Canada enjoys a federal type of constitution though in the matter of conferring residuary jurisdiction to the Centre, it departs from the normal federal type. However, as there is a Central Legislature in addition to the legislatures of the various federating units, there is inevitably a distribution of legislative powers. As Defence and Foreign Affairs relate to the entire State and cannot be regarded as the concern of any individual federating State, they are placed within the exclusive competence of the Central Parliament. In accordance with Section 91(7) of the British North America Act 1867, "militia, military and Naval Service and Defence" come under the legislative authority of the Parliament of Canada. Thus the Central Parliament has been in a position to pass Acts on National Defence, to constitute a Department and to appoint a Minister. In Canada, statutory authority exists for the ...

1 The Constitution of USA represents the ideal federation in which the Constitution represents a treaty creating an indestructible Union of indestructible States (Texas vs White) by virtue of which federating units while retaining residuary jurisdiction part with certain defined powers to the federal centre. In this respect Australia follows the true federal principle but both Canada and India depart by conferring residuary jurisdiction to the Centre and not to the federating units. See Section 91 of the British North America Act, 1867, and Section 248(1) of the Indian Constitution Act, 1950.
for the Department of National Defence which was created by the National Defence Act of 1932. The Act also provided for the appointment of a Minister of Defence. The position has, however, been further brought up to date by the passing of the National Defence Act, 1950 (Chapter 43 14 George VI). Thus the organisation for higher defence policy and expert military planning is prescribed by an Act of Parliament.

THE DEPARTMENT OF NATIONAL DEFENCE AND ITS MINISTER.

In accordance with Section 3 of the Defence Act, a Department of the Government of Canada is created which is called the Department of National Defence over which the Minister of National Defence, for the time being appointed by the Governor General by the Commission under the Great Seal, presides. Again, Section 4 of the National Defence Act, 1950, which prescribes the duties of the Minister, states that he shall have the "control and management of the Canadian Forces, the Defence Research Board and of all matters relating to National Defence including preparation for Civil Defence against enemy action." The Act also provides for the appointment of a Deputy Minister and an Associate Minister of National Defence by the Governor General in Council. In an emergency the Governor General is further empowered to appoint not more than three additional Ministers and not more than three Associate Ministers of ....
Ministers of National Defence, vide Section 61(a) and (b) of the National Defence Act 1960. Again, an Additional Deputy Minister can be appointed for each Additional Minister or Associate Minister during the period of an emergency. This is the general Ministerial set up of the National Defence Department which is conceived as a unitary organisation and does not provide for three separate Service Ministers to cater for the needs of the three Services. However, in an emergency in order to cope with the additional work consequent on the expansion of the Services, three Ministers of National Defence are visualised assisted by Deputy or Associate Ministers. But this is possible only for and during an emergency. The normal set up of the Department is one Minister and one Deputy Minister and one Associate Minister for all the three Services.

In sharp contrast to the Australian federal type of defence organisation, Canada emphasises the unification, integration and coordination of Defence in a single organisation. In the report of the Department of National Defence for the fiscal year ending March 31, 1951, it is brought out that since 1946 a "silent revolution" has taken place within the Department of National Defence, the fruits of which were becoming more and more evident as years passed by. "There has been a ...."
been a process of unification, integration and coordination whose progress has naturally been unspectacular but whose results have been far-reaching influencing every level and every directorate.¹ Thus under a single Minister charged with the full responsibility for all matters relating to defence, the Department has been working on a well-defined policy based on the following premises:

(1) the adoption of a unified defence programme to meet agreed strategic needs;
(2) a single defence budget under which funds and resources would be allocated in accordance with the programme;
(3) the elimination of duplication of services;
(4) consistent and equitable personnel politics;
(5) greater emphasis on defence research and closer coordination with other government departments and with war industry.

With the establishment of a single National Defence Headquarters at Ottawa in 1946, the amalgamation of the three Departments and the coordination of the three Services was taken up in right earnest. A chart indicating the general set-up of the three Services and the link up with the Department of National Defence is given as Appendix 'A' to this Chapter. The broad set up is that under the direction of one Minister, Service command is exercised....

is exercised by the Heads of the three Services concerned. There is no Commander-in-Chief but the Chief of Staff of each Service is recognized as the head of that Service.

THE MILITARY OF DEFENCE POLICY PLANNING AND THE RELATIONSHIP WITH EXPERT MILITARY AND SCIENTIFIC PLANNING.

(i) THE DEFENCE COUNCIL.

The Defence Forces of Canada come under the general control of the Minister of National Defence who is assisted and advised by the Defence Council. The composition of the Council is as follows:

(1) Minister of National Defence - Chairman.
(2) Parliamentary Assistant.
(3) Deputy Minister and Associate Deputy Ministers.
(4) Chairman, Defence Research Board.
(5) Service Chiefs of Staff who attend as expert advisers to the Government.

The object of the Defence Council is to advise the Minister in regard to administrative matters of an inter-Service nature which affect the Department as a whole. The Defence Council is the highest organ not only for coordination of the three Services but also for bringing about fullest collaboration with the scientist. In this respect, it is assisted by a two-pronged organisation, namely, that of the Chiefs of Staff Committee...
Committee for expert military planning and the Defence Research Board for the full utilisation of scientific knowledge and to augment the potency of the armed forces. Before describing these two pillars on which the structure of policy planning is based it is essential to emphasise that the Canadian machinery aims at the closest cooperation between the Defence Council, the Chiefs of Staff Committee and the Defence Research Board. Thus the Chairman of the Research Board is a member of the Chiefs of Staff Committee and the members of the latter are in attendance as expert advisers to the Defence Council at all its meetings.

(11) THE CHIEFS OF STAFF COMMITTEE AND EXPERT MILITARY PLANNING.

The Chiefs of Staff have a statutory existence by virtue of Section 19 of the National Defence Act 1950. The Governor General in Council is empowered to appoint an officer to be the Chief of the Naval Staff, the Chief of the General Staff and the Chief of the Air Staff with such rank as the Governor General in Council may prescribe." These Service Chiefs are placed under the "direction of the Minister" and "charged with the control and administration" of the respective Services. It is significant that under Section 19(4) of the said Act the Chiefs of Staff "are required to give effect to the decisions and to carry out the directions of the Government of Canada or the Minister." In U.K. as well as in other democratic...
other democratic countries including India this is a more well-understood convention, but in Canada there is a statutory direction that the decisions of the Government "shall be issued by or through the Chief of the Naval Staff, the Chief of the General Staff and the Chief of the Air Staff as the case may be."¹

The Chiefs of Staff Committee consists of the three Service Chiefs as well as the Chairman of the Defence Research Board. The Deputy Minister and the Under Secretary of State for External Affairs and the Secretary to the Canadian Cabinet attend on invitation when matters of particular or general interest are discussed. The function of the Chiefs of Staff Committee is planning, training and general supervision of the three services, and preparation of joint reports giving strategic appreciation of military situations.

CHAIRMAN OF THE CHIEFS OF STAFF COMMITTEE

It appears that the Chiefs of Staff Committee did not have a permanent Chairman till 1951 and hence the practice followed was that of electing one of the senior-most members to take the chair. However, by an authorisation of an Order in Council dated 1st February 1951, Lieut-General Charles Foulkes was appointed Chairman of the Chiefs of Staff ....

¹ Section 10(4) of the National Defence Act, 1950.
² Order in Council No.564 of 1/2/1951.
Staff Committee. Thus the institution of the Joint Chiefs of Staff as it exists in USA and France was adopted in Canada also. The Chairman is a Service officer being selected on considerations of paramount merit. This means duplication of representation of the Service to which he belongs because the Chief of Staff of that Service already sits as a member. However, the system has worked well in USA and France and has therefore been adopted by Canada as well. The Order in Council has laid down the following responsibilities of the Chairman, subject to the regulations and the directions of the Minister:

a) to act as Chairman of a Committee composed of the Chiefs of Staff and such other members as the Minister may designate;
b) to coordinate the operations and training of the Canadian forces;
c) to perform such other duties as the Minister may direct;
d) to act as the Canadian Military Representative in the North Atlantic Treaty Organisation and be responsible for coordinating all military NATO matters.

The appointment of a permanent Chairman to the Canadian Chiefs of Staff Committee appears to be designed to ensure that all matters of overall defence policy and other joint defence matters are examined and coordinated before decisions are taken. The Report on National Defence for the year 1951 states that "this would give greater direction to the already existing Chiefs of Staff Secretariat and Joint Staff Organisations." In order to ensure
that every aspect of defence is taken into consideration, members of other government departments are adopted, when necessary, as members of the Joint Committees and Joint Staff, again with a view to bring about close liaison between the Cabinet Secretariat and the Defence Department. The Secretary, Chiefs of Staff Committee, is also the Military Secretary of the Cabinet Defence Committee, and the Department of National Defence provides Service officers to serve in the Cabinet Secretariat. This is a practice which is followed in several countries, and even in India coordination is brought about by the appointment of Service officers in the Military Wing of the Cabinet Secretariat. The general position of the Chiefs of Staff Committee in the structure of the State is the same as in UK or in other democratic countries. The Chiefs of Staff exist as professional military advisers of the Government and cannot take part or vote in any Committee as members of Government. Thus, unlike Pakistan, the man in uniform is not allowed in Canada to rise to Cabinet status and to violate the principle of constitutional responsibility to the electorate.

With a view to achieving the greatest coordination which is in accordance with the declared policy and programme of unification, the Department of National Defence has organised the following three Committees which also assist the Chiefs of .....
Chiefs of Staff Committees:

(1) Personnel Members Committee;
(2) Principal Supply Officers Committee; and
(3) Inter-Service Recruiting Committee.

The PERSONNEL MEMBERS COMMITTEE is directed to ensure that where feasible, personnel of the Army, Navy and Air Force are governed by the same regulations. It, therefore, deals with joint administration of personnel, medical and dental service, pay, pension and allied matters. Its composition is as follows:

(i) Adjutant General, Army
(ii) Chief of Naval Personnel
(iii) Air Member for Personnel
(iv) Associate Deputy Minister; and
(v) A representative of the Defence Research Board.

THE PRINCIPAL SUPPLY OFFICERS COMMITTEE has, as its object, the coordination and unification of supply and equipment, and matters of procurement. The Principal Supply Officer from each Service and a representative of the Defence Research Board are its members. The Associate Deputy Minister is an additional member of the Committee.

The object of the INTER-SERVICE RECRUITING COMMITTEE is planning campaigns and sustaining recruitment programmes for the active and reserve components of the armed forces. A similar Committee exists in the Australian set up also. These Committees feed the Chiefs of Staff and assist them in the formulation of their plans.

(iii) THE DEFENCE....
(iii) THE DEFENCE RESEARCH BOARD.

In accordance with Section 4 of the National Defence Act, the Minister of National Defence is assigned the duty of controlling and managing the Defence Research Board. The organisation of the Defence Research Board is laid down in Section 53 of the said Act wherein it is stated that the main function of the Board is to advise the Minister "on all matters relating to scientific, technical and other research and development which, in its opinion, may affect national defence." The Defence Research Board consists of-

(1) One Chairman
(2) Two Vice-Chairman (both appointed by the Governor-General in Council).
(3) The Chief of Naval Staff
(4) The Chief of General Staff
(5) The Chief of Air Staff
(6) The President of the Honorary Advisory Council of Scientific & Industrial Research; and
(7) The Deputy Minister for National Defence.

A provision is made for the appointment of additional members to represent "Universities, Industries and other Research interests as the Governor General in Council deems fit." There are six members so appointed by the Governor General on the strength of their scientific and technical qualifications.

The organisation consists of a Headquarters Staff, Advisory Committee and Field Research Stations.

The Defence Research Board is regarded as an institution of great importance and is described as a "fourth service"...
a "fourth service" essential for the defence of Canada. Its fundamental purpose is to correlate the scientific requirements of the armed forces with the research activities of the scientific bodies at large. The user Services are constantly consulted and brought into close touch with the expert scientists. To assist coordination at the highest level, the Chairman of the Board has the status of a Chief of Staff and is a member of the Chiefs of Staff Committee and of the Defence Council.

Thus, the Canadian machinery represents a happy union of the politician, the man in uniform and the scientist who sit side by side in the Defence Council and assist the government of the day in formulating plans and policy.

AUSTRALIA.

Australia has also a federal Constitution and the defence structure conforms to the true federal type inasmuch as the residuary jurisdiction rests with the States and the Centre has defined powers. However, 'Defence' is always a central subject irrespective of whether the federal centre is strong or weak. Again, like the United States or Canadian or Indian Constitutions. (1) the Head of the State is vested with the supreme command of the armed forces; and (2)

'Defence'.....
'Defence' is a subject placed within the legislative competence of the Federal Parliament. In accordance with Section 68 of the Commonwealth of Australia Constitution Act, 1900, "the Command in Chief of the Naval and Military Forces" is "vested in the Governor General as the Queen's representative." Again, Section 51(6) lays down that the central Federal Parliament has the powers to legislate on 'Naval and Military Defence of the Commonwealth'.

HIGHER ORGANS OF DEFENCE.

The Council of Defence and Cabinet: The Cabinet is responsible for the determination of defence policy. It is, however, assisted in this respect by a Council of Defence, which is a statutory body created under Section 58 of the Defence Act 1903-34.¹ The Act does not prescribe its composition or powers and functions which are left entirely to the Governor General to be prescribed from time to time. It appears that the main functions of the Council relate to the tendering of advice upon questions of defence policy or organisation which are referred to it by the Prime Minister.

¹ Section 58 of the Defence Act 1903-34 reads as follows:

1. The Governor-General may constitute a Council of Defence, which shall have such powers and functions as are prescribed.

2. The Governor-General may constitute a Board of Administration for the Military Forces, to be called the Military Board.

3. The Military Board shall have such powers and functions as are prescribed.
the Prime Minister or the Minister of Defence.

The present composition of the Council is as follows:

- Prime Minister
- Minister of Defence
- Ministers concerned with Defence matters or those required for the particular subject under discussion.
- The three Chiefs of Staff and the Secretary, Defence Department, attend to tender expert professional advice.

The Defence Council though originally conceived with limited powers and functions, has now assumed the same role as the Defence Committee of the Cabinet in U.K. It, therefore, crowns the higher defence mechanism of the State.

DEFENCE DEPARTMENT.

The Defence Minister has a regular secretariat organisation with a Defence Secretary under him. The policy planning and its association with expert military planners is achieved under the Defence Ministry with the assistance of various Committees two of which are more or less a reproduction of the Chiefs of Staff Committee as witnessed in other countries. As the Defence Secretary in Australia has a unique function to perform as the chairman of the Committee of which the three Chiefs of Staff are members, the functions of the Defence Ministry may briefly be mentioned first.

It is stated that, subject to the authority of Cabinet and the Council of Defence, the Minister and Department....
and Department of Defence are responsible for the following:

1. The formulation and general application of a unified defence policy relating to the Defence forces and their requirements, including:
   a) cooperation in British Commonwealth Defence and the defence aspect of the Charter of the United Nations;
   b) the supply aspect of defence policy including the review of production programs and capacity;
   c) the scientific aspect of defence policy;
   d) the financial requirements of defence policy, and the allocation of funds made available.

2. The defence aspect of Armistice and Peace Terms, Control Commissions and Forces of Occupation.

3. Matters of policy or principle and important questions having a joint service or inter-departmental defence aspect.

4. The higher defence machinery, the control of the joint service machinery, and the Secretariat of the Council of Defence.

5. The defence aspect of questions relating to the organisation and machinery for:
   a) cooperation in British Commonwealth Defence;
   b) cooperation in regional security, including obligations under the United Nations Charter;
   c) higher direction in war; and
   d) higher direction of the Services.

6. The Commonwealth War Book, which is a summary of national plans for an emergency as developed in Departmental War Books.

7. The administration of inter-Service organisations such as the Joint Intelligence Machinery.

8. The defence aspect of the strength and organisation of the Forces, higher appointments in the Services, Honours and Awards, and Civil Defence policy.

EXPERT MILITARY PLANNING UNDER THE DEFENCE MINISTRY.

In addition to the above functions of the Defence...

1 Year Book of the Commonwealth of Australia, No.36 of 1951. Chapter XXVI - Defence.
Defence Department, there is the supreme function of coordination of military planning which is performed with the assistance of various Committees of which the more important are:

(i) The Defence Committee  
(ii) The Chiefs of Staff Committee  
(iii) The Joint War Production Committee

THE DEFENCE COMMITTEE: This is a statutory body consisting of the Secretary, Defence Department, who is the Chairman and the Chiefs of Staff of the three Services as members. Its function is to advise on defence policy as a whole and on important questions having a joint Service or inter-departmental defence aspect.

The name of this body is rather deceptive. In its membership as well as in its functions, there is no comparison between it and the Defence Committee of the Cabinet either in India or in U.K. It is, however, an important Committee since it brings to bear the views of the civil secretariat of the Defence Ministry along with those of the Defence Minister on the plans and policies formulated by the Chiefs of Staff. In U.K. there is no such Committee though the Minister of Defence is entitled to call the Chiefs of Staff to a meeting and take the chair himself. In view of the fact.....
the fact that the Defence Minister and his Secretariat have a definite opinion to present, it is essential that the same is made known to the Chiefs of Staff when the plans are being formulated rather than ask them at a later stage to change their plans in accordance with the views of the Defence Minister. In order to facilitate the presentation of the viewpoint of the Defence Minister and his Secretariat to the Chiefs of Staff at the proper planning stage, either the institution of the Chief Staff Officer to the Minister of Defence has to be devised as in UK or a Committee has to be created like the Defence Committee in Australia. In India there is no Committee of which the Defence Secretary is the Chairman and the Chiefs of Staff members. There is also no Chief Staff Officer to the Minister of Defence who is a member of the Chiefs of Staff Committee. The institution of the Defence Committee with the Defence Secretary as Chairman and the Chiefs of Staff as Members is, therefore, most helpful if the Service Chiefs cooperate fully with the civilian chairman. The Defence Committee in Australia, therefore, is another experiment towards providing a permanent Chairman for the Chiefs of Staff Committee. The institution of the Joint Chiefs of Staff as it exists in USA, Canada and France provides for a Service officer to permanently....
permanently chair the Chiefs of Staff Committee even though it results in duplication of representation in respect of the Service to which the Chairman belongs. In Australia, the Chairmanship of the Chiefs of Staff Committee has been given to a civilian, namely, the Defence Secretary to constitute a new Committee. Thus the designation of the Committee resulting from the chairmanship of the civilian is different but in essence it is another method of providing a permanent Chairman of the Chiefs of Staff Committee. As already stated, such an institution can function efficiently and effectively only if the Secretary, Defence, receives the fullest cooperation of the Service Chiefs when he chairs the Defence Committee.

The functions of the Defence Committee are as follows:

"An advisory and consultative body to advise the Minister on the initiation and maintenance of a consistent defence policy directing the common action of the naval, military and air services, and to provide the technical coordinating link between the Naval, Military and Air Boards and the Minister."

The Chiefs of Staff Committee is entrusted with the function of preparing strategic appreciations and military plans. Its composition as usual is of the three Service Chiefs of Staff. Not only the composition but also the functions and organisation of the Chiefs of Staff Committee in Australia are exactly the same as in U.K. and need no elaboration here. However, owing to the overriding importance of the Defence Secretary in the Australian....
Australian set-up, the considered plans and appreciations of the Chiefs of Staff Committee have added weight only when the Defence Secretary has presided over its deliberations. Thus the Defence Committee relegates to the background the otherwise eminent position of the Chiefs of Staff. However, expert military planning is entrusted to the Chiefs of Staff of the three Services and in this respect there is no departure from the established practice.

THE JOINT WAR PRODUCTION COMMITTEE examines the relation between strategical plans and their requirements with a view to ascertain if the necessary war potential exists.

In addition to these three principal Committees, there are several subordinate Committees which aid and assist the three parent Committees mentioned above. There are, for example, the Principal Administrative Officers Committee (Maintenance and Materials), the Principal Administrative Officers Committee (Personnel) which assist both the Defence Committee as well as the Chiefs of Staff Committee. Again, the Defence Research and Development Policy Committee and the Joint Planning Committee as well as the Joint Intelligence Committee are specially designed to aid the Chiefs of Staff Committee.

DEFENCE RESEARCH AND COORDINATION.

The post-war policy of every country has been affected....
affected by the impact of scientific development on types of weapons and equipment needed for the three Services and high priority has had to be given to the employment of science in Defence Research. The Department of Defence is responsible for all questions of policy in the field while the Department of Supply and Development is the authority for executive action in respect of approved policy decisions. The Defence Research Policy Committee is the main organ bringing together the user Services and the scientists under the aegis of the Defence Ministry.

In accordance with the Constitution Act, 1900, the Commonwealth of Australia took over control of defence matters in 1901. As already observed, Defence is a federal subject and Section 51(6) of the Constitution Act, while defining the powers of Parliament, has laid down that "the naval and military defence of the Commonwealth and of the several States, and the control of forces to execute the lines of the Commonwealth" shall be within the exclusive legislative competence of the Central Parliament. Thus by gradual steps the Central Government had to establish a defence mechanism throughout the length and....
length and breadth of the country since it was charged not only with the protection of the Commonwealth but also of the several States.

The Commonwealth military forces thus expanded by gradual stages after the passing of the Constitution Act in 1900 and are now spread all over Australia and cover all the federating States. The organisation of the Command system does not strictly come within the purview of this thesis but is mentioned because it helps to explain how the Central Government is required to meet its defence obligations by creating Commands all over the country. It also helps us to appreciate how the various Commanders are directly linked with the Chiefs of Staff Committee and act in obedience to the orders conveyed to them by the latter. In 1939, an important step was taken when the organisation of Commands came into existence. The objects of the Command organisation are stated to be as follows:

(a) to bring peace organisation into line with war organisation;

(b) to provide for the personal and whole-time guidance and supervision, by a higher commander, of divisional and other formation commanders, on questions of training and general preparedness for war; and

(c) to reduce the number of lower formations under the direct control of Army Headquarters.

During the war, however, the regular organisation of Commands.....
of Commands was considerably upset because of the forces of allied countries operating in Australia. For example, in August 1941, the War Cabinet approved of Lieut. General Sir Ivan Mackay as General Officer Commanding in Chief, Home Forces, commanding the forces in Northern, Eastern and Southern Commands. The General Officer Commanding in Chief was made superior to the General Officers Commanding Commands for the direction of operations, but subordinate to the Military Board which remained the body responsible for advising the Minister for the Army, and, through him, the Cabinet. When, however, the U.S. forces were posted to Australia, General Douglas Mac Arthur was appointed Commander-in-Chief, South West Pacific Area. Thus with the appointment of General Sir Thomas Blamey as Commander-in-Chief, Australian Military Forces, the Military Board ceased to function and Army Headquarters became the Allied Land Forces Headquarters, Australia. After the termination of war, however, in March 1946, the Military Board and the organisation of Commands and military districts was introduced again. This indicates that the policy-making and planning organs like the Board of the Chiefs of Staff Committee are manned by officers who do not carry the designation of Commander-in-Chief though they are required to issue orders...
to Commands in the country. As Australia follows
the system of Boards and Councils for the adminis-
tration of each Service, the expert military
planner who functions as the Chief of Staff of his
Service is not designated as C-in-C as was the
case in India prior to 1955. At present the Command
organisation in Australia is as follows:

**COMMAND ORGANISATION.**

<table>
<thead>
<tr>
<th>Northern Command</th>
<th>Eastern Command</th>
<th>Southern Command</th>
<th>Western Command</th>
<th>7th Military District</th>
</tr>
</thead>
<tbody>
<tr>
<td>All formations &amp; units in 1st Military District</td>
<td>All formations &amp; units in 2nd Military District</td>
<td>All formations &amp; units in 3rd Military District</td>
<td>All formations &amp; units in 4th Military District</td>
<td>All formations &amp; units in 5th Military District</td>
</tr>
</tbody>
</table>

| All formations & units in 6th Military District |

| POST-1947 INDIA |
The era of constitutionalism in the realm of defence affairs commenced in India after the termination of the Whitehall-controlled government of Delhi on the 15th August 1947. Though the British rule was known for its "rule of law" and it made attempts to take as much of the Indian element into confidence as possible, there can be no dispute as to the fundamental responsibility of the pre-1947 Indian Government to the English Parliament as opposed to the Indian electorate. The British set up prior to August 1947, in its strict legal sense, was based on an "Army of Occupation" with a tremendously elevated position of the Commander-in-Chief who ranked next to the Viceroy. Thus the role of the Indian armed forces from a 'colonial reserve' or a 'police force' during peace, or a component part of the Imperial forces during war, came to an abrupt end with the passing of the Indian Independence Act, 1947. In short, the control of the armed forces, both political and executive, which was vested in the person of the Commander-in-Chief, who was not only the...
Supreme Commander of the Army, Navy and the Air Force but also the War Member responsible to the Viceroy and through him to the Secretary of State for India, gave way to another system which provided for parliamentary control of the armed forces by the creation of a Cabinet and a Defence Minister popularly elected and responsible to the electorate through the Parliament. The new democratic set up is described in the chart giving the constitutional position of the defence mechanism in the Republic of India for which see Appendix B to this Chapter.

Again, the position of the Crown in the armed forces of the State was altered in 1950 when India became a Republic with a President as the Head of the State and the Supreme Commander-in-Chief of the armed forces. The Crown was not accepted in the internal structure of the State though it was acknowledged as the Head of the Commonwealth of which India was a member. In the circumstances, the prefix "Royal" which was associated with the three Services as well as with ships and other installations was dropped when India inaugurated her Republican Constitution on the 26th January 1950. Thus, unlike Canada, Australia and other Dominions, where the Queen is the supreme Commander-in-Chief...
Commander-in-Chief of the armed forces, in India there is no such allegiance to the Crown as the President of the Republic has taken the place of the head of the State.

PLACE OF 'DEFENCE' IN THE INDIAN CONSTITUTION.

The Constituent Assembly which was originally set up under the Cabinet Mission's Plan of 1946, became an independent body after the 15th August 1947 and proceeded to frame a Federal Constitution for India taking the very best of the Presidential and Parliamentary types of democratic Constitutions. Thus, being a federation, in conformity with the general constitutional practice, Defence as well as Foreign Affairs have been placed under the exclusive legislative competence of the central Indian Parliament, vide Article 243 of the Indian Constitution read with the Schedule thereto. The first item of the Union List gives legislative authority to the Indian Parliament in regard to "Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation". The scope of this item is indeed very wide because it includes preparation for war, which in Australia was a

matter of.....
Matter of dispute settled by the Federal Court of Australia in the case Fursey v. Burvett (21 C.L.R. 433)\(^1\). Thus the first item of the Union List in the Constitution of India is specially designed to cover every kind of contingency and, being based on experience gained by the working of other similar Constitutions, it defines its scope leaving little or no room for constitutional issues of the above-mentioned nature to arise.

In item 3 of List I - Union List (Seventh Schedule) "the naval, military and air forces as well as any other armed forces of the Union", and in item 4 "the naval, military and air force works" and 'cantonments' are brought within the legislative powers of the Indian Parliament. Again, provision is made in item 6 for atomic energy and mineral resources and in item 7 even 'industries...

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\(^1\) In this celebrated case the validity of a wartime regulation fixing the maximum price of bread was impugned. The regulation was held valid by a majority of 5 to 2 when Isaacs J. held that 'defence' included everything in relation to national defence that the Commonwealth Parliament might deem advisable to enact. (see C.L.R. 433 : p.455). Griffith C. J. supporting the position stated that the word 'defence' of itself includes all acts of such a kind as may be done under the authority of Parliament or under the Royal prerogative "for the purpose of the defence of the realm. It includes preparation for war in time of peace and any such action in time of war as may conduce to the successful prosecution of the war and defeat of the enemy." (See C.L.R. 433 : page 440). These cases are of general constitutional interest and help to define the scope and extent of 'defence'.

declared by parliament by law to be necessary for the purpose of defence or for the prosecution of war are, for that purpose, removed from the control of the State Legislatures and vested in the Centre. The "production of arms, firearms and explosives" as well as preventive detention for reasons connected with defence are also brought within the ambit of Defence. Lastly, in item 15 "war and peace" which are matters connected with Foreign Affairs but also linked with Defence are brought within the sphere of the Central Legislature.

THE HIGHER ORGAN OF DEFENCE FOR POLICY PLANNING

THE PRESIDENT.

As the Republican Constitution of India has the President as Head of the State, he has been vested with the supreme command of the defence forces of the Union, and Section 53(2) of the Constitution Act lays down that "the exercise thereof shall be regulated by law." This is in accordance with the accepted constitutional practice. As, however, the parliamentary type of democracy is expressly provided for in Sections 74 and 75 of the Constitution Act, the de facto control of defence rests in the hands of the Prime Minister and his Cabinet, described in Section 74(1) as the "Council of Ministers". The President, therefore, exercises the authority vested in....
vested in him by Section 53(2) of the Act on the advice of the Council of Ministers who are there to 'aid' him in the discharge of his 'functions'. Again, Section 74(3) makes the Council of Ministers collectively responsible to the House of the People and hence the defence mechanism of modern India is based on the principle of parliamentary control which functions through the Cabinet or the Council of Ministers.

THE DEFENCE MINISTER.

There is no statutory provision for the appointment of a Defence Minister as such which is a feature of the Australian and Canadian systems. As already pointed out, the Canadian National Defence Act, 1950, expressly provides for the appointment of a Minister for National Defence as well as a Deputy Minister and an Associate Minister. In South Africa also the Defence Minister has a statutory existence since the Second Schedule read with Section 28 of the Defence Act, 1912, lays down the composition of the Council of Defence of which the Defence Minister is a member. In India there is no such statutory provision but, as Defence is regarded as one of the key subjects of the federal Centre, a separate Minister for Defence along with two Deputy Ministers and one Minister for Defence Organisation, all responsible to Parliament and hence its...
hence its members, have been appointed. These Ministers are answerable to Parliament for all matters relating to the administration of the three Services as well as for defence problems in general. The responsibility of the Prime Minister for Defence comes within his overall responsibility for executive acts and hence in peace-time he is not required to answer parliamentary questions on defence matters, from day to day, which function is performed by the Defence Minister, the latter being assisted by Deputies. There can, however, be no dispute as to the supreme responsibility of the Prime Minister in matters of national defence which is based on a convention well established in parliamentary forms of government.

The broad lay out of the actual machinery which links the Minister of Defence with the three Services functioning under him together with the Cabinet and the President, may be set out as follows:-
P R E S I D E N T

CABINET WITH PRIME MINISTER

DEFENCE COMMITTEE OF THE CABINET
(with P.M. as Chairman)

DEFENCE MINISTER

MINISTRY OF DEFENCE
(with a Secretary, Defence)

Chief of Army Staff

Chief of Naval Staff

Chief of Air Staff

Army HQ

Naval HQ

Air HQ

CCS QMG AG MGQ

CCS COP COM GOA COA

DCAS AO AO

Southern Eastern Western FOIF Other Naval Establishments

Operational Training Maintenance Air Command Command Command Stations

CCS - Chief of the General Staff
QMG - Quartermaster General
AG - Adjutant General
MGQ - Master General of the Ordnance
CCS - Chief of Staff
COP - Chief of Personnel
COM - Chief of Material
COA - Chief of Administration
CONA - Chief of Naval Aviation
FOIF - Flag Officer, Indian Flotillas
DCAS - Deputy Chief of Air Staff
AOPO - Air Officer in Charge Personnel & Organisation
AOENS - Air Officer in Charge Technical & Equipment Services.

/DEFENCE COMMITTEE OF THE CABINET ...
DEFENCE COMMITTEE OF THE CABINET.

As already stated, the Cabinet is responsible for the overall defence policy but it exercises this responsibility through a sub-committee of its members which is known as the Defence Committee of the Cabinet. The composition of the Defence Committee of the Cabinet is as follows:

1. Prime Minister
2. Defence Minister
3. Home Minister
4. Finance Minister, and
5. A couple of other Ministers to be nominated by the Prime Minister.

The practice hitherto has been to appoint the Minister of Transport and Railways and the Minister of Education as members of this body.

In accordance with the correct democratic practice, the three Service Chiefs as well as the Secretary, Ministry of Defence, and the Financial Adviser, Ministry of Finance (Defence), are in attendance as expert advisers but not as members of the Defence Committee. The function of the Defence Committee is to deal with all important questions falling within the ambit of Defence on behalf of the entire Cabinet. All questions relating to the administration of the defence forces which require decisions at the top level and involve matters of policy, are referred to the Defence Committee for obtaining government's decision. The Defence Committee is constitutionally entitled to refer to the whole Cabinet questions of great importance which would involve collective responsibility and would thus necessitate consultation of all the members.

The Minister ...
The Minister of Defence who is invariably a member of the Cabinet as well as of the Defence Committee, is the head of the Secretariat organisation known as the Defence Ministry. He has a dual function to perform in so far as he not only tenders advice to the Cabinet and the Defence Committee, but is also responsible for the implementation of the policies laid down by those bodies, and this latter function he performs through the agency of the Ministry of Defence and the Chiefs of Staff Committee.

THE ORGANISATION FOR EXPERT MILITARY PLANNING.

THE CHIEFS OF STAFF COMMITTEE is the most important coordinating agency, apart from the Defence Ministry. At the Service level it is really the supreme coordinating organ. As usual it has the heads of the three Services as members who till April 1955 combined in themselves the dual role of Commander-in-Chief as well as Chief of Staff. There is no permanent Chairman of the type witnessed in the Joint Chiefs of Staff Organisation as in France, USA and Canada. There are only three members representing the Chiefs of Staff organisation of the three Services. The senior-most member of the Chiefs of Staff Committee takes the chair. All important questions of policy which require Cabinet approval are discussed by the Chiefs of Staff Committee and their opinion in the shape of expert advice is placed before the Cabinet. The Chiefs of Staff are also in attendance at meetings of the Defence Committee of the Cabinet.

The change ...
The change in designation of the Service Chiefs announced by the Prime Minister on the floor of the Lok Sabha on 25/3/1955 is important from the constitutional viewpoint since the intention of Government in dropping the incongruous designation of "Commander-in-Chief" is to conform to the practice of other democratic countries where the system of Councils is in vogue. The P.M., therefore, stated that the Government were examining the need for, and the possibility of, constituting Defence Councils, such as the Army Council, the Air Council and the Board of Admiralty, to make the practice in this country conform even more closely to that obtaining in other democratic countries. When such Councils are constituted, the functions of the Chiefs of Staff will undergo certain changes. Until such changes occur, however, the change of designation is not intended in any way to diminish either the authority or the powers and responsibilities of the three Service Chiefs. The designation of "Commander-in-Chief" has a special significance in the context of constitutional history of India since in the British days the C-in-C was not only the "Supreme" of the armed forces constituting the military occupation of India but also a member of the Viceroy's Executive Council. This clearly indicated that the Viceroy's Cabinet enshrined the principle of military rule since a man in uniform sat side by side with civilians, both bureaucrats and those nominated from public life, to constitute the government ....
the government of the country. With the 
constitution of the Interim Government in 
September 1946, the position changed and the 
Commander-in-Chief became merely the head of the three Services. In 1947, after Independence, each Service was placed separately under its own Chief, and they were designated the Commander-in-Chief, Indian Army, the Flag Officer Commanding, Royal Indian Navy, and the Air Marshal Commanding, Royal Indian Air Force. In order to mark their altered role, they were given, in February 1948, the additional designation of "Chief of Staff" along with their old designations. They were later called (in June 1948) Chief of the Army Staff and Commander-in-Chief, Indian Army, Chief of the Naval Staff and Commander-in-Chief, Indian Navy, and Chief of the Air Staff and Commander-in-Chief, Indian Air Force.

As already pointed out, under Article 53(2) of the Constitution, the supreme command of the Defence Forces is vested in the President. The Prime Minister, therefore, explained in the Lok Sabha in March 1955 that it was felt ever since Independence that the designation of "Commander-in-Chief" would have to be changed sooner or later, and an indication of this intention was given when the words "Chief of Staff" were added to the old designation. It was, therefore, concluded that there was no longer any real need or justification to continue the somewhat incongruous dual designation and that it would, from all points of view, be more fitting and appropriate to fall in line with the practice, in such matters, in other democratic
democratic countries. It was accordingly decided that with effect from 1/4/55 the heads of the three Services would be called the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff respectively.

India has fully profited by adopting the basic principle of the British organisation that the men responsible in the Service Departments for carrying out the approved policy and plans should be brought together in the central machine to formulate them. In fact, in this country the said principle has been extended to its logical conclusion. This was so before April 1955 and continues to be so thereafter since the Chiefs of Staff of the three Services were and are responsible not only for planning but also for the proper implementation of their plans. Even though they have dropped the designation of Commander-in-Chief, they have not been deprived of any of their powers and responsibilities which existed prior to April 1955. In this connection a reference to Mr Campbell-Johnson's "Mission with Mountbatten" which describes the circumstances leading to the birth of the Chiefs of Staff Committee in India, is most illuminating. As described by Mr Campbell-Johnson, it was over the question of Junagadh Accession and Pakistan's stand that the Government needed full appreciation of the strategic position to avoid taking a risky, false or drastic decision. Incidentally, from the event ...

the event can be illustrated an essential function of the Chiefs of Staff. It is a well-known principle of strategy that what is politically desirable must be equated to what is strategically possible. When politics is divorced from strategy the result is more often than not disastrous. It is the duty of the Chiefs of Staff to bring out frankly and clearly the strategic possibilities for the guidance of the politician. As India did not have a Chiefs of Staff Committee, Lord Mountbatten at once appreciated its need and strongly recommended it. To quote Campbell-Johnson -

"With a view to avoid any further confusion of this nature, while at the same time to minimize the general risk of false decision and precipitate action by the Government, Mountbatten has recommended the establishment of a Defence Committee of the Cabinet. Within this context he has in mind ancillary Committees such as the Chiefs of Staff Committee, Joint Intelligence and Joint Planning Committees; but he has at the same time propounded one vital modification of the British practice in which the Chief of the Imperial General Staff is wholly divorced from Operational Command. He has insisted that India would do better to adopt the procedure whereby from each of the three Services one and the same officer should double the role of Commander-in-Chief and Chief of Staff. Nehru and Patel approved this idea, and Ismay has been asked to draft a paper elaborating its organisation in time for tomorrow's Cabinet."

This was on the 29th September 1947. Thus in India we have a Chiefs of Staff Committee in which the three supreme planners as the Chiefs of Staff are also the supreme executioners of those plans which at once makes for effective and enforceable planning. When, however, the system of Councils is introduced, the functions of the individual Chief of Staff would undergo a further ...
a further change as the orders issued by them as the head of their respective Service will be issued by and in the name of the Service Council. However, the Chiefs of Staff would still be responsible for execution of plans involving combined operations in a battlefield. The position would then be as it now exists in U.K., and has been described in Chapter III.

THE ORGANISATION TO ASSIST THE CHIEFS OF STAFF COMMITTEE.

The Chiefs of Staff Committee is assisted by a network of Committees based on the U.K. model. These are, for example, the Joint Planning Committee, Joint Administrative Planning Committee, Joint Intelligence Committee, etc. to help the Chiefs of Staff in the preparation of military appreciations and strategic plans.

There are some other Committees of an inter-Service nature like the Principal Personnel Officers Committee and the Principal Supply Officers Committee to coordinate problems of personnel and logistics common to all the three Services.

These Committees, though functioning under the Defence Ministry, assist the Chiefs of Staff Committee in every respect.

THE ROLE OF SCIENCE.

The invention of new weapons and the development of devices to increase firepower have been ...
have been a special feature of the defence
organisations of the major powers of the world
and since this can only be achieved by a close
alliance of the user Services with the scienti-
this so-called "fourth arm" is usually the task
entrusted to the Defence Ministry. This being
a feature of all Defence Ministries, India is
exception to the rule. In Canada, Australia as
well as in U.K., the development of Defence Sc
has become the sole charge of the Defence Mini-
set up. In India there is a Defence Science
Policy Board which advises the Defence Minis-
try on all aspects of Defence Science and on pro-
blems of operational research. It guides the Scient-
Adviser whose organisation also comes under the
Defence Ministry. The Chairman of the Defence
Science Policy Board is the Secretary, Minis-
ter of Defence, and its members are eminent scient-
of India who serve on the Board along with the
three Service Chiefs and the Financial Adviser.

The DEFENCE SCIENCE ADVISORY COMMITTEE 1
yet another body which functions under the Def-
Ministry with the Scientific Adviser as the
Chairman. In this connection it may be men-
tioned that there is not only a Scientific Adviser to
Ministry of Defence, but there are also scient-
to advise the Army, Navy and Air Force separate
As Defence Science is an inter-Service matter
these two bodies form part of a number of inte-
Service Committees which function directly und
the Defence Ministry to achieve coordination.
APPENDIX B

CHAPTER IV