answer was: "There is not the slightest doubt about it".

That the convention about acting on ministerial advice ought to be the same in India as in England no one appears to have doubted; the only doubt voiced was whether this was sufficiently clear in the Indian Constitution. The Constituent Assembly, on the assurance of the Law Minister that the point admitted of no doubt, agreed to omit the schedule and the clause.  

If the words are taken alone they can only mean it is for the President to accept the advice or not. But if the clause is taken along with other clauses, the President is bound by the advice.

Acting on the Ministerial advice does not necessarily mean immediate acceptance of the ministerial advice on first thoughts. The President may ask for reconsideration. It is clear from Article 74 that it is the function of the Council of Ministers to advice the President over the whole of the central field. Nothing is left to his discretion.
Clause 14 of the report of the Provincial Constitution Committee providing that the Governor shall be guided by the conventions of responsible government in the appointment of Ministers and his relations with them was debated thoroughly. There was objection to the absence of schedule containing conventions. Vallabhbhabai Patel, the Chairman of the Committee assured to form a schedule the members insisted that the Constituent Assembly should know the convention to be followed.

The Governor is the Constitutional Head of the State. His office is analogous as that of the President of India and his functions in the sphere of State Government are similar to those of the President in the Union Government. Whereas the President Acts on the advice of his ministers, the Governor only does so except in so far as he is required to exercise his functions in his discretion. The relations between the Governor as Head of the State and his/her council of ministers resemble those between the President and his council of ministers. The Constituent Assembly did not include the term Cabinet in the Constitution though it was fully recognized and accepted concept of the British Political System. Most probably the framers of the Constitution thought that the term 'Council Ministers' includes in it the term Cabinet.
But it is not correct to say that the term Council of Ministers is equivalent to the term Cabinet. The Cabinet is the inner Council of Ministers consisting of only the heads of the principal Departments of Government. It is the Cabinet that meets and takes policy decisions in a parliamentary system. That is why the terms 'Cabinet Governments' and parliamentary government are used interchangeably.

Thus in India the above mentioned convention is secured by the express provision in Article 74 and 163.

2. British Convention: "The Sovereign has three rights-the right to be consulted, the right to encourage, the right to warn."

Even though the Sovereign is deprived of most of the prerogatives, the Prime Minister is in constant touch with the monarch keeping him informed about the proceedings of Parliament, the deliberations of the cabinet, the course of policy, the conduct of negotiations and the whole range of executive actions.

Article 78:

*It shall be the duty of the Prime Minister—*

(a)to communicate to the President all decisions of the Council of Ministers relating to the administration
of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Article 167:

It shall be the duty of the Chief Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
If the Governor so requires, to submit for the consideration of the council of Minister any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Thus, in India in all aspects of interrelationship between the 'Head of the State' and 'Head of the Government' the Indian 'Head of the State' is better placed than the British 'Head of the State'.

This convention is codified in Article 78 and 167 of the Constitution of India.

3 British Convention: "The sovereign should choose as Prime Minister that person who appears best able command the support of a stable majority in the House of Commons."

The choice of a Prime Minister by the sovereign is of some importance in the British Parliamentary System. But the choice is necessarily limited by the political conditions. The Prime Minister must be able to secure his/her colleagues and with the colleagues must be able to secure the collaboration of the House of Commons. Frequently there is no choice at all. The essential point is that the new Prime Minister should be able to command a majority in the Lower House and
not merely be able to form a Government, for; the government cannot live without the support of majority. This is the principle of parliamentary system of government.

The views of Herbert Morrison on this issue are noteworthy. He said that usually the party supporting the government has a majority over all other parties. However the House of Commons majority may be composed, the government must have one or it will fall. That is the basis of our (British) Parliamentary Democracy.8 There can be discretion in the choice of Prime Minister if there is no clear cut known leader of majority party, perhaps because of sudden death or resignation of the Prime Minister or absence of majority party.

Article 75:

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(3) The Council of Ministers shall be collectively responsible to the House of the People

Article 164:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed
by the Governor on the advice of the Chief Minister,
and the Ministers shall hold office during the
pleasure of the Governor: ......

(2) The Council of Ministers shall be collectively
responsible to the Legislative Assembly of the State.

This convention is indirectly codified in Article 75 (1) and 75
(3) in case of the Union and 164 (1) and (2) in case of the States.

4. British Convention: "The Prime Minister must be (or must
become immediately after his appointment) a member of the
House of Commons."

(Prior to this the rule was that the Prime Minister should
be a member of either House of Parliament)

The Prime Minister should necessarily be a Member of
Parliament, that is, member of the House Commons. Every Prime
Minister since Robert Walpole has been in one of the Houses. Today
the Prime Minister must be in the House of Commons because the
Government owes responsibility to that House alone. The
composition of the House determines the nature of the government.
A vote in that house can compel the government either to resign or advise dissolution.

**Article 75:**

(5) *A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.*

**Article 164:**

(4) *A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that cease to be a Minister.*

Both the clauses quoted above have been copied from the Government of India Act of 1935. The membership of the either House is compulsory for all the Ministers including the Prime Minister. There is no special provision with regard to the compulsion on the Prime Minister or Chief Minister to become member of the Lower House.

**This means that the above mentioned British Convention is partially codified with concession of six months time.**
5. British Convention: "On the defeat and resignation of the government, the King should first send for the Leader of the Opposition."

The framers of the Indian Constitution have not taken into account the importance of the Political Parties in the working of Parliamentary System of Government. The above said convention is not codified either directly or indirectly in any clause of the Indian Constitution.

6. British Convention: "The Queen appoints the other ministers on the advice of the Prime Minister"

In England the Prime Minister is given full liberty to choose his colleagues for securing unity in the Council of Ministers. Though technically speaking and in literal sense it is the Queen who appoints.

During the debate on the report of the Union Constitution Committee in the Constituent Assembly, members wanted the mode of appointment of Ministers should be made clear. They wanted to include the conventions governing the principle of choosing Ministers but it was not possible to do so.
Article 75:

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

Article 164:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister....

These two clauses look to the simple and vague but both of them are the replica of the British Convention in Principle. The Choice of the Ministers is fully left to the discretion of the Prime Minister / Chief Minister as the case may be. Either the President or the Governor cannot turn down the recommendation. It can therefore be said that the British Convention is codified in form

7. British Convention: "All Ministers are required to be members of one or the other House of Parliament"

In the United Kingdom the Ministers who are not members of either House of Parliament should secure membership of either House within a reasonable time. This rule is compulsory in a
Parliamentary System because the Ministers are like executive board and are accountable to the elected chamber and their acts can be examined, revised, criticized and disallowed by the representatives of the constituency. There is direct responsibility. That is why the Ministers are compelled to belong to one or the other House of Parliament. The Constituent Assembly had succeeded fully in codifying the British Convention in the form of clause (5) of Article 75 and clause (4) of Article 164. In India six months concession is given to all Ministers to secure the membership of either House of Parliament.

8. British Convention: "The Prime Minister enjoys a pre-eminent position in the cabinet."

In a Parliamentary System fashioned after the Westminster System the Prime Minister is the presiding and actual Head of the Government and Head of the Executive Branch. The influence of the Prime Minister under the Cabinet System is ever increasing. He chooses his Ministers, selects his Cabinet, dismisses the Ministers, allocates and reallocates portfolios, makes patronage appointments, announces policy decisions, represents the government, schedules
Parliamentary session, so on so forth. Prime Minister is not only first among equals; he is more than first among equals. In conclusion it may be said that the position of the Prime Minister in a Parliamentary System is one of predominance. Article 74 and 163 (previously quoted) contains simple provisions in regard to this. Even though they are simple clauses both of them are the codified form of British Convention.

9. British Convention: "The government enjoying the confidence of the House of Commons cannot be dismissed by the Queen."

In a Parliamentary System, the Ministry is a legislative Ministry and derives its life from the legislature; therefore the Ministry cannot be dismissed so long as it enjoys the confidence of the majority. The cabinet is like an Executive Committee of Parliament.

Article 75:

(2) The Ministers shall hold office during the pleasure of the President.
(3) The Council of Ministers shall be collectively responsible to the House of the People

Article 164:

(1) ...The Ministers shall hold of his pleasure of the Governor

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

The clauses of the Constitution of India quoted above are indirectly codified form of the British Convention because the "Pleasure" clause should be read with 'Collective Responsibility' clause of both the Articles. The President of India and the Governor of the State cannot dismiss a Ministry which enjoys the confidence of the Lower House of the Parliament/Legislature, as the case may be.

The dismissal of a Ministry undoubtedly is a knotty question of Constitutional law. It is, therefore, necessary to take the support of the recognized Constitutional Conventions of the British parliamentary system from where we have borrowed the system of parliamentary form of government. In England, it had been established that the Ministers collectively hold their offices so long
as they command majority in the House of Commons. The legal responsibility of Ministers to the Crown has thus been replaced by the political responsibility of Ministers to the Parliament. This is the best reflection of the principles that should underlie parliamentary democracy. No Government has been dismissed by the sovereign since 1783. The Crown's power to dismiss a Prime Minister and his Cabinet has become obsolete by disuse. Therefore, the Constitutional experts in England agree that dismissal of the Cabinet by the Crown could now be an unconstitutional act except in the abnormal case of a cabinet refusing to resign or appeal to the electorate upon a loss of majority and a vote of no confidence in the House of Commons. To ask the Prime Minister who enjoys the confidence of the Parliament to resign would also be treated similarly.

Repying to the debate on amendments to the Draft Constitution of India, B.R. Ambedkar Chairman of the Drafting Committee of the Constituent Assembly of India expressed similar view. Interpreting the scope of the provision that the Ministers shall hold office during the pleasure of the Governor, he said that the Ministry shall hold office during such time as it holds the
confidence of a majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated in that fashion or in these terms in any of the Constitutions which lay down a parliamentary system of government.⁹

It is possible that a Ministry has lost the confidence of the Legislative Assembly as a result of a split in the party in power and one of the groups crossing the floor to join the ranks of Opposition. However, the Governor cannot ask the Chief Minister to resign or dismiss the Chief Minister and the Council or Ministers at his pleasure on the subjective estimate of the strength of the Chief Minister’s party in the Legislative Assembly at any point of time, because it is for the Legislative Assembly to enforce collective responsibility of the Council of Ministers to itself, under Article 164(2).¹⁰

Though clause (1) of Article 164 of the Constitution of India provides that ‘the Ministers shall hold office during the pleasure of the Governor’, clause (2) of the same Article makes the Ministers collectively responsible to the Legislative Assembly. It embodies the principle of political responsibility. Therefore, the ‘Pleasure of
the Governor' is subject to the 'responsibility of Ministers to the
Assembly.' A Chief Minister and a Council of Ministers that enjoy
the confidence of the Legislative Assembly cannot be removed from
office unless it is proved that the Ministry is patently corrupt or is
misusing the administrative machinery or is indulging in activities
aimed at seceding from the Union or weakening the unity and
integrity of the country. This action is possible only under Article
356 of the Constitution of India.

In the Constituent Assembly the question of taking over the
Government of a State in case of breakdown of the machinery of
Constitutional Government raised another issue. The Constitution-
makers were alive to the fact that several regions or areas of the
country had no past experience or deep rooted tradition of
Parliamentary form of Government and a failure or breakdown of
the Constitutional Machinery in a State could not be ruled out as an
impossibility a duty was therefore laid on the Union to ensure that
the government of every State is carried on in accordance with a
provisions of constitution.

The provisions of Article 356 of the Constitution of India
provide for assumption of functions of the State Government by the
Union Government in case of failure of the Constitutional machinery in the State. If we go by the intentions of the framers of the Constitution, the Union Government cannot subvert the normal parliamentary form of government in the State.

With regard to Article 356, B.R. Ambedkar's observations are noteworthy. He said that 'Article 356 is an exceptional provision which should be applied only in the last resort. He even expected that such Articles will never be called into operation and that they would remain a dead letter.' 11 Another constitutional expert in the Constituent Assembly, Alladi Krishnaswamy Ayyar held that if responsible government as contemplated by the Constitution functions properly, the Union will not and cannot interfere. 12

The Convention is indirectly codified in Article 75 and 164, but Article 356 in an undemocratic provision in a democratic constitution, posing threat to majority governments in the States.

10. British Convention: "The Queen may dismiss individual Minister on the advice of the Prime Minister."

Though, this convention is not codified directly it is implied that the power of the Prime Minister to recommend
appointment of Ministers also includes the power to recommend dismissal. The President therefore cannot decline to dismiss a Minister if the Prime Minister recommends dismissal of a Minister. The rule applies to States also. This implied clause is to be found in Article 75 (1) and 164 (1) quoted above.

11. British Convention: "The Ministers are collectively responsible to Parliament"

The Chairman of the Drafting Committee made the following observation with regard to the Ministerial responsibility:

Parliamentary Executive being more dependent upon a majority in Parliament becomes more responsible. The Parliamentary system differs from a non-Parliamentary System in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary System, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary System prevails, the assessment of responsibility of the Executive is both
daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability. ¹³

This above mentioned convention with regard to collective responsibility is codified in article 75 (3) and 164 (2). But there is no elaboration. It is implied that Minister of the Cabinet must approve the collective decisions or resign. Since the Cabinet decisions are secret, its proceedings are confidential. The Ministers are therefore, not expected to disclose the minutes of the Cabinet Meeting and publicly disagree with the decisions taken and the policy of the government. Even within the Parliament all Ministers are supposed to work as a team and defend the Government.
12. British Convention: "The Government that loses the confidence of the House of Commons must either resign or advise dissolution."

The Constituent Assembly of India did not provide anything about the resignation of the government when it loses the confidence of the Lower House. With regard to desolation of the House of the People the constitution provides a very simple clause about which we can discuss later, in this chapter.

13. British Convention: "The ministers are individually responsible to parliament in respect of matters lying within their fields of responsibility"

In all parliamentary governments of Westminster type the Ministers bear the ultimate responsibility for the Administration, policy, legislation and finance of the Ministry or department. The Minister is responsible for all actions in a Ministry. It motivates the Minister to closely scrutinize the activities within the department. The Minister is expected to answer all parliamentary questions to the Minister. In his absence the Prime Minister answers the questions. Answering question is most common political means to
ensure individual Ministerial responsibility. This type of responsibility is called role responsibility. The Minister is also personally responsible for his own actions. Both these types of responsibilities bear the consequence for failure of the Minister.

Article 75:

(3) The Council of Ministers shall be collectively responsible to the House of the People

Article 164:

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

Thus the Constitution of India provides only for collective responsibility of the Minister to the Lower House but not individual responsibility. **We can therefore say that the collective responsibility clause also includes individual responsibility of a Minister.**

14. British Convention: "The monarch should not dissolve or refuse to dissolve the House of Commons save on the advice of ministers"
Dissolution of the Parliament (popular chamber) is one of the distinguishing characteristics of parliamentary systems of government. In non parliamentary systems the legislatures are elected for a fixed time. Though the power of dissolution is vested in the nominal executive, that is, the monarch or the President, as the case may be, dissolution takes place only on the advice of the Ministers. Though technically speaking the power of dissolution is in the hands of the Head of the State, dissolving the Parliament against wishes of the Prime Minister and the Cabinet or refuse to dissolve when the Prime Minister advices would amount to interference with the regular working of Parliamentary System. The power of the Prime Minister and the Cabinet to dissolve is a means to retain the support of the majority in the House of Commons.

The House of Commons is theoretically strong because it can call the Ministry to account over any Act and compel their resignation by refusing supplies. The Ministry is its servant but not its slave; for it can advice the King or the Queen to dissolve parliament, appeal to the nation, and ask it to decide.
Article 83:

(2) The House of the People, unless sooner dissolved shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

Article 85:

(2) Subject to the provisions of clause (1), the President may from time to time—

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People

Article 172:

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:
Article 174 :

(2) Subject to the provisions of clause (1), the Governor may from time to time—

(a) summon the House or either House to meet at such time and place as he thinks fit ;

(b) prorogue the House or Houses ;

(c) dissolve the Legislative Assembly.

All these clauses quoted above simply follow the English precedent but lack the details of the circumstances under which a dissolution can be effected.

15. British Convention: "The Prime Minister may advise dissolution without prior reference to the Cabinet"

This convention developed in the first half of the 20th century and was fully established later. But the framers of the Constitution of India were unable to take note of this and therefore there is no question of thinking of codifying this convention.
16. British Convention: "The Queen can refuse dissolution to a minority government provided an alternative government is possible"

This convention is fully in agreement with the well established principles of Parliamentary Government. In a multi party scenario no party can emerge as a ruling party, giving way for either a coalition government or minority government. Therefore on defeat, the minority government may advice dissolution but the Queen enjoys the privilege of securing an alternative government, whether minority or coalition. The United Kingdom saw coalition arrangements right from the beginning of the 20th century. The situation suddenly changed after the Second World War when the two party system was restored. The Queen dissolved the Parliament in 1974 on the advice of the Minority Government as alternative government was not possible under then existing circumstances.

The Constituent Assembly dominated by Congress members did not take note of this convention. The convention remained un-codified.
17. British Convention: "The Queen is an essential part of Parliament as a law-making organ of the State"

Article 79:

"There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People"

Article 168:

(1) For every State there shall be a Legislature which shall consist of the Governor, and

(a) in the States of Bihar, Bombay, Madras, Punjab, the United Provinces and West Bengal, two Houses;

(b) in other States, one House.

In a Parliamentary System of Government in the United Kingdom, Parliament is the supreme legislative authority. The three elements of Parliament — The Queen and the two Houses of Parliament (The House of Lords and the elected House of Commons) are outwardly separate; they are constituted on different principles; and they meet together only on occasions of symbolic
significance such as a coronation, or the State opening of Parliament when the Commons are summoned by the Queen to the House of Lords. As a law-making organ of State, however, Parliament is a corporate body and with certain exceptions cannot legislate without the concurrence of all its parts. In India this convention is verbally codified though there are circumstantial differences in view of republican nature of Indian Political System.

18. British Convention: "The Queen will not withhold the Royal Assent from a Bill duly passed by Parliament"

Article 111:

When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent there from:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will
consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Article 200:

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President;

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the
Bill or any specified provisions there of and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent there from;

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

The Queen being an essential part of the Parliament Royal Assent is necessary for the enactment of the Law. But Royal Assent is only a formality. The veto power of the Crown has become obsolete since 1707. With the development of Cabinet System under which, all public legislation is initiated by the Cabinet. In India
Presidential and Governor's veto is combination of absolute veto, suspensive veto and pocket veto. Thus the Convention is codified but modified considerably.

19. British Convention: "The party which wins the majority of seats at the general election gets the privilege of forming the government and its leader should become the Prime Minister".

It is now well established that the Parliamentary System in Britain works successfully because of the two party system. It is the political parties that have given stability to the Cabinet government. Without political parties it becomes very difficult to experiment the scheme of parliamentary government. In spite of the knowledge of this, the framers of the Constitution did not bother to say anything about the party system.

This convention is not incorporated in the Constitution.

20. British Convention: "The largest minority has the right to be called as the 'Official Opposition'.

Special Political Status ought to be conceded to the Leader of the party in Opposition to the government in office: since the leader
of largest opposition party is potentially the next Prime Minister, it is reasonable to acknowledge, formally, the importance of his office. He is entitled to give his opinion on many matters of State including the arrangement of parliamentary business. That is why official opposition is called 'Her Majesty's Opposition'. It is second in importance to 'Her Majesty's Government.

The Prime Minister consults him from time to time on problems of national concern. The expression 'His Majesty's Opposition' was coined in 1826 applied to the second largest party in the House of Common. The expression 'Loyal Opposition' also existed as an important constitutional concept indicating that reasonable men can oppose the government's policy and still be loyal to the sovereign.

The Constituent Assembly of India neglected the importance of opposition. The phrase is not built into the framework of Constitution of India.

21. British Convention: "The seating arrangements in both the Houses is made on the basis of a single clear-cut division between government and opposition"
This convention did not find place in the provisions of the Constitution of India. However, the rules of procedure and conduct of business in both the Houses have an indirect reference to the seating arrangement for parties. The speaker had the responsibility of making arrangements in this connection.

22. British Convention: "The front bench, on the right hand of the Speaker is appropriated for the members of the government; the front bench on the opposite side is reserved for the leading members of the Opposition"

The Opposition Front Bench known as 'Shadow Cabinet' shares Front Bench responsibilities. Its members are called Shadow Ministers/ Secretaries. The Her Majesty's Leader of Opposition allocates Front Bench responsibilities to leading members of the Opposition. He is also called 'Her Majesty's Alternative Prime Minister.' Each member of the Opposition Front Bench who sits Opposite to the Government Front Bench is responsible for conducting attack on the Government and the Minister concerned. The members of the Opposition are therefore, 'Critics by Profession'.
We find nothing in the constitution with regard to this convention. The British Convention is followed as convention in this country also.

23. British Convention: "Arrangements for the conduct of business are made between the representatives of the parties—the whips behind the Speaker's chair"

The Convention is not codified in the Constitution. But this convention is invariably followed according to rules of procedure and conventions.

24. British Convention: "The Committees of the House represent the party strength in the House"

The Constituent Assembly did not attach much importance this convention. The matter is left to be governed by the rules of procedure and conventions.

25. British Convention: "The speech from the Government side shall be followed by a speech from the Opposition"

The Constituent Assembly failed to take note of this important convention.
26. British Convention: "The Opposition must be given all reasonable opportunities for criticizing the programmes of the Government"

Ivor Jennings observed that Opposition and Government are carried on alike by agreement. The minority agrees that the majority must govern and the majority agrees that the minority should criticize. The process of participatory government would breakdown if there were not mutual forbearance.

Though the legislative functions of Parliament are reduced as the legislative initiative rests with the Cabinet, the critical functions of Parliament have increased in importance. The following tools of criticism are widely used: Debate on Address, Debate on Bills, Debate on Budget, Adjournment Debate, Debate on Confidence Motion or No-Confidence Motion and Parliamentary Questions.

In India the tools of criticism are made available by various provisions of the constitution and Rules of business. But the Convention is not codified.

27. British Convention: "The Speaker of the House of Commons should sever all connections with party after his election as a Speaker"
28. British Convention: "The Speaker of the House of Commons should be non-partisan and that he should behave impartially"

29. British Convention: "The new Speaker should normally be elected unopposed"

In Parliamentary Democracy the office of the Speaker is held in a very high esteem and respect. Once a person is elected the Speaker he is expected to be above parties and politics. He belongs to all members and belongs to none.

Speakership in India has before it, the English model, but what we follow in India is the substance of British Parliamentary Democracy and not necessarily its form. As there is no written Constitution in Britain, the position and role of the Speaker are governed by the conventions. The Indian Constitution is written and that makes a difference.

Articles 93 to 97 and 178 to 181 contain the provisions relating to the office of the speaker. But there is nothing in the Constitution which provides for non partisanship, impartiality and unopposed or unanimous election of the Speaker.
The Speaker's importance in the conduct of the proceedings of the House of Commons increased as the influence of the parties on the functioning of the House increased. The Speaker is expected to function like an impartial judge conducting the proceedings in an impartial and non-partisan way.

The office of the Speaker was created by the Government of India Act, 1919. The framers of the Constitution of India were well aware of the importance of the office of the Speaker. Such an office is created both at the centre and the States. But it is almost impossible to write down all rules of Speaker's conduct. The conventions governing the office of the Speaker cannot be converted into the written rules of the constitution. All the three conventions quoted above are left un-codified in a real sense of the term. The matter is left to the Political Parties. They have to respect these conventions of the British Constitution.
Notes And References

1. Constituent Assembly Debates (CAD) Volume VII, p.37


3. CAD. Volume I, p. 58

4. Jennings Ivor, 'Crown and the Commonwealth in Asia' in International Affairs' Volume 32, No.2, April 1956, p.140

5. CAD. Volume X, p. 114

6. For details see CAD. Volume X, pp. 268-278

7. For details see CAD. Volume IV pp. 649-652


9. CAD. Book No. 3, p.520


11. CAD. Book 4 p. 177

12. CAD. Book 4 p. 150

13. CAD. Volume VII, pp.32-33


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