

A HANDBOOK OF
SELECTED CONSTITUTIONS

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A HANDBOOK OF
SELECTED CONSTITUTIONS

DEDICATION

TO MILLIONS OF PEOPLE IN AFRICA STILL IN
SEARCH OF A SATISFACTORY FORMULAE FOR A
DEMOCRATIC REPUBLICAN GOVERNMENT

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P R E F A C E

A common phenomenon in the transfer of political independence by the former imperial powers to their former territories of Africa has been the emergence of new nations with written constitutions. These transfers were, in most cases, no voluntary concessions from the imperial powers. They were the logical offsprings of the irresistible winds of change sweeping over Africa! Nor would it be undisputed to say that the emergent countries were completely happy with the constitutions handed over to them as a prelude to independence. But, anxious to be free, and desirous to avoid anything that might delay that freedom, the new countries had to accept constitutions which, they knew, did not quite satisfy their aims and aspirations.

This is not to impute any motive of bad faith against the makers of the different constitutions. In the former British Colonies, the aim of the imperial powers had been to train the native inhabitants for eventual independence. In so far as timing was concerned, it was a vague aim. But when the forces of change took on a velocity quite beyond any calculations of the imperial power, it is to their credit that they quickly adapted their attitudes and approaches to the new situations. The constitutions which preceded the transfer of power had been something drawn up after mutual negotiations and consultations at the cost of great thought and time.

It was not so with many other territories of Africa vis-a-vis the imperial powers. Here the forces of change appeared to have taken all sides unawares. Everything was rushed—including the Constitution and the grant of independence. The immediate aftermath of this rush and unpreparedness have been quite sad in a few cases.

In practically all cases, and for various reasons not necessarily inherent in the spirit of the constitutions, the "Independence Constitutions" have not succeeded in ensuring the inviolacy of the principles of "government of the people, for the people, by the people."

The fact that these "Independence Constitutions" have almost generally been amended by the independent nations soon after the attainment of national sovereignty points to something which would make an interesting research and study. In some cases the amendments have been merely in form rather than in fundamentals—for instance when a nation is transformed from Monarchy to a Republic as a means of dispelling all doubts about its sovereignty. There have, however, been other cases where the changes have been violent and dramatic—indeed revolutionary—producing completely new constitutions.

Many countries of Africa are still groping for a satisfactory constitutional formula, which will ensure democratic government while enshrining sufficient safeguards for the minority groups and individual liberties. Such constitutions must be ones recognising the special circumstances, cultural background and traditions of the people without ignoring the experience and practices of other countries with older traditions of democracy.

This handbook attempts to discuss the general mechanics of modern constitution making. To facilitate reference and study the Constitutions of selected countries together with some historical documents related thereto, have been placed side by side.

This handbook is written for the general reader—the citizen who is interested in the making and the working of the Constitution of his country. It is hoped, however, that students of Political Science, Government and Law will find it useful as

a supplementary reading material to standard works. To the active Politician or even the armchair Politician, we would wish that this work is not only a handbook, but a "handy book". A satisfactory Constitution should reflect the wishes and the desires of the people themselves. In a republican democracy, sovereignty should ultimately reside in the people.

For lack of space, it has not been possible to include more constitutional instruments in this volume. A list of useful reading materials has, however, been prepared.

Readers are invited to read the introductory notes carefully as a basis for the proper understanding of what follows.

This work had to be produced within a very short time. The indebtedness to several people who helped in preparing it is hereby acknowledged: Drs. Edwin Nwogugu, Dennis Ewelukwa, Gaius Ezejiakor of the University of Nigeria, Enugu Campus, and Mr. Edmund Uzodike, State Counsel in the Ministry of Justice, for reading the proofs; Mr. Joseph Emembolu, Commissioner for Law Revision, Law Reporting and Law Research, Ministry of Justice, Eastern Nigeria, for producing some of the Head Notes and finally, to my Private Secretary, Mrs. R. Iroaganachi, for typing the manuscript and for organizing the copying of the various constitutional instruments.

I accept full responsibility for the contents, including the errors of commission and omission and other shortcomings. I shall depend upon constructive criticisms in the production of a better edition.

C. C. M.

Attorney-General's Chamber,
Enugu, Nigeria.
24th December 1965.

INTRODUCTION

The word "CONSTITUTION", as a term in political science, is defined by the Shorter Oxford Dictionary as "the mode in which a State is constituted or organised; the system or body of fundamental principles according to which a nation, state or body politic is constituted and governed". By the same authority, the word "constitute" means "to set up, ordain, appoint; to frame, form; to make up, compose." Every "state" has a constitution, or an organic, basic or fundamental law, written or unwritten, which ordains the form of government, establishes its various organs and assigns to them their respective powers. It also regulates the relationship of the organs with one another and with the sovereign, and provides the sanctions necessary for the preservation of itself and of the body politic.

Thus defined, the constitution is the supreme law of the land and the norm by reference to which all other laws, actions and dispositions of the organs of the state are judged. It is the edict of the sovereign, and this principle is not affected by the fact that the sovereign, is a person, a group of persons, or the entire peoples of the State. It may consist of express provisions in writing, as the Constitutions of the United States of America and of the Republic of India. It may, on the other hand, consist of the ancient laws and liberties of the realm, handed down from generation to generation, and, as in Great Britain, evidenced by a number of monumental documents like the Magna Carta (1215), the Confirmatio Cartarum (1297), the Petition of Right (1628), and the Bill of Rights (1689).

The process by which a constitution is made largely depends on the political set up of the State at the time. A dictator, who rules by force, merely imposes, with or without consultations, a structure he deems appropriate to his views. In a monarchy, constitution making usually takes the form of transferring the actual exercise of governmental power to the hands of elected representatives of the people. In a democratic republic, the people themselves, through constituent assemblies, conventions or conferences formulate a constitution to be adopted by the people in a referendum or other form of popular acclamation.

That a constitution should be short and vague was the view of Emmanuel—Joseph (Abbe) Sieyes (1748—1836), a French diplomat and thinker, expressed at a time when the coup d'etat had been completed, the last of the French monarchs had been removed, and France was in search of a "perfect" Constitution. About the same time, the United States of America was making their own Constitution. They drew inspiration from a number of sources—from Britain, the Magna Carta, and the true incidents of Colonial rule; from France, the principle of the separation of powers as proposed by Montesquieu, and the ideals of the French Revolution. These, and the peculiar genius of the colonists themselves, produced a constitution of seven short articles, vague enough to be applicable to almost any situation in any age, and alterable only by a very cumbrous procedure.

The world and its affairs have since become indeed very complex. Modern inventions have brought peoples and ideas closer together than before. Monarchies are no longer fashionable. Dictatorships, which were never cherished at the best of times, have now become pure anathema. Many countries hitherto unfree, have become free. Every individual wants to develop within environments free from the tyranny of one person or a group of persons, and desires a constitution which must

guarantee those freedoms to himself and to his offspring. The making of constitutions is approached no longer on the theory that it should be short and vague, but on the basis that its contents should be as full and as well-defined as human foresight and ingenuity can manage. Of such a nature are the Constitution of the Indian Republic, a document of considerable length, and the Constitution of the Federal Republic of Nigeria.

Written Constitutions almost invariably follow identical patterns:—

(a) The Preamble recites the authority behind the document, its ideals and objectives. Examples:—

(i) **The French Republican Constitution:** “The National Constituent Assembly has adopted, the French people have approved, the President of the provisional Government of the Republic promulgates the following Constitution”.

(ii) **The Italian Republican Constitution:** “The provisional Head of State, having seen the resolution of the Constituent Assembly which in the session of December 22, 1947, approved the Constitution of the Italian Republic, having seen the eighteen final provisions of the Constitution, promulgates the Constitution of the Italian Republic in the following text”.

(iii) **The Republican Constitution of Ghana:** “We the people of Ghana by our representatives gathered in this our Constituent Assembly in exercise of our undoubted right to appoint for ourselves the means whereby we shall be governed, do hereby enact and give to ourselves this Constitution”.

(b) The document then defines the territory or territories over which it applies.

(c) It establishes the form of Government: a democracy, a Republic, a unitary government, a federation, a confederation, or a cross between any of these. For example:—

The French Constitution:

“France shall be a Republic, indivisible, secular, democratic and social”. (Article 1).

“The motto of the Republic shall be: “Liberty, Equality, Fraternity. Its principle shall be: Government of the people for the people, and by the people”. (Article 2).

The Constitution of the German Federal Republic:

“The Federal Republic of Germany is a democratic and social federal state”. (Article 20(1)).

“All state authority emanates from the people. It is exercised by the people by means of elections and voting and by *separate legislative, executive and judicial organs*”. (Article 20(2)).

The Italian Constitution:

“Italy is a democratic Republic founded on Labour. Sovereignty *belongs to the people who exercise it within the forms and limits of the Constitution*”. (Article 1).

The Constitution of Burma:

“Burma is a sovereign, independent Republic to be known as “the Union of Burma”. (Chapter 1 (1)).

(d) It states where Sovereignty resides, for example:

The French Constitution: National sovereignty belongs to the French people. (Article 3).

The Constitution of Burma: The sovereignty of the Union resides in the people. (Chapter 1 (3)).

The Constitution of the Turkish Republic: National sovereignty shall be vested in the nation without reservation and condition. (Article 4). Note also the provisions in the Constitution of Italy and the German Federal Republic quoted above.

The Constitution of the Federal Republic of Nigeria is silent on the question of Sovereignty. This omission is unfortunate. The fact however remains that the Nigerian people have the inalienable sovereign right to decide upon the fundamental principles under which their state is to be organised or governed.

(e) There are then provisions as to whom the Constitution should affect, that is to say, the citizens, with, possibly, a system of rights and duties. Most modern constitutions contain a more or less elaborate statements of positive fundamental rights.

The Constitution of the Federal Republic of Germany: "The dignity of man is inviolable. To respect and protect it is the duty of all State authority. (Article 1 (1)).

"The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (Article 1 (ii)).

The Italian Republican Constitution: "The Republic recognises and guarantees the inviolable rights of man whether as an individual or on social group through which his personality develops, and requires the fulfilment of inalienable duties of political, economic and social solidarity". (Article 2).

The Turkish Republican Constitution: "The Turkish Republic is a nationalistic, democratic, secular and social State governed by the rule of law, based on human rights and fundamental tenets set forth in the preamble". (Article 2).

"Every individual is entitled in virtue of his existence as a human being to fundamental rights and freedoms which cannot be usurped, transferred or relinquished". (Article 10).

"The fundamental rights and freedoms shall be restricted by law only in conformity with the letters and spirit of the Constitution. The law shall not infringe upon the essence of any right or liberty not even when it is applied for the purpose of upholding public interest, morals and order, social justice as well as national security." (Article 11).

"No individual shall be subjected to ill treatment or torture. No punishment incompatible with human dignity shall be imposed". (Article 13).

The Constitution of Pakistan: "Any law or any custom or usage having the force of law in so far as it is inconsistent with the rights conferred by this chapter (Fundamental Rights) shall, to the extent of such inconsistency be void". (Article 6 (i)).

Its counterpart in the Indian Constitution is Article 32 (i), which states: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part (Fundamental Rights) is guaranteed."

Chapter III, sections 18 to 33 of the Constitution of the Federal Republic of Nigeria provides for fundamental rights but it is a matter for closer examination what effect the provisos and exceptions have on those rights. For example, Section 19 (i) provides: "No person shall be subjected to torture or inhuman or degrading punishment or other treatments; 19 (ii): Nothing in this section shall invalidate any law by reason only that it authorises the infliction in any part of Nigeria of any punishment *that was lawful and customary in that part on the first day of November, 1959*". Similarly the nature and extent of freedom from discrimination embodied in section 28 is very doubtful having regard to the exception under section 28 (2)(d).

- (f) The organs of government are then named, *e.g.*, the Legislature, the Executive and the Judiciary. The first is the law-making body and may consist of a tier of bodies chosen in a specified manner. The second is the authority which applies the law, and may consist of one man who is allowed to exercise all these powers, *e.g.*, the President of the United States of America, or a person in whose name other persons exercise the powers, *e.g.*, the Queen of England, the President of the Federal Republic of Nigeria; or indeed it may consist of a group of persons who in fact exercise the powers, *e.g.*, the Federal Council in Switzerland which consists of seven men who must act together. The third consists of a hierarchy of courts or tribunals to which is entrusted the duty of deciding all disputed issues within the country, including in some cases, to review the acts of both the Legislature and the Executive.
- (g) Then there are provisions relating to the finances of the country, foreign relations, trade, the police, armed forces and so on.
- (h) Provisions are made as to the rights and duties of the citizens with regards to the choosing of representatives. The Indian constitution contains elaborate provisions on voting and elections.

A word must be said about federations because there are quite a number of them nowadays, especially among the former British Colonies. A federation is a union of two or more geographically proximate, autonomous regions or states, which have agreed to unite for stated purposes while remaining independent in others. In such a set up, there are regional as well as federal or central organs of State. Their respective relationships are defined by the Constitution. In some, *e.g.*, Canada, the undefined powers are appropriated to the centre; in some, *e.g.*, Australia, they are left with the regions; in others, *e.g.*, India, Nigeria, the powers are enumerated in such great detail and have so many contingent provisions that it is difficult to categorise on the matter. All this goes to show that federations do not follow any particular pattern. Federation, however, creates a common nationality. The right of a citizen to live, vote and acquire property in any part of a Federation cannot, therefore, be

limited by reason of place of birth, religion, tribe or political persuasion. To do otherwise would be to create two kinds of citizens. Every citizen in a Federation, is both a citizen of his State and a citizen of the Federation as a whole.

The framers of a basic law have always found it necessary to look at the constitutions of other nations for guidance and ideas. The Constitution Act of Australia, was modelled on the Constitution of the United States of America; so, to some extent, that of Liberia; the Indians read practically every available constitution when considering their own. So did the Italians, the Swiss and many others. Essentially, however, a constitution, where framed in an atmosphere of peace, concord and good faith, must be an expression of the will of the people who in fact ought to make and adopt it. This has unfortunately not always been so. Many constitutions result from upheavals of one kind or another, or from a desire to make permanent a number of preconceived ideas. Such were the constitutions of Japan, Germany, former colonies of Britain, of France, of Belgium and of the Netherlands. So many years of trial await them, and their ultimate success and authority will depend on whether they represent in fact the will of their respective peoples expressed in an atmosphere of freedom.

The constitutions of the following countries have been selected for publication because they do show how the physical characteristics of a country, its historical development, the dangers of religious intolerance, the innate temperament of the people, and the fear of one thing or another, can produce variations in the expression of identical principles:

- (i) Great Britain (Historical documents).
- (ii) The United States of America.
- (iii) The Swiss Confederation.
- (iv) The Republic of India.
- (v) The Federal Republic of Camerouns.
- (vi) The United States of Brazil.
- (vii) The Congo Democratic Republic.
- (viii) The Federal Republic of Nigeria.

Introductory Preface to:

MAGNA CARTA

JUNE 15, 1215

This Great Charter is one of the earliest written documents in British constitutional development. It was a direct challenge to the divine right of Kings, and a bold assertion of, among other things, the right to have a say in matters of taxation, the right to certain liberties, and the right to be dealt with in accordance with the "law of the land". Shorn of the peculiar feudal incidents with which it was then directly concerned, the spirit of the Charter has ranged with timeless vitality beyond the British Isles.

2. The Magna Carta is a document born out of revolution and literally rammed down the throat of reluctant King John at Runnymede on June 15, 1215, by an assemblage of armed barons who had previously renounced their allegiance to the King, and had chosen as their leader, Robert Fitz-Walter, "Marshall of the army of God and Holy Church". The barons were demanding a restoration of the ancient laws and liberties of the realm, some of which were earlier embodied in the "Charter of Liberties" of Henry I. King John had no intention of complying with the stipulations of a document thus forced upon him by his overmighty subjects, and almost immediately invoked the assistance of Pope Innocent III who issued excommunication decrees against those who had persecuted "John, King of England, crusader and vassal of the Church of Rome". Unfortunately for him, the barons were prepared to fight "even unto death", and had the sympathy of the Church, led by Stephen Langton, the then Archbishop of Canterbury, who in fact gave them the Charter of Henry I. The threatened struggle was averted by the death of Pope Innocent on June 2, 1216, and of King John on October 19 of the same year.

3. Many writers have wondered whether the later uses made of some of the provisions of this document are really warranted by their terms. From Section 39 of the Charter, they point out two instances, namely, the "due process" clause found in many constitutions established since Magna Carta, and the institution of trial by Jury. Sir Edward Coke has been blamed for interpreting the Charter in a manner not contemplated by the barons. He himself, in his "Institutes" wrote:

"As the goldfiner will not out of the dust, threds, or shreds of gold, let passe the least crum, in respect of the excellency of the metal; so ought not the

learned reader to let passe any syllable of this law, in respect of the excellency of the matter."

4. Coke wrote this about 1628. But over two centuries earlier, (1354) Parliament had equated the "law of the land" with due process of law when it declared:

"That no man of what estate or condition that he be, shall be put out of land or tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without brought in answer by *due process of the law*".

At the time, the nobles held their lands, "of the King" in knight-service, frankalmoign (in the case of the Church) and such like tenure; and others, from the ordinary freemen, cotmen, socmen and villains to the almost rightless serfs, held theirs "of the lords" in diverse degrees of limited tenure. Only the barons, therefore, were in any position to oppose the king, and even if we concede that they thought of themselves when the Charter was drawn up, the parliamentary decree quoted above extended these liberties to everybody "of what estate or condition". It is but right that the document should be regarded by later generations as a statement of immutable liberties for all manner of Englishmen.

5. It can justly be imagined that the succeeding monarchs tried every means of evading the Charter. By a series of other documents, however, the Charter was confirmed and enlarged. Such was the nature of the following instruments:—

- (a) Confirmatio Cartarum (November 5, 1297).
- (b) The Petition of Right (June 7, 1628).
- (c) The Abolition of the Star Chamber (June 5, 1641).
- (d) The Habeas Corpus Act (May 27, 1679).
- (e) The Bill of Rights (December 16, 1689).

6. The Magna Carta was re-issued several times since 1215, three times in fact under Henry III, and the text reproduced here is a translation of the Latin issue of 1225. Following it is the Confirmatio Cartarum.

MAGNA CARTA

Preamble

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou, to the archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, reeves, servants, and all bailiffs and his faithful people greeting. Know that by the inspiration of God and for the good of our soul and those of all our predecessors and of our heirs, to the honor of God and the exaltation of holy church, and the improvement of our kingdom, by the advice of our venerable fathers Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, bishops; of Master Pandulf, sub-deacon and member of the household of the lord Pope, of Brother Aymeric, master of the Knights of the Temple in England; and of the noblemen William Marshall, earl of Pembroke, William, earl of Salisbury, William, earl of Warren, William earl of Arundel, Alan of Galloway, constable of Scotland, Warren Fitz-Gerald, Peter Fitz-Herbert, Hubert de Burgh, steward of Poitou, Hugh de Nevil, Matthew Fitz-Herbert, Thomas Bassett, Alan Bassett, Philip d'Albini, Robert de Roppelay, John Marshall, John Fitz-Hugh, and others of our faithful.

Liberties of the church

1: In the first place, we have granted to God, and by this our present charter confirmed, for us and for our heirs forever, that the English church shall be free, and shall hold its rights entire and its liberties uninjured; and we will that it be thus observed; which is shown by this, that the freedom of elections, which is considered to be most important and especially necessary to the English church, we, of our pure and spontaneous will, granted, and by our charter confirmed, before the contest between us and our barons had arisen; and obtained a confirmation of it by the lord Pope Innocent III; which we shall observe and which we will shall be observed in good faith by our heirs forever.

We have granted moreover to all free men of our kingdom for us and our heirs forever all the liberties written below, to be had and holden by themselves and their heirs from us and our heirs.

Inheritance

2: If any of our earls or barons, or others holding from us in chief by military service shall have died, and when he has died his heir shall be of full age and owe relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl for the whole barony of an earl a hundred pounds; the heir or heirs of a baron for a whole barony a hundred pounds; the heir or heirs of a knight for a whole knight's fee a hundred shillings at most; and who owes less let him give less according to the ancient custom of fiefs.

Same

3: If moreover the heir of any one of such shall be under age, and shall be in wardship, wher he comes of age he shall have his inheritance without relief and without a fine.

Rights of wards

4: The custodian of the land of such a minor heir shall not take from the land of the heir any except reasonable products, reasonable customary payments, and reasonable services, and this without destruction or waste of men or of property; and if we shall have committed the custody of the land of any such a one to the sheriff or to any other who is to be responsible to us for its proceeds, and that man shall have caused destruction or waste from his custody we will recover damages from him, and the land shall be committed to two legal and discreet men of that fief, who shall be responsible for its proceeds to us or to him to whom we have assigned them; and if we shall have given or sold to any one the custody of any such land, and he has caused destruction or waste there, he shall lose that custody, and it shall be handed over to two legal and discreet men of that fief who shall be in like manner responsible to us as is said above.

Same

5: The custodian moreover, so long as he shall have the custody of the land, must keep up the houses, parks, warrens, fish ponds, mills, and other things pertaining to the land, from the proceeds of the land itself; and he must return to the heir, when he has come to full age, all his land, furnished with ploughs and implements of husbandry according as the time of wainage requires and as the proceeds of the land are able reasonably to sustain.

Marriage of heirs

6: Heirs shall be married without disparity, so nevertheless that before the marriage is contracted, it shall be announced to the relatives by blood of the heir himself.

Rights of widows

7: A widow, after the death of her husband, shall have her marriage portion and her inheritance immediately and without obstruction, nor shall she give anything for her dowry or for her marriage portion, or for her inheritance, which inheritance her husband and she held on the day of the death of her husband; and she may remain in the house of her husband for forty days after his death, within which time her dowry shall be assigned to her.

Same

8: No widow shall be compelled to marry so long as she prefers to live without a husband, provided she gives security that she will not marry without our consent, if she holds from us, or without the consent of her lord from whom she holds, if she holds from another.

Debtors

9: Neither we nor our bailiffs will seize any land or rent for any debt, so long as the chattels of the debtor are sufficient for the payment of the debt; nor shall the pledges of a debtor be distrained so long as the principal debtor himself has enough for the payment of the debt; and if the principal debtor fails in the payment of the debt, not having the wherewithal to pay it, the pledges shall be responsible for the debt; and if they wish, they shall have the lands and the rents of the debtor until they shall have been satisfied for the debt which they have before paid for him, unless the principal debtor shall have shown himself to be quit in that respect towards those pledges.

Interest on debts

10: If any one has taken anything from the Jews, by way of a loan, more or less, and dies before that debt is paid, the debt shall not draw interest so long as the heir is under age, from whomsoever he holds; and if that debt falls into our hands, we will take nothing except the chattel contained in the agreement.

Heirs of debtors

11: And if any on edies leaving a debt owing to the Jews, his wife shall have her dowry, and shall pay nothing of that debt; and if there remain minor children of the dead man, necessaries shall be provided for them corresponding to the holding of the dead man; and from the remainder shall be paid the debt, the service of the lords being retained. In the same way debts are to be treated which are owed to others than the Jews.

Taxation

12: No scutage or aid shall be imposed in our kingdom except by the common council of our kingdom, except for the ransoming of our body, for the making of our oldest son a knight, and for once marrying our oldest daughter, and for these purposes it shall be only a reasonable aid; in the same way it shall be done concerning the aids of the city of London.

Liberties of the City of London

13: And the City of London shall have all its ancient liberties and free customs, as well by land as by water. Moreover, we will and grant that all other cities and boroughs and villages and ports shall have all their liberties and free customs.

Assent to taxation by common council of the kingdom

14: And for holding a common council of the kingdom concerning the assessment of an aid otherwise than in the three cases mentioned above, or concerning the assessment of a scutage, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons by our letter under seal; and besides we shall cause to be summoned generally, by our sheriffs and bailiffs all those who hold from us in chief, for a certain day, that is at the end of forty days at least, and for a certain place; and in all the letters of that summons, we will express the cause of the summons, and when the summons has thus been given the business shall proceed on the appointed day, on the advice of those who shall be present, even if not all of those who were summoned have come.

Taxation of subtenants

15: We will not grant to any one, moreover, that he shall take an aid from his free men, except for ransoming his body, for making his oldest son a knight, and for once marrying his oldest daughter; and for these purposes only a reasonable aid shall be taken.

Knights services

16: No one shall be compelled to perform any greater service for a knight's fee, or for any other free tenement than is owed from it.

Justice available at a fixed place

17: The common pleas shall not follow our court, but shall be held in some certain place.

Courts to be held regularly to determine land disputes

18: The recognitions of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be held only in their own counties and in this manner: we, or if we are outside of the kingdom our principal justiciar, will send two justiciars through each country four times a year, who with four knights of each county, elected by the county, shall hold in the country and on the day and in the place of the county court the aforesaid assizes of the county.

Same

19: And if the aforesaid assizes cannot be held within the day of the county court, a sufficient number of knights and free-holders shall remain from those who were present at the county court on that day to give the judgments, according as the business is more or less.

Assessment of fines

20: A free man shall not be fined for a small offence, except in proportion to the measure of the offence; and for a great offence he shall be fined in proportion to the magnitude of the offence, saving his freehold; and a merchant in the same way, saving his merchandise; and the villain shall be fined in the same way, saving his wainage, if he shall be at our mercy; and none of the above fines shall be imposed except by the Oaths of honest men of the neighbourhood.

Same

21: Earls and barons shall be fined only by their peers, and only in proportion to their offence.

Same

22: A clergyman shall be fined, like those before mentioned, only in proportion to his lay holding, and not according to the extent of his ecclesiastical benefice.

Duty to provide bridges

23: No manor or man shall be compelled to make bridges over the rivers except those which ought to do it of old and rightfully.

Unauthorized persons not to administer justice

24: No sheriff, constable, coroners, or other bailiffs of ours shall hold pleas of our crown.

Rents

25: All counties, hundreds, wapentakes, and trithings shall be at the ancient rents and without any increase, excepting our demesne manors.

Attachments of decedents' goods for debt

26: If any person holding a lay fief from us shall die, and our sheriff or bailiff shall show our letters-patent of our summons concerning a debt which the deceased owed to us, it shall be lawful for our sheriff or bailiff to attach and levy on the chattels of the deceased found on his lay fief, to the value of that debt, in the view of legal men, so nevertheless that nothing be removed thence until the clear debt to us shall be paid; and the remainder shall be left to the executors for the fulfilment of the will of the deceased; and if nothing is owed to us by him, all the chattels shall go to the deceased, saving to his wife and children their reasonable shares.

Goods of intestates

27: If any free man dies intestate, his chattels shall be distributed by the hands of his near relatives and friends, under the oversight of the church, saving to each one the debts which the deceased owed to him.

Payment for goods taken by officers

28: No constable or other bailiff of ours shall take anyone's grain or other chattels, without immediately paying for them in money, unless he is able to obtain a postponement at the good will of the seller.

Castleguard

29: No constable shall require any knight to give money in place of his ward of a castle if he is willing to furnish that ward in his own person or through another honest man, if he himself is not able to do it for a reasonable cause; and if we shall lead or send him into the army he shall be free from ward in proportion to the amount of time by which he has been in the army through us.

Horses and carriages of freemen

30: No sheriff or bailiff of ours or any one else shall take horses or wagons of any free man for carrying purposes except on the permission of that free man.

Taking of timber

31: Neither we nor our bailiffs will take the wood of another man for castles, or for anything else which we are doing, except by the permission of him to whom the wood belongs.

Lands of felons

32: We will not hold the lands of those convicted of a felony for more than a year and a day, after which the lands shall be returned to the lords of the fiefs.

Fishweirs

33: All the fish-weirs in the Thames and the Medway, and throughout all England shall be done away with, except those on the coast.

Writ of praecipe

34: The writ which is called *praecipe* shall not be given for the future to any one concerning any tenement by which a free man can lose his court.

Uniform measures

35: There shall be one measure of wine throughout our whole kingdom, and one measure of ale, and one measure of grain, that is the London quarter, and one width of dyed cloth and of russets and of halbergets, that is two ells within the selvages; of weights, moreover, it shall be as of measures.

Writ of life and limb

36: Nothing shall henceforth be given or taken for a writ of inquisition concerning life or limbs, but it shall be given freely and not denied.

Rights of wards

37: If any one holds from us by fee farm or by soccage or by burgage, and from another he holds land by military service, we will not have the guardianship of the heir or of his land which is of the fief of another, on account of that fee farm, or soccage, or burgage, nor will we have the custody of that fee farm, or soccage, or burgage, unless that fee farm itself owes military service. We will not have the guardianship of the heir or of the land of any one, which he holds from another by military service on account of any petty serjeanty which he holds from us by the service of paying to us knives or arrows, or things of that kind.

Proof of indictments

38: No bailiff for the future shall place any one to his law on his simple affirmation, without credible witnesses brought for this purpose.

Procedure against freemen

39: No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.

Sale, denial or delay of justice

40: To no one will we sell, to no one will we deny, or delay right or justice.

Liberties of merchants

41: All merchants shall be safe and secure in going out from England and coming into England and in remaining and going through England, as well by land as by water, for buying and selling, free from all evil tolls, by the ancient and rightful customs, except in time of war, and if they are of a land at war with us; and if such are found in our land at the beginning of war, they shall be attached without injury to their bodies or goods, until it shall be known from us or from our principal justiciar in what way the merchants of our land are treated who shall then be found in the country which is at war with us; and if ours are safe there, the others shall be safe in our land.

Liberty to leave and enter the kingdom

42: It is allowed henceforth to any one to go out from our kingdom, and to return, safely and securely, by land and by water, saving their fidelity to us, except in time of war for some short time, for the common good of the kingdom; excepting

persons imprisoned and outlawed according to the law of the realm, and people of a land at war with us, and merchants, of whom it shall be done as is before said.

Escheats

43: If any one holds from an escheat, as from the honour of Wallingford, or Nottingham, or Boulogne, or Lancaster, or from other escheats which are in our hands and are baronies, and he dies, his heir shall not give any other relief, nor do to us any other service than he would do to the baron, if that barony was in the hands of the baron; and we will hold it in the same way as the baron held it.

Administration of forest laws

44: Men who dwell outside the forest shall not henceforth come before our justiciars of the forest, on common summons, unless they are in a plea of, or pledges for any person or persons who are arrested on account of the forest.

Qualifications of officers

45: We will not make justiciars, constables, sheriffs or bailiffs except of such as know the law of the realm and are well inclined to observe it.

Custody of abbeys

46: All barons who have founded abbeys for which they have charters of kings of England, or ancient tenure, shall have their custody when they have become vacant, as they ought to have.

Forest boundaries

47: All forests which have been afforested in our time shall be disafforested immediately; and so it shall be concerning river banks which in our time have been fenced in.

Forest customs

48: All the bad customs concerning forests and warrens and concerning foresters and warreners, sheriffs and their servants, river banks and their guardians shall be inquired into immediately in each county by twelve sworn knights of the same county, who shall be elected by the honest men of the same county, and within forty days after the inquisition has been made, they shall be entirely destroyed by them, never to be restored, provided that we be first informed of it, or our justiciar, if we are not in England.

Securities for peace

49: We will give back immediately all hostages and charters which have been liberated to us by Englishmen as security for peace or for faithful service.

Ouster of foreign favorites

50: We will remove absolutely from their bailiwicks the relatives of Gerard de Athyes, so that for the future they shall have no bailiwick in England; Engelard de Cygony, Andrew, Peter and Gyon de Chancelles, Gyon de Cygony, Geoffrey de Martin and his brothers, Philip Mark and his brothers, and Geoffry his nephew and their whole retinue.

Disbandment of troops

51: And immediately after the re-establishment of peace we will remove from the kingdom all foreign-born soldiers, crossbow men, servants, and mercenaries who have come with horses and arms for the injury of the realm.

Restoration of rights

52: If any one shall have been dispossessed or removed by us without legal judgment of his peers, from his lands, castles, franchises, or his right, we will restore them to him immediately; and if contention arises about this, then it shall be done according to the judgment of the twenty-five barons, of whom mention is made below concerning the security of the peace. Concerning all those things, however, from which any one has been removed or of which he has been deprived without legal judgment of his peers by King Henry our father, or by King Richard our brother, which we have in our land, or which others hold, and which it is our duty to guarantee, we shall have respite till the usual term of crusaders; excepting those things about which the suit has been begun or the inquisition made by our writ before our assumption of the cross; when, however, we shall return from our journey or if by chance we desist from the journey, we will immediately show full justice in regard to them.

Grant of respite

53: We shall, moreover, have the same respite and in the same manner about showing justice in regard to the forests which are to be disafforested or to remain forests, which Henry our father or Richard our brother made into forests; and concerning the custody of lands which are in the fief of another, custody of which we have until now had on account of a fief which any one has held from us by military service; and concerning the abbeys which have been founded in fiefs of others than ourselves, in which the lord of the fee has asserted for himself a right; and when we return or if we should desist from our journey we will immediately show full justice to those complaining in regard to them.

Prosecutions by women

54: No one shall be seized nor imprisoned on the appeal of a woman concerning the death of any one except her husband.

Illegal judgments invalidated

✓55: All fines which have been imposed unjustly and against the law of the land, and all penalties imposed unjustly and against the law of the land are altogether excused, or will be on the judgement of the twenty-five barons of whom mention is made below in connection with the security of the peace, or on the judgment of the majority of them, along with the aforesaid Stephen, archbishop of Canterbury, if he is able to be present, and others whom he may wish to call for this purpose along with him. And if he should not be able to be present, nevertheless the business shall go on without him, provided that if any one or more of the aforesaid twenty-five barons are in a similar suit they should be removed as far as this particular judgment goes, and others who shall be chosen and put upon oath, by the remainder of the twenty-five shall be substituted for them for this purpose.

Rights of Welshmen

56: If we have dispossessed or removed any Welshmen from their lands, or franchises, or other things, without legal judgement of their peers, in England, or in Wales, they shall be immediately returned to them; and if a dispute shall have arisen over this, then it shall be settled in the borderland by judgment of their peers, concerning holdings of England according to the law of England, concerning holdings of Wales according to the law of Wales, and concerning holdings of the borderland according to the law of the borderland. The Welsh shall do the same to us and ours.

Same

57: Concerning all those things, however, from which any one of the Welsh shall have been removed or dispossessed without legal judgment of his peers, by King Henry our father, or King Richard our brother, which we hold in our hands, or which others hold, and we are bound to warrant to them, we shall have respite till the usual period of crusaders, those being excepted about which suit was begun or inquisition made by our command before our assumption of the cross. When, however, we shall return or if by chance we shall desist from our journey, we will show full justice to them immediately, according to the laws of the Welsh and the aforesaid parts.

Same

58: We will give back the son of Lewellyn immediately, and all the hostages from Wales and the charters which had been liberated to us as a security for peace.

Rights of Alexander, King of Scots

59: We will act toward Alexander, king of the Scots, concerning the return of his sisters and his hostages, and concerning his franchises and his right, according to the manner in which we shall act toward our other barons of England, unless it ought to be otherwise by the charters which we hold from William his father, formerly king of the Scots, and this shall be by the judgment of his peers in our court.

Liberties of subtenants

60: Moreover, all those customs and franchises mentioned above which we have conceded in our kingdom, and which are to be fulfilled, as far as pertains to us, in respect to our men; all men of our kingdom as well clergy as laymen, shall observe as far as pertains to them, in respect to their men.

Enforcement of liberties by committee of twenty-five barons to keep the peace

61: Since, moreover, for the sake of God, and for the improvement of our kingdom, and for the better quieting of the hostility sprung up lately between us and our barons, we have made all these concessions; wishing them to enjoy these in a complete and firm stability forever, we make and conceded to them the security described below; that is to say, that they shall elect twenty-five barons of the kingdom, whom they will, who ought with all their power to observe, hold, and cause to be observed, the peace and liberties which we have conceded to them, and by this our present charter confirmed to them; in this manner, that if we or our justiciar, or our bailiffs,

or any of our servants shall have done wrong in any way toward any one or shall have transgressed any of the articles of peace or security; and the wrong shall have been shown to four barons of the aforesaid twenty-five barons, let those four barons come to us or to our justiciar, if we are out of the kingdom, laying before us the transgression, and let them ask that we cause that transgression to be corrected without delay. And if we shall not have corrected the transgression or, if we shall be out of the kingdom, if our justiciar shall not have corrected it within a period of forty days, counting from the time in which it has been shown to us or to our justiciar, if we are out of the kingdom; the aforesaid four barons shall refer the matter to the remainder of the twenty-five barons, and let these twenty-five barons with the whole community of the country distress and injure us in every way they can; that is to say by the seizure of our castles, lands, possessions, and in such other ways as they can until it shall have been corrected according to their judgement, saving our person and that of our queen, and those of our children; and when the correction has been made, let them devote themselves to us as they did before. And let whoever in the country wishes take an oath that in all the above mentioned measures he will obey the orders of the aforesaid twenty-five barons, and that he will injure us as far as he is able with them, and we give permission to swear publicly and freely to each one who wishes to swear, and no one will we ever forbid to swear. All those, moreover, in the country who of themselves and their own will are unwilling to take an oath to the twenty-five barons as to distressing and injuring us along with them, we will compel to take the oath by our mandate, as before said. And if any one of the twenty-five barons shall have died or departed from the land or shall in any other way be prevented from taking the above mentioned action, let the remainder of the aforesaid twenty-five barons choose another in his place, according to their judgement, who shall take an oath in the same way as the others. In all those things, moreover, which are committed to those five and twenty barons to carry out, if perhaps the twenty-five are present, and some disagreement arises among them about something, or if any of them when they have been summoned are not willing or are not able to be present, let that be considered valid and firm which the greater part of those who are present arrange or command, just as if the whole twenty-five had agreed in this; and let the aforesaid twenty-five swear that they will observe faithfully all the things which are said above, and with all their ability cause them to be observed.

Infringement of liberties to be invalid and void

And we will obtain nothing from any one, either by ourselves or by another by which any of these concessions and liberties shall be revoked or diminished; and if any such thing shall have been obtained, let it be invalid and void, and we will never use it by ourselves or by another.

Pardon of transgressions

62: And all ill-will, grudges, and anger sprung up between us and our men, clergy and laymen, from the time of the dispute, we have fully renounced and pardoned to all. Moreover, all transgressions committed on account of this dispute, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, clergy and laymen, and as far as pertains to us, fully pardoned. And moreover we have caused to be made for them testimonial letters-patent of lord Stephen, archbishop of Canterbury, lord Henry, archbishop of Dublin, and of the aforesaid bishops and of master Pandulf, in respect to that security and the concessions named above.

Oath to observe liberties

63: Wherefore we will and firmly command that the Church of England shall be free, and that the men in our kingdom shall have and hold all the aforesaid liberties rights and concessions, well and peacefully, freely and quietly, fully and completely for themselves and their heirs, from us and our heirs, in all things and places, forever, as before said. It has been sworn, moreover, as well on our part as on the part of the barons, that all these things spoken of above shall be observed in good faith and without any evil intent. Witness the above named and many others. Given by our hand in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

CONFIRMATIO CARTARUM 26

NOVEMBER 5, 1297

*Confirmation of the charters**Publication of the charters :**Charters allowed as common law*

EDWARD, by the grace of God, King of England, Lord of Ireland, and Duke of Guian, to all those that these present letters shall hear or see, greeting. Know ye that we, to the honour of God and of Holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of liberties, and the Charter of the forest, which were made by common assent of all the realm, in the time of King HENRY our father, shall be kept in every point without breach. (2) And we will that the same charters shall be sent under our seal, as well to our justices of the forest, as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs, in the which it shall be contained, that they cause the foresaid charters to be published, and to declare to the people that we have confirmed them in all points; (3) and that our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgement in all their points, that is to wit, the Great Charter as the common law, and the Charter of the forest, for the wealth of our realm.

Judgements contrary to charters are void

2. AND we will, That if any judgement be given from henceforth contrary to the points of the charters aforesaid by the justices, or by any other our ministers that hold plea before them against the points of the charters, it shall be undone, and holden for nought.

Charters sent to churches

3. AND we will, That the same charters shall be sent, under our seal, to cathedral churches throughout our realm, there to remain, and shall be read before the people two times by the year.

Excommunication of violators

4. AND that all archbishops and bishops shall pronounce the sentence of excommunication against all those that by word, deed, or counsel do contrary to the foresaid charters, or that in any point break or undo them. (2) And that the said curses be twice a year denounced and published by the prelates aforesaid. (3) And if the said prelates, or any of them, be remiss in the denunciation of the said sentences, the archbishops of *Canterbury* and *York* for the time being shall compel and distrein them to the execution of their duties in form aforesaid.

Limitation of aids, tasks, and prises

5. AND for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime towards our wars and other business, of their own grant and good will (howsoever they were made) might turn to a bondage to them and their heirs, because they might be at another time found in the rolls, and likewise for the prises taken throughout the realm by our ministers: (2) We have granted for us and our heirs, that we shall not draw such aids, tasks, nor prises into a custom, for any thing that hath been done heretofore, be it by roll or any other precedent that may be founded.

Common assent of realm required in taxation

6. Moreover we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the communalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit threof, saving the ancient aids, and prises due and accustomed.

Tax on wool

7. AND for so much as the more part of the communalty of the realm find themselves sore grieved with the maletent of woolls, that is to wit, a toll of forty shillings for every sack of wool, and have made petition to us to release the same; We at their requests have yearly released it, and have for granted us and our heirs, that we shall not take such things without their common assent and good will, saving to us and our heirs the custom of woolls, skins, and leather, granted before by the communalty aforesaid. In witness of which things we have caused these our letters to be made patents. Witness EDWARD our son at *London* the tenth day of *October*, the five and twentieth year of our reign.

REFERENCES

- Barrington, Boyd C. *The Magna Charta and Other Great Charters of England*. Philadelphia: William S. Campbell, 1900.
- Corwin, Edward S. "The 'Higher Law' Background of American Constitutional Law," *Harvard Law Review*, (XLII 1928-29), 149-85, 365-409.
- Fox, John C. "The Originals of the Great Charter of 1215," *English Historical Review*, XXXIX (1924), 321-36.
- Jenks, Edward. "The Myth of Magna Carta", *The Independent Review*, IV (1904), 260-73.
- Malden, Henry E. (ed.). *Magna Carta Commemoration Essays*: Aberdeen: The University Press, 1917.
- McIlwain, Charles H. "Due Process of Law in Magna Carta", *Columbia Law Review*, XIV (1914), 27-51.
- McKechnie, William S. *Magna Carta*. 2d ed. Glasgow: James Maclehose and Sons, 1914.
- Mullett, Charles F. *Fundamental Law and the American Revolution, 1760-1776*. New York: Columbia University Press, 1933.
- Edwards, J. G. "Confirmatio Cartarum and Baronial Grievances in 1297", *English Historical Review*, LVIII (1943), 147-71, 273-300.
- Mullett, Charles F. *Fundamental Law and the American Revolution, 1760-1776*. New York: Columbia University Press, 1933.
- Rothwell, Harry. "The Confirmation of the Charters, 1297", *English Historical Review*, LX (1945), 16-35, 177-91, 300-15.
- Thompson, Faith. "Parliamentary Confirmations of the Great Charter", *American Historical Review*, XXXVIII (1933), 659-72.

Introductory Preface to:

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The colonial wars between Great Britain and France which was terminated by the Treaty of Paris (1763) left Britain successful but improverished and hard put to it to meet the financial burdens imposed on her by her overseas responsibilities. The Stamp Act (passed on March 22, 1765) was one of the measures adopted for increasing her trade and revenue. As far as the North American colonies were concerned, the Act was utterly objectionable. There were thirteen of these Colonies, each of them administered by Britain in accordance with a charter. Grouses there were against the administration, these being heightened by the indifference of Parliament to the problems of the colonists. Thus before the Act was passed, and immediately thereafter, there were calls, particularly from Boston and Virginia, for a meeting of the Colonies

“to consult together on the present circumstances of the colonies, and the difficulties to which they are and must be reduced by the operation of the acts of parliament for levying duties and taxes on the colonies, and to consider of a general and united, dutiful, loyal and humble representation of their condition to his majesty and to parliament, and to implore relief”.

That was the origin of the “Stamp Act Congress” which, on October 19, 1765, resolved to declare the rights of the colonies, adding to it the well-known war-cry: “No taxation without representation”.

2. The Stamp Act was repealed in 1766, but the Declaratory Act which followed claimed the right of Britain to rule the colonies as she pleased. But the spirit of freedom was already abroad. The Declaratory Act quoted it, and all other Acts which sought to enhance British trade and control the activities of the colonies were strenuously resisted.

3. A “Continental Congress” was first proposed in Providence, Rhode Island, on May 17, 1774 and later in Boston, Massachusetts. It was to be a meeting of representatives appointed by the legislatures and conventions of the colonies and was “to complete the system for American Independent Commonwealth, as it is so evident that no other plan will secure the rights of this people from rapacious and plotting tyrants”.

The representatives met at Philadelphia on September 5, 1774, decided to call, itself "CONGRESS", elected Peyton Randolph as chairman in the name and style of "PRESIDENT". It produced the "Declaration of Resolves" on October 17, 1774.

4. Thus, before the first shot was fired at Lexington on April 19, 1775, movement towards union and independence had begun. It was tardy because many people still wanted to retain the tie with Britain. While hostilities were on, the Second Continental Congress met, again in Philadelphia, on May 10, 1775. It consisted of members of the First Congress with the inclusion of radical elements like Benjamin Franklin, Thomas Jefferson, James Wilson and John Hancock. Its purpose was to agree upon

"such further measures as shall to them appear to be best calculated for the recovery and establishment of American rights and liberties, and for restoring harmony between Great Britain and the Colonies".

A draft petition was prepared, debated, amended and agreed upon on July 31, 1775, and entitled "A Declaration by the Representatives of the United Colonies of North America, now met in Congress at Philadelphia, setting forth the causes and necessity of their taking up Arms." Richard Penn was commissioned to take it to London, and on the day he was to present it (August 23, 1775), George III issued a proclamation of rebellion, charging that the American colonists had renounced their allegiance to him and had become traitors.

5. The attitude of George III was somewhat justified by events although the proclamation was ill-considered. Individuals and groups had for some time been purveying resolutions urging independence. On May 11, 1775, the people of Mechenburg County in North Carolina had resolved:

"We conceive that all laws and commissions confirmed by, or derived by the authority of the King or Parliament, are annulled and vacated, and the former civil constitution of these colonies for the present wholly suspended".

Following the proclamation, Thomas Paine published vitriolic attacks on the King in 1776. On June 7, 1776, Richard Lee of Virginia moved Congress which, on July 2, resolved:

"That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connexion between them, and the State of Great Britian is, and ought to be, totally dissolved."

This resolution was embodied in "The Unanimous Declaration of the Thirteen United States of America," which was promulgated on July 4, 1776.

6. On the same day as the Second Continental Congress appointed a Committee to draft the Declaration of Independence (June 11, 1776) it also appointed another Committee to draft a form of Confederation to be entered into by the Colonies. This was done. The draft so produced was discussed in Congress for over one year; the document which emerged was adopted in November, 1777, and even though the "Articles of Confederation" (as the document was called) was not adopted by all the States until 1781, it formed the basis for subsequent activities of the Congress.

7. Under the Articles, each state retained its sovereignty and independence in and over all those matters not expressly delegated to Congress. The States had equal representation in Congress; decisions were made unanimously in respect of Amendments to the Articles, but by two-thirds majority for others. There was no bill of rights, that being regarded then as the prerogative of the colonies.

8. The "Articles" was in force for ten years. During that period, the States had become aware that it did not altogether meet their requirements. A review was proposed in Virginia in January 1786, for the purpose of forming "a more perfect Union". This led to the appointment of delegates who met in Annapolis in September 1787. The Annapolis Convention only sat for a few days but before it dissolved, it proposed a "Federal Convention for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States render the federal constitution adequate to the exigencies of Government and the preservation of the Union." The convention was duly appointed. By 25th May, 1787, it met, organized itself and elected George Washington as its President. It appointed a number of Committees to deal with specific aspects of the revision. There was a Committee of Detail which was charged with the duty of preparing of Draft from the resolutions adopted by the Convention. Points on which agreement was not reached were submitted to a "Committee on the Unfinished Parts of the Constitution". After agreement had been reached on all essential matters, a "Committee of Style and Arrangement" was asked to draft the document on appropriate language and arrange its order, but not to alter the substance of the agreed proposals. It reported on September 15 and the document was signed on September 17, establishing thereby the first seven articles of the "Constitution of the United States" as it has been known to this day.

9. Later, the Convention attacked the trickiest part of its work: drafting the Bill of Rights. Many States would not ratify the Constitution unless safeguards were guaranteed as "would remove the fears and quiet the apprehensions of many of the good people of this Commonwealth and more effectually guard against an undue administration of the Federal Government." Eventually the First Ten Amendments, commonly called the "Bill of Rights" were promulgated on December 15, 1791

10. Three documents are reproduced in the following pages:

- (a) The Declaration of Causes, July 6, 1775.
- (b) The Declaration of Independence, July 4, 1776.
- (c) The Constitution of the United States embodying the Bill of Rights and amendments to date.

11. The American Constitution was an attempt to reconcile State autonomy with federal supremacy, individual liberty with the public interest and to pit the organs of government one against the other. This has no doubt produced a system more or less rigid according to the shifting views of the United States Supreme Court.

**DECLARATION OF THE CAUSES AND NECESSITY
OF TAKING UP ARMS JULY 6, 1775**

A DECLARATION BY THE REPRESENTATIVES OF THE UNITED COLONIES OF NORTH-AMERICA, NOW MET IN CONGRESS AT PHILADELPHIA, SETTING FORTH THE CAUSES AND NECESSITY OF THEIR TAKING UP ARMS.

Purpose of government is to promote the welfare of mankind

If it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end.

Violence of Parliament has resulted in recourse to arms

The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desparate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms.—Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obligations of respect to the rest of the world, to make known the justice of our case.

First settlers

Our forefathers, inhabitants of the island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike nations of barbarians.

Colonial assemblies—French and Indian War

Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies.

New British ministry

Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels.—From that fatal moment, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations.—The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

British colonial policy—Specific grievances

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder.—The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations.—Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive specimens of the spirit and consequences attending this power; as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the “murderers” of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

Declaratory Act

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can “of right make laws to bind us in all cases whatsoever., What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our controul or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Actions of colonists toward oppressive measures

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was roused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure: we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty.—This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Actions of British

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho' we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected.

Declaration of rebellion

The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned in it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to enforce due obedience to the laws and authority of the supreme legislature".

Commerce halted; fishing rights infringed; troops sent

Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their co[a]sts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

British policy

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and stren[u]ously asserted the justice of our cause, and even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on.—Equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favour. Parliament adopted an insidious manoeuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to extort from us, at the point of the bayonet, the unknown sums that should be suf-

ficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? In our circumstances to accept them, would be to deserve them.

Battles of Lexington and Concord

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it is [as] a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation.

Confinement of inhabitants of Boston

The inhabitants of Boston being confined within that town by the general thier governor, and having, in order to procure their dismissal, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

Hardships to colonists

By this perfidy wives are separated from their husbands, children from their parents, the aged and the sick from their relations and friends, who wish to attend and comfort them; and those who have been used to live in plenty and even elegance, are reduced to deplorable distress.

Declaration of rebellion

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial."

Depredations of troops

His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

Hostility of Canadians

We have received certain intelligence, that general Carelton [*Careleton*], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us.

Resistance preferable to slavery

In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword, and famine. We are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force.—The latter is our choice.—We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery.—Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Recourse to arms for the preservation of liberties

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable.—We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation, and possessed of the means of defending ourselves. With hearts fortified with these animating re-utmost ener most solemnly, before God and the world, *declare*, that, exerting the flections, wegy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Union not dissolved

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored.—Necessity has not yet driven us into that desperate measure, or induced us to excite any other nation to war against them.—We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind

the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

Arms to be laid down when hostilities cease

In our own native land, in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it—for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

Divine protection asked

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

DECLARATION OF INDEPENDENCE JULY 4, 1776

**THE UNANIMOUS DECLARATION OF THE THIRTEEN
UNITED STATES OF AMERICA**

Political Theory of the Declaration

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold those truths to be selfevident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient

sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government.

Grievances Against George III

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Interference with the legislative process

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause other to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining in the mean time, exposed to all the dangers of invasions from without, and convulsions within.

Emigration

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

Administration of justice; dependence of judges

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

New offices

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

Standing armies

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

Military authority

He has affected to render the military independent of, and superior to the civil power.

Foreign jurisdiction

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

Quartering of troops

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

Trade and taxes

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

Trials

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offences;

Abolition of laws

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into those colonies;

Abolition of charters

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

Suspension of legislatures

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

Waging war

He has abdicated government here, by declaring us out of his protection, and waging war against us.

Acts against the people

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

Mercenaries

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

Impressment of seamen

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

Domestic insurrections

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions

In every stage of those oppressions we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disallow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

Declaration of Independence

We, therefore, the representatives of the UNITED STATES OF AMERICA, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are and of right ought to be, FREE and INDEPENDENT STATES; that they are absolved from all allegiance, to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as FREE and INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

Names of Signers JOHN HANCOCK.

New Hampshire—Josiah Bartlett, William Whipple, Matthew Thornton.

Massachusetts Bay—Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

Rhode Island, &c.—Stephen Hopkins, William Ellery.

Connecticut—Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

New York—William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

New Jersey—Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

Pennsylvania—Rober Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

Delaware—Caesar Rodney, George Read, Thomas M’Kean.

Maryland—Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton.

Virginia—George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jun, Francis Lightfoot Lee, Carter Braxton.

North Carolina—William Hooper, Joseph Hewes, John Penn.

South Carolina—Edward Rutledge, Thomas Hayward, Jun., Thomas Lynch, Jun., Arthur Middleton.

Georgia—Button Gwinnett, Lyman Hall, George Walton.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Preamble:

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the States Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand,** but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvanis eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3: The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]*** for six Years; and each Senator shall have one Vote.

*Changed by section 2 of the fourteenth amendment.

**Ratio in 1963 was one to over 410,000.

***Changed by section 1 of the seventeenth amendment.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]**

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgement and Punishment, according to law.

Section 4: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,]* unless they shall by Law appoint a different Day.

Section 5: Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgement require Secrecy;

**Changed by clause 2 of the seventeenth amendment.

*Changed by section 2 of the twentieth amendment.

and the Yeas and Nays of the Member of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6: The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office.

Section 7: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States:

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals Inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof.

Section 9: The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; omit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact, with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Section 1: The executive Power shall be vested in a President of the United States of America, He shall hold his Office during the Term of four Years, and together with the Vice-President, chosen for the same Term, be elected, as follows.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members

from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years in Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion in writing, of the principal Officer upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

*Superseded by the twelfth amendment.

Section 3: He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

Section 1: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority:—to all Cases affecting Ambassadors, other public Ministers and Consuls:—to all Cases of admiralty and maritime Jurisdiction:—to Controversies to which the United States shall be a Party:—to Controversies between two or more States:—between a State and Citizens of another State:—between Citizens of different States:—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3: Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

Section 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Section 3: New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4: The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

*Superseded by the thirteenth amendment.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives, before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.

GQ WASHINGTON

*President and deputy from Virginia**New Hampshire*JOHN LANGDON
NICHOLAS GILMAN*Massachusetts*NATHANIEL GORHAM
RUFUS KING*Connecticut*WM SAML JOHNSON
ROGER SHERMAN*New York*

ALEXANDER HAMILTON

New Jersey

WIL: LIVINGSTON
 DAVID BREARLEY
 WM PATTERSON
 JONA: DAYTON

Pennsylvania

B. FRANKLIN
 ROBT. MORRIS
 THOS. FITZSIMONS
 JAMES WILSON
 THOMAS MIFFLIN
 GEO. CLYMER
 JARED INGERSOLL
 GOUY MORRIS

Delaware

GEO: READ
 JOHN DICKINSON
 JACO: BROOM
 GUNNING BEDFORD jun
 RICHARD BASSETT

Maryland

JAMES MCHENRY
 DANL CARROL
 DAN: of St. THOS JENIFER

Virginia

JOHN BLAIR
 JAMES MADISON Jr.

North Carolina

WM BLOUNT
 HU WILLIAMSON
 RICHD DOBBS SPAIGHT,

South Carolina

J. RUTLEDGE
 CHARLES PINCKNEY
 CHARLES COTESWORTH PINCKNEY
 PIERCE BUTLER

Georgia

WILLIAM FEW

ABR BALDWIN

Attest:

WILLIAM JACKSON , *Secretary*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.*

AMENDMENT I. (1791)**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II. (1791)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III. (1791)

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV. (1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V. (1791))

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*Amendment XXI was not ratified by state legislatures, but by state conventions summoned by Congress.

**Date of ratification.

AMENDMENT VI. (1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII. (1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII. (1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX. (1791)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X. (1791)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI. (1795)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII. (1804)

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States,

directed to the President of the Senate:—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted:—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII. (1865)

Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2: Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV. (1868)

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2: Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in such State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the member of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except

*Superseded by section 3 of the twentieth amendment.

for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3: No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4: The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV. (1870)

Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race color, or previous condition of servitude—

Section 2: The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI. (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT XVII. (1913)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII. (1919)

[**Section 1:** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[**Section 2:** The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[**Section 3:** This article shall be inoperative unless it shall have been ratified of as amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]*

AMENDMENT XIX. (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX. (1933)

Section 1: The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2: The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3: If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 4: The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

*Repealed by section 1 of the twenty-first amendment.

Section 5: Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article

Section 6: This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission

AMENDMENT XXI. (1933)

Section 1: The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2: The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3: This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventious in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XXII. (1951)

Section 1: No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office, of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2: This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT XXIII. (1961)

Section 1: The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2: The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXIV. (1964)

Section 1: The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2: The Congress shall have power to enforce this article by appropriate legislation.

Introductory Preface to

THE CONSTITUTION OF THE SWISS CONFEDERATION

Switzerland is a country covering an area of 15,950 square miles, much of it mountainous and uninhabitable. It is surrounded by Germany, Austria, Italy and France. It has a population of five million people who live in autonomous areas known as "Cantons", of which there are twenty-five. The lowest unit of social organization is the "Commune"; there are three thousand "Communes" with populations ranging from fourteen inhabitants to several thousand persons.

2. The peoples of Switzerland are made up, in order of size, of the following linguistic groups:

German (73%), French (22%), Italian (4%) and Romansch (1%). The four languages are recognized by the Swiss Constitution, but only the first three are used for official purposes.

3. Switzerland is a Confederation; the unit is the Canton. Each Canton has its own origin, development and government. Over the years, they had come together, bit by bit, under pressure of war, economic circumstances and religious strife, to form a confederation. In Switzerland, August 1 is a national day, for on that day, in 1291, the Cantons of URI, SCHWYZ and UNTERWALD formed the "Everlasting League" which is regarded as the beginning of the Swiss Confederation. LUCERNE joined in 1332, ZURICH in 1351, GLARUS and ZUG in 1352 and BERNE in 1353. By 1513, it had grown to a Confederation of thirteen Cantons by the admission of FRIBOURG and SOLEURE (1481), BASLE and SCHAFFHAUSEN 1501, and APPENZEL (1513).

4. The league became an effective means of offering collective resistance to outside attacks, but internal relationships were weakened by the religious struggles which characterised that period. There was a Diet, a central council to which the Cantons sent representatives, but it did no more than settle boundary disputes and remove obstacles to concerted defence action. The Diet was unable to control the divergent, and sometimes inimical, foreign policies of the Cantons.

5. The French Revolution had its consequences in Switzerland as in other parts of Europe. After a strong resistance, Switzerland was vanquished and occupied

by the French, who added new Cantons to the old ones and imposed a central government on all of them; established a system of guaranteed rights in accordance with the tenets of the Revolution, and abolished hereditary rights and privileges. This Constitution (1798) was approved in a referendum, and affected 19 Cantons, together known as the Helvetic Republic. It lasted for five years, when the Mediation Act of Napoleon (1803) put an end to it and to the vicious internal wars it engendered. The Act itself created a federal structure, and restored Cantonal autonomy. The boundaries of the Cantons, as settled then, remain till this day.

6. Napoleon fell in 1812; British and Austrian troops overran Switzerland in 1813, the Mediation Act was abrogated, and the Swiss, under pressure from the Allies, drafted the Federal Pact of 1815 restoring the old Confederation. Again internal squabbles prevented the proper functioning of any national government. The position was brought to a head in 1847 because a major civil war broke out when secession was threatened by a union of Catholic Cantons (Sonderbund) headed by Jesuits. They were routed after three weeks of fighting, but one of the peace terms was that the 1815 pact was to be revised. A new Constitution was produced and accepted on September 12, 1848, and it set out the form of the present constitution. It was revised in 1874 when it put military and labour matters under the federal government, outlawed the Jesuits, placed the church permanently under the temporal power, and introduced the optional referendum. The Initiative provisions followed in the 1891 amendment.

7. The Constitution of the Swiss Confederation herein reproduced in English, reflects the history of the country itself. Local autonomy is reconciled with the need for central control; religious fanaticism is rendered harmless; the Swiss people take active part in making and executing laws; and the possibility of dictatorship, either of an individual, a group of individuals or Cantons, becomes quite remote. The Swiss Constitution amply provides for its own defence and survival. The Swiss people have found peace and progress, not because they are just Swiss people, or because they are few in number and live in a small compact area, but because they, from rich experience of external occupation, internal jealousies and strife, have hit upon a constitution which assures individual, cantonal and national development without too many stresses.

THE CONSTITUTION OF THE SWITZERLAND

SEPTEMBER 12, 1848, AS AMENDED AND REVISED

In the name of Almighty God! The Swiss Confederation, resolved to consolidate the alliance of the confederated members and to maintain and increase the unity, strength, and honour of the Swiss nation, has adopted the following federal Constitution:-

CHAPTER I

General Provisions

Article 1: The peoples of the twenty-two sovereign cantons of Switzerland united in the present alliance, namely: Zurich, Berne, Lucerne, Uri, Schwyz, Unterwalden (Upper and Lower), Glaris, Zoug, Fribourg, Soleure, Bale (city and country), Schaffhausen, Appenzell (the two Rhodes), St. Gall, Grisons, Aargua, Thurgau, Ticino, Vaud, Valais, Neuchatel, and Jeneva, form together the Swiss Confederation.

Article 2: The object of the Confederation is to ensure the independence of the country against the foreigner, to maintain tranquillity and order within its borders, to protect the liberties and rights of the confederates, and to promote their common prosperity.

Article 3: The cantons are sovereign so far as their sovereignty is not limited by the federal Constitution, and as such they exercise all the rights which are not delegated to the federal power.

Article 4: All Swiss are equal before the law. In Switzerland there are no subjects or privileges of rank, birth, person, or family.

Article 5: The Confederation guarantees to the cantons their territory, their sovereignty within the limits fixed by Article 3, their constitutions, the liberty and rights of their people, the constitutional rights of the citizens, and the rights and power conferred by the people in the authorities.

Article 6: The cantons are required to demand from the Confederation its guarantee of their constitutions.

This guarantee shall be accorded, provided that:

- (a) The constitutions contain nothing contrary to the provisions of the federal Constitution.
- (b) They ensure the exercise of political rights according to republican forms-representative or democratic.
- (c) They have been accepted by the people and can be revised when an absolute majority of citizens so demand.

Article 7: All separate alliances and treaties of a political character between cantons are forbidden.

The cantons, however, have the right to make agreements with one another on matters of legislation, administration, or justice; they must, nevertheless, communicate such agreements to the federal authority, which may prohibit their execu-

tion if they contain anything prejudicial to the Confederation or the rights of the other cantons. If this is not the case, the contracting cantons are authorized to demand the co-operation of the federal authorities in the execution of the agreements.

Article 8: The Confederation has the sole right to declare war and conclude peace, and to make alliances and treaties, particularly customs and commercial treaties, with foreign states.

Article 9: Exceptionally, the cantons retain the right to conclude treaties with foreign states in respect of matters of public economy and neighborhood and police relations; nevertheless, such treaties must not contain anything prejudicial to the Confederation or the rights of other cantons.

Article 10: Official intercourse between the cantons and foreign governments or their representatives shall take place through the Federal Council.

In regard to the matters mentioned in the preceding article, however, the cantons may correspond directly with the subordinate authorities and officers of a foreign state.

Article 11: Military capitulations may not be concluded.

Article 12: Members of the federal authorities, civil and military officials, and federal representatives or commissioners, as also members of the cantonal governments and legislative assemblies, may not accept from a foreign government any pension, salary, title, gift or decoration. Contravention of this prohibition involves loss of the mandate or office.

No one who is in possession of such a pension, title, or decoration may be elected or appointed member of a federal authority, civil or military official of the Confederation, federal representative or commissioner, or member of a cantonal government or legislative assembly unless, before exercising the mandate or office, he expressly renounces the enjoyment of his pension or the bearing of his title, or returns his decoration.

The wearing of foreign decorations and the use of titles conferred by foreign governments are forbidden in the Swiss army.

Every officer, non-commissioned officer, or soldier is forbidden to accept such distinctions.

Article 13: The Confederation has not the right to maintain a standing army.

No canton or half-canton may have more than three hundred permanent troops without the permission of the federal power; the police are not included in this number.

Article 14: The cantons shall abstain, in the event of differences arising between them, from any act of violence or arming. They shall submit to the decision reached in regard to such differences in the manner prescribed by the Confederation.

Article 15: In case of sudden danger from without, the government of the canton threatened must invoke the assistance of the confederated states and immediately notify the federal authority, all without prejudice to the measures which the latter will take. The cantons so called upon are bound to give their assistance. The cost shall be borne by the Confederation.

Article 16: In case of internal troubles, or when danger threatens from another canton, the government of the canton threatened must immediately notify the Federal Council, in order that the latter may take the necessary measures within the limits of its competence (Article 102, Nos. 3, 10, 11), or convene the Federal Assembly. In case of urgency, the government, while immediately notifying the Federal Council, is authorized to call for the assistance of the other confederated states, which are bound to render the same.

When the government is not in a position to summon assistance, the competent federal authority may intervene on its own initiative and it is bound to do so when the disturbances endanger the safety of Switzerland.

In cases of intervention, the federal authorities shall ensure the observance of the provisions of Article 5.

The costs shall be borne by the canton by which assistance was invoked or intervention was necessitated, unless the Federal Assembly, in consideration of special circumstances, should otherwise decide.

Article 17: Every canton is bound to give free passage to troops in the cases mentioned in the two preceding articles. The troops are placed immediately under federal command.

Article 18: Every male Swiss is liable to perform military service.

Soldiers who lose their lives or suffer permanent injury to their health in the federal service are entitled to assistance from the Confederation, for themselves or their families, if in need.

Every soldier shall receive free of charge his first outfit of arms, equipment, and clothing. The arms shall remain in the possession of the soldier upon conditions to be determined by federal legislation.

The Confederation will prescribe uniform regulations regarding the tax on exemption from military service.

Article 19: The Federal army consists of:

- (a) The cantonal corps of troops;
- (b) All Swiss who, not being members of these corps, are, nevertheless, liable for military service.

The control of the army and of the war material prescribed by law is vested in the Confederation.

In case of danger the Confederation has also the right of exclusive and immediate control over men not incorporated in the federal army and of all other military resources of the cantons.

The cantons exercise control over the military forces of their territory, save in so far as this right is limited by the federal Constitution or laws.

Article 20: Laws as to the organization of the army are enacted by the Confederation. The execution of military laws, within the cantons is undertaken by the cantonal authorities within the limits prescribed by federal legislation and under the supervision of the Confederation.

Military instruction in its entirety is vested in the Confederation; the same also applies to arming.

The supply and maintenance of clothing and equipment are within the competence of the cantons, but the cost thereof shall be reimbursed by the Confederation to the cantons in a manner to be prescribed by federal law.

Article 21: Unless military considerations forbid, each corps shall consist of troops from the same canton.

The composition of such corps, the obligation of maintaining their effectives, and the appointment and promotion of their officers shall rest with the cantons, subject to general regulations which shall be communicated to them by the Confederation.

Article 22: In return for reasonable compensation, the Confederation has the right to make use of or to acquire drill grounds and buildings used for military purposes, together with their accessories, in the cantons.

The conditions governing compensation shall be regulated by federal legislation.

Article 23: The Confederation may order the construction at its own expense of public works of utility to Switzerland or a considerable part of the country, or may encourage the same by granting subsidies.

For this purpose it may order expropriation on payment of just compensation. Federal legislation will make further provision in this respect.

The Federal Assembly may prohibit public works which would endanger the military interests of the Confederation.

Article 23A: The Confederation shall maintain the corn reserves which are necessary for ensuring the provisioning of the country. It may oblige millers to store corn and to acquire reserve stocks in order to facilitate the renewal of supplies.

The Confederation shall encourage the cultivation of corn in the country, it shall facilitate the selection and acquisition of native seed of good quality, and shall grant assistance to producers cultivating corn for their own needs, special consideration being given to mountainous regions. It shall purchase native corn of good quality fit for grinding at a price which allows the cultivation of the same. Millers may be compelled to buy this corn at its market value.

The Confederation shall ensure the maintenance of the national milling industry; it shall likewise safeguard the interests of consumers of flour and bread. It shall supervise, within the limits of its powers, trade in and the prices of corn, bread-flour, and bread. The Confederation shall take the necessary measures for regulating the importation of bread-flour; it may reserve to itself the exclusive right of importing this product. In case of need, the Confederation shall grant the mills facilities to enable them to reduce costs of transport to the interior of the country. It shall take, in favour of mountainous districts, appropriate measures to equalize the prices of flour.

The statistical duty levied on all goods crossing the Swiss frontier shall be increased. The yield from this duty will contribute to cover the expenditure arising from the provisioning of the country with corn.

Article 24: The Confederation has the right of supreme supervision of the policing of embankments and forests.

It will assist in the control and embanking of mountain streams and the re-afforestation of the districts in which they rise. It will decree the measures necessary for ensuring the maintenance of such works and the preservation of the existing forests.

Article 24A: The utilization of water-power is placed under the supreme control of the Confederation.

Federal legislation will enact the general provisions necessary for safeguarding the public interest and ensuring the rational utilization of water-power, taking into account, as far as possible, the interest of internal navigation.

Subject to such provisions, the cantons shall regulate the utilization of water-power.

Nevertheless, when a watercourse, the utilization of which is sought for the production of hydraulic power, is under the sovereignty of several cantons, and these have failed to come to any agreement as to granting a concession, the Confederation may grant the concession. It shall likewise have power to do so, after hearing the views of the cantons concerned, in respect of watercourses forming the frontier of the country.

Fees and royalties payable in respect of the utilization of waterpower are the property of the cantons or of those entitled to them under cantonal law.

Dues and royalties payable in respect of concessions granted by the Confederation shall be determined by the latter after hearing the views of the cantons concerned and having due regard to their legislation. Dues and royalties payable in respect of other concessions shall be fixed by the cantons, within the limitations imposed by federal legislation.

The diversion abroad of energy produced from water-power may not take place without the consent of the Confederation.

Upon the coming into force of the present article, all new waterpower concessions shall be subject to future federal legislation.

The Confederation has the right to legislate upon the transmission and distribution of electrical energy.

Article 24B: Legislation affecting navigation is within the province of the Confederation.

Article 25: The Confederation has the right to pass laws for the regulation of fishing and hunting, particularly with a view to the preservation of large game in the mountains and the protection of birds useful to agriculture and silviculture.

Article 25A: The bleeding of slaughter animals which have not been previously stunned is expressly forbidden; this provision applies to all methods of slaughter and to all kinds of livestock.

Article 26: Legislation on the construction and working of railways is within the province of the Confederation.

Article 27: The Confederation has the right to establish, in addition to the existing federal polytechnic school, a federal university and other institutions for higher education, or to subsidize establishments of this kind.

The cantons shall make provision for elementary education which must be adequate, and be exclusively under the control of the civil authorities. It is compulsory and, in the public schools, free.

Public schools must be open for the attendance of members of all religious faiths without their conscience or belief having to suffer in any fashion.

The Confederation will take the necessary measures against cantons which fail to fulfill these obligations.

Article 27A: Subventions shall be granted to the cantons to aid them in carrying out their obligations in respect of elementary education.

Effect will be given to this provision by legislation.

The organization, direction, and supervision of elementary schools remain within the competence of the cantons, subject to the provisions of Article 27 of the federal Constitution.

Article 28: Customs matters are the concern of the Confederation, which may impose import and export duties.

Article 29: The collection of the federal customs shall be regulated in accordance with the following principles:

(1) Import taxes:

(a) Materials necessary to the industry and agriculture of the country shall be taxed as lightly as possible.

(b) The same principle shall apply to commodities necessary to life.

(c) Articles of luxury shall be subjected to the heaviest taxes.

Except where circumstances render it impossible, these principles must be observed in the conclusion of commercial treaties with foreign countries.

(2) Export taxes shall be as moderate as possible.

(3) Legislation on customs will contain suitable provisions for guaranteeing frontier and market trading.

The foregoing provisions do not preclude the Confederation from taking exceptional measures temporarily to meet abnormal circumstances.

Article 30: Revenue from customs duties belongs to the Confederation. The indemnities hitherto paid to the cantons in respect of the redemption of customs, road and bridge tools, local dues, and similar revenues, are abolished.

The Cantons of Uri, Grisons, Ticino, and Valais shall receive exceptionally, on account of their international Alpine highways, a yearly allowance fixed as follows:

Uri	Fr 160,000
Grisons	400,000
Ticino	400,000
Valais	100,000

Article 31: The freedom of trade and commerce is guaranteed throughout the Confederation, in so far as it is not limited by the Federal Constitution and laws based on constitutional provisions.

Cantonal regulations concerning the exercise of commercial and industrial occupations and taxes in connection therewith, remain unaffected. Such regulations may not contain any provisions contravening the principle of freedom of trade and commerce unless permitted by the Federal Constitution. Cantonal monopolies are also excepted.

Article 31A: The Confederation takes the necessary measures within its constitutional authority for the welfare of the people and the economic security of the citizens.

With due regard for the general interest of the Swiss economy as a whole, the Confederation may enact regulations concerning the exercise of trades and industries

and may take measures for the development of certain branches or professions. The Confederation is bound (excluding the exceptions contained in paragraph 3 of this Article) to the observance of the principle of freedom of trade and commerce.

If justified in the national interest, the Confederation is authorized to enact regulations in the following matters which may, if necessary, deviate from the principle of freedom of trade and commerce:

(a) Measures for the maintenance of important branches and professions whose existence is jeopardized; as well as measures for the professional furtherance of self-employed persons in these branches or professions.

(b) Measures for the maintenance of a healthy and productive agriculture; as well as measures for the protection of land ownership by farmers.

(c) Measures for the protection of distressed areas.

(d) Measures against economically and socially dangerous effects of cartels and similar groups.

(e) Measures to insure preparedness in time of war.

Measures in accordance with (a) and (b) may be taken only if the branches or professions to be protected have exhausted all ordinary means of self-help.

The federal legislation adopted in accordance with paragraph 3, (a) and (b) must guarantee the development of economic organizations based on mutual assistance.

Article 31B: The cantons are authorized to enact legislation with regard to the requirements for the management of hotels and restaurants. The cantons may limit the number of such enterprises if they exceed the public need and if the existence of the industry is threatened by excessive competition. These regulations must take into account the relative importance of the different types of hostleries for the public welfare.

The Confederation, within its own legislative powers, may furthermore authorize the cantons to issue regulations in fields which do not require general regulation by the Confederation itself and which actually do not fall under the jurisdiction of the cantons.

Article 31C: The Confederation is authorized to regulate banks.

These regulations must take into account the special function and position of the cantonal banks.

Article 31D: The Confederation, in connection with the cantons and private business, takes measures to prevent economic crises and, if necessary, to relieve existing unemployment. The Confederation may act with regard to the creation of employment opportunities.

Article 32: The measures provided for in Article 31a, 31b, paragraph 2, 31c and 31d may be introduced only in the form of federal laws or federal decrees subject to the referendum. For cases of an urgent character, in times of economic stress, Article 89, paragraph 3, may be invoked.

The cantons must be consulted before the enactment of laws providing for the execution of these measures. As a rule, the execution of the federal regulations must be entrusted to the cantons.

The competent business organizations should also be consulted before the enactment of the laws of execution. They may be asked to cooperate in the execution of these measures.

Article 32A: The Confederation has the right to legislate regarding the manufacture, importation, purification, sale, and taxation of distilled beverages.

Such legislation shall conduce to diminish the consumption and consequently the importation and production of spirits. It shall encourage the production of table fruit and the use of native distillable matters for food or fodder. The Confederation will reduce the number of distilling plants by means of private purchases.

The concession for the industrial production of distilled beverages is granted to co-operative societies and other private undertakings. The concessions granted must permit of the utilization of the waste matter and residues of fruit, vine, and sugar-beet cultivation and the surplus crops of fruit and potatoes, as far as these raw materials are incapable of being rationally used otherwise than in distillation.

The non-industrial production of spirits from fruit and fruit waste, of cider, wine grape and wine dregs, gentian roots, and other similar materials is permitted in domestic distilleries already existing or in itinerant distilleries, provided that such materials originate exclusively from the individual crop of the producer or have been gathered in a wild state in the country. The spirit thus obtained, which is necessary in the household or agricultural business of the producer, is exempt from taxation. Domestic distilleries which are still in existence after the expiration of a period of fifteen years dating from the acceptance of the present article must, in order to continue working apply for a concession, which will be granted without payment on conditions to be fixed by law.

Specialties obtained by the distillation of kernel fruit, wine, grape and wine dregs gentian, roots and other similar materials are subjected to the payment of a tax. The producer must, however, be able to get a fair price for his raw materials of native origin.

With the exception of the quantities necessary to the producer, which are exempt from taxation, and specialties, spirits manufactured in the country shall be handed over to the Confederation. The latter shall take them over at fair prices.

The receipts accruing from duties upon the sale and retail trade within the limits of the cantonal territory remain the property of the cantons. Licenses for inter-cantonal and international trade are issued by the Confederation; the receipts therefrom shall be distributed among the cantons in proportion to their populations ordinarily resident.

Half of the net receipts accruing to the Confederation from the taxation of distilled beverages shall be distributed among the cantons in proportion to their populations ordinarily resident; each canton is bound to expend at least ten per cent of its share in combating the causes and effects of alcoholism. The other half of the receipts remains the property of the Confederation; it shall be set apart for old age and dependents' insurance, and shall be paid into the funds established for the same until the time such insurance is introduced.

Article 32B: The manufacture, importation, transport, sale, and keeping for sale of the liquor called absinthe are prohibited throughout the Confederation. This prohibition extends to all beverages, by whatever names called, which constitute imitations of absinthe. The transport in transit of absinthe and its use for pharmaceutical purposes are excepted.

The foregoing prohibition will come into operation two years after its adoption. Federal legislation will enact the necessary provisions consequent on this prohibition.

The Confederation has the right to impose by law the same prohibition on all other beverages containing absinthe which might constitute a public danger.

Article 32C: Cantons have the right to subject, by means of legislation, the exercise of the calling of publican and the retail trade in spirituous beverages to the restrictions required by the public welfare. Trade in quantities of less than two liters is deemed to be retail trade in non-distilled spirituous beverages.

Trade in non-distilled spirituous beverages in quantities from two to ten liters may, within the limits of Article 31, paragraph 2, and by means of legislation, be made conditional by the cantons on the payment of a small fee and subjected to the supervision of the authorities.

The sale of non-distilled spirituous beverages may not be subjected by the cantons to special taxation other than license duties.

Juridical persons must not be treated less favorably than physical persons, Producers of wine and cider may, without permission and without paying any duty, sell the product of their own crop in quantities of two liters or over.

The Confederation has the right to legislate on trade in non-distilled spirituous beverages in quantities of two liters or over. The regulations which it may issue must not contain anything which contravenes the principle of freedom of commerce and Industry.

Colportage and other means of itinerant sale of spirituous beverages are prohibited.

Article 33: The cantons may require evidence of capacity from persons desiring to practise the liberal professions.

Federal legislation shall make provisions that such persons may be able to obtain certificates of qualification valid throughout the Confederation.

Article 34: The Confederation has the right to make uniform regulations concerning child labor in factories, the hours of work of adults therein, and the protection of workers in unhealthy and dangerous industries.

The operations of emigration agencies and insurance undertakings not established by the State are subject to federal supervision and legislation.

Article 34A: The Confederation will introduce, by means of legislation, accident and sickness insurance, regard being had to assistance funds in existence.

* It may declare participation in such insurance to be compulsory in general or as regards certain specified categories of citizens.

Article 34B: The Confederation is authorized to enact regulations with regard to the following matters:

- (a) Protection of employees
- (b) Relations between employers and employees; in particular, mutual regulation of professional and business matters in common concern.
- (c) General compulsory effect of collective contracts and of other common measures of employers and employees organizations intended to insure labor peace.
- (d) Fair compensation for loss of salary during military service.
- (e) Employment placement.
- (f) Unemployment compensation and relief

- (g) Professional training in industry, trade, commerce, agriculture, and domestic work.

The declaration of a general compulsory effect according to (c) may apply only to subject matters concerning the conditions of employment and is permissible only if minority interests and regional differences are given due consideration and if there is no infringement on the principles of equality before the law and freedom of association.

Unemployment insurance will be carried out by public and private funds made up of bilateral and unilateral contributions. The establishment of public unemployment insurance funds and of a compulsory unemployment insurance system is left to the decision of the individual canton.

The provisions of Article 32 will be applied in this sense.

Article 34C: The Confederation shall, by means of legislation, institute a system of old age and surviving dependents insurance; it may later introduce invalidity insurance.

It may declare such insurance to be obligatory in general or as regards certain categories of citizens.

The insurance plan shall be carried into effect with the cooperation of the cantons; application may be made to the public or private insurance societies for their collaboration.

The first two branches of insurance shall be introduced simultaneously.

The financial contributions of the Confederation and the cantons shall not exceed, altogether, one-half of the total sum necessary for the insurance.

From January first, 1926, the Confederation shall set apart for old age and surviving dependents insurance, the total yield of the tobacco tax.

The Confederation's share of the net receipts accruing from the taxation of spirits shall be set apart for old age and surviving dependents insurance.

Article 34D: The Confederation, in the exercise of the powers conferred on it and within the limits of the Constitution, is concerned with the needs of the family.

The Confederation is authorized to legislate regarding family compensation funds. It may declare participation therein to be obligatory in general or for certain groups of the population. It is concerned with the existing funds, supports the efforts of cantons and professional associations for the establishment of new funds, and may create a central compensation fund. It may make its financial advances contingent upon equitable participation of the cantons.

The Confederation is authorized, in the matter of housing and internal colonization, to support the efforts in favour of the family. A federal law shall indicate the conditions which the Confederation may attach to its financial participation, subject to the cantonal police provisions with respect to buildings.

The Confederation shall, by means of legislation, establish maternity insurance. It may declare participation therein to be obligatory in general or for certain groups of the population and may require contributions to be made even by persons not qualified to benefit by insurance payments. It may make its financial advances contingent upon equitable participation of the cantons.

The laws issued by virtue of the present article shall be executed with the cooperation of the cantons; the collaboration of associations of public or private law may be requested.

Article 35: It is forbidden to open and run gaming houses.

The cantonal governments may, on certain conditions dictated by public interest, permit gambling for pleasure as in vogue in kursaals up to the spring of 1925, provided that the competent authorities are of opinion that such play is necessary for the maintenance or development of the tourist industry and that its organization is assured by an enterprise running a kursaal for that purpose. The cantons may likewise forbid such play.

An ordinance of the Federal Council shall determine the conditions dictated by public interest.

Cantonal authorizations shall be submitted to the Federal Council for approval.

One-quarter of the gross receipts from the play shall be paid over to the Confederation, which shall set the same apart, without taking into account its own contributions, for victims of natural catastrophes and works of public utility.

The Confederation may also take the necessary measures in regard to lotteries.

Article 36: Throughout Switzerland posts and telegraphs are within the domain of the Confederation.

The revenues from posts and telegraphs belong to the federal treasury.

The charges shall be fixed according to the same principles and as equitably as possible in every part of Switzerland.

The inviolable secrecy of letters and telegrams is guaranteed.

Article 37: The Confederation exercises supreme control over the roads and bridges in the maintenance of which it is concerned.

The same due to the cantons specified in Article 30 on account of their international Alpine highways shall be withheld by the federal authorities if these highways are not properly maintained by the cantons.

Article 37A: The Confederation may make regulations concerning motor cars and cycles.

The cantons retain the right to restrict or prohibit motor and cycle traffic. The Confederation, may, nevertheless, declare open or partially open to traffic certain highways necessary for through traffic. The use of highways for the business of the Confederation remains reserved.

Article 37B: Legislation concerning aerial navigation is within the sphere of the Confederation.

Article 38: The Confederation shall exercise all the rights comprised in the coinage monopoly.

It has the sole right of coining money.

It shall determine the monetary system and may, if necessary, regulate the rate of exchange of foreign money.

Article 39: The right of issuing bank-notes and any other fiduciary money is vested exclusively in the Confederation.

The Confederation may exercise its monopoly of note issue through a state bank under a special administration, or may concede its exercise, subject to the right of redemption, to a central joint-stock bank to be established, which shall be administered with the assistance and under the control of the Confederation.

The principal function of the bank holding the monopoly shall be to regulate the money market in Switzerland and to facilitate payments.

At least two-thirds of the net profits of the bank, after payment of interest or reasonable dividend on the endowment or share capital, and deductions of payment to the reserve funds, shall go to the cantons.

The bank and its branches shall be exempt from all cantonal taxation.

The compulsory acceptance of bank-notes and any other form of fiduciary money may only be decreed by the Confederation in case of necessity in time of war.

Federal legislation shall make provision as to the seat of the bank, its basis and organization, and the carrying into effect of this Article in general.

Article 40: The system of weights and measures shall be determined by the Confederation.

The laws relating thereto shall be carried out by the cantons federal supervision.

Article 41: The manufacture, purchase, trade and distribution of gunpowder (with the exception of explosives unsuitable for firing) as well as of arms, munitions, and other materials of war belong to the Confederation.

The Confederation shall grant, within this measure, concessions to companies which, from the point of views of the national interest, present the necessary guaranties.

The Confederation shall take measures required for the control of the concessionnaires.

The importation, exportation, and transit of arms and war materials within the meaning of the present constitutional provision can take place only with the authorization of the Confederation.

The Federal Council shall establish by ordinance the modalities of execution.

Article 41A: The Confederation may charge stamp duties upon deeds, receipts for insurance premiums, bills of exchange and similar instruments, documents in use in transport and other documents relating to commercial operations; such duties may not be imposed on documents concerning transactions in landed property and mortgages. The cantons may not subject to any stamp or registration duty documents which are liable to federal stamp duty or which have been exempted therefrom by the Confederation.

One-fifth of the net yield of these provisions shall be paid to the cantons.

The carrying into effect of these provisions shall be regulated by law.

Article 41B: The Confederation is authorized to tax raw and manufactured tobacco.

Article 42: The expenses of the Confederation shall be defrayed by:

- (a) The revenue from federal property;
- (b) The revenue from federal customs collected at the Swiss frontier;
- (c) The revenue from posts and telegraphs;
- (d) The revenue from the powder monopoly;
- (e) Half the gross yield of the military exemption tax collected by the cantons;
- (f) Contributions by the cantons, to be determined by federal legislation, having special regard to their wealth and taxable resources;
- (g) The revenue from stamp duties.

Article 43: Every citizen of the canton is a Swiss citizen. As such he may, after having duly proved his qualification as a voter, take part at his place of domicile in all federal elections and referenda.

No person may exercise political rights in more than one canton.

A Swiss who has settled anywhere shall enjoy at his place of domicile all the rights of citizens of the canton, together with all the rights of a burgher of the commons. Participation in the property of communalities and corporations, and the right to vote in matters exclusively connected therewith, are excluded from these rights, unless cantonal legislation otherwise decides.

In cantonal and communal matters he shall become an elector after settlement for 3 months.

Cantonal laws concerning settlement and on electoral rights in communal affairs possessed by citizens who have settled anywhere shall be submitted to the Federal Council for approval.

Article 44: No Swiss national may be expelled from the territory of the Confederation or from his canton of origin.

Federal legislation shall determine the rules applicable to the acquisition or loss of Swiss nationality.

It may be enacted that a child born of foreign parents is a Swiss national from birth when the mother was of Swiss origin by filiation and if the parents are domiciled in Switzerland at the moment of the child's birth. The child acquires civic rights in the mother's commune of origin.

Federal legislation shall lay down the principle governing the establishment of civic rights.

Persons incorporated in virtue of the present provisions enjoy the same right as other nationals; they have, however, no right to property which is exclusively communal and corporative unless cantonal legislation provide otherwise. The Confederation shall defray at least one-half of the expenditure for assistance which persons incorporated on birth occasion to cantons and communes up to the completion of their eighteenth year. The same applies in the case of establishment of civic rights during the ten years which follow such.

Federal legislation shall determine the cases in which the Confederation shall participate in the expenditure incurred by cantons and communes in assisting naturalized "heimatlos" persons.

Article 45: Every Swiss citizen has the right to settle at any place in Swiss territory, subject to the production of a certificate of origin or similar document.

The right of settlement may, by way of exception, be refused or withdrawn in the case of persons who have been deprived of their civic rights as a result of a penal conviction.

The right of settlement may further be withdrawn from persons who have been repeatedly sentenced for grave misdemeanors and from persons who become a permanent burden upon public charity and whose commune, or canton of origin, refuses adequate help to them after having been officially requested to provide the same.

In cantons in which domicilliary relief exists, permission to settle may be made conditional, in the case of citizens of the canton, upon the persons being capable of

work and not having been a permanent burden upon public charity at their former domicile in the canton of origin.

Every expulsion on account of poverty must be approved by the government of the canton of domicile and notified in advance to the government of the canton of origin.

The canton in which a Swiss citizen establishes his domicile may not require from him any security or impose on him any special charge in respect of such settlement. Similarly, communes may not impose in Swiss citizens domiciled in their territory any taxes other than those imposed upon their own citizens.

The maximum fee chargeable in respect of permits for settlement shall be fixed by federal law.

Article 46: Persons settled in Switzerland shall normally be subject in matters of civil law to the jurisdiction and legislation of their place of domicile.

Federal legislation will make the necessary provisions for the application of this principle and for preventing the double taxation of a citizen.

Article 47: Federal legislation shall define the difference between establishment and sojourn, and shall at the same time prescribe the regulations governing the political and civil rights of Swiss citizens during temporary residence.

Article 48: A federal law shall make the necessary provisions as to the expenses of the illness and burial of poor citizens of one canton who fall ill or die in another.

Article 49: Liberty of conscience and belief is inviolable.

No person may be compelled to become a member of any religious body, submit to any religious instruction, perform any religious act or incur any penalties of whatsoever kind, by reason of religious opinions.

The person who exercises paternal or tutelar authority is entitled, in conformity with the foregoing principles, to determine the religious education of children up to the age of sixteen years.

The exercise of civil or political rights may not be limited by ecclesiastical or religious requirements or conditions of any kind whatsoever.

No person may secure exemption, on the ground of religious opinion, from the fulfillment of any civic obligation.

No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of the purely religious expenses of any religious community of which he is not a member. The exact execution of this principle is reserved to federal legislation.

Article 50: The free exercise of forms of worship is guaranteed within the limits compatible with public order and morality.

The cantons and the Confederation may take the measures necessary to maintain public order and peace between the members of the various religious communities and to prevent encroachments by ecclesiastical authorities upon the rights of citizens and of the State.

Dispute within the sphere of public or private law arising out of the formation of religious communities, or the division of existing religious communities, may be submitted to the competent federal authorities.

Article 51: The Order of Jesuits and societies affiliated with it may not be admitted in any part of Switzerland and all activities in Church and school are forbidden to their members.

This prohibition may be extended, by federal decree, to other religious orders whose activity is dangerous to the State or disturbs the peace between the various religious bodies.

Article 52: The founding of new religious orders and the re-establishment of those which have been suppressed, are forbidden.

Article 53: Civil status and registration in connection therewith are within the sphere of the civil authorities. Federal legislation will enact further provision on this matter.

The control of burial places is vested in the civil authorities, which must provide that every deceased person may receive decent burial.

Article 54: The right to marry is placed under the protection of the Confederation.

No impediment to marriage may be based upon grounds of religious belief, the poverty of either party, their conduct, or any other considerations whatever of a police nature.

Marriages celebrated in any canton or abroad, in accordance with the law there prevailing, shall be recognised as valid throughout the Confederation.

A wife acquires by marriage the civic and burgess rights of her husband.

Children born before marriage are legitimized by the subsequent marriage of their parents.

No marriage fee or similar tax may be levied on either spouse.

Article 55: The liberty of the press is guaranteed.

The cantons may, nevertheless, enact measures necessary for the repression of abuses such laws must be submitted to the Federal Council for approval.

The Confederation may also prescribe penalties in order to suppress abuses directed against itself or its authorities.

Article 56: Citizens have the right to form associations, provided that the objects and methods of such associations are not unlawful or dangerous to the State. Cantonal laws will make the necessary provisions for the prevention of abuses.

Article 57: The right of petition is guaranteed.

Article 58: No person may be withdrawn from his natural judge. Accordingly, no extraordinary tribunals may be established.

Ecclesiastical jurisdiction is abolished.

Article 59: Suits for personal claims against a solvent debtor domiciled in Switzerland must be brought before the judge of his place of domicile; consequently the property of such a person may not be seized or sequestered outside the canton in which he is domiciled by reason of personal claims.

These provisions are, in respect of foreigners, without prejudice to the provisions of international treaties.

Imprisonment for debt is abolished.

Article 60: Every canton is bound to accord to citizens of the other confederated states the same treatment as to its own citizens in regard to legislation and all that concerns judicial proceedings.

Article 61: Final civil judgments delivered in one canton may be enforced throughout Switzerland.

Article 62: Internal taxes on the transfer of property are abolished throughout Switzerland, together with all rights of preemption possessed by citizens of one canton against those of other confederated states.

Article 63: Taxes on the transfer of property to foreign countries are abolished, subject to reciprocity.

Article 64: Legislation in regard to the following matters falls within the domain of the Confederation:

Civil capacity;

All matters of law relating to commerce and transactions affecting movable property (law of obligation, including commercial law and the law in bills of exchange);

Literary and artistic property;

The protection of inventions applicable to industry, including designs and models;

Suits for debt and bankruptcy.

The Confederation has the right to legislate upon other matters of civil law.

The organization of the judiciary, legal procedure, and the administration of justice remain vested in the cantons to the same extent as hitherto.

Article 64A: The Confederation has power to legislate in regard to penal law.

The organization of the judiciary, legal procedure, and the administration of justice remain vested in the cantons to the same extent as hitherto.

The Confederation has power to grant subventions to the cantons for the construction of penitentiaries, labor establishments, and houses of correction, and for the carrying out of reforms in the execution of punishments. It has likewise power to give assistance to institutions for the care of deserted children.

Article 65: Sentence of death may not be pronounced for any political offense.

Corporal punishment is forbidden.

Article 66: Federal legislation shall prescribe the limits within which a Swiss citizen may be deprived of his political rights.

Article 67: Federal legislation shall deal with the extradition of accused persons from one canton to another; extradition may not, however, be made obligatory for political or press offenses.

Article 68: The measures to be taken to incorporate persons without nationality, and for preventing the occurrence of such cases in future, shall be prescribed by federal law.

Article 69: The Confederation may take legislative measures to deal with infectious, widespread, and exceptionally dangerous diseases of human beings and animals.

Article 69A: The Confederation has the right to legislate regarding trade in:

- (a) Foodstuffs;
- (b) Other household commodities and articles of general use, in so far as they may be prejudicial to health or life.

Laws passed in such spheres shall be executed by the cantons under the supervision and with the financial assistance of the Confederation.

The control of importation at the national frontiers is vested in the Confederation

Article 69B: The Confederation has the right to legislate regarding the entry, exit, residence, and establishment of foreigners.

The cantons decide, in accordance with federal law, regarding residence and establishment. The Confederation has, however, the right to give rulings in the last resort regarding:

- (a) Permission granted by cantons for residence over prolonged periods and for establishment, as also cases in which indulgent treatment is given;
- (b) The violation of establishment treaties;
- (c) Cantonal expulsions producing effects in federal territory;
- (d) Refusals to grant asylum.

Article 70: The Confederation has power to expel from its territory foreigners who compromise the internal or external security of Switzerland.

CHAPTER II

The Federal Authorities

I. The Federal Assembly

Article 71: Subject to the rights reserved to the people and the cantons (Articles 89 and 121), the supreme authority of the Confederation is exercised by the Federal Assembly, composed of two divisions of Council, viz:

- (A) The National Council;
- (B) The Council of States.

(A) The National Council

Article 72: The National Council is composed of deputies of the Swiss people, elected in the proportion of one member per 22,000 souls of the total population. Fractions greater than 11,000 are reckoned as 22,000.

Each canton and, in the divided cantons, each half-canton elect at least one deputy.

Article 73: Elections to the National Council are direct. They are conducted on the principle of proportional representation, each canton or half-canton forming an electoral constituency.

Federal legislation shall enact detailed provisions to give effect to this principle.

Article 74: Every Swiss who has reached the age of twenty years, and who is not excluded from the rights of active citizenship by the legislation of the canton in which he is domiciled, has the right to take part in elections and referenda.

Federal legislation may nevertheless pass uniform regulations regarding the exercise of this law.

Article 75: Every lay Swiss citizen entitled to vote is eligible for membership of the National Council.

Article 76: The National Council is elected for four years and shall be completely renewed at each election.

Article 77: Deputies of the Council of States, members of the Federal Council, and officials appointed by the latter council, may not at the same time be members of the National Council.

Article 78: The National Council shall select a president and vice-president from amongst its members for each ordinary or extraordinary session.

A member who has been president during an ordinary session may not in the following ordinary session hold this office or that of vice-president.

The same member may not be vice-president during two consecutive ordinary sessions.

In case of an equality of opinions, the president shall have a casting vote; in elections, he shall vote in the same way as other members.

Article 79: The members of the National Council receive an allowance from the federal treasury.

(B) The Council of States

Article 80: The Council of States is composed of forty-four deputies from the cantons. Each canton appoints two deputies; in divided cantons, each half-canton elects one.

Article 81: Members of the National Council and those of the Federal Council may not be deputies to the Council of States.

Article 82: The Council of States selects a president and vice-president from among its members for each ordinary or extraordinary session.

Neither the president nor the vice-president may be elected from amongst the deputies of the canton from which the president was chosen for the ordinary session immediately preceding.

Deputies from the same canton may not occupy the office of vice-president during two consecutive ordinary sessions.

In case of an equality of opinions, the president has the casting vote; in elections, he shall vote in the same way as other members.

Article 83: The deputies to the Council of States receive an allowance from the cantons.

(C) Powers of the Federal Assembly

Article 84: The National Council and the Council of States deliberate on all matters which the present Constitution places within the competence of the Confederation, and which are not assigned to any other federal authority.

Article 85: The following matters in particular are within the competence of the two councils:

(1) Laws dealing with the organization and mode of election of the federal authorities;

(2) Laws and ordinances dealing with matters which the Constitution places within the competence of the federal authorities;

(3) Salaries and allowances of members of the authorities of the Confederation and of the federal chancery; the creation of permanent federal offices and the determination of their remuneration;

(4) The election of the Federal Council, the Federal Tribunal, the chancellor, and the general-in-chief of the federal army.

Other rights of election or confirmation may be vested in the Federal Assembly by federal legislation;

(5) Alliances and treaties with foreign states, as also the approval of treaties made by the cantons between themselves or with foreign states; nevertheless, treaties between cantons shall only be brought before the Federal Assembly when the Federal Council or another canton raises objection;

(6) Measures to ensure external safety and the preservation of the independence and neutrality of Switzerland; the declaration of war and the conclusion of peace;

(7) The guarantee of the constitutions and territory of the cantons; intervention in consequence of this guarantee; measures for the internal security of Switzerland and for the maintenance of peace and order; amnesties and pardons;

(8) Measures necessary to ensure the observance of the federal Constitution and the guarantee of cantonal constitutions, and those whose object is to secure the fulfilment of federal obligations;

(9) The control of the federal army;

(10) The enactment of the annual budget, the approval of the state accounts, and decrees authorizing loans;

(11) The general supervision of federal administration and justice;

(12) Appeals against decisions of the Federal Council relating to administrative disputes (Article 113);

(13) Conflicts of jurisdiction between federal authorities;

(14) The revision of the federal Constitution.

Article 86: Both councils meet once a year in ordinary session on a day fixed by standing orders.

Extraordinary meetings are summoned by the Federal Council, or on the demand of one-quarter of the members of the National Council, or on that of five cantons.

Article 87: A council may not deliberate unless the deputies present form an absolute majority of the total number of its members.

Article 88: In the National Council and the Council of States, decisions shall be taken by an absolute majority of persons voting.

Article 89: Federal laws and decrees may be issued only with the consent of the two councils.

Federal laws and decrees of general import shall be submitted for adoption or rejection by the people when such a demand is made by thirty thousand active citizens or by eight cantons.

Federal decrees of general import whose entry in force permits of no delay can be declared urgent by a decision of the majority of all the members of each of the two councils. In this case, popular voting cannot be demanded. The length of application of urgent federal decrees must be limited.

International treaties concluded for a period of indeterminate duration, or for more than fifteen years, shall likewise be submitted for acceptance or rejection by the people if a demand to this effect be made by thirty thousand active citizens or by eight cantons.

Article 90: Federal legislation shall determine the forms and waiting periods to be observed in referenda.

Article 91: The members of the two councils vote without instructions.

Article 92: Each council shall deliberate separately. Nevertheless, in the cases of the elections mentioned in Article 85 (4), the exercise of the right of pardon or a decision on a conflict of jurisdiction (Article 85, (13)), the two councils shall meet in joint session under the chairmanship of the president of the National Council, decisions being reached by a majority of all the members of the two councils voting.

Article 93: The initiative appertains to each of the two councils and each of their members.

The cantons may exercise the same right by correspondence.

Article 94: Meeting of the councils shall normally be public.

II. The Federal Council

Article 95: The supreme directing and executive authority of the Confederation is exercised by a federal council composed of seven members.

Article 96: Members of the Federal Council are appointed for four years by the councils in joint session, and are chosen from among all Swiss citizens eligible for the National Council. No more than one member of the Federal Council may, however, be chosen in the same canton.

The Federal Council is completely renewed after every renewal of the National Council.

Vacancies arising during the period of four years are filled at the next meeting of the Federal Assembly, for the remainder of the period of office.

Article 97: The members of the Federal Council may not, during their term of office, occupy any other position, either in the service of the Confederation or of a canton, or engage in any other calling or profession.

Article 98: The President of the Confederation shall preside over the Federal Council. A vice-president shall be appointed.

The President of the Confederation and the vice-president of the Federal Council are nominated by the Federal Assembly for one year from amongst members of the council.

An outgoing president cannot be elected president or vice-president for the following year.

The same member cannot occupy the position of vice-president for two consecutive years.

Article 99: The President of the Confederation and the other members of the Federal Council shall receive an annual salary from the federal treasury.

Article 100: The Federal Council may not deliberate unless at least four members are present.

Article 101: Members of the Council have the right to speak, but not to vote in both divisions of the Assembly, as well as the right of proposing motions on subjects under discussion.

Article 102: The powers and duties of the Federal Council, within the limits of the present Constitution, are more particularly the following:

(1) It directs federal business in accordance with the laws and ordinances of the Confederation.

(2) It insures the observance of the Constitution, the laws and ordinances of the Confederation, and the provisions of federal concordats. It takes the necessary measures to this end, of its own accord or upon complaint, in such cases as are not included among those which have to be submitted to the Federal Tribunal in accordance with Article 113.

(3) It enforces the guarantees of the cantonal constitutions.

(4) It submits drafts of laws and ordinances to the Federal Assembly and reports upon proposals submitted to it by the councils or the cantons.

(5) It provides for the execution of the laws and ordinances of the Confederation, the judgments of the Federal Tribunal, and the compromises or arbitral awards upon disputes between cantons.

(6) It makes such appointments as are not assigned to the Federal Assembly, the Federal Tribunal, or other authority.

(7) It examines treaties of the cantons between themselves or with foreign countries, and gives its approval thereto if it thinks fit. (Article 85 (5)).

(8) It watches over the interests of the Confederation abroad, paying particular notice to its international relations, and has general charge of foreign affairs.

(9) It insures the external security of Switzerland and the maintenance of its independence and neutrality.

(10) It insures the internal security of Switzerland and the maintenance of tranquility and order.

(11) In case of urgency arising when the Federal Assembly is not in session, the Federal Council has authority to raise the necessary troops and dispose of them, provided that it convene the councils immediately if the number of troops raised exceeds two thousand, or if they remain mobilized for more than three weeks.

(12) It has charge of federal army affairs and of all the other branches of administration which are vested in the Confederation.

(13) It examines the laws and ordinance of the cantons which are required to be submitted for its approval; it supervises the branches of cantonal administration which are placed under its control.

(14) It administers the finances of the Confederation, prepares the budget, and renders accounts of receipts and expenditure.

(15) It supervises the conduct of business by all officials and servants of the federal administration.

(16) It gives account of its work to the Federal Assembly in each ordinary session, submits to it a report upon the internal condition and foreign relations of the Confederation, and recommends for consideration such measures as it thinks appropriate for promoting the general welfare.

In addition, it makes special reports whenever the Federal Assembly or either division thereof so requests.

Article 103: The business of the Federal Council is distributed among its members by departments. Decisions emanate from the Federal Council as a single authority.

Federal legislation may authorize departments, or services in connection therewith, to settle certain affairs themselves, subject to a right of appeal.

The cases in which such appeal may be made to a federal administrative court shall be determined by federal legislation.

Article 104: The Federal Council and its departments are authorized to call in experts for special purposes.

III. The Federal Chancery

Article 105: A federal chancery, at the head of which is the chancellor of the Confederation, acts as the secretariat of the Federal Assembly and the Federal Council.

The chancellor is elected for the period of four years by the Federal Assembly, at the same time as the Federal Council.

The chancery is under the special supervision of the Federal Council.

The organization of the chancery is determined by a federal law.

IV. The Federal Tribunal

Article 106: There is a Federal Tribunal for the administration of justice in federal matters.

In penal cases there exists, in addition, trial by jury (Article 112).

Article 107: Members of the Federal Tribunal and their substitutes are appointed by the Federal Assembly, who shall pay regard to the representation of the three official languages.

The organization of the Federal Tribunal and its divisions, the number of its members and their substitutes, their term of office and emoluments shall be determined by law.

Article 108: Any Swiss citizen eligible for the National Council may be appointed to the Federal Tribunal.

Member of the Federal Assembly and the Federal Council, and officials appointed by them, may simultaneously form part of the Federal Tribunal

Member of the Federal Tribunal may not, during their term of office, occupy any other position, either in the service of the Confederation or in a canton, or follow any other calling or profession.

Article 109: The Federal Tribunal shall organize its secretariat and appoint the staff thereof.

Article 110: The Federal Tribunal shall have civil cognisance of disputes:

(1) Between the Confederation and the cantons;

(2) Between the Confederation of the one part, and corporations or private individuals of the other part, when the latter are plaintiffs and the dispute reaches the degree of importance to be prescribed by federal legislation;

(3) Between cantons;

(4) Between cantons of the one part, and corporations or private individuals of the other part, where either party so demands and the dispute reaches the degree of importance to be prescribed by federal legislation.

The Federal Tribunal shall further take cognisance of differences in regard to loss of nationality and disputes between communes of different cantons concerning civic rights.

Article 111: The Federal Tribunal is bound to judge other cases when the parties agree to appeal to it and the matter in dispute is of the degree of importance to be prescribed by federal legislation.

Article 112: The Federal Tribunal, with the assistance of a jury to decide the facts, has penal jurisdiction as to:

(1) Cases of high treason against the Confederation, and revolt and violence against the federal authorities;

(2) Crimes and offenses against international law;

(3) Crimes and political offenses which are the cause or consequence of disorders necessitating armed federal intervention;

(4) Charges against officials appointed by a federal authority, when brought before the tribunal by that authority.

Article 113: The Federal Tribunal has also jurisdiction in regard to:

(1) Conflicts of competence between federal authorities of the one part, and cantonal authorities of the other part;

(2) Disputes between cantons, when in the sphere of public law;

(3) Complaints in respect of violation of constitutional rights of citizens, and complaints by individuals in respect of violation of concordats or treaties.

Administrative disputes to be determined by federal legislation are excluded.

In all the cases above mentioned, the Federal Tribunal shall administer the laws passed by the Federal Assembly, and such ordinances of that assembly as are of general application. It shall likewise act in accordance with treaties ratified by the Federal Assembly.

Article 114: In addition to the matters mentioned in Articles 110, 112, and 113, other matters may be placed by federal legislation within the competence of the Federal Tribunal; in particular, powers may be conferred on the tribunal for the purpose of ensuring the uniform application of the laws contemplated in Article 64.

IVA. Federal Administrative and Disciplinary Jurisdiction

Article 114A: The federal administrative court has cognisance of administrative disputes in federal matters referred to it by federal legislation.

It has also jurisdiction in the disciplinary cases of the federal administration which are referred to it by federal legislation, in so far as such cases have not been referred to a special jurisdiction.

The administrative court shall apply the federal legislation and treaties approved by the Federal Assembly.

Subject to the approval of the Federal Assembly, the cantons have the right to give the federal administrative court jurisdiction in administrative disputes regarding cantonal affairs.

The organization of federal administrative and disciplinary jurisdiction, and its procedure, are regulated by law.

V. Various Provisions

Article 115: Everything which concerns the authorities of the Confederation shall be the subject of federal legislation.

Article 116: German, French, Italian, and Romanche are the national languages of Switzerland.

The official languages of the Confederation shall be: German, French, and Italian.

Article 117: Officials of the Confederation are responsible for their conduct in office. A federal law shall determine what such responsibility involves.

CHAPTER III

The Revision of the Federal Constitution

Article 118: The federal Constitution may at any time be wholly or partially revised.

Article 119: Total revision shall be effected in the forms laid down in respect of federal legislation.

Article 120: When either division of the Federal Assembly decides in favour of a total revision of the federal Constitution, and the other division does not agree, or when fifty thousand Swiss voters demand a total revision, the question whether the federal Constitution ought to be revised is in either case submitted to the Swiss nation which votes in the affirmative or negative.

If in either case a majority of the Swiss nation who vote pronounce in the affirmative, the two councils shall be renewed for the purpose of undertaking the revision.

Article 121: A partial revision may be effected either by means of the popular initiative, or in the forms laid down in respect of federal legislation.

The popular initiative consists of a demand by fifty thousand Swiss voters for the adoption of a new constitutional article or for the repeal or modification of certain articles of the Constitution already in force.

If by means of the initiative several different provisions are submitted for revision of or for addition to the federal Constitution, each of them must form the subject of a separate initiative demand.

The initiative demand may take the form of a proposal couched in general terms, or of a bill complete in all details.

When the demand is couched in general terms, the federal chambers, if they approve thereof, will proceed to undertake the partial revision in the sense indicated, and will submit and draft acceptance or rejection by the people and the cantons. If, on the contrary, they do not approve the demand, the question of partial revision shall be submitted to the vote of the people; if a majority of them shall be submitted to the vote of the people; if a majority of the Swiss citizens taking part in the vote pronounce in the affirmative, the Federal Assembly will proceed to undertake the revision in conformity with the popular decision.

When a demand is presented in the form of a bill complete in all details, and the Federal Assembly approves thereof, the bill shall be submitted for acceptance or rejection by the people and the cantons. If the Federal Assembly is not in agreement, it may draw up a separate bill or recommend to the people the rejection of the bill proposed, and submit to the vote its counter-draft or its proposal for rejection at the same time as the bill presented by popular initiative.

Article 122: Federal legislation shall determine the formalities to be observed in regard to popular initiative and to referenda concerning the revision of the federal Constitution.

Article 123: The revised federal Constitution, or the revised part thereof, shall enter into force when it has been accepted by the majority of the Swiss citizens taking part in the vote thereon and by the majority of the states.

In reckoning a majority of the states, the vote of a half-canton shall be counted as half a vote.

The result of the popular vote in each canton shall be regarded as the vote of the State.

Transitory Provisions

1. The proceeds of the postal and customs services shall be divided on the existing bases until the time when the Confederation assumes the military expenditures heretofore borne by the cantons.

The federal legislation shall moreover provide that the part which might entail modifications resulting from Articles 20, 30, 36 of second paragraph, and 42E, for the treasuries of certain cantons shall effect the latter only gradually and shall reach its total figure only after a transitional period of several years.

The cantons which, at the moment of the entering into force of Article 20 of the Constitution may not have fulfilled the military obligations imposed upon them by the former Constitution and the federal laws, shall be obliged to fulfill those obligations at their own expense.

2. The provisions of the federal laws, regional agreements, and constitutions or of the cantonal laws contrary to the present Constitution shall cease to be in force upon the adoption of the latter or upon the promulgation of the laws contemplated therein.

3. The new provisions concerning the organization and jurisdiction of the federal tribunal shall enter into force only after the promulgation of the pertinent federal laws.

4. A period of five years is accorded to the cantons to introduce free primary instruction (Article 27).

5. The persons who engage in a liberal profession and who, prior to the promulgation of the federal law contemplated in Article 33, have obtained a certificate of capacity from a canton or from a regional authority representing several cantons, may engage in such profession throughout the territory of the Confederation.

THE CONSTITUTION OF THE REPUBLIC OF INDIA

The Constitution of India is acclaimed to be the lengthiest written Constitution in the world. It contains 395 Articles, 9 Schedules and several amendments. It is both rigid and flexible and has, with some justification, been described as a unitary system with federal features. Judicial supremacy is reconciled with parliamentary sovereignty, this no doubt being influenced by the American situation. It has reduced into a written form some of the usages and conventions which are found in parliamentary forms of Governments which have unwritten Constitutions. It has attempted to make detailed provision for all possible situations including administrative matters, the Public Services and Elections.

2. India consisted of an agglomeration of princedoms, principalities and territories in varying degrees of development, with a diversity of races, religions and gradations of personal status. The largest religious groups were the Hindus and the Moslems. Early contact with Britain was made through the East India Company (1600), a chartered trading organisation which foisted some sort of government over India. The Company itself gradually came under the control of Parliament, and after the Indian Mutiny (1856) the governance of India was directly taken over by the Crown, represented in India by the Viceroy or Governor-General. British India then consisted of what we now know as India, Pakistan and Nepal.

3. There were legislative and executive organisations at central and provincial levels with delegated powers, but the British 'Raj' was very much in control.

4. From 1922, Mahatma Gandhi had repeatedly urged the British to accept the fact that India's political destiny must be determined by Indians themselves. In 1933, The United Kingdom Joint Parliamentary Committee which visited India categorically rejected this legitimate demand on the ground that a specific grant of constituent powers to authorities in India was not at that moment a "practicable proposition".

5. By the Government of India Act of 1935, the British Parliament proposed to bring together both the Indian States and the Provinces under the Crown in the form of a Federation. It was proposed that each Province and each State should become "autonomous" and derive its authority direct from the Crown. The Federal or Central Government and the Provincial Governments were to have well-defined powers. The Federal structure envisaged by the 1935 Act never materialised because

it was left for the Indian Princes to join "the Federation" or remain as they were. The Princes did not consent to join.

6. In the meantime, the Indian National Congress headed by Ghandi, Nehru and others, proclaimed the "right of self determination" of the Indian people, and renewed the claim that only Indians were legitimately entitled to draw up their own Constitution through a Constituent Assembly elected by adult suffrage without any "midwives" or "godfathers" to assist them. This was again rejected by Britain. It was not until the outbreak of World War II (1938—1945) that the British Government realized the necessity for solving the Indian constitutional problem. In 1940 the then coalition Government hastily accepted a plan for self-determination which the Congress Party had been urging for many years. In 1942, with the Japanese Army at the door of India, Her Majesty's Government in Britain sent Sir Stafford Cripps to India with a three point proposal for India's independence. They were:—

- (a) "that the future Constitution of India was to be framed by an elected Constituent Assembly of the Indian people;
- (b) that the Constitution should give India *Dominion status*, - equal partnership of the British Commonwealth of Nations;
- (c) that there should be *one* Indian Union comprising all the Provinces and the Indian States."

7. By this time the Moslem League led by Mohamadu Jinnah had also developed demands for a separate Moslem India. The Congress Party and the Moslem League were unable to agree between themselves to accept Cripps' offer. The Moslem League proposed:—

- "(a) that India should be divided into two autonomous States on communal lines, and that some of the Provinces earmarked by Mr. Jinnah, should form an independent Moslem State to be known as Pakistan;
- (b) that instead of one Constituent Assembly, there should be two Constituent Assemblies, *i.e.*, a separate Constituent Assembly for building Pakistan."

8. Lord Wavell, the then Governor-General of India, made several attempts to reconcile the Indian leaders. The Moslem League was insistent on a divided India based on religion. On the 16th May, 1946, the British Cabinet made the last effort at reconciliation by sending a delegation of three Cabinet Ministers to India, including Cripps, to settle the rift. While the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate State for all the Moslems, the scheme which they recommended involved a virtual acceptance of Jinnah's principle, namely, to give the Centre powers relating to three subjects only, *i.e.*, Foreign Affairs, Defence and Communications.

9. A Constituent Assembly was, however, elected under the Cabinet missions announcement, based on one representative for a million of the population. The representatives of the Provinces were elected by members of the Lower House of

the Provincial Legislature. The representatives of the Indian States were elected by an Electoral College made up of the Rulers themselves. Somehow, a serious disagreement arose between the Congress Party and the Moslem League in connection with the interpretation of the grouping clauses of the proposal. The British Government made it quite clear that if the Constitution was framed by only one section, such a Constitution would not be forced on any Party that did not take part in it. The Moslem League, naturally, saw in this statement a clear indication that the British would support partition. They intensified their demand that the Constituent Assembly already empanelled and which they had boycotted, be dissolved. On 20th February, 1947, Her Majesty's Government declared:—

- “(a) that British rule in India would in any case end by June 1947, after which the British would certainly transfer authority to Indian hands; (b) that if a fully representative Constituent Assembly failed to work out a constitution in accordance with the proposals made by the Cabinet Delegation:

Her Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over, on the due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as seem most reasonable and in the best interests of the Indian people.”

10. This suited the Moslem League admirably. It was for Lord Mount Batten who became Governor-General in place of Lord Wavell to set the final route undertaken to reach the goal of Indian Independence. Accordingly, the Indian Independence Act of 1947 was promulgated. The Act, among other things, directed that the Constituent Assembly which had its first sitting on the 9th of December, 1946, was to be the Constituent Assembly for India, while Pakistan was to set up a new and Independent Constituent Assembly for herself. The Act established India and Pakistan.

11. The “Indian” Constituent Assembly was reconvened after mid-night of December 14th, 1947. This Assembly had been addressed by Pandit Nehru wherein proposed his now famous “Objective Resolutions”. On 22nd January, 1947, these resolutions were adopted. They are:

- (1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution; and
- (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and
- (3) WHEREIN the said territories, whether with their present boundaries

or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities ward and tribal areas, and depressed and other backward classes; and

(7) WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations; and

(8) this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

12. The Constituent Assembly divided up into several Committees, among which were the Union Constitution Committee, the Union Powers Committee. A Draft was presented to the Assembly on 4th November, 1948, and after general discussions which lasted until 15th November, 1948, they began a clause by clause consideration of the Draft Constitution, which it concluded on 17th October, 1949. The Assembly re-assembled on the 14th of November, 1949, for the final reading of the Draft Constitution. On 26th November, 1949, the President of the Assembly signed the Constitution.

13. The present Constitution of India was, therefore, deliberately thought out and adopted by Indians themselves, after careful study of Constitutions of other countries. The "Fundamental Rights" were adapted from the United States Constitution; the "Directive Principles" were borrowed from Eire, and the structure of the Union itself resembles the Canadian pattern. The influence of British rule is represented in the parliamentary system adopted by the Union. Running through the entire document are provisions which reflect the peculiar incidents of the Indian social structure.

14. What is reproduced in the following pages are the complete texts of the Constitution but without a number of matters dealt with in the Appendices, such as the detailed names of the States and matters reserved for future consideration. One unfinished business involved in the exodus of the British Government is the position of Kashmir, a terrible legacy which has plagued India and Pakistan for eighteen years, with no solution as yet in sight.

THE CONSTITUTION OF INDIA*(As amended up to the 1st of May 1965)**Preamble*

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation:

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I

THE UNION AND ITS TERRITORY*Name and territory of the Union*

1: (1) India, that is Bharat, shall be a Union of States

[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise—

(a) the territories of the States;

[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

Admission or establishment of new States

2: Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Formation of new States and alteration of areas, boundaries or names of existing States.

3: Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the

India

States ***, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

4: Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

PART II

CITIZENSHIP

Citizenship at the commencement of the Constitution

5: At the commencement of this Constitution every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

Rights of citizenship of certain persons who have migrated to India from Pakistan.

6: Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Rights of citizenship of certain migrants to Pakistan

7: Notwithstanding anything in articles 5 and 6 a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India.

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

Rights of citizenship of certain persons of Indian origin residing outside India.

8: Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens

9: No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Continuance of the rights of citizenship

10: Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen

Parliament to regulate the right of citizenship by law

11: Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III

FUNDAMENTAL RIGHTS

General

Definition.

12: In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature

of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Laws inconsistent with or in derogation of the fundamental rights.

13: (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Right to Equality

Equality before law

14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

15: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment ; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Abolition of Untouchability

17: "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Abolition of titles

18: (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Protection of certain rights regarding freedom of speech, etc.

19: (1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) to acquire, hold and dispose of property and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said

sub-clause in the interests of [the sovereignty and integrity of India,] the security State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests, of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.]

Protection in respect of conviction for offences.

20: (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Protection of life and personal liberty

21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Protection against arrest and detention in certain cases

22: (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

- (a) an Advisory Board consisting of persons who are, or have been or are qualified to be appointed as Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
- (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Right against Exploitation

Prohibition of traffic in human beings and forced labour

23: (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Prohibition of employment of children in factories, etc.

24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

Freedom of conscience and free profession, practice and propagation of religion.

25: (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Freedom to manage religious affairs

26: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Freedom as to payment of taxes for promotion of any particular religion

27: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

28: (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and Educational Rights

Protection of interests of Minorities.

29: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right of minorities to establish and administer educational institutions

30: (1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

Compulsory acquisition of property.

31: (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

- (a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or
- (b) the provisions of any law which the State may hereafter make—
 - (i) for the purpose of imposing or levying any tax or penalty, or
 - (ii) for the promotion of public health or the prevention of danger to life or property, or
 - (iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

Saving of laws providing for acquisition of estates, etc

31A. (1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State the provisions of this article shall not apply thereto unless such law having been reserved for the consideration of the President, has received his assent:

[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any

portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building of structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,

(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janman right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) the expression "rights" in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [raiyat. under-raiyat] or other intermediary and any rights or privileges in respect of land revenue

Validation of certain Acts and Regulations

[31B. Without prejudice to the generality of the provisions contained in article 31A none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts, and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force]

Right to Constitutional Remedies

Remedies for enforcement of rights conferred by this Part

32: (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or order or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Power to Parliament to modify the rights conferred by this Part in their application to forces.

33: Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Restriction on rights conferred by this Part while martial law is in force in any area.

34: Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Legislation to give effect to the provisions of this Part.

35: Notwithstanding anything in this Constitution—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) or article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part.

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law which was made immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause

(ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression “law in force” has the same meaning as in article 372.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

Definition

36: In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III

Application of the principles contained in this Part

37: The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

State to secure a social order for the promotion of welfare of people.

38: The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Certain principles of policy to be followed by the State

39: The State shall, in particular direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment

Organisation of village panchayats.

40: The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Right to work, to education and to public assistance in certain cases.

41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Provision for just and humane conditions of work and maternity relief.

42: The State shall make provision for securing just and humane conditions of work and for maternity relief.

Living wage, etc., for workers.

43: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Uniform civil code for the citizens.

44: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Provision for free and compulsory education for children.

45: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

Duty of the State to raise the level of nutrition and the standard of living and to improve public health

47: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

Organisation of agriculture and animal husbandry

48: The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

Protection of monuments and places and objects of national importance.

49: It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Separation of judiciary from executive.

50: The State shall take steps to separate the judiciary from the executive in the public services of the State.

Promotion of international peace and security.

51: The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relation between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

*The President and Vice-President**The President of India.*

52: There shall be a President of India.

Executive power of the Union,

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 fore-going provision, the supreme command of the Defence 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.

Election of President.

54: The President shall be elected by the members of an electoral college consisting of—

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.

Manner of election of President.

55: (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the of system proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation.—In this article, the expression “population” means the population ascertained at the last preceding census of which the relevant figures have been published.

Term of office of President

56: (1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

Eligibility for re-election

57: A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Qualifications for election as President.

58: (1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

Conditions of President's office.

59: (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

Oath or affirmation by the President.

60: Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme court available, an oath or affirmation in the following form, that is to say swear in the name of God

“I, A. B, do _____

solemnly affirm

that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India”

Procedure for impeachment of the President

61: (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.

62: (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

The Vice-President of India.

63: There shall be a Vice-President of India.

The Vice-President to be ex-officio Chairman of the Council of States

64: The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97

The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President

65: (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignations or removal or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and

immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

Election of Vice-President.

66: (1) The Vice-President shall be elected by the [members of an electoral college consisting of the members of both Houses of Parliament] in accordance with the system of proportional representation by means of the single transferable vote the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Government.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor * * * of any State or is a Minister either for the Union or for any State.

Terms of office of Vice-President

67: The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

68: (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67 be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Oath or affirmation by the Vice-President.

69: Every Vice-President shall before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

swear in the name of God

“I, A. B., do_____

solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter”.

Discharge of President's functions in other contingencies.

70: Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

Matters relating to or connected with the election of a President or Vice-President.

71: (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of the Legislation.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

72: (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor * * * of a State under any law for the time being in force.

Extent of executive power of the Union.

73: (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State * * * to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

Council of Ministers to aid and advise President

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.

Other provisions as to Ministers

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.

(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.

(4) Before a Minister enters upon his office the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(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.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

76: (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine.

*Conduct of Government Business**Conduct of business of the Government of India*

77: (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Duties of Prime Minister as respects the furnishing of information to the President etc.

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 in 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.

CHAPTER II.—PARLIAMENT

*General**Constitution of Parliament*

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.

Composition of the Council of States

80: (1) The Council of States shall consist of—

- (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
- (b) not more than two hundred and thirty eight representatives of the States [and of the Union territories].

(2) The allocation of seats in the Council of States to be filled by representatives of the States [and of the Union territories] shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

(4) The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the [Union territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

Composition of the House of the People

[†81: (1) Subject to the provisions of article 331, the House of the People shall consist of—

- (a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and
 - (b) not more than [twenty-five members] to represent the Union territories, chosen in such manner as Parliament may by law provide.
- (2) For the purposes of sub-clause (a) of clause (1)—
- (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and
 - (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census

82: Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

Duration of Houses of Parliament

83: (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(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:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

Qualification for membership of Parliament

84: A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) is a citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is in the case of a seat in the Council of States, not less than thirty years of age and, in the case of seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Sessions of Parliament, prorogation and dissolution.

[85: (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People.]

Right of President to address and send messages to Houses.

86: (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the President.

87: (1) At the commencement of the first session after each general election to the House of the People and to the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address

Rights of Ministers and Attorney-General as respects Houses.

88: Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member but shall not by virtue of this article be entitled to vote.

Officers of Parliament

The Chairman and Deputy Chairman of the Council of States

89: (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall as soon as may be, choose a member of the Council to be Deputy Chairman thereof and so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

90: A member holding office as Deputy Chairman of the Council of States—

Vacation and resignation of, and removal from, the office of Deputy Chairman.

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days, notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

91: (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of State the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

92: (1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman shall not though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in and otherwise to take part in the proceedings of the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

The Speaker and Deputy Speaker of the House of the People.

93: The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the office of Speaker and Deputy Speaker.

94: A member holding office as Speaker or Deputy Speaker of the House of the People ;

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker to the Speaker resign his office and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Power of the Deputy Speaker or other person to perform the duties of the office of or to act as, Speaker.

95: (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker

The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

96: (1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

97: There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made such salaries and allowances as are specified in the Second Schedule.

Secretariat of Parliament

98: (1) Each House of Parliament shall have a separate secretarial staff: Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

Oath or affirmation by members

99: Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

100: (1) Save as otherwise provided in this constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person, acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

*Disqualifications of Members**Vacation of seats.*

101: (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of [a State], then, at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 102 or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker as the case may be his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualifications for membership.

102: (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of his article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

Decision on questions as to disqualifications of members

103: (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and the decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified

104: If a person sits or votes, as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Powers, Privileges and Immunities of Parliament and its Members.

Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.

105: (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1) (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Salaries and allowances of members.

106: Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

Provisions as to introduction and passing of Bills.

107: (1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the proceedings of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the provisions of article 108 lapse on a dissolution of the House of the People.

Joint sitting of both Houses in certain cases.

108: (1) If after a Bill has been passed by one House and transmitted to the other House—

- (a) the Bill is rejected by the other House; or
- (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

- (a) if the Bill having been passed by one House has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill.
- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since President notified his intention to summon the Houses to meet therein.

Special procedure in respect of Money Bills.

109: (1) A Money Bill shall not be introduced in the Council of States

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

Definition of "Money Bills"

110: (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109 and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Assent to Bills.

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 therefrom:

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.

*Procedure in Financial Matters**Annual financial statement.*

112: (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and
 - (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.
- and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India:—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
- (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court,
- (ii) the pensions payable to or in respect of Judges of the Federal Court,
- (iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in [a Governor's Province of the Dominion of India];
- (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;
- (f) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;
- (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

Procedure in Parliament with respect to estimates.

113: (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

Appropriation Bills.

114: (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

Supplementary, additional or excess grants.

115: (1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

Votes on account, votes of credit and exceptional grants.

116: (1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of the current service of any financial year,

and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

Special provisions as to financial Bills.

117: (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

*Procedure Generally**Rules of procedure.*

118: (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with

respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

Regulation by law of procedure in Parliament in relation to financial business

119: Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of the article, such provision shall prevail

Language to be used in Parliament.

120: (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

Restriction on discussion in Parliament.

121: No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

Courts not to inquire into proceedings of Parliament

122: (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER III.—LEGISLATIVE POWERS OF THE PRESIDENT

Power of President to promulgate Ordinances during recess of Parliament

123: (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

CHAPTER IV.—THE UNION JUDICIARY

Establishment and constitution of Supreme Court

124: (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

[(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

¹Now "thirteen", vide Act 17 of 1960.

- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is, in the opinion of the President, a distinguished jurist.

Explanation I—In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India

Explanation II—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Salaries, etc., of Judges.

125: (1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Appointment of acting Chief Justice.

126: When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Appointment of ad hoc Judges.

127: (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief

Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

Attendance of retired Judges at sittings of the Supreme Court

128: Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court [or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

Supreme Court to be a court of record.

129: The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Seat of Supreme Court.

130: The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Original jurisdiction of the Supreme Court

131: Subject to the provisions of this Constitution, the Supreme Court shall to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States, on the other; or
- (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases

132: (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

133: (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court; and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Appellate jurisdiction of Supreme Court in regard to criminal matters

134: (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

135: Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Special leave to appeal by the Supreme Court.

136: (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Review of judgments or orders by the Supreme Court.

137: Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Enlargement of the jurisdiction of the Supreme Court.

138: (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court

Conferment on the Supreme Court of powers to issue certain writs

139: Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Ancillary powers of Supreme Court.

140: Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Law declared by Supreme Court to be binding on all courts.

141: The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Enforcement of decrees and orders to Supreme Court and orders as to discovery, etc.

142: (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Power of President to consult Supreme Court.

143: (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131 refer a dispute of the kind mentioned in the [said proviso] to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit report to the President its opinion thereon.

Civil and judicial authorities to act in aid of the Supreme Court.

144: All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Rules of Court, etc

145: (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

- (a) rules as to the persons practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

- (c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
 - (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
 - (e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
 - (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
 - (g) rules as to the granting of bail;
 - (h) rules as to stay of proceedings;
 - (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
 - (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.
- (2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

Officers and servants and the expenses of the Supreme Court

146: (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed

to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses for the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Interpretation

147: In this Chapter and in Chapter V of Part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V.—COMPTROLLER AND AUDITOR-GENERAL OF INDIA

Comptroller and Auditor-General of India

148: (1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters, upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

Duties and powers of the Comptroller and Auditor-General

149: The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

Power of Comptroller and Auditor-General to give directions as to accounts

150: The accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

Audit report

151: (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

PART VI

THE STATES

CHAPTER I.—GENERAL

Definition

152: In this Part, unless the context otherwise requires, the expression "State" [does not include the State of Jammu and Kashmir].

CHAPTER II.—THE EXECUTIVE

The Governor

Governors of States

153: There shall be a Governor for each State:

[Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.]

Executive power of State.

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.

Appointment of Governor.

155: The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Term of office of Governor.

156: The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

Qualifications for appointment as Governor.

157: No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Conditions of Governor's office.

158: (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.]

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Oath or affirmation by the Governor.

159: Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the

State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say—
swear in the name of God

“I, A. B., do_____

solemnly affirm

that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....(*name of the State*) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of.....(*name of the State*).”

Discharge of the functions of the Governor in certain contingencies.

160: The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

161: The Governor of a State shall have the power to grant pardons, reprieves respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which executive power of the State extends.

Extent of executive power of State.

162: Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers

Council of Ministers to aid and advise Governor.

163: (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise 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.

Other provisions as to Ministers.

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:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

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

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(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 period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

The Advocate-General for the State.

165: (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

*Conduct of Government Business**Conduct of business of the Government of a State*

166: (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

Duties of Chief Minister as respects the furnishing of information to Governor, etc.

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
- (c) if the Governor 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.

CHAPTER III.—THE STATE LEGISLATURE

General

Constitution of Legislatures in States.

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

- (a) in the States of [Andhra Pradesh], Bihar [Madhya Pradesh], Madras, [Maharashtra], [Mysore], Punjab, [Uttar Pradesh] and West Bengal, two Houses;
- (b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Abolition or creation of Legislative Councils in States.

169: (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Composition of the Legislative Assemblies.

170: (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each consti-

tuency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation—In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly.]

Composition of the Legislative Councils.

171: (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed ² [one-third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as maybe, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

Duration of State Legislatures.

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:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Qualification for membership of the State Legislature.

173: A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

- (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Sessions of the State Legislature, prorogation and dissolution

[174: (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sittings in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

- (a) prorogue the House or either House;
- (b) dissolve the Legislative Assembly]

Right of Governor to address and send messages to the House or Houses.

175: (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the Governor.

176: (1) At the commencement of [the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year], the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Rights of Ministers and Advocate-General as respects the Houses.

177: Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature.

The Speaker and Deputy Speaker of the Legislative Assembly.

178: Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

179: A member holding office as Speaker or Deputy Speaker of an Assembly—

- (a) shall vacate his office if he ceases to be a member of the Assembly;
- (b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution

Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

180: (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

181: (1) At any sitting of the Legislative Assembly while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

The Chairman and Deputy Chairman of the Legislative Council

182: The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

183: A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

184: (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

185: (1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Salaries and allowances of the Speaker and Deputy Speaker and Chairman and Deputy Chairman.

186: There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Secretariat of State Legislature.

187: (1) The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating

the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

Oath or affirmation by members.

188: Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

189: (1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes,

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members.

Vacation of seats.

190: (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualifications for membership.

191: (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

Decision on questions as to disqualifications of members

192: (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

193: If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Powers, Privileges and immunities of State Legislatures and their Members.

Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

194: (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Salaries and allowances of members.

195: Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.

Legislative Procedure

Provisions as to introduction and passing of Bills.

196: (1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Restriction on powers of Legislative Council as to Bills other than Money Bills.

197: (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or
- (b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or
- (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

Special procedure in respect of Money Bills.

198: (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council, for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Definition of "Money Bills".

199: (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of the State;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Assent to Bills

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 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 House or Houses shall reconsider the Bill accordingly, and if the

Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

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.

Bills reserved for consideration.

201: When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

Annual financial statement.

202: (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

- (a) the emoluments and allowances of the Governor and other expenditure relating to his office;
- (b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;
- (c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) expenditure in respect of the salaries and allowances of Judges of any High Court;

- (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

Procedure in Legislature with respect to estimates

203: (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Appropriation Bills

204: (1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

Supplementary, additional or excess grants.

205: (1) The Governor shall—

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State

another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

Votes on account, votes of credit and exceptional grants.

206: (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of the current service of any financial year;

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

Special provisions as to financial Bills.

207: (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council;

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of procedure

208: (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses

Regulation by law of procedure in the Legislature of the State in relation to financial business.

209: The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriations of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail

Language to be used in the Legislature

210: (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

Restriction on discussion in the Legislature

211: No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

Courts not to inquire into proceedings of the Legislature

212: (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

CHAPTER IV

LEGISLATIVE POWER OF THE GOVERNOR

Power of Governor to promulgate Ordinances during recess of Legislature

213: (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

- (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or
- (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
- (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and
- (b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

CHAPTER V

THE HIGH COURTS IN THE STATES

High Courts for States

214: There shall be a High Court for each State.

High Courts to be courts of record

215: Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Constitution of High Courts

216: Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint:

Appointment and conditions of the office of a Judge of a High Court

217: (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and [shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of 'sixty-two years].

Provided that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
 - (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
 - (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.
- (2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—
- (a) has for at least ten years held a judicial office in the territory of India; or
 - (b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

Explanation—For the purposes of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate;

¹ Subs. by the Constitution (Fifth Amendment) Act, 1963 5.4, for "sixty years."

- (b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

[(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final].

Application of certain provisions relating to Supreme Court to High Courts

218: The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution for references to the Supreme Court.

Oath or affirmation by Judges of High Courts

219: Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Restriction on practice after being a permanent Judge

[220: No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation—In this article, the expression “High Court” does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956].

Salaries, etc., of Judges

221: (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Transfer of a Judge from one High Court to another

222: (1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court

[(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix]

Appointment of acting Chief Justice

223: When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Appointment of additional and acting Judges

224: (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of '[sixty-two years].'

Appointment of retired Judges at sittings of High Courts

224A: Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.]

Jurisdiction of existing High Courts

225: Subject to the provisions of his Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

¹Subs. by the Constitution (Fifth Amendment) Act, 1963, 5.6, "sixty years."

Power of High Courts to issue certain writs

226: (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person of authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

[(1A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories].

(2) The power conferred on High Court by [clause (1) or clause (1A)] shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Power of superintendence over all courts by the High Court

227: (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Force.

Transfer of certain cases to High Court

228: If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- (a) either dispose of the case itself, or
- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

Officers and servants and the expenses of High Courts

229: (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State * * *

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

Extension of jurisdiction of High Courts to Union territories

²[230: (1) Parliament may by law extend the jurisdiction of a High Court to or exclude the jurisdiction of High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory—

- (a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and
- (b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President

Establishment of a common High Court for two or more States.

231: (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court—

- (a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;
- (b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

¹The words "in which the High Court has its principal seat" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

²Subs. by s. 16, *ibid.*, for the original arts. 230, 231 and 232.

- (c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.]

CHAPTER VI.—SUBORDINATE COURTS

Appointment of district judges.

233: (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of persons other than district judges to the judicial service.

234: Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

Control over subordinate courts.

235: The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Interpretation.

236: In this Chapter—

- (v) the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;
- (b) the expression “judicial service” means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial post inferior to the post of district judge.

Application of the provisions of this Chapter to certain class or classes of magistrates.

237: The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes

of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

PART VII.—[The States in Part B of the First Schedule. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

PART VIII

[THE UNION TERRITORIES]

Administration of Union territories.

[239:] (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Creation of local Legislatures or Council of Ministers or both for certain Union territories.

[239A:] (1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipura, Tripura, Goa, Daman and Diu, and Pondicherry—

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.]

Power of President to make regulations for certain Union territories.

240: (1) The President may make regulations for the peace, progress and good government of the Union territory of—

(a) the Andaman and Nicobar Islands;

(b) the Laccadive, Minicoy and Amindivi Islands;

[(c) Dadra and Nagar Haveli;

[(d) Goa, Daman and Diu;]

[(e) Pondicherry;]

[Provided that when any body is created under article 239A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature.]

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.]

High Courts for Union territories.

241: (1) Parliament may by law constitute a High Court for a [Union territory] or declare any court in any [such territory] to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.]

242: [*Coorg.*] *Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.*

PART IX.—[*The territories in Part D of the First Schedule and other territories not specified in that Schedule.*] *Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.*

PART X**THE SCHEDULED AND TRIBAL AREAS***Administration of Scheduled Areas and Tribal Areas*

244: (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

PART XI**RELATIONS BETWEEN THE UNION AND THE STATES****CHAPTER I.—LEGISLATIVE RELATIONS***Distribution of Legislative Powers**Extent of laws made by Parliament and by the Legislatures of States*

245: (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make law for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Subject-matter of laws made by Parliament and by the Legislatures of States

246: (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.

Power of Parliament to provide for the establishment of certain additional courts

247: Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

Residuary powers of legislation.

248: (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

249: (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period of not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months

after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

250: (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States

251: Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

252: (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Legislation for giving effect to international agreements.

253: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

254: (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

255: No Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
- (c) where the recommendation or previous sanction required was that of the President, by the President.

CHAPTER II

ADMINISTRATIVE RELATIONS

General

Obligation of States and Union.

256: The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Control of the Union over States in certain cases.

257: (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

Power of the Union to confer powers, etc., on States in certain cases

258: (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Power of the States to entrust functions to the Union

[258A: Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.]

259: [*Armed Forces in States in Part B of the First Schedule*]. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Jurisdiction of the Union in relation to territories outside India.

260: The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legi-

slative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Public acts, records and judicial proceedings

261: (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

Adjudication of disputes relating to waters of inter-State rivers or river valleys.

262: (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

Provisions with respect to an inter-State Council

263: If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respects to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I

FINANCE

General

Interpretation

[264: In this Part, "Finance Commission" means a Finance Commission constituted under article 280].

Taxes not to be imposed save by authority of law.

265: No tax shall be levied or collected except by authority of law.

Consolidated Funds and public accounts of India and of the States.

266: (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

Contingency Fund

267: (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States*Duties levied by the Union**Duties levied by the Union but collected and appropriated by the States*

268: (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any [Union territory], by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State

Taxes levied and collected by the Union but assigned to the States.

269: (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely:-

- (a) duties in respect of succession to property other than agricultural land;
- (b) estate duty in respect of property other than agricultural land;
- (c) terminal taxes on goods or passengers carried by railway, sea or air;
- (d) taxes on railway fares and freights;
- (e) taxes other than stamp duties on transactions in stock-exchanges and future markets;
- (f) taxes on the sale or purchase of newspapers and on advertisements published therein;

[(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce].

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to [Union territories], shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

[(3) Parliament may by law formulate the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.]

Taxes levied and collected by the Union and distributed between the Union and the States.

270: (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to [Union territories] or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2), in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to [Union territories].

(4) In this article—

- (a) "taxes on income" does not include a corporation tax;

- (b) "prescribed" means—
- (i) until a Finance Commission has been constituted, prescribed by the President by order, and
 - (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission;
- (c) "Union emoluments" includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income-tax is chargeable.

Surcharge on certain duties and taxes for purposes of the Union

271: Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Taxes which are levied and collected by the Union and may be distributed between the Union and the States

272: Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

Grants in lieu of export duty on jute and jute products

273: (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

Prior recommendation of President required to Bills affecting taxation in which States are interested

274: (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

- (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or
- (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Grants from the Union to certain States.

275: (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable the State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provisions so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

Taxes on professions, trades, callings and employments.

276: (1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on professions, trade, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Savings

277: Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

278: [*Agreement with States in Part B of the First Schedule with regard to certain Financial matters*]. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Calculation of "net proceeds" etc.

279: (1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net process of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Finance Commission

280: (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or a such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
 - (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
 - (c) any other matter referred to the Commission by the President in the interests of sound finance.
- (4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

Recommendations of the Finance Commission

281: The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

Expenditure defrayable by the Union or a State out of its revenues

282: The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts

283: (1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor of the State.

Custody of suitors' deposits and other moneys received by public servants and courts.

284: All moneys received by or deposited with—

- (a) any officer employed in connection with the affairs of the Union or of a

State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

- (b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of the State, as the case may be.

Exemption of property of the Union from State taxation.

285: (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

Restrictions as to imposition of tax on the sale or purchase of goods.

286: (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

- (a) outside the State; or
 (b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

[(2) Parliament may by law formulate the principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade of commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify].

Exemption from taxes on electricity.

287: Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

- (a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or
 (b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Exemption from taxation by States in respect of water or electricity in certain cases.

288: (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression “law of a State in force” in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

Exemption of property and income of a State from Union taxation

289: (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government.

Adjustment in respect of certain expenses and pensions.

290: Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

- (a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or
- (b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the

other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Annual payment to certain Devaswom Funds.

[290A: A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Madras every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin].

Privy purse sums of Rulers.

291: Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse—

- (a) such sums shall be charged on, and paid, out of, the Consolidated Fund of India; and
- (b) the sums so paid to any Ruler shall be exempt from all taxes on income.

Chapter II

BORROWING

Borrowing by the Government of India.

292: The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Borrowing by States.

293: (1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

Chapter III

PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

Succession to property, assets, rights, liabilities and obligations in certain cases.

294: As from the commencement of this Constitution—

- (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and
- (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

Succession to property, assets, rights liabilities and obligations in other cases.

295: (1) As from the commencement of this Constitution—

- (a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and
- (b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

Property accruing by escheat or lapse or as bona vacantia.

296: Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *Bona Vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union:

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.

Explanation.—In this article, the expressions “Ruler” and “Indian State” have the same meanings as in article 363.

Things of value lying within territorial waters or continental shelf to vest in the Union.

297: All lands, minerals and other things of value underlying the ocean within the territorial waters [or the continental shelf] of India shall vest in the Union and be held for the purposes of the Union.

Power to carry on trade, etc.

[298: The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

- (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
- (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament].

Contracts.

299: (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and proceedings.

300: (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parlia-

ment or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

- (2) If at the commencement of this Constitution—
- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
 - (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

Freedom of trade, commerce and intercourse.

301: Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Power of Parliament to impose restrictions on trade, commerce and intercourse.

302: Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.

303: (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Restrictions on trade, commerce and intercourse among States.

304: Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

- (a) impose on goods imported from other States [or the Union territories] any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

Saving of existing laws and laws providing for State monopolies.

[305:] Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to any such matter as is referred to in sub-clause (ii) of clause (6) of article 19].

306: [Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce]. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Appointment of authority for carrying out the purposes of articles 301 to 304.

307: Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I

SERVICES

Interpretation.

308: In this Part, unless the context otherwise requires, the expression "State" [does not include the State of Jammu and Kashmir].

Recruitment and conditions of service of persons serving the Union or a State.

309: Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office of persons serving the Union or a State.

310: (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the

Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

311: (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply—

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final].

All-India services

312: (1) Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common

to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

Transitional provisions.

313: Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

Provision for protection of existing officers of certain services.

314: Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

Chapter II

PUBLIC SERVICE COMMISSIONS

Public Service Commissions for the Union and for the States.

315: (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires

be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

Appointment and term of office of members.

316: (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose].

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier:

Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Removal and suspension of a member of a Public Service Commission.

317: (1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor, in the case of a State Commission, may suspend from office

the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be—

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the President, unfit to continue in Office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

Power to make regulations as to conditions of service of members and staff of the Commission

318: In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations—

- (a) determine the number of members of the Commission and their conditions of service; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

Prohibition as to the holding of offices by members of Commission on ceasing to be such members.

319: On ceasing to hold office—

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Com-

mission, but not for any other employment either under the Government of India or under the Government of a State;

- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Functions of Public Service Commissions.

320: (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;
- (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State,

may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

Power to extend functions of Public Service Commissions.

321: An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Expenses of Public Service Commissions.

322: The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

Reports of Public Service Commissions.

323: (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

PART XV

ELECTIONS

Superintendence, direction and control of elections to be vested in an Election Commission

324: (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex

325: There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

326: The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Power of Parliament to make provision with respect to elections to Legislatures.

327: Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Power of Legislature of a State to make provision with respect to elections to such Legislature.

328: Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

Bar to interference by courts in electoral matters.

329: Notwithstanding anything in this Constitution—

- (a) the validity of any law relating to the delimitation of constituencies of the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

330: (1) Seats shall be reserved in the House of the People for—

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State [or Union territory] for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State [or Union territory] in the House of the People as the population of the Scheduled Castes in the State [or Union territory] or of the Scheduled Tribes in the State [or Union territory] or part of the State [or Union territory], as the case may be, in respect of which seats are so reserved, bears to the total population of the State [or Union territory].

Representation of the Anglo-Indian community in the House of the People.

331: Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

332: (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State. (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in the Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

Representation of the Anglo-Indian community in the Legislative Assemblies of the States

333: Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate (such number of members of the community to the Assembly as he considers appropriate.

Reservation of seats and special representations to cease after twenty years.

334: Notwithstanding anything in the foregoing provisions of this Part, the provisions of his Constitution relating to—

- (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and
- (b) the representation of the Anglo-Indian community in the House of the

People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of [twenty years] from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Claims of Scheduled Castes and Scheduled Tribes to services and posts

335: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Special provision for Anglo-Indian community in certain services

336: (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

Special provisions with respect to educational grants for the benefit of Anglo-Indian community.

337: During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

Special Officer for Scheduled Castes, Scheduled Tribes, etc.

338: (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

Control of the Union over the administration of Scheduled areas and the welfare of Scheduled Tribes

339: (1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to [a State] as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Appointment of a Commission to investigate the conditions of backward classes.

340: (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Scheduled Castes.

341: (1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes.

342: (1) The President [may with respect to any State [or Union territory], and where it is a State, after consultation with the Governor thereof], by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

PART XVII**OFFICIAL LANGUAGE****CHAPTER I****LANGUAGE OF THE UNION***Official language of the Union.*

343: (1) The official language of the Unions shall be Hindi in Devanagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.

Commission and Committee of Parliament on official language

344: (1) The President shall, at the expiration of five years from the commencement of this Constitution and hereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the progressive use of the Hindi Language for the official purposes of the Union;
- (b) restrictions on the use of the English language for all or any of the official purposes of the Union;
- (c) the language to be used for all or any of the purposes mentioned in article 348;
- (d) the form of numerals to be used for any one or more specified purposes of the Union;
- (e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public] services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

CHAPTER II

REGIONAL LANGUAGES*Official language or languages of a State*

345: Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Official language for communication between one State and another or between a State and the Union

346: The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Special provision relating to language spoken by a section of the population of a State.

347: On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III

LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills etc.

348: (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) the authoritative texts—

- (i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

- (ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

- (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgement, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause where (1), the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

Special procedure for enactment of certain laws relating to language

349: During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV

SPECIAL DIRECTIVES*Language to be used in representations for redress of grievances*

350: Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Facilities for instruction in mother-tongue at primary stage

350A: It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Special Officer for linguistic minorities

350B: (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Directive for development of the Hindi language

351: It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other Languages.

PART XVIII

EMERGENCY PROVISIONS

Proclamation of Emergency

352: (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1)—

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

Effect of Proclamation of Emergency

353: While a Proclamation of Emergency is in operation, then—

(a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring powers and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation

354: (1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Duty of the Union to protect States against external aggression and internal disturbance

355: It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

Provisions in case of failure of constitutional machinery in States

356: (1) If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

Exercise of legislative powers under Proclamation issued under article 356

357: (1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

- (a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;
- (b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;
- (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

Suspension of provisions of article 19 during emergencies

358: While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part become competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

Suspension of the enforcement of the rights conferred by Part III during emergencies.

359: (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Provisions as to financial emergency

360: (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions of any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply of be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the union including the Judges of the Supreme Court and the High Courts.

PART XIX

MISCELLANEOUS

Protection of President and Governors and Rajpramukhs.

361: (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61;

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Rights and privileges of Rulers of Indian States

362: In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

Bar to interference by courts in disputes arising out of certain treaties agreements, etc.

363: (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian state.

Special provisions as to major ports and aerodromes

364: (1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

- (a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or
 - (b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.
- (2) In this article—
- (a) “major port” means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all area for the time being included within the limits of such port;
 - (b) “aerodrome” means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

Effect of failure to comply with, or to give effect to, directions given by the Union

365: Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

Definitions

366: In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

- (1) “agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
- (2) “an Anglo-Indian” means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;
- (3) “article” means an article of this Constitution;
- (4) “borrow” includes the raising of money by the grant of annuities, and “loan” shall be construed accordingly;
- (5) “clause” means a clause of the article in which the expression occurs;
- (6) “corporation tax” means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—
 - (a) that it is not chargeable in respect of agricultural income;
 - (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
 - (c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;

- (7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or States as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;
- (8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;
- (9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;
- (10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;
- (11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;
- (12) "goods" includes all materials, commodities, and articles;
- (13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;
- (14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—
 - (a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and
 - (b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution;
- (15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State;
- (16) "Part" means a Part of this Constitution;
- (17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;
- (18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352;
- (19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;
- (20) "railway" does not include—
 - (a) a tramway wholly within a municipal area, or
 - (b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

- * * * * *
- (22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;
- (23) "Schedule" means a Schedule to this Constitution;
- (24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;
- (25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;
- (26) "securities" includes stock;
- (27) "sub-clause" means a sub-clause of the clause in which the expression occurs;
- (28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;
- (29) "tax on income" includes a tax in the nature of an excess profits tax;
- [(30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule].

Interpretation

367: (1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Act or laws of, or made by, the Legislature of a State, shall be construed as including reference to an Ordinance made by the President or, to an Ordinance made by a Governor, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order

PART XX AMENDMENT OF THE CONSTITUTION

Procedure for amendment of the Constitution

368: An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

¹Clause (21) omitted by the constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

PART XXI

[TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS]

Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List

369: Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:—

- (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginced cotton or *kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil, cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;
- (b) offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

Temporary provisions with respect to the State of Jammu and Kashmir

370: (1) Notwithstanding anything in this Constitution—

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;
- (b) the power of Parliament to make laws for the said State shall be limited to—
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

- (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

- (c) the provisions of article (1) and of this article shall apply in relation to that State;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office”.

(Ministry of Law Order No. C.O. 44, dated the 15th November, 1952).

- (3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Special provision with respect to the States of Andhra Pradesh, Punjab, Maharashtra and Gujarat

371: (1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh or Punjab, provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to [the State of Maharashtra or Gujarat], provide for any special responsibility of the Governor for—

- (a) the establishment of separate development boards for Vidarbha, Marathwada, [and the rest of Maharashtra or, as the case may be), Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;
- (b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and
- (c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole).

Special provision with respect to the State of Nagaland

[371A: (1) Notwithstanding anything in this Constitution—

- (a) no Act of Parliament in respect of—
 - (i) religious or social practices of the Nagas,
 - (ii) Naga customary law and procedure,
 - (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
 - (iv) ownership and transfer of land and its resources,
 shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;
- (b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgement as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, 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 the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

- (c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Govern-

ment of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand;

- (d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for—

- (i) the composition of the regional council and the manner in which the members of the regional council shall be chosen:

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman *ex officio* of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves;

- (ii) the qualifications for being chosen as, and for being, members of the regional council;
- (iii) the term of office of, and the salaries and allowances, if any, to be paid to members of, the regional council;
- (iv) the procedure and conduct of business of the regional council;
- (v) the appointment of officers and staff of the regional council and their conditions of services; and
- (vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.

- (2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf—

- (a) the administration of the Tuensang district shall be carried on by the Governor;
- (b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State;
- (c) no Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council:

Provided that any direction given under this sub-clause may be given so as to have retrospective effect; (d) the Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district;

- (e) (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the majority of the members as aforesaid;
- (ii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district but he shall keep the Chief Minister informed about the same;
- (f) notwithstanding anything in the foregoing provisions of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion;

“Provided that the Governor may, on the advice of the Chief Minister, appoint any person as Minister for Tuensang affairs to act as such until such time as persons are chosen in accordance with law to fill the seats allocated to the Tuensang district in the Legislative Assembly of Nagaland”. (g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article;

(h) in article 170—

- (i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word ‘sixty’, the words ‘forty-six’ had been substituted;
- (ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article;
- (iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation.—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962].

Continuance in force of existing laws and their adaptation

372: (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by

order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

- (3) Nothing in clause (2) shall be deemed—
- (a) to empower the President to make any adaptation or modification of any law after the expiration of [three years] from the commencement of this Constitution; or
- (b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression “law in force” in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

Power of the President to adapt laws

372A: (1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Power of President to make order in respect of persons under preventive detention in certain cases

373: Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council

374: (1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court. (2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of any judgement, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

Courts, authorities and officers to continue to function subject to the provisions of the Constitution

375: All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

Provisions as to Judges of High Courts

376: (1) Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court.

[Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court].

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression "Judge" does not include an acting Judge or an additional Judge.

Provisions as to Comptroller and Auditor-General of India

377: The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

Provisions as to Public Service Commissions

378: (1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the corresponding State or the members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the

proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

Special provision as to duration of Andhra Pradesh Legislative Assembly

[378A: Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of sections 28 and 29 of the States Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly].

379-391: *Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.*

Power of the President to remove difficulties

392: (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor General of the Dominion of India.

PART XXII

SHORT TITLE, COMMENCEMENT AND REPEALS

Short title

393: This Constitution may be called the Constitution of India.

Commencement

394: This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution

Repeals

395: The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.

SEVENTH SCHEDULE

[ARTICLE 246]

List I—Union List

1. 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.
2. Naval, military and air forces; any other armed forces of the Union.
3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries
15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

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31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State '***' subject to legislation by the State, save in so far as Parliament by law otherwise provides

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34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and future markets.

¹ The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

²Entry 33 omitted by s. 26, *ibid.*

49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.
60. Sanctioning of cinematograph films for exhibition
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
 - (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, ²[declared by or under law made by Parliament] to be of national importance
68. The survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
69. Census.
70. Union public services; all-India services; Union Public Service Commission.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India
72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission
73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.
76. Audit of the accounts of the Union and of the States.
77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.
78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.
- [79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory].
80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one state to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the state in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.
81. Inter-State migration; inter-State quarantine.
82. Taxes on income other than agricultural income.
83. Duties of customs including export duties.
84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;
 (b) opium, Indian hemp and other narcotic drugs and narcotics,
 but including medicinal and toilet preparations containing alcohol or any substance
 included in sub-paragraph (b) of this entry.

85. Corporation tax.
86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
87. Estate duty in respect of property other than agricultural land.
88. Duties in respect of succession to property other than agricultural land.
89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
- [92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce].
93. Offences against laws with respect to any of the matters in this List.
94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.
95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
96. Fees in respect of any of the matters in this List, but not including fees taken in any Court.
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).
2. Police, including railway and village police.
3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.
7. Pilgrimages, other than pilgrimages to places outside India.
8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9. Relief of the disabled and unemployable.
10. Burials and burial grounds; cremations and cremation grounds.
11. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.
12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance.
13. Communications, that is to say, roads, bridges, ferries, and other means of Communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
16. Pounds and the prevention of cattle trespass.
17. Water, that is to say, water supplies irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
19. Forests.
20. Protection of wild animals and birds.
21. Fisheries.
22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.
23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of [entries 7 and 52] of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to the provisions of entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
28. Markets and fairs.
29. Weights and measures except establishment of standards.

30. Money-lending and money-lenders; relief of agricultural indebtedness.
31. Inns and inn-keepers.
32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
34. Betting and gambling.
35. Works, lands and buildings vested in or in the possession of the State.
 1* * * * * *
37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.
38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
40. Salaries and allowances of Ministers for the State.
41. State public services; State Public Service Commission.
42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43. Public debt of the State.
44. Treasure trove.
45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46. Taxes on agricultural income.
47. Duties in respect of succession to agricultural land.
48. Estate duty in respect of agricultural land.
49. Taxes on lands and buldings.
50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—
 - (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics;
 but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

¹Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, s. 26

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.
53. Taxes on the consumption or sale of electricity.
- ¹[54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I].
55. Taxes on advertisements other than advertisements published in the newspapers.
56. Taxes on goods and passengers carried by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on professions, trades, callings and employments.
61. Capitation taxes.
62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List.
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

¹Subs. by the Constitution (Sixth Amendment) Act, 1956, s. 2, for the original entry 54.

6. Transfer of property other than agricultural land; registration of deeds and documents.
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
8. Actionable wrongs.
9. Bankruptcy and insolvency.
10. Trust and Trustees.
11. Administrators-general and official trustees.
12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
17. Prevention of cruelty to animals.
18. Adulteration of foodstuffs and other goods.
- “1. Criminal law (excluding offences against laws with respect to any of the matters specified in List I and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power) in so far as such criminal law relates to offences against laws with respect to any of the matters specified in this list”.
- Not applicable to the State of Jammu and Kashmir.
Made applicable by C.O. 72.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
20. Economic and social planning.
21. Commercial and industrial monopolies, combines and trusts.
22. Trade unions; industrial and labour disputes.
23. Social security and social insurance; employment and unemployment.
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25. Vocational and technical training of labour.
26. Legal, medical and other professions.
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.
31. Ports other than those declared by or under law made by Parliament or existing law to be major posts.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
- [33. Trade and commerce in, and the production, supply and distribution of:—
- (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
 - (b) foodstuffs, including edible oilseeds and oils;
 - (c) cattle fodder, including oilcakes and other concentrates;
 - (d) raw cotton, whether ginned or unginned, and cotton seed; and
 - (e) raw jute]
34. Price control.
35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied
36. Factories.
37. Boilers.
38. Electricity.
39. Newspapers, books and printing presses.
40. Archaeological sites and remains other than those [declared by or under law made by Parliament] to be of national importance.
41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
- [42. Acquisition and requisitioning of property].
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

EIGHTH SCHEDULE

[ARTICLES 344 (1) and 351]

Languages

1. Assamese.
2. Bengali.
3. Gujarati.
4. Hindi
5. Kannada.
6. Kashmiri.
7. Malayalam.
8. Marathi.
9. Oriya.
10. Punjabi.
11. Sanskrit.
12. Tamil.
13. Telugu.
14. Urdu.

CONSTITUTION OF THE FEDERAL REPUBLIC OF CAMEROON

TITLE I

The Federal Republic of Cameroon

Article 1: The Federal Republic of Cameroon is formed, as from 1st October 1961, of the Territory of the Republic of Cameroon, henceforth called East Cameroon, and the Territory of the Southern Cameroon formerly under United Kingdom administration, henceforth called West Cameroon.

The Federal Republic of Cameroon is democratic, secular and Social. It shall ensure the equality of all citizens before the law. It affirms its adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights and the Charter of the United Nations.

The official language of the Federal Republic of Cameroon shall be French and English.

The national motto shall be peace, work, Fatherland.

The national flag shall be: green, red and yellow, in three vertical bands of equal size, with two gold stars superimposed on the green end.

The seat of the national institutions shall be Yaounde.

The National Anthem of the Federation shall be: O Cameroon, Cradle of Our Forefathers.

The Seal of the Federal Republic of Cameroon shall be a circular medallion in bas-relief, forty-six millimetres in diameter, showing on the reverse, in its centre, the head of a girl in profile, facing to the dexter towards a branch of coffee-shrub bearing two leaves and adjoined on the sinister side by five cocoa pods, the whole encircled by the words Federal Republic of Cameroon above and the national motto peace, work, Fatherland below.

Nationals of the Federated States shall be citizens of the Federal Republic and shall possess Cameroonian nationality.

Article 2: National sovereignty shall be vested in the Cameroonian people, which shall exercise such sovereignty either through its deputies in the Federal Assembly or by way of referendum. No section of the people, nor any individual, may assume the exercise thereof. The vote shall be equal and secret; all citizens who have attained the age of twenty-one years shall participate therein.

The authorities entrusted with the guidance of the State shall derive their powers from the people through elections held on a basis of universal suffrage and direct or indirect ballot.

Article 3: The political parties and groups play a part in the expression of the suffrage. They shall be free to form and to carry on their activities within the limits established by law and regulations. They must respect the principles of democracy and national sovereignty.

Article 4: The federal authority shall be exercised by:

The President of the Federal Republic;

The Federal National Assembly.

TITLE II

The Powers of the Federal Authorities

Article 5: The powers of the Federal Authorities shall embrace the following matters:

- Nationality;
- The status of aliens;
- Regulations concerning conflicts of laws;
- National defence;
- Foreign affairs;
- The internal and external security of the Federal State, emigration and immigration;
- Development planning, guidance of the economy, statistics, the control and organisation of credit, external economic relations (including trade agreements);
- The monetary system, the preparation of the Federal Budget and the establishment of taxes and revenue of all kinds to meet federal expenditure;
- Higher education and scientific research;
- Information services and radio;
- Foreign technical and financial assistance;
- Postal services and telecommunications;
- Aviation and meteorology, mining and geological research and the geographical cover of the national territory;
- Regulations governing the Federal Civil Service and the judiciary;
- The organisation and functioning of the Federal Court of Justice;
- The territorial boundaries of the Federated States;
- Organisation of services pertaining to these matters.

Article 6: The powers of the Federal Authorities shall also embrace the following:

- Public liberties;
- The law of persons and of property;
- The law of obligations and contracts in civil and commercial matters;
- Judicial organisation, including the rules of procedure and jurisdiction of all courts (with the exception of Customary Courts of West Cameroon, save as regards appeals from the decisions of such Courts);
- Criminal law;
- Transport of federal importance (roads, railways, rivers, maritime and air transport) and ports;
- Prison administration;
- Legislation relating to State lands;
- Labour legislation;
- Public health;
- Secondary and technical education;
- Administrative organisation;
- Weights and measures.

So far as concerns the matters enumerated in this article, the authorities of the Federated States, may continue to enact laws and to direct the corresponding

administrative services until such time as the Federal National Assembly or the President of the Federal Republic, as the case may be, shall decide to exercise the powers vested in them respectively.

The powers of the executive and legislative authorities, as the case may be, of the Federated States in respect of any such matters shall cease when the Federal Authorities have assumed responsibility therefor.

Article 7: Where under the provisions of the preceding article, the authorities of the Federated States are temporarily authorized to exercise powers in respect of matters within the jurisdiction of the Federal Authorities, they may enact laws on such matters only after consultation with the federal co-ordination commission.

The said commission shall be presided over by a Federal Minister, and shall be composed of persons appointed by the President of the Federal Republic on the basis of competence.

TITLE III

The President Of The Federal Republic

Article 8: The President of the Federal Republic of Cameroon, Head of the Federal State and Head of the Federal Government, shall uphold the Federal Constitution and shall ensure the unity of the Federation and the conduct of the affairs of the Federal Republic.

He shall be assisted in his duties by a Vice-President of the Federal Republic.

Article 9: The President of the Federal Republic and the Vice-President, who must not be natives of the same Federated State, shall be elected, on a single list, by universal suffrage and direct and secret ballot.

Candidated for the offices of President of the Federal Republic and Vice-President must be in possession of their civil and political rights and must have attained the age of thirty-five years on the date of the election; the conditions governing the nomination of candidates, the supervision of elections and the proclamation of the results shall be prescribed by a federal Law.

The offices of President and Vice-President of the Republic shall be incompatible with any other office.

Article 10: The President of the Federal Republic shall be elected for a term of five years. He shall be eligible for re-election.

Election shall be effected by a majority of the votes cast.

Elections shall take place not less than twenty days and not more than fifty days before the expiry of the term of the President in office.

In the event of the Presidency falling vacant for any reason whatsoever, the powers of the President of the Federal Republic shall automatically devolve upon the Vice-President until such time as a new President is elected.

The ballot for the election of the new President shall take place not less than twenty days and not more than fifty days after the date on which the Presidency falls vacant.

The President shall take the oath in the form prescribed by Federal Law.

Article 11: The President of the Federal Republic shall appoint the Ministers and Deputy Ministers, whom he shall select from among the nationals of each of the Federal States. They shall be responsible to him. Their offices shall be terminated by him.

The offices of Minister and Deputy Minister shall be incompatible with the exercise of any parliamentary mandate in either of the Federal States, with any post as national representative of a trade or professional association and with any public employment or gainful activity.

Article 12: The President of the Federal Republic shall represent the Federal State in all acts of public life. He shall be Head of the Armed Forces.

Ambassadors and Envoys Extraordinary to foreign Powers shall be accredited by him. Ambassadors and Envoys Extraordinary of foreign Powers shall be accredited to him.

The President of the Republic shall negotiate agreements and treaties. Treaties relating to matters within the sphere of Federal Law as defined in articles 24 shall be submitted, before ratification, for approval in legislative form by the Federal Assembly.

He shall exercise the right of pardon on the advice of the Federal Council of Magistracy.

He shall confer the decorations of the Federal Republic.

He shall promulgate federal laws as provided in article 31.

He shall be responsible for the execution of federal laws and of such laws as may be adopted in the Federated States in pursuance of article 6, last paragraph.

He shall exercise the power to make regulations.

He shall make appointments to federal posts, both civil and military.

He shall uphold the internal and external security of the Federal Republic.

He shall establish, organize and direct all administrative services necessary for the discharge of his duties or, if he deems it preferable, shall place under his own authority, after consulting the Heads of Government of the Federated States, the services of those States exercising the powers vested in the Federal Authorities under the provisions of articles 5 and 6.

He may by decree delegate some of his powers to the Vice-President of the Federal Republic.

Article 13: The President of the Federal Republic must in all circumstances be consulted by the Governments of the Federated States when those Governments take measures which may affect the life of the Federation. He shall then request the Commission provided for in article 7, to give an advisory opinion on the matter.

Article 14: The President of the Federal Republic shall refer to the Federal Court of Justice, constituted as provided in article 34, any federal law which he considers to be contrary to the present Constitution or any law for either of the Federated States which he regards as having been adopted in violation of the provisions of the Constitution or of a federal law.

Article 15: The President of the Federal Republic may, when circumstances so require, proclaim by decree a state of emergency under which he shall be vested with special powers, subject to the conditions prescribed by federal law.

In the event of serious peril threatening the integrity of the national Territory, or of the life, independence, or institutions of the Nation, the President of the Federal Republic may, after consulting the Prime Ministers of the Federated States, proclaim by decree a state of special emergency and take all measures as he may deem necessary.

He shall inform the nation accordingly by means of a message.

The Federal National Assembly shall automatically remain convened throughout the period of special emergency.

TITLE IV

The Federal Legislature

Article 16: The Federal National Assembly, the term of which shall be five years, shall be composed of deputies elected by universal suffrage and direct and secret ballot in each of the Federated States in the ratio of one deputy to 80,000 inhabitants.

Article 17: Federal laws shall be adopted by simple majority of deputies.

Article 18: Before a law is promulgated, the President of the Federal Republic may request a second reading thereof, either of his own motion or at the request of either of the Prime Ministers of the Federated States. On second reading, the law shall be adopted only if the majority specified in the preceding article comprises a majority of the votes of the deputies of each of Federated States.

Article 19: The Federal National Assembly shall hold two sessions annually; the duration of a session shall not exceed thirty days.

The opening date for each session shall be fixed by the officers of the Assembly after consultation with the President of the Federal Republic. During one of the sessions the Federal Budget shall be voted by the Assembly. Where the Budget is not adopted by the end of the current financial year, the President of the Federal Republic shall be entitled to appropriate each month one-twelfth of the amount of the previous Budget until the new Budget is adopted.

The Federal National Assembly shall meet in special session of a duration not exceeding fifteen days in order to consider a specific agenda, at the request of the President of the Federal Republic or of two-thirds of its members.

Article 20: The Federal National Assembly shall establish its own rules of procedure. It shall elect its President and other officers annually at the opening of its first session. Meetings of the Federal National Assembly shall be public. By way of exception, the Federal National Assembly may hold closed meetings at the request of the Federal Government or of a majority of its members.

Article 21: The electoral system of the Federation shall be determined by a federal law.

Article 22: The immunities, emoluments and privileges of deputies, the grounds of ineligibility for the office of deputy and the offices with which that of deputy shall be incompatible shall be laid down by Federal Law.

TITLE V

Relations between the Executive and the Federal Legislature

Article 23: The power to initiate legislation shall belong equally to the President of the Federal Republic and the Deputies of the Federal Assembly.

Article 24: The following matters shall be within the sphere of Federal Law, within the framework of the powers specified in articles 5 and 6.

1. The fundamental guarantees and obligations of the citizen:
 - Protection of the freedom of the individual;
 - Public liberties;
 - Labour and trade-union legislation;
 - The duties and obligations of the citizen in respect of national defence.
2. The law of persons and property;
 - Nationality and personal status;
 - The law of personal and real property;
 - The law of civil and commercial obligations.
3. Political, administrative and judicial organisation with respect to:
 - The electoral system of the Federal Assembly;
 - The general rules relating to the organization of national defence;
 - The definition of crimes and offences and the establishment of penalties of any kind, criminal procedure, means of enforcement, amnesty, and the creation of new orders of jurisdiction.
4. The following questions of finance and property:
 - The currency issue system;
 - The Federal Budget;
 - The Institution, assessment and rates of federal taxes and dues of any kind;
 - Legislation relating to State lands.
5. The aims of economic and social action within the framework of the laws, relating to economic and social policy.
6. The educational system.

Article 25: Legislative texts laid before the Assembly shall be considered by the competent committees before being discussed in plenary.

Article 26: The text considered in plenary shall be the text introduced by the President of the Federal Republic, in the case of a government bill, and the text drafted by the appropriate committee, in the case of a parliamentary bill. Texts may be amended when they are debated.

Article 27: The President of the Federal Republic may, at his request, address the Assembly or send messages to it. Such communications may not give rise to any debate in his presence.

Article 28: The Ministers and Deputy Ministers of the Federation shall have access to the Assembly and may participate in its debates.

Article 29: The agenda of the Federal National Assembly shall be drawn up by the conference of chairmen, consisting of the chairmen of the parliamentary parties, the chairmen of committees and the officers of the Assembly. A Federal Minister or Deputy Minister shall take part in the work of the conference.

Texts may not be placed on the agenda of the Assembly unless they fall within its competence under the terms of articles 5, 6 and 24. Parliamentary bills or amendments shall be inadmissible if their adoption would lead either to a curtailment of public resources or to an increase in public expenditure without corresponding reduction in other expenditure or an equivalent increase in revenue.

Where any doubt or dispute arises as to the admissibility of a text, the President of the Assembly or the President of the Federal Republic shall refer the matter to the Federal Court of Justice for its ruling.

The discussion of government bills and of parliamentary bills which the Government has accepted shall have priority on the agenda, in the order fixed by the Government.

The Government's request to treat any matter as one of first priority shall automatically be granted.

Article 30: The Government shall be obliged to give any explanations and any information on its actions to the Federal National Assembly, which may put questions to it orally or in writing and which may investigate government activity by setting up commissions of investigations.

A Federal law shall lay down the procedures through which these rights of inquiry and supervision shall be exercised.

Article 31: The President of the Federal Republic shall promulgate the laws enacted by the Federal National Assembly within a fortnight of the date of their transmission, if no request for a second reading is made to him. At the end of this period, the President of the Federal Assembly may act in his place, after establishing his failure to do so.

Laws shall be published in the two official languages of the Federal Republic.

TITLE VI

The Judicial Authority

Article 32: Justice shall be administered in the territory of the Federal State in the name of the Cameroonian people by the competent courts of each State.

The President of the Federal Republic shall be the guardian of the independence of the judicial authority and shall appoint the members of the judiciary of the Federated States.

He shall be assisted in this task by the Federal Council of Magistracy, which shall give him its opinion on all proposed appointments of judges and shall act as the Disciplinary Council for the latter. Its organization and operation shall be governed by a federal law.

Article 33: The Federal Court of Justice shall have the following duties:

1. To settle any conflicts of jurisdiction which may arise between the highest courts of each of the Federated States;
2. To give final judgment on appeals under federal law against decisions given by the higher courts of the Federated States in any cases involving the application of federal law;
3. To give judgment in appeals for damages or on grounds, of excess of authority against administrative acts by the federal authorities;
4. To give judgment in disputes between the Federated States or between either of them and the Federal Republic.

The composition and procedure of the Federal Court of Justice and the rules under which cases may be brought before it shall be prescribed by a federal statute.

Article 34: When the Federal Court of Justice is called upon to give its decisions in the cases provided for in articles 14 and 29, its membership shall be supplemented by an equal number of persons appointed for a period of one year by the President of the Federal Republic on the basis of their competence and experience.

Article 35: Judicial orders and decisions of any court in either of the Federated States shall be enforceable throughout the Federal Territory.

TITLE VII

The High Court of Justice

Article 36: A Federal High Court of Justice is hereby established; its composition and the rules under which cases may be brought before it shall be prescribed by federal law.

The Federal High Court of Justice shall have jurisdiction in respect of acts carried out in the exercise of their functions by the President of the Federal Republic, in the case of high treason, and by the Federal Vice-President, the Ministers of the Federal State, and the Prime Ministers and Secretaries of the Federated States, in the case of conspiracy against the security of the State.

TITLE VIII

The Economic and Social Council of the Federation

Article 37: An Economic and Social Council of the Federation is hereby established; its composition, powers and organisation shall be prescribed by a federal law.

TITLE IX

The Federated States

Article 38: Matters other than those specified in articles 5 and 6 and other than those which under the present Constitution are to be the subject of a federal law shall lie exclusively within the competence of the Federated States.

Within those limits the said States may set up for themselves such institutions as they choose.

The House of Chiefs of the Southern Cameroons shall be maintained.

Article 39: The President of the Federal Republic shall appoint the Prime Minister of each Federated State, who must be confirmed in office by simple majority vote of the legislative Assembly of the State concerned.

The President shall appoint the Secretaries of State members of the Government on the proposal of the Prime Minister confirmed in office.

He may relieve them of office under the same conditions.

Article 40: Legislative power shall be exercised in each Federated State by a Legislative Assembly to be elected for a term of five years by universal suffrage and direct and secret ballot, under conditions such as to ensure the representation of each administrative unit in proportion to the size of its population.

Nevertheless, in West Cameroon certain power may be exercised in matters of legislation by the House of Chiefs.

The nature of those powers and the terms on which they are to be exercised shall be laid down by a law of the Federated State concerned subject to the provisions of this Constitution.

The number of representatives in the Legislative Assembly of East Cameroon shall be one hundred; in the Legislative Assembly of West Cameroon, thirty-seven.

The electoral system, the qualification for election, immunities and emoluments of members of the Legislative Assemblies and the offices with which that of member of a Legislative Assembly shall be incompatible shall be laid down by a federal law.

Article 41: The Legislative Assemblies shall establish their own rules of procedure and shall elect their officers annually.

They shall hold two sessions a year, neither of which shall be of a duration exceeding thirty days. The dates of the sessions shall be fixed by the Assembly officers after consultation with the Prime Minister of the Federal state, in such a way that the budget session shall not begin until after the adoption of the Federal Budget.

They shall meet in special session of duration not exceeding fifteen days in order to consider a specific agenda, at the request of the Prime Minister, or the President of the Federal Republic or of two-thirds of their members.

Article 42: Meetings of the Legislative Assemblies shall be public. By way of exception, the Assemblies may hold closed meetings on the request of the Government or of a majority of their members.

Article 43: The power to initiate legislation shall belong to the Government of each Federated State and the Representatives in the legislative Assemblies. Laws shall be adopted by simple majority.

Article 44: If a vote of no confidence is adopted by simple majority or a motion of censure by absolute majority, the Prime Minister must tender his resignation to the President of the Federal Republic or shall be declared to have resigned. The President may then dissolve the Legislative Assembly.

In the event of Persistent disagreement between the Government and the Legislative Assembly, the President of the Federal Republic may dissolve the Assembly, either of his own motion or on the proposal of the Prime Minister.

New elections shall be held within the following two months.

Until a new Prime Minister is confirmed in office, the outgoing Government shall deal with current business.

Article 45: The President of the Legislative Assembly of each Federated State shall transmit laws enacted by the Assembly within twenty-one days to the President of the Federal Republic, who shall promulgate them within a fortnight of the date of their transmittal.

Within the latter period the President of the Federal Republic may request the Legislative Assembly concerned to give such laws a second reading or may apply article 14.

At the end of the said period, the President of the Legislative Assembly concerned may act in his place, after establishing his failure to do so.

Article 46: Previous legislation of the Federated States shall remain in force in so far as it does not conflict with the provisions of this Constitution.

TITLE X

Revision of the Constitution

Article 47: Any proposal for the revision of the present Constitution which impairs the unity and integrity of the Federation shall be inadmissible.

The power to initiate the revision of the Constitution shall belong equally to the President of the Federal Republic, after consultation with the Prime Ministers of the Federated States, and the Deputies of the Federal Assembly.

Any proposal for revision submitted by the Deputies must be signed by at least one-third of the Members of the Federal Assembly.

Proposals for revision shall be adopted by simple majority vote of the Members of the Federal Assembly, provided that such majority includes a majority of the representatives in the Federal Assembly of each of the Federated States.

The President of the Federal Republic may request, under the same conditions as for a federal law that a second reading be given to a law revising the Constitution.

TITLE XI

Transitional and special Provisions

Article 48: The powers specified in article 5 shall be exercised ipso jure by the federal authorities from the moment of their establishment.

Article 49: Each of the Governments of the Federated State shall transmit to the Federal Government all the documents and records necessary for the discharge of its functions. All shall place at the disposal of the Federal Government the services which are to exercise the federal powers under the latter's authority.

Article 50: By way of exception, for a period of six months from 1st October 1961, the legislative measures necessary for the establishment of the constitutional institutions and until they are established, for the functioning of the public authorities

and for the life of the Federal State shall be taken by the President of the Federal Republic in the form of ordinances having the force of law.

Article 51: The President of the Republic of Cameroon shall be President of the Federal Republic until the end of his present term of office.

Article 52: During the term of office of the first President of the Federal Republic, the Prime Minister of West Cameroon shall be Vice-President of the Federal Republic. The provisions of article 9 regarding the incompatibility of the office of Vice-President of the Federal Republic with other offices shall not apply during this period.

Article 53: From 1st October 1961, the National Assembly of the Republic of Cameroon and the House of Assembly of South Cameroons shall become the first Legislative Assemblies of East Cameroon and West Cameroon respectively.

Article 54: Until 1st April 1964, the Federal National Assembly shall consist of deputies appointed from among their members by the Legislative Assemblies of the Federated States in proportion to the number of inhabitants of each State, in the ratio of one deputy to 80,000 inhabitants.

Article 55: Until the election of the Federal Assembly in accordance with the terms of article 16, the federal offices of Minister and Deputy-Minister shall be compatible, the provisions of article 11 notwithstanding with the exercise of parliamentary mandate in a Federated State.

Article 56: On 1st October 1961, the Government of the Republic of Cameroon and the Government of the Southern Cameroons under British administration shall become the Governments of the two Federated States respectively.

Article 57: Until the establishment of the Economic and Social Council of the Federation, the Economic and Social Council of the Republic of Cameroon shall be maintained.

Article 58: Until the final federal budget is adopted, a provisional federal budget shall be drawn up and shall be financed by contributions from each of the Federated States, to be determined after approval by the Governments of those States.

Article 59: The present provisions, by which the Constitution of the Republic adopted on 21st February 1960 by the Cameroonian people is revised, shall enter into force on 1st October 1961. The revised Constitution shall be published in French and in English, the French text being authentic.

Article 60: For the purposes of this Constitution the population of the Federated States shall be taken on the basis of United Nations statistics, to be as follows: East Cameroon: 3,200,000 inhabitants; West Cameroon: 800,000 inhabitants. If significant changes in these figures are revealed by future censuses, they may be amended by a federal law.

Yaounde, 1st of September, 1961.

Ahmadou AHIDJO.

THE CONSTITUTION OF THE UNITED STATES OF BRAZIL

Brazil, the largest both in size and population, of the Latin American countries, has a constitutional development which is rather unique due to her history. Settled by the Portuguese instead of Spaniards since 1530, Brazil became a colony of the King of Portugal. By virtue of the papal grants of demarcation, Spanish and Portuguese Kings owned in person all land and water in their respective colonies. Thus the Kings made grant of territories in America to favoured courtiers. They claimed all or part of the products from the land or water so granted. In their absolute discretion, the Kings allowed or refused any person to go to the colonies, and they invariably supervised all trade to and from the colonies. The Kings forced the colonies to grow certain kinds of produce. They collected all revenue and spent it as they pleased. The Kings, as Heads of the Roman Catholic Church in their respective kingdom, could collect and spend church revenue. They could approve or disapprove church appointments and could veto or sanction any papal decree which might be directed at their colonies by the Pope. Through the church, however the Kings controlled colonial education, printing and literature.

As the source of justice, the King of Portugal made and executed all colonial laws in Brazil including amusements and Public activities. Even private affairs were subject to the control and regulation of the ruler from Portugal. The native Indians and Negro slaves in Brazil came also under the protection or slavery of the Sovereign. Everything in Brazil was subject to the absolute authority of the King of Portugal who, however, ruled through agents or Viceroy. Thus from 1520 to 1822 when the independence of Brazil was declared, the territory was ruled from Portugal.

The constitutional development in Brazil can be classified as follows:—

The Colonial Era — 1520 — 1822.

The Independence Monarchical Era — 1822 — 1889.

The Republican Era — 1889 to the present.

In 1822 Don Pedro, the son of King John VI of Portugal, assisted by Jose Bonifacio, a Scientist, educated in Europe and of aristocratic family, declared Brazil an Independent State free from Portuguese Colonial Rule. Don Pedro was acclaimed first Emperor of Brazil and was solemnly crowned in the chapel of the Royal Palace on December 1, 1822. Jose Bonifacio became Premier of his Cabinet. The war of Independence with Portugal lasted till 1825 when, through the mediation of Great Britain, Portugal recognised the Independence of Brazil.

In 1824, Don Pedro I called the first Constituent and Legislative Assembly of Brazil. The Assembly was under the control of a conservative faction headed by

Premier Jose Bonifacio. Two of Premier Jose's brothers, Antonio and Francisco, were on the drafting committee and they prepared a rather conservative draft which was unacceptable. While the committee was still at work, Premier Jose and his brothers disagreed with Don Pedro I on some fundamental issues. Don Pedro I removed them from his Cabinet and appointed another committee with a more liberal view to draft the Constitution based on the French and Portuguese pattern. The Constituent Assembly declared itself a permanent Legislative Assembly in session, but the Emperor, Don Pedro, quickly dissolved it, arrested Premier Jose and his brothers and exiled them.

The new draft which was prepared by the liberal committee was sent to all municipal governments in Brazil for criticism and suggestions. The liberal draft received the support of the municipalities and on March 25, 1824, it was publicly sworn to. This Constitution which remained in effect with slight changes till 1889, provided for a hereditary and limited monarchy. The Emperor was to have executive powers to be assisted by a Ministry and a Privy Council appointed by him. There was a bicameral legislature made up of a Senate and House of Representatives. The legislature had power to vote in a new dynasty at any time.

Latin America has its history full of uprisings and military take-overs. Brazil was no exception. In April 1825, an uprising broke out in the Banda Oriental (Uruguay); the Brazilian forces were decisively defeated by the rebels assisted by the Argentines. Independence of Uruguay was accepted in 1828.

Owing partly to the defeat of Brazilian forces in the River Plata Region and because of the death of his father King John VI of Portugal, Don Pedro I was faced with the choice of either inheriting the throne in Portugal or staying in Brazil where he was fast becoming unpopular. He decided to remain in Brazil and abdicated the Portuguese throne in favour of his little daughter, Dona Maria da Gloria. But his enemies in Brazil lost no time in spreading the rumour that he wanted to be both the King of Portugal and the Emperor of Brazil. A military revolt broke out and Don Pedro I was forced once more to abdicate his throne in Brazil in favour of his infant son, Don Pedro de Alcantara. The abdicated Emperor sailed to Europe within a week and his little son became the Emperor Don Pedro II and was so acclaimed on April 13, 1831.

During the reign of Don Pedro II — 1831 — 1889 — Brazil became one of the best governed countries in the western hemisphere. The Emperor rules wisely and promoted education, commerce, communications, immigration and agriculture. A parliamentary system was effectively established with the alternation of Liberals and Conservatives in power. Revolutionary movements were suppressed, dishonesty in public administration was not tolerated. By 1830, the Brazilian parliament had abolished slave traffic. By 1850, all slaves in Brazil were completely free.

Towards the close of this era, Republican propaganda had set in. A republican club was founded. A newspaper "A Republica" was established. A republican manifesto was published and a republican convention was held very soon afterwards. There was dissatisfaction in the army and the church, and each lent weight to the republican ideas that wanted to free Brazil from the hands of the Emperors.

By 1889, the Conservative majority in power was being strongly criticised for its handling of national problems, and the Viscount of Ouro, Preto, was entrusted

with founding a new Ministry under which the suffrage was broadened. Religious freedom was established; import duties were lowered. Despite this broad programme of reforms, dissatisfaction in the Army increased, and on 14th November, 1889, there was a revolution in the country and the Army under the leadership of Marshal Deodoro da Fonseca, seized power. The Emperor was banished and he and his family were sent back to Europe. Thus came the end of the second era.

The provisional Government of the Republic, headed by Marshal Deodoro da Fonseca adopted decrees establishing universal human suffrage, separation of church and state and freedom of religion. He introduced a new civil code and abolished corporal punishment in the Armed Forces. He threw open the use of the cemeteries to every class of people. A Committee was appointed to prepare a draft of a new constitution which was adopted provisionally on June 22, 1890. A Constituent Congress was then called and the proposed constitution was adopted with certain modifications in February of 1891. This constitution followed similar patterns like the United States of America. It was a representative federal republican constitution with the customary separation of powers. The Chief Executive or President was to be elected by direct votes for a term of four years. A bicameral legislature was retained and a federal judiciary was created. The component States were autonomous, and were free to adopt constitutions of their own, provided they were in harmony with the federal constitution. An elaborate Bill of Rights was also incorporated in the constitution which was adopted on February 24 of 1891.

A few weeks later, the first President, Marshal Deodoro quarrelled with the Congress. He dissolved it and assumed dictatorial powers. The Navy revolted. The President was forced to resign and his Vice-President, Marshal Peixoto, became the President. There followed a period of unrest and civil wars.

In 1924, another major revolution broke out all over the country. The aim of that revolution was to end the political hegemony of the large States. Fortunately, the Government forces were able to suppress the uprising. But in 1930, Governor Vargas of the State of Rio Grande do Sul, led a revolution that resulted in the deposition of de Souza, the then President. Vargas, the new President, soon became a dictator and in 1932, a further revolution broke out in the State of Sao Paulo. This was in protest against the delay of the return to constitutional Government.

In 1934, a Constituent Congress gathered in the capital of Brazil and adopted a strongly nationalist constitution which was promulgated on July 16, 1934. The form of Government remained essentially the same as the 1891 constitution. It, however, contained many provisions which aimed at the improvement of social and economic conditions of the common people. Some of the provisions aimed at curtailing the privileges of foreigners in Brazil. Women were given the right to vote and they could hold public office. Vargas was again elected President. In 1937, there was further general unrest and Vargas once more assumed sole authority and became a dictator. Stability came into Brazilian affairs with the signing of an agreement between Brazil and the United States in 1940 whereby American assistance would be given to Brazil to establish a large steel industry. With World War II, Brazil entered into a number of agreements with the United States providing for a "lend lease" aid and for the purchase of war supplies. In October 1945, the dictatorship of Vargas, after fifteen years, came to an end in a bloodless coup, headed

by General Goes, the War Minister. The Chief Justice of Brazil, Judge Linhares, was sworn in as President "ad interim" to hold office until the election of a new President. Presidential elections were held as scheduled in December of the same year, and Major General Eurico Gaspa Dutra, under whose leadership the bloodless coup was staged, won by a large majority.

A new constitution adopted in 1946 affirmed the basic rights to universal suffrage and the secret ballot, but maintained wide government authority over social and economic institutions, including the power to ban any political Party considered to be anti-democratic. In 1950, the former dictator President Vargas won election by the support of the Brazilian Labour Party and the Socialist Progressive Party. Inaugurated as President in 1951, Vargas declared that his would be "a Government of evolution and not of revolution"; but in August 1954, the President shot and killed himself following a political crisis in which there was an unsuccessful attempt against his Deputy. The Vice-President assumed Presidency and soon took ill. The Speaker of the Chamber of Deputies became the Acting President, and in three days time he was deposed by a coup d'état led by the Minister of War, General Henrique.

President Kubitschek who was inaugurated in January 1956 took many progressive steps. In 1958, the new President, by a letter addressed to President Eisenhower, proposed that the United States Government should seriously consider the adoption of a comprehensive economic and financial programme to assist Latin America. This "Operation Pan America" was studied under the auspices of the Organization of American States and in consequence the relation between the United States and Brazil was improved and America gave a lot of aid to Latin American countries. He took measures to transfer the capital to a new city designed by the country's best architects to be called "Brasilia". But soon the Americans were not happy with the financial policy of the Brazilian Government towards the utilization of loans and credits, and by 1960, several influences played a large part in the Presidential election of that year.

In 1961, the former Governor of Sao Paulo, Quadros, was elected President by a large majority of two of the Brazilian political parties. He was able to persuade America to give further loans. In August 1961, however, President Quadros was forced to resign due to his stand with the communists. His Vice-President, Goulart, was prevented by Congress from assuming the Presidency. Because of the opposition of some military leaders to Goulart becoming President as provided in the constitution, a constitutional amendment was adopted suspending full Presidential Government of 1946 and introducing parliamentary Government with many Presidential powers being exercised by a Premier who presided over the Council of Ministers. The constitutional amendments adopted in 1961, whereby full presidential powers were suspended and a Premier headed the Executive Council, were repealed in 1963. Brazil went back to full Presidential Government. President Goulart was a radical reformer and was soon ousted by a military coup in April 1964. President Goulart's term was to expire at the end of January 1966. In the meantime, Congress has elected General Humberto and Milton Campos as interim President and Vice-President for the remainder of Goulart's term. Ex-President Goulart has taken refuge with his family in Uruguay. A new President will be inaugurated early in 1966.

The Constitution of Brazil reproduced hereunder was taken from a copy prepared by the Pan American Union of New York.

**THE CONSTITUTION OF THE UNITED
STATES OF BRAZIL**

TITLE I

The Federal Organization

Chapter I

Preliminary Provisions

Article 1: The United States of Brazil maintain, under a representative system, the federation and the republic.

All power emanates from the people and will be exercised in their name.

1. The union includes, in addition to the states, the Federal District and the territories.
2. The Federal District is the capital of the union.

Article 2: The states may merge with one another, subdivide, or partition in order to annex themselves to others or to form new states, by vote of the respective legislative assemblies, a plebiscite of the populations directly concerned, and approval of the national Congress.

Article 3: The territories may, by special law, be made states, be subdivided into new territories, or be restored as parts of the states from which they were separated.

Article 4: Brazil shall resort to war only in case of nonapplicability or failure of recourse to arbitration or pacific means of settlement of the dispute, regulated by any international security organization in which it may participate; and in no case shall it embark on a war of conquest, directly or indirectly, alone or in alliance with another state.

Article 5: The union shall have the power to:

- I Maintain relations with foreign states and to make treaties and conventions with them;
- II Declare war and make peace;
- III Decree, extend, and suspend a state of siege;
- IV Organize the Armed Forces, the security of the frontiers, and external defense;
- V Permit foreign forces to pass through the national territory, or, for reasons of war, to remain there temporarily;
- VI Authorize the production of and control commerce in war material;
- VII Supervise, throughout the national territory, the services of maritime, air, and frontier police;

- VIII Coin and issue money and establish banks of issue;
- IX Control the operations of credit, capitalization, and insurance establishments;
- X Establish a national highway plan;
- XI Maintain the postal service and the national air mail;
- XII Operate, directly or through authorization or concession, the telegraph, radiocommunications, radiobroadcasting, interstate and international telephone, and air navigation services and railways connecting seaports and national frontiers or crossing the boundaries of a state;
- XIII Organize a permanent defense against the effects of drought rural endemic diseases, and floods;
- XIV Grant amnesty;
- XV Legislate upon:
 - (a) Civil, commercial, criminal, procedural, electoral, aeronautical and labor law;
 - (b) General rules of law with respect to finances, insurance, and social security; defense and protection of health; and the penitentiary system;
 - (c) Production and consumption;
 - (d) Policies and bases of national education;
 - (e) Public registries and commercial boards;
 - (f) Organization, instruction, justice, and guarantees of the military police and general conditions for their utilization by the federal government in the event of mobilization or of war;
 - (g) Expropriation;
 - (h) Civil and military requisitions in time of war;
 - (i) Regulations of ports and of coastwise navigation;
 - (j) Interstate traffic;
 - (k) Foreign and interstate commerce; credit institutions, exchange, and the transfer of funds abroad;
 - (l) Underground resources, mining, metallurgy, waters, electric energy, forests, hunting, and fishing;
 - (m) Monetary and measurements systems; title and guarantee of metals;
 - (n) Naturalization, entry, extradition, and expulsion of foreigners;
 - (o) Emigration and immigration;
 - (p) Conditions of capacity to practice technical, scientific and liberal professions;
 - (q) Use of the national symbols;
 - (r) Incorporation of the aborigines in the national community.

Article 6: The federal power to legislate upon the matters enumerated in Article 5, No. XV, letters (b), (c), (d), (f), (h), (j), (l), (o), and (r) does not exclude supplementary or complementary state legislation.

Article 7: The federal government shall not intervene in the states except to:

- I Maintain the national integrity;
- II Repel foreign invasion or that of one state in another;
- III Suppress civil war;
- IV Guarantee the free exercise of any of the state powers;
- V Ensure the execution of judicial orders or decisions;
- VI Reorganize the finances of a state which, without reasons of force majeure, suspends, for more than two consecutive years, services on its funded external debt;
- VII Ensure observance of the following principles:
 - (a) Representative republican form;
 - (b) Independence and harmony of powers;
 - (c) Temporary nature of elective offices, these latter being limited to the term of the corresponding federal offices;
 - (d) Prohibition of the re-election of governors and prefects for the term immediately following;
 - (e) Municipal autonomy;
 - (f) Rendering of administrative accounts;
 - (g) Guarantees of the judicial power.

Article 8: Intervention shall be decreed by federal law in the cases of Nos. VI and VII of the preceding article.

Sole paragraph. In the case of No. VII, the act alleged to be unconstitutional shall be submitted by the attorney general of the republic for examination by the federal Supreme Court, and, if the latter so declares the act, intervention shall be decreed.

Article 9: The president of the republic has the power to decree intervention in the cases of Nos. I to V of Article 7.

1. Issuance of the decree shall be dependent upon:

I In the case of No. V, the requisition of the federal Supreme Court or if the order or decision is from an electoral court, the requisition of the Electoral Superior Court.

II In the case of No. IV, the request of the legislative branch or of the executive, obstructed or impeded, or the requisition of the federal Supreme Court, if the obstruction is exercised against the judicial branch.

2. In the second case provided for by Article 7, No. II, the intervention shall be decreed only in the invading state.

Article 10: In cases other than requisition of the federal supreme Court or the Electoral Superior Court, the president of the republic shall decree intervention and submit it, without prejudice to its immediate execution, to the approval of the national Congress which, if not in session, shall be convoked into extraordinary session for this purpose.

Article 11: The law or decree of intervention shall fix its scope, its duration and the conditions under which it is to be executed.

Article 12: The president of the republic has the power to make the intervention effective and, if necessary, to appoint an interventor.

Article 13: In the cases enumerated in Article 7, No. VII, and with observance of the provisions of Article 8, sole paragraph, the national Congress shall limit itself to suspending execution of the act alleged to be unconstitutional, if this measure is sufficient for the re-establishment of normality in the state.

Article 14: Upon cessation of the reasons which brought about the intervention, the state authorities removed in consequence thereof shall return to the exercise on their offices.

Article 15: The union shall have power to decree taxes upon;

- I Importation of goods of foreign origin;
- II Consumption of goods;
- III Production, commerce, distribution, and consumption, as well as the importation and exportation of liquid or gaseous lubricants and fuels of whatever origin or nature, this regime being extended, insofar as it may be applicable, to the minerals of the country and to electric energy;
- IV Income and profits of any kind;
- V Transfer of funds abroad;
- VI The business of its own economy, acts and instruments regulated by federal law.

1. Articles classified by law as the minimum indispensable to housing, clothing, nourishment, and medical treatment for persons of limited economic capacity are exempt from the consumption tax.

(2) The taxation dealt with in No. III shall be in the form of a single tax to be levied on each kind of product. Of the resulting revenue, a minimum of sixty percent shall be turned over to the states, the Federal District, and the municipalities, in proportion to their area, population; consumption, and production, according to the terms and for the purposes set forth in federal law.

(3) The union may tax the income from obligations of state or municipal public debt and the profits of agents of states and municipalities; but it cannot do so to an extent greater than that fixed for its own obligations and for the profits of its own agents.

(4) The union shall turn over to municipalities, except those of capitals, ten percent of the total that it collects from the tax dealt with in No. IV, the distribution being made in equal parts with at least half of the amount applied to benefits of a rural nature.

(5) The juridical acts to which the union, the states, or municipalities may be parties, or the instruments relating thereto, and those included in the tax qualifications established in Articles 19 and 29, do not come under the provisions of No. VI.

(6) In the imminence of or in case of foreign war, the union is empowered to decree extraordinary taxes, which shall not be distributed in the manner of Article 21 and which shall be eliminated gradually, within five years counted from the date of signing the peace.

Article 16: The union shall, moreover, have the power to decree the taxes provided for in Article 19, that are to be collected by the territories.

Article 17: The union is forbidden to decree taxes that are not uniform throughout the national territory, or that may result in distinction or preference for one port or another, to the detriment of another in any other state.

Article 18: Every state shall be governed by the constitution and by the laws it may adopt, with observance of the principles established in this Constitution.

(1) All powers which are not implicitly or explicitly forbidden to them by this Constitution are reserved to the states.

(2) The states shall provide for the needs of their government and their administration, but in the event of public calamity, it is incumbent on the union to lend them aid.

(3) By agreement with the union, the states may entrust federal officials with the execution of state laws and services or of acts and decisions of their authorities; and reciprocally, the union may, in matters within its jurisdiction, entrust analogous duties to state officials, with provision of the necessary expenses.

Article 19: The states have the power to decree taxes upon:

I Landed property, except urban;

II Transfer of property *causa mortis*—

III Transfer of real property *inter vivos* and its incorporation into the capital of companies;

IV Sales and consignments made by merchants and producers, including industrialists, with exemption, however, of the first transaction of a small producer, as defined by state law;

V Exportation abroad of goods of their production, up to a maximum of five percent ad valorem, any additional taxes being prohibited;

VI Acts regulated by state law, those of their judicial service, and the business of their economy.

(1) The tax on land shall not be imposed on parcels having an area not in excess of twenty hectares when cultivated by the proprietor himself or with his family, who does not own any other property.

(2) The taxes on the transfer of tangible property (Nos. II and III) belong to the state in whose territory such property is located.

(3) The tax on a transfer *causa mortis* of intangible property, including securities and credits, belongs to the state in whose territory the assets of the estate are to be liquidated or transferred to the heirs, even though the succession may have been opened in a foreign country.

(4) The states may not tax securities of the public debt issued by other judicial persons of national public law to an extent greater than that established for their own obligations.

(5) The tax on sales and consignments shall be uniform, without distinction as to origin or destination.

(6) In exceptional cases, the federal Senate may authorize an increase, for a specified time, in the tax on exports up to a maximum of ten percent advalorem.

Article 20: When the state collection of taxes, except that of the export tax, shall exceed, in any municipality other than the capital, the total of local revenues of whatever nature, the states shall return to it thirty percent annually of the excess collected.

Article 21: The union and the states may decree other taxes in addition to those attributed to them by this Constitution, but a federal tax shall exclude an identical state tax. The states shall collect such taxes and, as this is effected, shall turn over twenty percent of the proceeds to the union and forty percent to the municipalities where the collection was made.

Article 22: The financial administration, especially the execution of the budget, shall be supervised in the union by the national Congress, with the assistance of the Tribunal of Accounts, and in the states and municipalities in the manner established in the state constitutions.

Sole paragraph. In the preparation of the budget, the provisions of Articles 73 to 75 shall be observed.

Article 23: The states shall not intervene in the municipalities, except to put their finances in order when:

I There is a lack of punctuality in the service of a loan guaranteed by the state;

II They fail to pay their funded debt for two consecutive years.

Article 24: A state is permitted to create an organ for technical assistance to municipalities.

Article 25: The administrative and judicial organization of the Federal District and of the territories shall be governed by federal law, with observance of the provisions of Article 124.

Article 26: The Federal District shall be administered by a prefect, appointed by the president of the republic, and shall have a chamber, elected by the people, with legislative functions.

(1) The appointment shall be made after the federal Senate has given its consent to the name proposed by the president of the republic.

(2) The prefect shall be removable at will.

(3) The salaries of the judges (desembargadores) of the Court of Justice shall be fixed at an amount not less than seventy percent of the salaries of the justices of the federal Supreme Court, and those of other life-tenure judges at a difference not exceeding thirty percent between one classification and another

those in the highest classification to receive not less than two thirds of the salaries of the judges (*desembargadores*).

(4) The Federal District shall be entitled to the same taxes as those attributed to the states and municipalities by this Constitution.

Article 27: The union, the states, the Federal District, and municipalities are forbidden to establish limitations on traffic of any nature by means of interstate or inter-municipal taxes, except for the collection of taxes or tolls destined exclusively for the repayment of expenses for the construction, conservation and improvement of roads.

Article 28: The autonomy of municipalities shall be ensured:

I By the election of a prefect and councilors (*vereadores*);

II By self-administration in all matters concerning their particular interest and especially:

(a) The imposition and collection of taxes within their jurisdiction and the application of their revenues;

(b) The organization of their local public services.

(1) The prefects of the capitals and those of municipalities where there are natural hydromineral resorts, when improved by the state or by the union, may be appointed by the governors of the states or of the territories.

(2) The prefects of such municipalities as federal law, at the instance of the National Security Council, may declare to be military bases or ports of exceptional importance to the external defense of the country, shall be appointed by the governors of the states or territories.

Article 29: In addition to the revenue that is attributed to them by virtue of paragraphs 2 and 4 of Article 15, and of the taxes that in whole or in part are to be transferred to them by the state, the following tax sources belong exclusively to the municipalities:

I Urban land and buildings;

II Licenses;

III Industries and professions;

IV Public amusements;

V Acts relating to their economy or matters within their jurisdiction.

Article 30: The union, the states, the Federal District, and the municipalities shall have the power to collect.

I A tax on improvements whenever there is an increase in value of real property, as a consequence of public works;

II Excise taxes (*taxas*);

III Any other revenues that may arise out of the exercise of their powers and of the utilization of their property and services.

Sole paragraph. The tax on improvements cannot be assessed in amounts greater than the expense incurred or the increase in value that may accrue to the real property benefited by the work.

Article 31: The union, the states, the Federal District, and the municipalities are forbidden to:

- I Create distinctions between Brazilians or preferences favoring any states or municipalities as against others;
- II Establish or subsidize religious sects, or hinder their activities;
- III Enter into relationship of alliance or dependence with any sect or church, without prejudice to reciprocal collaboration in the furtherance of the collective interest;
- IV Refuse to honor public documents;
- V Levy a tax on;
 - (a) Property, revenues, and services of one another, without prejudice to the taxation of public services granted under concession, with observance of the sole paragraph of this article;
 - (b) Places of worship of any sect, the property and services of political parties, educational and social welfare institutions, provided that their income is applied entirely within the country for their intended purposes;
 - (c) Paper intended exclusively for the printing of newspapers, periodicals, and books.

Sole paragraph. Public services granted under concession do not enjoy tax exemption, except when so determined by the power having jurisdiction or when the union grants such exemption by special law, with respect to its own services, having in mind the common interest.

Article 32: The states, the Federal District, and municipalities may not establish any tax differential between goods of any nature by reason of their origin.

Article 33: The states and municipalities are prohibited from contracting an external loan without prior authorization by the federal Senate.

Article 34: Included in the property of the union are:

I Lakes and watercourses in lands within its domain or which border on more than one state, serve as boundaries with other countries, or extend into foreign territory, as well as islands in rivers and lakes in the boundary zones with other countries;

II The portion of public lands indispensable for the defense of the frontiers, fortifications, military constructions and railways.

Article 35: Among the properties of the state domain are included lakes and rivers within the territory of its domain and those which have their source and mouth within the territory of its domain and those which have their source and mouth within the territory of the state.

Article 36: The branches of the union are the legislative, the executive, and the judicial, independent and harmonious among themselves.

(1) A citizen vested with the function of one of these may not exercise the function of another, except as provided in this Constitution.

(2) It is forbidden for any of the branches to delegate their functions.

CHAPTER II

The Legislative Branch

Section I

PRELIMINARY PROVISIONS

Article 37: The legislative branch is exercised by the national Congress, which is composed of the Chamber of Deputies and the federal Senate.

Article 38: The election for deputies and senators is to be held simultaneously throughout the country.

Sole paragraph. The conditions of eligibility for the national Congress are:

I To be a Brazilian (Art. 129, Nos. I and II);

II To be in the exercise of political rights;

III To be over twenty-one years of age for the Chamber of Deputies and over thirty-five years of age for the federal Senate.

Article 39: The national Congress shall meet in the capital of the republic on March 15 each year, and shall function until December 15.

Sole paragraph. The national Congress may be convoked extraordinarily only by the president of the republic or at the initiative of one third of one of the chambers.

Article 40: Each chamber shall have the power to provide, by internal regulations, for its own organization, police, and the creation and filling of offices.

Sole paragraph. In the selection of committees, proportional representation of the national parties forming part of the respective chamber shall be ensured.

Article 41: The Chamber of Deputies and the federal Senate, under the direction of the executive committee of the latter (*Mesa da Camara*), shall meet in joint session in order to:

I Inaugurate the legislative session;

II Prescribe common regulations;

III Receive the oath of the president and of the vice-president of the republic

IV Deliberate upon a veto.

Article 42: In each chamber, except for constitutional provisions to the contrary, decisions shall be taken by majority of votes, when a majority of its members are present.

Article 43: The vote shall be secret in elections and in the cases established by Articles 45, 2; 63, No. I; 66, No. VIII; 70, 3; 211; and 213.

Article 44: Deputies and senators are inviolable in the exercise of their mandate for their opinions, words and votes.

Article 45: From the time of issuance of their diplomas until the inauguration of the subsequent legislature, the members of the national Congress may not be arrested except *in flagrante delicto* in an unbailable crime, nor criminally tried without previous permission of their chamber.

(1) In the case of *in flagrante delicto* in an unbailable crime, the warrant of arrest shall be transmitted within forty-eight hours to the respective chamber, in order that it may decide upon the imprisonment and authorize or reject the trial.

(2) The chamber concerned shall always deliberate by vote of the majority of its members.

Article 46: Deputies and senators, whether civilian or military, may not be incorporated into the Armed Forces except in time of war and by permission of their chamber, being thereafter subject to military legislation.

Article 47: Deputies and senators shall receive annually an equal remuneration and shall have equal allowances for expenses.

(1) The remuneration shall be divided into two parts: one fixed, which shall be paid during the course of the year, and the other variable, corresponding to attendance.

(2) The allowance for expenses and remuneration shall be fixed at the end of each legislature.

Article 48: Deputies and senators may not:

I After issuance of their credentials:

(a) Make a contract with a juridical person of public law, autonomous entity, or mixed economy company, except when the contract adheres to uniform standards;

(b) Accept or exercise a remunerated commission or employment from a juridical person of public law, an autonomous entity, mixed economy company or public service concession.

II After taking office:

(a) Be the owner or director of an enterprise which currently benefits from a contract with a juridical person of public law, or exercise remunerated employment therein;

(b) Occupy public employment from which they may be dismissed at will;

(c) Exercise another legislative mandate, whether federal, state, or municipal;

(d) Bring suit against any juridical person of public law.

(1) Infraction of the provisions of this article, or absence from sessions, without permission, for more than six consecutive months, shall result in loss of the mandate, declared by the chamber to which the deputy or senator belongs, upon the initiative of any of its members or documented representation by a political party or by the attorney general of the republic.

(2) A deputy or senator whose conduct is held to be incompatible with parliamentary decorum, by a vote of two thirds of the members of his chamber, shall likewise lose his mandate

Article 49: It is permissible for a deputy or senator, with previous permission of his chamber, to carry out a temporary diplomatic mission, or to participate in congresses, conferences and cultural missions held abroad.

Article 50: During the term of his mandate, a public official shall be separated from the functions of his office, with time of service being counted only for promotion by seniority and retirement.

Article 51: A deputy or senator invested with the function of minister of state, federal interventor, or secretary of state shall not lose his mandate.

Article 52: In the case of the preceding article, and in case of leave, as established by internal regulations, or vacancy in the office of deputy or senator, the respective alternate shall be called.

Sole paragraph. If there is no alternate to fill the vacancy, the president of the chamber concerned shall communicate the fact to the Superior Electoral Tribunal to arrange for an election, unless there are less than nine months remaining until the end of the term. The deputy or senator elected to the vacancy shall exercise the mandate for the remaining time.

Article 53: The Chamber of Deputies and the federal Senate shall create committees of inquiry upon a given matter, whenever one third of their members shall so request.

Sole paragraph. In the organization of these committees, the criterion established in the sole paragraph of Article 40 shall be observed.

Article 54: The ministers of state are obliged to appear before the Chamber of Deputies or the federal Senate, or any of their committees, whenever either chamber shall call them personally to give information respecting matters previously determined.

Sole paragraph. Failure to appear, without justification, shall constitute a crime of responsibility.

Article 55: The Chamber of Deputies and the federal Senate, as well as their committees, shall designate a day and hour to hear a minister of state who may desire to furnish them with explanations or to request legislative measures

Section II

The Chamber of Deputies

Article 56: The Chamber of Deputies is composed of representatives of the people elected, according to a system of proportional representation, by the states, by the Federal District, and by the territories

Article 57: Each legislature shall last four years.

Article 58: The number of deputies shall be fixed by law, in a proportion not to exceed one for each one hundred and fifty thousand inhabitants, up to twenty deputies, and beyond this limit, one for each two hundred and fifty thousand inhabitants.

(1) Each territory shall have one deputy, and seven deputies shall be the minimum number for each state and for the Federal District.

(2) The representation already fixed may not be reduced.

Article 59: The Chamber of Deputies shall have exclusive power:

(I) To declare founded or unfounded, by vote of an absolute majority of its members, an impeachment against the president of the republic under the terms of Article 88, and against ministers of state in crimes connected with those of the president of the republic;

(II) To take the initiative in demanding accounts from the president of the republic, by designation of a special committee, when they are not presented to the national Congress within sixty days after the opening of the legislative session.

Section III

The Federal Senate

Article 60: The federal Senate is composed of representatives of the states and of the Federal District, elected according to the majority principle.

(1) Each state, and the Federal District, shall elect three senators.

(2) The term of office of a senator shall be eight years.

(3) The representation of each state and of the Federal District shall be renewed every four years, alternately, one-third and two-thirds at a time.

(4) A senator's alternate elected with him shall replace or succeed him, under the terms of Article 52.

Article 61: The vice-president of the republic shall exercise the functions of president of the federal Senate, where he shall have only the deciding vote.

Article 62: The federal Senate has exclusive power:

(I) To judge the president of the republic in crimes of responsibility and ministers of state in crimes of the same nature that are connected with the former;

(II) To prosecute and judge the ministers of the federal Supreme Court and the attorney general of the republic, in crimes of responsibility.

(1) In cases covered by this article, the federal senate shall be presided over by the president of the federal Supreme Court.

(2) The federal Senate shall only pronounce condemnatory sentence by a vote of two-thirds of its members.

(3) The federal Senate may not impose any sentence other than loss of office and disqualification from holding another, up to five years, without prejudice to the action of ordinary justice.

Article 63: The federal Senate shall also have exclusive power:

(I) To approve, by secret vote, the appointment of magistrates, in the cases established by this Constitution, of the attorney general of the republic, the ministers of the Tribunal of Accounts, of the prefect of the Federal District, of the members of the National Economic Council, and of the chiefs of diplomatic mission of permanent character.

(II) To authorize foreign loans of states, the Federal District, and of municipalities.

Article 64: It is incumbent upon the federal Senate to suspend the execution, wholly or in part, of any law or decree declared unconstitutional by final decision of the federal Supreme Court.

Section IV

Powers of the Legislative Branch

Article 65: The national Congress has the power, with the approval of the president of the republic, to:

(I) Vote the budget;

(II) Vote the taxes pertaining to the union and to regulate the collection and distribution of its revenues;

(III) Enact provisions concerning the federal public debt and the means for its payment;

(IV) Create and abolish public positions, and fix the salaries therefor, always by a special law;

(V) Vote the law for the establishment of armed forces in peacetime;

(VI) Authorize the opening of credits, credit operations, and issues of legal tender currency;

(VII) Transfer temporarily the seat of the federal Government;

(VIII) Settle questions concerning boundaries of the national territory;

(IX) Legislate concerning property of the federal domain, and all matters within the jurisdiction of the union, except as provided in the following article.

Article 66: The national Congress has exclusive power to:

(I) Render final decision respecting treaties and conventions made with foreign states by the president of the republic;

(II) Authorize the president of the republic to declare war and make peace;

- (III) Authorize the president of the republic to permit foreign forces to pass through the national territory or, by reason of war, to remain therein temporarily;
- (IV) Approve or suspend federal intervention when decreed by the president of the republic;
- (V) Grant amnesty;
- (VI) Approve the resolutions of state legislative assemblies concerning the merger, subdivision, or partitioning of states;
- (VII) Authorize the president and vice-president of the republic to absent themselves from the country;
- (VIII) Pass upon the accounts of the president of the republic;
- (IX) Fix the expense allowance of members of the national Congress, as well as their subsidies and those of the president and vice-president of the republic;
- (X) Change its seat temporarily.

Section V

Laws

Article 67: The initiation of laws, excepting the cases of exclusive power, pertains to the president of the republic and to any member or committee of the Chamber of Deputies and the federal Senate.

(1) Initiation of the law establishing the Armed Forces and of all laws relating to financial matters pertains to the Chamber of Deputies and the president of the republic.

(2) Excepting the powers of the Chamber of Deputies, of the Senate, and of the federal courts, in matters concerning their respective administrative services, the president of the republic has exclusive power to initiate laws which create positions in existing services, increase salaries, or amend the law governing the establishment of the Armed Forces in the course of a legislative term.

(3) Discussion of bills initiated by the president of the republic shall begin in the Chamber of Deputies.

Article 68: A bill adopted in one of the chambers shall be reviewed by the other, which, if it approves it, shall send it for approval or promulgation (Arts. 70 and 71).

Sole paragraph. The review shall be discussed and voted upon in a single session.

Article 69: If a bill of one chamber is amended by the other, it shall be returned to the first for pronouncement concerning the amendment, with approval or disapproval.

Sole paragraph. The bill shall be sent for approval in the terms in which it was finally voted.

Article 70: In the cases listed in Article 65, the chamber where the voting of a bill

is concluded shall send it to the president of the republic who, if he concurs, will approve it.

(1) If the president of the republic shall adjudge the bill, wholly or in part, unconstitutional or contrary to the national interests, he shall veto it, wholly or in part, within ten business days, counted from the day on which he receives it, and he shall, within the same period, inform the president of the federal Senate of the reasons for his veto. If approval is refused after the legislative session is over, the president of the republic shall publish the veto.

(2) After a lapse of ten days, the silence of the president of the republic shall be equivalent to approval.

(3) When the president of the federal Senate is notified of the veto, he shall convoke the two chambers to inform them in joint session, and if the vetoed bill obtains the vote of two-thirds of the deputies and senators present, it shall be considered approved. In this case the bill shall be sent to the president of the republic for promulgation.

(4) If the law is not promulgated within 48 hours by the president of the republic, in the cases of paragraphs 2 and 3, the president of the Senate shall promulgate it; and if the latter does not do so within the same period of time, the vice-president of the Senate shall promulgate it.

Article 71: In the cases of Article 66, the enactment of a law shall be considered closed with the final voting, and it shall be promulgated by the president of the Senate.

Article 72: Bills which are rejected or not approved may be renewed during the same legislative session only by proposal of an absolute majority of the members of either chamber.

Section VI

The Budget

Article 73: There shall be a single budget and it shall be compulsory to include therein all the receipts and allotments of funds, and to itemize in the expenditures the appropriations necessary for the payment of all public services.

(1) The budget law shall not contain any provision foreign to the estimate of receipts and the fixing of expenses for services previously created. This prohibition does not include:

I Authorization for opening supplementary credits and credit operations in anticipation of receipts;

II Application of balances and the manner of covering deficits.

(2) The budget of expenditures shall be divided into two parts: one fixed, which may not be altered except by virtue of a previous law; and the other variable, which shall be subject to strict itemization.

Article 74: If the budget shall not have been sent for approval by November 30, the one which was in effect shall be extended for the following fiscal year.

Article 75: The transfer of budget items, the granting of unlimited credits, and the opening of special credits without legislative authorization are prohibited.

Sole paragraph. The opening of extraordinary credits shall be admitted only for urgent or unforeseen necessity, in case of war, internal disorder, or public disaster.

Article 76: The Tribunal of Accounts shall have its seat in the capital of the republic and jurisdiction throughout the national territory.

(1) The ministers of the Tribunal of Accounts shall be appointed by the president of the republic after approval of the selection by the federal Senate, and they shall have the same rights, guarantees, prerogatives, and remuneration as the judges of the federal Court of Appeals.

(2) The Tribunal of Accounts shall exercise, in matters concerning it, the powers set forth in Article 97, and shall have its own staff of personnel.

Article 77: The Tribunal of Accounts shall have the power to:

I Follow and control directly or through agencies created by law, the execution of the budget;

II Pass upon the accounts of those responsible for public funds and other public property, as well as the accounts of the administrators of autonomous entities;

III Pass upon the legality of contracts, retirements, removals, and pensions.

(1) Contracts which in any way affect receipts or expenditures shall be considered complete only after they have been registered by the Tribunal of Accounts. Refusal of registry shall suspend execution of the contract until the national Congress acts upon the matter.

(2) Any act of public administration which may result in an obligation of payment by the national Treasury or for its account, shall be subject to registry by the Tribunal of Accounts, either before or afterwards, as prescribed by law.

(3) In any case, the refusal of registry for lack of a credit balance or because of a charge to an improper credit shall have prohibitive character. If the refusal is based on other grounds, the expenditure may be made after an order is issued by the president of the republic for registry under reservation by the Tribunal of Accounts and direct appeal to the national Congress.

(4) The Tribunal of Accounts shall give its advance opinion, within a period of sixty days, upon the accounts which the president of the republic must render annually to the national Congress. If there are not submitted within the period prescribed by law, the fact shall be communicated to the national Congress for purposes of law, presenting to it in either case a detailed report of the fiscal year just ended.

Chapter III

The Executive Branch

Section I

The President and Vice-President of the Republic

Article 78: The powers of the executive branch are exercised by the president of the republic.

Article 79: The president shall be replaced, in case of impediment, and succeeded, in case of vacancy in office, by the vice-president of the republic.

(1) In case of impediment or vacancy in office of the president and of the vice-president of the republic, the president of the Chamber of Deputies, the vice-president of the federal Senate, and the president of the federal Supreme Court shall be called, in that order, to exercise the presidency.

(2) In case of vacancy in office of the president and vice-president of the republic, an election shall be held sixty days after the occurrence of the last vacancy. If the vacancies occur in the second half of the presidential term, the election for both offices shall be held thirty days after the last vacancy by the national Congress, in the manner established by law. In either case, those elected complete the term of their predecessors.

Article 80: The conditions of eligibility for president and vice-president are:

- I To be a Brazilian (Art. 129, Nos. I and II);
- II To be in the exercise of political rights;
- III To be over thirty-five years of age.

Article 81: The president and vice-president of the republic shall be elected simultaneously throughout the country, one hundred and twenty days before the expiration of the presidential term.

Article 82: The president and vice-president of the republic shall hold office for five years.

Article 83: The president and vice-president of the republic shall take office at a session of the national Congress or, if this is not in session, before the federal Supreme Court.

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- I. Constitutional Amendment No. 4 of September 2, 1961, instituted the parliamentary system of government in Brazil, but Constitutional Amendment No. 6 of January 23, 1963, abrogated Constitutional Amendment No. 4, and restored the presidential system of government established by the Federal Constitution of 1946.

Sole paragraph. The president of the republic, upon taking office, shall take this pledge: "I promise to maintain, defend, and comply with the Constitution of the republic, observe its laws, promote the general welfare of Brazil, maintain its union, its integrity, and its independence."

Article 84: If after thirty days from the date fixed for their doing so, the president or the vice-president of the republic have not taken office, except for illness, the office shall be declared vacant by the Supreme Electoral Tribunal.

Article 85: The president and the vice-president of the republic may not leave the country without permission of the national Congress, under penalty of loss of office.

Article 86: During the last legislative year previous to the election of the president and vice-president of the republic, their remuneration shall be fixed by the national Congress.

Section II

The Powers of the President of the Republic

Article 87: The president of the republic shall have exclusive power:

I To approve, promulgate, and have the laws published, and to issue decrees and regulations for their faithful execution;

II To veto bills, in accordance with Article 70, I;

III To appoint and remove the ministers of state;

IV To appoint and remove the prefect of the Federal District (Art. 26, I and 2) and the members of the National Economic Council (Art. 205, I);

V To fill federal public offices, according to law and with the exceptions established by this Constitution;

VI To maintain relations with foreign states;

VII To conclude international treaties and conventions, subject to ratification by the national Congress;

VIII To declare war, upon authorization by national Congress, or without such authorization in the event of foreign aggression, if this occurs in the interval between legislative sessions;

IX To make peace, with the authorization of and subject to ratification by the national Congress;

X To permit, upon authorization by the national Congress or without this authorization in the interval between legislative sessions, foreign forces to pass through the territory of the country or because of war, to remain there temporarily;

XI To exercise supreme command of the Armed Forces, administering them through the intermediary of competent organs;

- XII To decree total or partial mobilization of the Armed Forces;
- XIII To decree a state of siege, under the terms of this Constitution;
- XIV To decree and execute federal intervention under the terms of Articles 7 to 14;
- XV To authorize Brazilians to accept pensions, employment, or commissions from foreign governments;
- XVI To send to the Chamber of Deputies, within the first two months of a legislative session, the proposed budget;
- XVII To render annually to the national Congress, within sixty days after the opening of a legislative session, the accounts relating to the previous fiscal year;
- XVIII To send a message to the national Congress, at the opening of a legislative session, giving an account of the state of the nation and requesting such action as he may deem necessary;
- XIX To grant pardons and commute sentences, with the recommendation of the organs instituted by law.

Section III

The Responsibility of the President of the Republic

Article 88: The president of the republic, after the Chamber of Deputies, by a vote of an absolute majority of its members has declared impeachment in order, shall be tried before the federal Supreme Court for common crimes, or before the federal Senate for those of responsibility.

Sole paragraph. If impeachment has been declared in order, the president of the republic shall be suspended from his functions.

Article 89: Acts of the president of the republic are crimes of responsibility when they are attempts against the federal Constitution and, especially, against:

- I The existence of the union;
- II The free exercise of the legislative branch, and of the judicial branch, as well as of the constitutional powers of the states;
- III The exercise of political, individual, and social rights;
- IV The internal security of the country;
- V The probity of the administration;
- VI The budget law;
- VII The safeguarding and legal employment of public monies;
- VIII The fulfilment of judicial decisions.

Sole paragraph. These crimes shall be defined in a special law, which shall establish the rules for prosecution and judgement.

Section IV

The Ministers of State

Article 90: The president of the republic is assisted by the ministers of state.

Sole paragraph. The essential conditions for investiture in the office of minister of state are:

- I To be a Brazilian (Art. 120, Nos. I and II).
- II To be in the exercise of political rights;
- III To be over twenty-five years of age.

Article 91: In addition to powers fixed by law, the ministers of state have the power;

- I To countersign the acts signed by the president of the republic;
- II To issue instructions for the proper execution of laws, decrees and regulations;
- III To present to the president of the republic a report of services of each year carried out in the ministry;
- IV To appear before the Chamber of Deputies and before the federal Senate in those cases and for the purposes specified in this Constitution.

Article 92: The ministers of state, in common crimes and crimes of responsibility, shall be prosecuted and judged by the federal Supreme Court, and in crimes connected with those of the president of the republic, by the organs competent for the prosecution and judgment of the latter.

Article 93: In addition to what is provided in Article 54, sole paragraph, the acts defined in law (Art. 89), when practiced or ordered by the ministers of state, are crimes of responsibility.

Sole paragraph. The ministers of state are responsible for the acts they sign, even though jointly with the president of the republic, or which they perform by his order.

Chapter IV

The Judicial Branch

Section I

Preliminary Provisions

Article 94: The judicial branch is exercised by the following organs:

- I Federal Supreme Court;
- II Federal Court of Appeals;
- III Military judges and courts;
- IV Electoral judges and courts.
- V Labor judges and courts.

Article 95: Except for the restrictions stated in this Constitution, judges shall enjoy the following guarantees:

- I Life tenure, being unable to lose office except by judicial sentence;
- II Nonremovability, except when some reason of public interest occurs, recognized by the vote of two-thirds of the effective members of the competent higher court;
- III Irreducibility of remuneration, which, however, shall be subject to general taxes.

(1) Retirement shall be compulsory at seventy years of age or for proven disability, and optional after thirty years of public service, counted in the manner prescribed by law.

(2) Retirement, in any case, shall be decreed with full remuneration.

(3) Life tenure shall not be compulsory for those judges whose functions are limited to the preparation of cases and the substitution of trial judges, except after ten years of continuous exercise of the office.

Article 96: Judges are prohibited:

I From exercising, even though inactive, any other public function except secondary and higher education, and the cases provided for in this Constitution, under penalty of loss of judicial office;

II From receiving percentages, under any pretext, in cases subject to their examination and judgment;

III From engaging in partisan political activity.

Article 97: The courts have the power:

I To elect their presidents and other organs of direction;

II To draw up their internal regulations and organize auxiliary services, filling offices according to law; and likewise to propose to the competent legislative branch the creation or abolishment of offices and the fixing of their corresponding salaries;

III To grant leave and vacations, according to provisions of law, to their members and to judges and employees that are immediately subordinate to them.

Section II

The Federal Supreme Court

Article 98: The federal Supreme Court, with its seat in the capital of the republic and jurisdiction throughout the national territory, shall be composed of eleven justices. Upon the proposal of the Court itself, this number may be increased by law.

Article 99: The justices of the federal Supreme Court shall be appointed by the president of the republic, after the selection has been approved by the federal Senate from among Brazilians (Art. 129, I and II) over thirty-five years of age, of notable juridical learning and of spotless reputation.

Article 100: The justices of the federal Supreme Court, in crimes of responsibility, shall be prosecuted and judged by the federal Senate.

Article 101: The federal Supreme Court is empowered:

- I To prosecute and judge in first instance:
 - (a) The president of the republic in common crimes;
 - (b) Its own justices and the attorney general in common crimes;
 - (c) The ministers of state, the judges of the federal superior courts the judges of the courts of justice of the states, the Federal District, and of the territories, the justices of the Tribunal of Accounts, and the chiefs of diplomatic missions of permanent character, both in common crimes and in crimes of responsibility, except, with respect to the ministers of state, as provided at the end of Article 92.
 - (d) Litigation between foreign states and the union, the states, the Federal District, or the municipalities;
 - (e) Cases and disputes between the union and the states or between the latter;
 - (f) Conflicts of jurisdiction between judges or between different federal courts of justice, between any federal judges or courts and those of the states, and between judges or courts of different states, including those of the Federal District and of the territories;
 - (g) Extradition of criminals requested by foreign states and the homologation of foreign judgments;
 - (h) *Habeas corpus*, when the party exercising or suffering restraint is a court, an official, or authority whose acts are directly subject to the jurisdiction of the federal Supreme Court; in matters of crime subject to this same jurisdiction in sole instance; and when there may be danger of violence being committed before another judge or court can take cognizance of the request;
 - (i) Writs of security against acts of the president of the republic of the executive committee (*Mesa*) of the Chamber or of the Senate, and of the president of the federal Supreme Court itself;
 - (j) The execution of judgments in cases of its original jurisdiction, the Court having the right to delegate acts of procedure to an inferior judge or to another court;
 - (k) Rescissory actions of its decisions.
- II To judge on ordinary appeal:
 - (a) Writs of security and *habeas corpus* decided in final instance by local or federal courts when the decision is one of denial;
 - (b) Cases decided by local judges based on contract or treaty between the union and a foreign state, as well as those in which a foreign state and a person domiciled in the country are parties;
 - (c) Political crimes.
- III To judge on special appeal cases decided in sole or final instance by other courts or judges:
 - (a) When the decision is contrary to a provision of this Constitution or to the text of a federal treaty or law;
 - (b) When question is raised as to the validity of federal law in the light of this Constitution, and the decision appealed denies application of the contested law;

- (c) When the validity of a law or act of a local government is contested, in the light of this Constitution or a federal law, and the decision, appealed holds the law or act valid;
- (d) When in the decision appealed the interpretation of the federal law invoked is different from that which has been given to it by any other judicial tribunals or the federal Supreme Court itself.

IV To review, in the interest of those condemned, its own final criminal decisions.

Article 102: With voluntary appeal to the federal Supreme Court, its president shall have the power to grant exequatur to letters rogatory from foreign courts.

Section III

The Federal Court of Appeals

Article 103: The federal Court of Appeals, with its seat in the federal capital, shall be composed of nine judges, appointed by the president of the republic, after their selection has been approved by the federal Senate, two-thirds among magistrates and one-third among lawyers and members of the public ministry, with the requirements of Article 99.

Sole paragraph. The Court may divide itself into chambers or panels.

Article 104: The federal Court of Appeals is empowered:

- I To prosecute and judge in first instance:
 - (a) Rescissory actions of its decisions;
 - (b) Writs of security, when the restraining authority is a minister of state, the Court itself or its president.
- II To judge on the level of appeal:
 - (a) Cases decided in first instance, when the union is involved as plaintiff, defendant, witness, or opponent, except in bankruptcy matters; or in matters of crimes committed against the property, services, or interests of the union, excepting the jurisdiction of electoral and military justice;
 - (b) The decisions of local judges, denying *habeas corpus*, and decisions issued in writs of security, when the indicated restraining authority is federal.
- III To review, in the interest of persons convicted, its own criminal decisions.

Article 105: The law may create, in different regions of the country, other federal Courts of Appeals, at the proposal of the court itself and with the approval of the federal Supreme Court, fixing their seat and territorial jurisdiction and with the observance of the provisions of Articles 103 and 104.

Section IV

Military Judges and Courts

Article 106: The organs of military justice are the Military Superior Court and such inferior courts and judges as the law may establish.

Sole paragraph. The law shall make provision concerning the number and manner of selection of the military judges and the magistrates of the Military Superior Court, who shall receive remuneration equal to that of the judges of the federal Court of Appeals, and it shall establish the conditions for the admission of its members.

Article 107: The irremovability assured to members of the military justice does not exempt them from the obligation to accompany the forces with which they are to serve.

Article 108: The military justice shall have the power to prosecute and judge military and similar persons, for military crimes defined by law.

(1) This special jurisdiction may be extended to civilians in cases provided by law, for the repression of crimes against the external security of the country or against its military institutions.

(2) The law shall regulate the application of the penalties of military legislation in time of war.

Section V

Electoral Judges and Courts

Article 109: The organs of electoral justice are:

- I The Superior Electoral Court;
- II Regional electoral courts;
- III Electoral boards;
- IV Electoral judges.

Article 110: The Superior Electoral Court, with its seat in the capital of the republic, shall be composed:

I By election by secret ballot:

- (a) Of two judges chosen by the federal Supreme Court, from among its justices;
- (b) Of two judges selected by the federal Court of Appeals, from among its judges;
- (c) Of one judge chosen by the court of justice of the Federal District from among its judges.

II By appointment of the president of the republic, of two from among six citizens of notable juridical learning and spotless reputation, who may not be incompatible by law, indicated by the federal Supreme Court.

Sole paragraph. The Superior Electoral Court shall elect as its president one of the two justices of the federal Supreme Court, the other occupying its vice-presidency.

Article 111: There shall be a regional electoral court in the capital of each state and in the Federal District.

Sole paragraph. At the proposal of the Superior Electoral Court, a regional electoral court may be established by law in the capital of any territory.

Article 112: The regional electoral courts shall be composed:

I By election by secret ballot:

- (a) Of three judges chosen by the Court of Justice from among its members;
- (b) Of two judges chosen by the Court of Justice from among the judges of law.

II By appointment of the president of the republic, of two from among six citizens of notable juridical learning and spotless reputation, who are not incompatible by law, indicated by the court of justice.

Sole paragraph. The president and vice-president of a regional electoral court shall be chosen from among the three judges of the court of justice.

Article 113: The number of judges of the electoral courts may not be reduced but may be raised, up to nine, at the proposal of the Superior Electoral Court and in the manner suggested by it.

Article 114: The judges of the electoral courts, except for justifiable reason, shall serve compulsorily for two years and never for more than two consecutive two-year terms.

Article 115: The alternates of the effective members of the electoral courts shall be chosen at the same time and by the same procedure, in equal number for each category.

Article 116: The organization of the electoral boards shall be regulated by law. They shall be presided over by a judge of law and their members shall be appointed after approval of the regional electoral court, by the president thereof.

Article 117: The judges of law shall have the power to exercise, with full jurisdiction and in the manner prescribed by law, the functions of electoral judges.

Sole paragraph. The law may grant to other judges jurisdiction in functions other than those of decision.

Article 118: For as long as they shall serve, electoral magistrates shall enjoy, insofar as they are applicable to them, the guarantees established in Article 95, numbers I and II, and as such, shall not have other incompatibilities except those declared by law.

Article 119: The law shall regulate the powers of the electoral judges and courts. Among the powers of electoral justice, there are included:

- I The registration and cancellation of registration of political parties;
- II Electoral division of the country;
- III Electoral registration;

IV Fixing of the date of elections, when not determined by constitutional or legal provision;

V The electoral process, the counting of votes, and the issuance of credentials to those elected;

VI Cognizance and decision of allegations of ineligibility;

VII The prosecution and judgment of electoral crimes and common crimes connected therewith as well as those of *habeas corpus* and writ of security in electoral matters;

VIII Cognizance of complaints relative to obligations imposed by law on political parties, with respect to their accounts and the ascertainment of the origin of their funds.

Article 120: Decisions of the Superior Electoral Court may not be appealed, except those which declare the invalidity of a law or act contrary to this Constitution and those denying *habeas corpus* or writ of security, which may be appealed to the federal Supreme Court.

Article 121: Appeal may be had from the decisions of regional electoral courts to the Superior Electoral Court only when:

I They are taken contrary to an express provision of law;

II There occurs a difference in interpretation of law between two or more electoral courts;

III They relate to the issuance of credentials in federal and state elections;

IV They deny *habeas corpus* or a writ of security.

Section VI

Labor Judges and Courts

Article 122: The organs of labor justice are:

I The Superior Labor Court;

II Regional labor courts;

III Boards or judges of conciliation and judgment.

(1) The Superior Labour Court has its seat in the federal capital.

(2) The law shall fix the number of the regional labor tribunals and their respective seats.

(3) The law shall establish the boards of conciliation and judgment and may confer their functions on judges of law in districts where boards are not established.

(4) Other organs of labor justice may be created by law.

(5) The constitution, investiture, jurisdiction, competence, guarantees, and conditions for the exercise of organs of labor justice shall be regulated by law, preserving the equality of representation of employees and employers.

Article 123: Labor justice shall have the power to conciliate and judge individual and collective disputes between employees and employers, as well as other controversies arising out of labor relations governed by special legislation.

(1) Disputes relative to labor accidents are within the jurisdiction of the ordinary courts.

(2) The law shall specify the cases in which decisions in collective disputes may establish standards and conditions of work.

TITLE II

State Justice

Article 124: The states shall organize their justice with observance of Articles 95 to 97 and also the following principles:

I Judicial division and organization shall be unalterable during five years from the date of the law establishing them, except for a well-founded proposal by the court of justice.

II Courts inferior to the courts of justice may be created.

III Entry into life-tenure magistracy shall be dependent upon competitive examinations, organized by the courts of justice in collaboration with the Sectional Council of the Order of Attorneys of Brazil, and indication of the candidates shall be made whenever possible in a triplicate list.

IV The promotion of judges shall be made from one classification to another according to seniority and merit, alternately, and in the second case, shall be dependent upon a triplicate list organized by the court of justice. The same proportion will be observed in admission to this court, except as provided in item V of this article. For this purpose, in cases of merit, the triplicate list shall consist of names selected from among judges of any classification. In cases of seniority, which shall be ascertained from the last classification, the court shall decide first whether the judge with the longest service is to be designated; and if this one is rejected by three-quarters of the judges, the voting shall be repeated with respect to the next in line, and so on successively until the selection is made. Only after two years of effective service in the respective classification may a judge be promoted.

V In the composition of any court, a fifth of the places shall be filled by attorneys and members of the public ministry, of renowned merit and spotless reputation, with at least ten years of law practice. For each vacancy the court shall vote upon a triplicate list, in secret session and by secret ballot. If a member of the public ministry is elected, the next vacancy shall be filled by an attorney.

VI The remuneration of the judges shall be fixed at an amount not inferior to that received, in any form, by state secretaries; and that of the other life-tenure judges, with a difference not in excess of thirty percent between one classification and another, those of the highest classification to receive not less than two-thirds of the remuneration of the judges.

VII In case of transfer of the seat of the court, a judge is authorized to move to the new seat or to a district of equal classification or to request placement on an available list with full remuneration.

VIII Only by proposal of a court of justice may the number of its members or the members of any other court be altered.

IX The court of justice has exclusive power to prosecute and judge inferior judges for common crimes and crimes of responsibility.

X A temporary justice of peace may be instituted with the judicial powers of substitution, except for final or appellate cases, and with powers for licensing and performing marriages, an other acts which the law may specify.

XI Magistrates may be created with investiture limited to a certain time and powers to judge cases of small value. These judges may substitute for life-tenure judges.

XII State military justice, organized in accordance with the general precepts of federal law (Art. 5, No. XV, f) shall have as organs of first instance the councils of justice and as organ of second instance a special court of the court of justice.

TITLE III

The Public Ministry

Article 125: The law shall organize the public ministry of the union, in conjunction with the ordinary, military, electoral, and labor courts.

Article 126: The federal public ministry has as its head the attorney general of the republic. The attorney general, appointed by the president of the republic, after approval of the selection by the federal Senate from among citizens meeting the requirements indicated in Article 99, is dismissible at will.

Sole paragraph. The union shall be represented in court by attorneys of the republic, but the law may entrust this representation, in districts in the interior, to the local public ministry.

Article 127: The members of the public ministry of the union, of the Federal District, and of the territories shall be admitted into the initial positions of the career by competition. After two years of service, they may not be dismissed except by judicial sentence or administrative process allowing them ample defense; nor may they be removed, except upon representation put forward by the head of the public ministry, based upon the convenience of the service.

Article 128: In the states, the public ministry shall also be established on a career basis, in accordance with the precepts of the preceding article, as well as on the principles of promotion from one classification to another.

TITLE IV

Declaration of Rights

Chapter I

Nationality and Citizenship

Article 129: The following are Brazilians:

I Persons born in Brazil, even though of foreign parents, if the latter are not resident in the service of their country;

II The children of a Brazilian father or mother born in a foreign country, if the parents are in the service of Brazil, or, if they are not, if they come to reside in the country. In this case, after attaining majority, they must, in order to conserve Brazilian nationality, opt for it within four years.

III Persons who acquired Brazilian nationality under the terms of Article 69, Nos. IV and V, of the Constitution of February 24, 1891.

IV Persons naturalized in the manner established by law, it being required of the Portuguese merely that they reside in the country one uninterrupted year and be of good moral standing and physical health.

Article 130: Nationality is lost by a Brazilian:

I Who, by voluntary naturalization, acquires another nationality.

II Who, without permission of the president of the republic, accepts a commission, employment, or pension from a foreign government.

III Who, by judicial sentence, by process established by law, shall have his naturalization cancelled because of engaging in activity injurious to the national interest.

Article 131: Voters shall be Brazilians over eighteen years of age who register as prescribed by law.

Article 132: The following may not register as voters:

I Illiterates;

II Those who do not know how to express themselves in the national language;

III Those who are deprived temporarily or permanently of political rights.

Sole paragraph. Enlisted soldiers likewise may not register as voters, except officer-candidates, subofficers, sublieutenants, sergeants, and students of military schools of higher education.

Article 133: Registration and voting are obligatory for Brazilians of both sexes, subject to the exceptions established by law.

Article 134: Suffrage is universal and direct; the vote is secret: and proportional representation of the national political parties is assured in the manner that the law shall establish.

Article 135: Political rights are suspended or lost only in the cases mentioned in this article:

(1) They shall be suspended:

I For absolute civil incapacity;

II For criminal conviction, as long as its effects shall last.

(2) They shall be lost:

I In the cases established in Article 130;

II For the refusal provided for in Article 141, 8;

III For the acceptance of a foreign title of nobility or foreign decoration that implies restriction of right or duty before the state.

Article 136: Loss of political rights carries with it, simultaneously, the loss of public office or function.

Article 137: The law shall establish the conditions for the reacquisition of political rights and of nationality.

Article 138: Those who may not be registered and those mentioned in the sole paragraph of Article 132 may not be elected to office.

Article 139: The following also may not be elected:

I As president and vice-president of the republic:

- (a) A president who has held office for any length of time in the term immediately preceding, and likewise the vice-president who has succeeded him or who, during the six months preceding the election, has substituted for him;
- (b) Until six months after definitive separation from their functions, governors, federal interventors appointed in accordance with Article 12, ministers of state, and the prefect of the Federal District;
- (c) Until three months after definitive cessation of their functions, the justices of the federal Supreme Court, the attorney general of the republic, the chiefs of the general staff, judges, the attorney general and regional attorneys of the electoral justice, the state secretaries and chiefs of police;

II As governor;

- (a) In each state, a governor who has held office for any period of time in the term immediately preceding, or the person who has succeeded him, or who has substituted for him within six months preceding the election; and a federal interventor appointed in the manner prescribed in Article 12, who exercised the functions for any length of time in the governmental period immediately preceding;
- (b) Until one year after definitive separation from his functions, the president or vice-president of the republic and any substitutes who have assumed the presidency;
- (c) In each state, until three months after definitive cessation of their functions, the state secretaries, the commandants of military districts, the chiefs and commandants of police, federal and state magistrates, and the chief of the public ministry;
- (d) Until three months after definitive cessation of their functions, those who may be ineligible for president of the republic, except those mentioned in items (a) and (b) of this number;

III As prefect, anyone who has held the office for any length of time in the period immediately preceding, as well as anyone who succeeded him or who, within six months preceding the election, substituted for him; and likewise, for the same period, the police authorities with jurisdiction in the municipality;

IV For the Chamber of Deputies and the federal Senate, the authorities; mentioned in Nos. I and II, under the same conditions established therein, if they held office during the three months preceding the election;

V For the legislative assemblies, the governors, state secretaries, and chiefs of police, until two months after definitive cessation of their functions.

Sole paragraph. The precepts of this article apply to office-holders, both regular and provisional, in the offices mentioned.

Article 140: Likewise ineligible for office, under the same conditions as set forth in the preceding article, are the spouse and relatives by consanguinity or affinity to the second degree;

I Of the president and the vice-president or of a substitute who may assume the presidency;

(a) For president and vice-president;

(b) For governor;

(c) For deputy or senator, except in case of already having held the office or of having been elected simultaneously with the president and vice-president of the republic;

II Of a governor or federal interventor, appointed in accordance with Article 12, in each state:

(a) For governor;

(b) For deputy or senator, except in case of having already held the office or of having been elected simultaneously with the governor;

III Of a prefect, for the same office.

Chapter II

Individual Rights and Guarantees

Article 141: The Constitution ensures to Brazilians and foreigners residing in the country the inviolability of rights concerning life, liberty, individual security, and property, in the following terms:

(1) All are equal before the law.

(2) No one may be compelled to do or to refrain from doing anything except by virtue of a law.

(3) The law shall not prejudice any vested right, any juridical act accomplished, or any adjudicated matter.

(4) The law shall not exclude any injury to individual rights from consideration by the judicial branch.

(5) The expression of thought is free and shall not be dependent upon censorship, except as regards public performances and amusements, and every person shall be responsible, in those cases and in the manner that the law shall establish, for any abuses he may commit. Anonymity is not permitted. The right of reply is assured. The publication of books and periodicals shall not be dependent upon license from the public power. However, propaganda for war, or violent procedures to overthrow the political and social order, or prejudices of race or class, shall not be tolerated.

(6) The secrecy of correspondence is inviolable.

(7) Freedom of conscience and belief is inviolable, and the free exercise of religious sects is assured, as long as they are not contrary to public order or good morals. Religious associations shall acquire juridical personality according to civil law.

(8) No one shall be deprived of his rights by reason of religious, philosophic, or political convictions, unless he shall invoke them in order to exempt himself from any obligation, duty, or service required by law of Brazilians in general or shall refuse those which the same law establishes as substitutes for those duties in order to meet a conscientious objection.

(9) Without constraint of the ones favored, religious ministrations to the Armed Forces shall be offered by a Brazilian (Art. 129, Nos. I and II) and likewise, when solicited by interested parties or their legal representatives, in establishments of collective confinement.

(10) Cemeteries shall be secular in character and shall be administered by the municipal authority. All religious confessions shall be permitted to practice their rites therein. Religious associations may maintain private cemeteries, according to law.

(11) All may meet, without arms, without any intervention on the part of the police except to ensure public order. With this object in view, the police may designate a place for the meeting, with the understanding that, by so proceeding, the meeting is not frustrated or rendered impossible.

(12) Freedom of association for lawful purposes is assured. No association may be compelled to dissolve except by virtue of a judicial sentence.

(13) The organization, registration, or functioning of any political party or association whose programme or action is contrary to the democratic regime based upon plurality of parties and guarantee of the fundamental rights of man, is prohibited.

(14) The practice of any profession shall be free, with observance of such conditions regarding capacity as the law may prescribe.

(15) The home is the inviolable refuge of the individual. No one may enter therein at night, without the consent of the dweller, except to go to the aid of victims of crime or disaster, or during the day, except in those cases and in the manner prescribed by law.

(16) The right of property is guaranteed except in case of expropriation for public necessity or utility, or social interest, with previous and fair compensation in money. In case of imminent danger, such as war or internal disorder, the competent authorities may use private property, if the public good so requires, with assurance of the right to compensation at a later date.

(17) Industrial inventions belong to their authors, to whom the law shall guarantee temporary privilege, or, if dissemination should be in the collective interest, it shall grant just compensation.

(18) Ownership of industrial and commercial trademarks is assured, as well as the exclusive use of a trade name.

(19) To authors of literary, artistic, or scientific works shall belong the exclusive right to reproduce them. The heirs of authors shall enjoy this right for such time as the law may determine.

(20) No one shall be arrested except in the act of committing a crime or by written order issued by a competent authority in the cases specified by law.

(21) No one shall be taken to jail or detained therein if he furnishes the bond permitted by law.

(22) The arrest or detention of any person shall be immediately communicated to the competent judge who, if it should not be legal, shall release such person and, in the case provided for by law, shall hold the restraining authority responsible.

(23) *Habeas corpus* shall be granted whenever anyone shall suffer, or shall be threatened with suffering, violence or restraint in his freedom of movement, by illegality or abuse of power. In disciplinary offenses, *habeas corpus* shall not apply.

(24) To protect clear and certain rights not protected by *habeas corpus*, a writ of security shall be granted, regardless of what authority may be responsible for the illegality or abuse of power.

(25) Accused persons are assured of full defense with all the means and recourses essential thereto, commencing with the notice of accusation which, signed, by the competent authority, with the names of the accuser and of witnesses shall be delivered to the prisoner within twenty-four hours. Criminal examination shall be contestable.

(26) There shall be no privileges at law nor exceptional judges or courts.

(27) No one shall be prosecuted or sentenced except by competent authority and as provided by a prior law.

(28) The institution of the jury is maintained, with such organization as the law shall give it, provided that the number of its members shall always be odd and the secrecy of its voting shall be guaranteed, as shall be the fullness of the defense of the accused and the sovereignty of verdicts. The judgments of wilful crimes against life through trial by jury is compulsory.

(29) Penal law shall regulate the individualization of punishment and shall be retroactive only if it shall benefit the accused.

(30) No penalty shall extend beyond the person of the delinquent.

(31) There shall be no penalty of death, of banishment, of confiscation, or perpetual in character. Exception is made, with respect to the death penalty, of the provisions of military law in time of war with a foreign country. The law shall provide for the sequestration and loss of property, in case of unlawful enrichment, through influence or through abuse of public office or function, or of employment in an autonomous entity.

(32) There shall be no civil imprisonment for debt, fines, or costs, except in the case of an unfaithful custodian and of failure to fulfill one's obligation of support, as provided by law.

(33) Extradition of a foreigner shall not be granted for political crimes or crimes of opinion, or of a Brazilian in any case.

(34) No tax shall be demanded or increased except as the law shall establish; no tax shall be collected without previous budgetary authorization in each fiscal

year, exception being made, however, of the customs tariff and of taxes levied by reason of war.

(35) The public power shall grant judicial assistance to the needy in such manner as the law may establish.

(36) The law shall ensure:

- (i) The rapid despatch of proceedings in public departments;
- (ii) Communication to the interested parties of decisions made and of information to which the latter refer;
- (iii) The issuance of certificates solicited for the defense of rights;
- (iv) The issuance of certificates solicited for the clarification of administrative affairs, unless the public interest imposes secrecy.

(37) The right is assured to any person whomsoever to make representation against abuses by authorities and to take steps to hold them responsible, by petition addressed to the public powers.

(38) Any citizen may be a legitimate party to plead the annulment or declaration of nullity of acts injurious to the patrimony of the union, the states, the municipalities, the autonomous entities, and mixed economy organizations.

Article 142: In time of peace any person may enter the national territory with his goods and remain therein or depart therefrom, so long as provisions of law are respected.

Article 143: The federal government may expel from the national territory any foreigner injurious to the public order, unless his spouse is a Brazilian or if he has a Brazilian child (Art. 129, Nos. I and II) dependent upon paternal support.

Article 144: The specification of the rights and guarantees expressed in this Constitution does not exclude other rights and guarantees resulting from the regime and from the principles which it adopts.

TITLE V

The Economic and Social Order

Article 145: The economic order shall be organized according to principles of social justice, reconciling freedom of initiative with the evaluation of human labor.

Sole paragraph. Everyone is assured work that will make possible a dignified existence. Labor is a social obligation.

Article 146: The union may intervene in the economic domain and monopolize a given industry or activity by means of a special law. The intervention shall be based on the public interest and shall be limited by the fundamental rights ensured by this Constitution.

Article 147: The use of property shall be conditioned upon social well-being. The law may, subject to observance of the provisions of Article 141; 16, promote a fair distribution of property, with equal opportunities for all.

Article 148: The law shall restrain any and all forms of abuse of economic power, including unions or groupings of concerns either individual or social, regardless of their nature, that aim to dominate domestic markets, to eliminate competition, and to increase profits arbitrarily.

Article 149: The law shall regulate the system of banks of deposit, insurance companies, capitalization companies, and the like.

Article 150: The law shall create specialized credit institutions to assist agriculture and stock-raising.

Article 151: The law shall provide for a system of concessions for federal, state, and municipal public services.

Sole paragraph. The control and revision of rates for services supplied by concessions shall be determined so that the profits of the concessionaries, not to exceed a fair return on capital, will permit them to meet the needs for improvement and expansion of such services. The law shall apply to concessions granted under the previous regime, on rates stipulated for the entire duration of the contract.

Article 152: Mines and other underground resources as well as waterfalls, constitute property distinct from that of the soil for the purpose of industrial exploitation or use.

Article 153: The utilization of mineral resources and of hydraulic power is subject to federal authorization or concession, as provided by law.

(1) Authorizations or concessions shall be granted exclusively to Brazilians or to companies organized in the country, the owner of the land being assured preference in exploitation. The preferential rights of the landowner, in case of mines and deposits, shall be regulated according to their nature.

(2) The utilization of hydraulic power of low capacity shall not be subject to authorization or concession.

(3) Once the conditions imposed by law are fulfilled, among which shall be the possession of the necessary technical and administrative services, the states shall assume the exercise in their territories of the powers conferred by this article.

(4) In the cases pertaining to the general interest, indicated by law, the union shall assist the states in studies relating to thermo-mineral waters for medicinal purposes, and in the equipment of resorts intended for their use.

Article 154: Usury, in any form, shall be punished in the manner prescribed by law.

Article 155: Coastwise navigation for the transportation of merchandise is the exclusive prerogative of national vessels, except in case of public necessity.

Sole paragraph. The owners, charterers, and commanders of national vessels, as well as at least two-thirds of the members of their crews, must be Brazilians (Article 129, Nos. I and II).

Article 156: The law shall facilitate the settlement of farm workers by establishing plans for the colonization and use of public lands. For this purpose, preference will be given to nationals, and from among these, to the inhabitants of impoverished areas and the unemployed

(1) In the concession of land grants, the states shall ensure to occupants (posseiros) who habitually dwell thereon, preference for the purchase of the land up to twenty-five hectares.

(2) Without previous authorization by the federal Senate, no sale or concession of public lands with an area of over ten thousand hectares may be granted.

(3) Anyone who, being neither a rural nor an urban landowner, occupies a piece of land not exceeding twenty-five hectares for ten uninterrupted years, without opposition and without recognition of other ownership, makes it productive by his labor and dwells thereon, shall acquire ownership by duly recorded legal declaration.

Article 157: Labor and social legislation shall be governed by the following principles, as well as by others aimed at improving the condition of workers:

I A minimum wage that, according to the conditions of each region, will cover the normal necessities of a worker and his family;

II Prohibition of wage differences for the same work because of age, sex, nationality or marital status;

III Higher wages for night work than for day work;

IV Compulsory and direct participation of the worker in the profits of an enterprise, on the terms and in the manner provided by law;

V Daily work not exceeding eight hours, except in the cases and under the conditions provided by law;

VI Weekly rest with pay, preferably on Sundays, and, within the technical requirements of concerns, on civil and religious holidays in accordance with local tradition;

VII Annual paid vacations;

VIII Hygiene and safety in work;

IX Prohibition of work by minors under fourteen years of age; in unhealthy industries, by women and by minors under eighteen; in night work, by minors under eighteen; with observance in every instance of conditions established by law and with exceptions admitted by a competent judge;

X The right of a pregnant woman to leave, before and after childbirth, and without prejudice to her employment or wages;

XI Fixation of a percentage of Brazilian employees in public service concessions and in establishments of specified branches of commerce and industry;

XII Security of employment in enterprises and in rural undertakings, and compensation for discharged workers, in those cases and under conditions established by law;

XIII Recognition of collective labor agreements;

(XIV) Health assistance, including hospitalization and preventive medicine, for workers and expectant mothers;

(XV) Assistance to the unemployed;

(XVI) Social security, through contributions by the union, by employers, and by employees, for the benefit of motherhood, and against the consequences of illness, old age, disability and death;

(XVII) Obligatory insurance by employers against work accidents.

Sole paragraph. There shall be no distinction as to rights, guarantees, and benefits between manual or technical labor and intellectual labor or between the respective professions.

Article 158: The right to strike is recognized, the exercise of which shall be regulated by law.

Article 149: Professional or labor union association is permitted; the form of organization, legal representation in collective labor contracts, and the exercise of functions delegated by the public power being regulated by law.

Article 160: The ownership of newspaper concerns, either political or merely for news, as well as radiobroadcasting, is prohibited to corporations having bearer shares and to foreigners. Neither the latter nor juridical persons, excepting national political parties, may be shareholders in corporations owning such enterprises. The principal responsibility for them and for their intellectual and administrative orientation shall be an exclusive prerogative of Brazilians (Art. 129, Nos. I and II).

Article 161: The law shall regulate the practice of the liberal professions and the revalidation of diplomas issued by foreign educational institutions.

Article 162: The selection, entry, distribution, and settlement of immigrants shall be subject to the requirements of the national interest, as provided by law.

Sole paragraph. A federal agency shall direct these services and coordinate them with those of naturalization and land settlement, the latter to be for the benefit of nationals.

TITLE VI

The Family, Education, and Culture

Chapter I

The Family

Article 163: The family is constituted by marriage that cannot be dissolved and shall have the right to special protection by the state.

(1) Marriage shall be civil and its celebration free of charge. Religious marriage shall be equivalent to civil marriage, if performed with observance of the impediments established by law and according to its provisions, and if requested by the celebrant or other interested party, provided that the act is recorded in the public registry.

(2) A religious marriage celebrated without the formalities indicated in this article shall have civil effects if, at the request of the betrothed, it is recorded in the public registry after ratification before competent authority.

Article 164: Assistance to mothers, infants, and adolescents is compulsory throughout the national territory. The law shall provide for assistance to families with numerous offspring.

Article 165: The order of succession to the estate of a foreigner, if located in Brazil, shall be regulated by Brazilian law and for the benefit of the spouse or of Brazilian children, whenever the national law of the deceased is not more favorable to them.

Chapter II

Education and Culture

Article 166: Education is the right of everyone and shall be administered at home and in school. It should be inspired by the principles of freedom and by ideals of human solidarity.

Article 167: The different branches of teaching shall be administered by the public powers and is open to private initiative, provided the laws which regulate it are respected.

Article 168: Teaching legislation shall adopt the following principles:

(I) Elementary schooling is compulsory and shall be given only in the national language;

(II) Public elementary schooling is free to all; public schooling subsequent to the elementary shall be free for all those who prove a lack or insufficiency of means;

(III) Industrial, commercial, and agricultural enterprises in which more than one hundred persons are employed are obligated to maintain free elementary schooling for their employees and their employees' children;

(IV) Industrial and commercial enterprises are obligated to provide, in cooperation, apprenticeships for minors in their employ, in such form as the law shall establish, with due regard for the rights of teachers;

(V) Religious instruction shall be a part of the teaching schedule of public schools, matriculation therein shall be optional, and the instruction shall be provided in accordance with the religious confession of the pupil, manifested by him if legally capable or by his legal representative or person responsible for him;

(VI) For the filling of teaching positions in public secondary education and public or free higher education, competition on the basis of degrees and examinations shall be required. Teachers admitted by competition in degrees and examinations shall be assured of life tenure;

(VII) The freedom of teaching is guaranteed.

Article 169: Annually, the union shall apply not less than ten percent, and the states, the Federal District, and the municipalities not less than twenty percent of their revenues derived from taxes to the maintenance and development of education.

Article 170: The union shall organize the federal system of education as well as that of the territories.

Sole paragraph. The federal system of education shall be supplementary in character, extending throughout the country within the strict limits of local deficiencies.

Article 171: The states and the Federal District shall organize their own systems of education.

Sole paragraph. In the development of these systems, the union shall cooperate with pecuniary aid which, with respect to elementary teaching, shall be appropriated from the respective national fund.

Article 172: Each system of education shall obligatorily include services of educational assistance to ensure conditions of scholastic efficiency to needy pupils,

Article 173: The sciences, letters, and arts are free.

Article 174: Support of culture is a duty of the state.

Sole paragraph. The law shall promote the creation of research institutes, preferably in connection with establishments of higher education.

Article 175: Works, monuments, and documents of historical and artistic value, as well as natural monuments, landscapes, and places endowed with peculiar beauty are under the protection of the public power.

TITLE VII

The Armed Forces

Article 176: The Armed Forces, consisting essentially of the Army, Navy, and Air Force, are permanent national institutions, organized on the basis of ranks and discipline, under the supreme authority of the president of the republic and within the limits of the law.

Article 177: It is the mission of the Armed Forces to defend the country and guarantee the constitutional powers, and law and order.

Article 178: The political direction of war and the selection of commanders-in-chief of forces in operation is incumbent on the president of the republic

Article 179: Problems relating to the defense of the country shall be studied by the National Security Council and by special organs of the Armed Forces charged with preparation for mobilization and military operations.

(1) The National Security Council shall be under the direction of the president of the republic, and participating therein, as effective members, shall be such ministers of state and chiefs of staff as the law may specify. In cases of impediments, the president of the republic shall designate substitutes.

(2) The law shall regulate the organizations, powers, and functions of the National Security Council.

Article 180: In zones indispensable to the defense of the country, the following shall not be permitted, without prior consent of the National Security Council:

(I) Any act whatsoever relating to the concession of lands, the opening of means of communication, and the installation of means of transmission;

(II) The construction of international bridges and roads;

(III) The establishment or operation of any industries affecting the security of the country.

(1) The law shall specify the zones indispensable to the national defense, shall regulate their utilization, and shall ensure the predominance of Brazilian capital and labor in industries situated therein.

(2) The authorizations referred to in Nos. I, II, and III may be modified or cancelled at any time by the National Security Council.

Article 181: All Brazilians are obligated to military service or other duties necessary to the defense of the country, under the terms and penalties of the law.

(1) Women are exempted from military service but are subject to such duties as the law may establish.

(2) The military obligation of clergymen shall be fulfilled in the services of the Armed Forces or in spiritual assistance to them.

(3) No Brazilian, after reaching the minimum age established by law for performing military service, may hold public office or employment in an autonomous entity, mixed economy company, or public service concession, without submitting proof of enlistment, reserve status, or exemption.

(4) To favor the fulfilment of military obligations, maneuvers and other training courses for reservists are permitted.

Article 182: Commissions, with the advantages, regalia, and prerogatives inherent therein, are fully guaranteed not only to active and reserve officers but also to retired officers.

(1) Military rank, posts, and uniforms are the exclusive right of an active, reserve, or retired soldier.

(2) An officer of the Armed Forces shall lose his post and commission only by final condemnatory sentence in which the penalty restricting individual liberty exceeds two years; or in the cases provided by law, if he is declared unworthy or incompatible with the rank of an officer, in accordance with the decision of a permanent military court in time of peace, or of a special court in time of foreign or civil war.

(3) A soldier on active duty who accepts a permanent public position outside his career will be transferred to the reserve, with the rights and duties defined by law.

(4) A soldier on active duty who accepts a temporary public position, elective or otherwise, will be added to the respective roster and shall count only the

time in service for promotion by seniority, transfer to the reserve, or retirement: After eight years of separation, continuous or otherwise, he shall be transferred, as provided by law, to the reserve, without prejudice in counting time for retirement.

(5) Any soldier receiving remuneration in a permanent or temporary position shall not be entitled to his regular salary, whether in active service, in the reserve, or in retirement.

(6) The provisions of Articles 192 and 193 are applicable to military personnel.

Article 183: The military police, instituted for purposes of internal security and the maintenance of order in the states, the territories, and the Federal District are considered to be auxiliary reserve forces of the Army.

Sole paragraph. When mobilized in the service of the union, in time of foreign or civil war, the personnel of the military police shall be entitled to the same benefits as that of the Army.

TITLE VIII

Public Employees

Article 184: Public offices are open to all Brazilians, in accordance with requirements established by law.

Article 185: The holding of more than one public post is prohibited, except as provided in Article 96, No. I, and the holding of two teaching positions or one teaching position and one that is technical or scientific, providing there is a correlation of subjects and compatibility of schedules.

Article 186: The first investiture in a career office or in others that the law may specify shall be effected by competition followed by a health examination.

Article 187: The only appointments for life are those of magistrates, ministers of the Court of Accounts, officers of justice, and university professors.

Article 188: The following have stability in their employment:

- I Effective employees appointed by competition, after two years in office;
- II Effective employees appointed without examination, after five years in office.

Sole paragraph. The provisions of this article do not apply to positions of confidence or to those which the law declares to be of free appointment and dismissal.

Article 189: Public employees shall lose their positions:

- I If holding a life appointment, only by virtue of a judicial sentence;
- II If having stability of employment, in the case provided for in the preceding numeral, if the office is abolished, or if dismissed after an administrative process in which they have been allowed ample defense.

Sole paragraph. If an office is abolished, an employee who has stability of employment shall be placed on an available list with pay, until he is obligatorily made use of in another position of a nature and salary that is compatible with the one that he occupied.

Article 190: If the dismissal of any official is invalidated by a court judgment, he shall be reinstated; and whoever occupied his place shall be summarily removed or restored to his former position, but without right to indemnity compensation.

Article 191: An employee shall be retired:

I For disability;

II Compulsorily, at the age of seventy.

(1) Any employee with thirty-five years of service may be retired at his request.

(2) Retirement salaries shall be in full, if the employee has had thirty years of service, and proportional; for less time.

(3) Retirement salaries shall be in full if an employee becomes disabled because of an accident sustained in service, by reason of an occupational or serious, contagious or incurable illness, specified by law. illness

(4) According to the special nature of a service, the law may reduce the limits referred to in No. II and Paragraph 2 of this article.

Article 192: The time of federal, state, or municipal public service shall be computed in full for purposes of placement on availability lists and for retirement.

Article 193: Inactivity income shall be adjusted whenever the salaries of active employees are modified by reason of a change in the purchasing power of money.

Article 194: Juridical persons of domestic public law are civilly liable for any injury which their employees, as such, may cause to third parties.

Sole paragraph. These persons shall have recourse against employees causing the injury, if the latter are found to have been guilty

TITLE IX

General Provisions

Article 195: The flag, the anthem, the seal, and the coat of arms in use on the date of promulgation of this Constitution are the national symbols. ¹ /

Sole paragraph. The states and municipalities may have their own symbols.

Article 196: The diplomatic representation to the Holy See is maintained.

1. See Article 7 of Constitutional Amendment No. 3.

Article 197: The incompatibilities set forth in Article 48 extend, insofar as they are applicable, to the president and vice-president of the republic, to the ministers of state, and to members of the judicial branch.

Article 198: In the execution of the plan to combat the effects of the so-called drought of the Northeast, the union shall expend annually, for works and services of economic and social assistance, an amount never less than three percent of its tax revenues.

(1) One-third of this amount shall be deposited in a special fund destined for the help of the populations affected by the calamity; this reserve, or part of it, may be invested at moderate interest, in accordance with provisions of law, in loans to farmers and industrialists established in the area embraced by the drought.

(2) The states included in the drought area must expend three percent of their tax revenue in the construction of dams, on a cooperative basis, and in other services necessary to the assistance of their populations.

Article 199. In the execution of the plan to expand the economic worth of the Amazon region, the union shall appropriate, during at least twenty consecutive years, an amount not less than three percent of its tax revenues.

Sole paragraph. The states and territories within that region, as well as their respective municipalities, shall reserve annually, for the same purpose, three percent of their tax revenues. The resources referred to in this paragraph shall be applied through the medium of the federal government.

Article 200: Only by the vote of an absolute majority of their members may the courts declare the unconstitutionality of a law or act of the public power.

Article 201: Law suits in which the union is the plaintiff shall be tried in the capital of the state or territory in which the other party is domiciled. Actions against the union may be tried in the state or territory in which the plaintiff has his domicile in the capital of the state in which the deed or fact which gave origin to the claim occurred or in which the object is situated; or also, in the Federal District.

(1) Suits brought before other judges, if the union is a party as witness or opponent, shall be referred to the jurisdiction of one of the courts of the capital.

(2) The law may permit the action to be brought in another court, committing the judicial representation of the union to a state public ministry.

Article 202: Taxes shall be of a personal nature whenever possible, and shall be graduated according to the economic capacity of the taxpayer.

Article 203: No tax shall be imposed directly on authors' royalties or on the remuneration of teachers and journalists.

Article 204: Payments due by the federal, state, or municipal treasuries, by virtue of a court judgment, shall be made in the order of presentation of the claims and shall be charged against the respective credits, it being prohibited to designate cases or persons in the budgetary allocations and extrabudgetary credits opened for this purpose.

Sole paragraph. The budgetary allocations and credits opened shall be assigned to the judicial branch, the amounts being paid to the competent department. It is the responsibility of the president of the federal Court of Appeals or, according to the case, of a president of a court of justice to issue orders for payment, according to the possibilities of the deposit and to authorize, at the request of any creditor deferred in his right of priority, and after hearing the chief of the public ministry, the sequestration of the amount necessary to cover the amount due.

Article 205: The National Economic Council is hereby instituted, and its organization shall be regulated by law.

(1) Its members shall be appointed by the president of the republic, after approval of the selection by the federal Senate, from among citizens of notable competence in economic affairs.

(2) It is incumbent on the Council to study the economic life of the country and to suggest to the competent authority such measures as it deems necessary.

Article 206: The national Congress may decree a state of siege in the following cases:

- I Serious domestic disturbance or facts evidencing its imminent outbreak;
- II Foreign war.

Article 207: The law that decrees a state of siege, in case of a foreign war or serious domestic disturbance in the nature of a civil war, shall establish the rules by which it is to be carried out and shall indicate which constitutional guarantees are to continue in effect. It shall also specify those cases in which crimes against the security of the nation or its political and social institutions are to become subject to military jurisdiction and legislation, even when committed by civilians, but outside of the zone of operation only when related to them and having a bearing on their development.

Sole paragraph. When the law has been published, the president of the republic shall designate by decree the persons entrusted with the execution of the state of siege and the zones of operation that, in accordance with the law, shall be subject to military jurisdiction and legislation.

Article 208: In the interval between legislative sessions, it shall be the exclusive prerogative of the president of the republic to decree or extend a state of siege, in accordance with the provisions of the preceding article.

Sole paragraph. After a state of siege has been decreed, the president of the federal Senate shall immediately convoke the national Congress to meet within fifteen days, in order to approve or disapprove the law.

Article 209: During a state of siege decreed in accordance with Article 206, No. I, only the following measures may be taken against persons:

- I Obligation to remain in a specified locality;
- II Detention in a building not destined for common criminals;

III Banishment to any populated and healthful locality of the national territory.

Sole paragraph. The president of the republic may in addition take the following steps;

I Censorship of correspondence or publicity, including radio broadcasting, motion pictures, and the theater;

II Suspension of freedom of assembly, including that exercised by associations within their own premises;

III Search and apprehension in private homes;

IV Suspension from office or employment of any public official or employee of any autonomous entity, mixed economy company, or public service concession;

V Intervention in public service enterprises.

Article 210: A state of siege, as defined in Article 206 No. I, may not be decreed for more than thirty days nor may it be extended in any one instance for more than this period. As defined in No. II, it may be decreed for as long as the foreign war may last.

Article 211: Whenever a state of siege is decreed by the president of the republic (Art. 208), the latter, as soon as the national Congress is assembled, shall make known in a special message the reasons which determined such action and shall justify the measures that have been adopted. The national Congress, in secret session, shall then deliberate on the decree issued in order to revoke or maintain it, examining also the government's action on the basis of information furnished, and when necessary, authorizing the extension of the measure.

Article 212: A decree of state of siege shall always specify the regions it is to cover.

Article 213: The immunities of the members of the national Congress shall continue during a state of siege; however, the immunities of certain deputies or senators whose freedom becomes manifestly incompatible with the national defense or with the security of political or social institutions, may be suspended by a vote of two-thirds of the members of the Chamber or of the Senate.

Sole paragraph. In the interval between legislative sessions, the authorization shall be given by the president of the Chamber of Deputies or by the vice-president of the federal Senate, according to which members are involved, but *ad referendum* to the respective chamber, which must be immediately convoked to meet within fifteen days.

Article 214: When a state of siege has expired, its effects shall also cease.

Sole paragraph. As soon as a state of siege shall end, the measures applied while it was in effect shall be reported by the president of the republic, in a message to the national Congress, with specification and justification of the measures adopted.

Article 215: Failure to observe any of the provisions of Articles 206 to 214 shall render the restraint illegal and shall permit injured parties to appeal to the judicial branch.

Article 216: The possession of lands by aborigines who are permanently dwelling thereon will be respected, provided that they do not transfer them.

Article 217: The Constitution may be amended.

(1) An amendment shall be considered proposed, if presented by at least one-fourth of the members of the Chamber of Deputies or of the federal Senate or by more than one-half of the legislative assemblies of the states, within a period of two years, each of these manifesting itself by a majority of its members.

(2) An amendment shall be considered accepted if it is approved in two discussions by an absolute majority of the Chamber of Deputies and of the federal Senate, in two regular, consecutive legislative sessions.

(3) If the amendment obtains in one of the chambers, in two discussions, the vote of two-thirds of its members, it shall then be submitted to the other and if approved in that chamber by the same process and by an equal majority, it shall be considered accepted.

(4) The amendment shall be promulgated by the executive committees (Mesas) of the Chamber of Deputies and of the federal Senate. After publication over the signatures of the members of both committees, it shall be appended, with its respective sequence number, to the text of the Constitution.

(5) The Constitution shall not be amended during a state of siege.

(6) Bills designed to abolish the federation or the republic shall not be admitted for consideration.

Article 218: This Constitution and the Act containing the Transitory Constitutional Provisions, after being signed by the deputies and senators present, shall be promulgated simultaneously by the executive committee (Mesa) of the Constituent Assembly and shall take effect on the date of its publication.

In the Hall of Sessions of the Constituent Assembly, September 18, 1900, in the 125th year of Independence and 58th of the Republic.

ACT OF THE TRANSITORY CONSTITUTIONAL PROVISIONS

The Constituent Assembly Decrees and Promulgates the Following
Act of the Transitory Constitutional Provisions

Article 1: On the day following the promulgation of this Act, the Constituent Assembly shall elect the vice-president of the republic for the first constitutional term.

(1) This election, for which no one shall be ineligible, shall be done by secret vote and shall, on the first ballot, be by absolute majority of votes, or, on the second ballot, by relative majority.

(2) The vice-president elect shall take office before the Assembly on the same date, or else before the federal Senate.

(3) The term of the vice-president shall terminate simultaneously with that of the first presidential period.

Article 2: The term of the president of the republic in office (Constitution, Art. 82) shall be counted from the date of his taking office.

(1) The terms of the present deputies and those of the federal senators who will be elected in order to complete the number prescribed by Article 60; 1 of the Constitution shall coincide with that of the president of the republic.

(2) The terms of the other senators shall terminate on January 31, 1955.

(3) The terms of the governors and of deputies to the legislative Assemblies, and of the municipal councillors (vereadores) of the Federal District, elected in accordance with Article 11 of this Act, shall terminate on the same date as that of the president of the republic.

Article 3: The Constituent Assembly, after fixing the remuneration of the president and vice-president of the republic for the first constitutional term (Constitution, Article 86), shall consider its mission completed and shall be separated into Chamber and Senate, which will initiate the exercise of their legislative functions

Article 4: The capital of the union shall be moved to the central plateau of the country.

(1) Within sixty days after the promulgation of this Act, the president of the republic shall appoint a commission of technicians of recognized skill to proceed with the study of a site for the new capital.

(2) The study referred to in the preceding paragraph shall be submitted to the national Congress which shall deliberate thereon, in a special law, and shall establish a time limit in which to begin the delimitation of the area to be incorporated into the domain of the union

(3) Upon completion of the task of demarcation, the national Congress shall decide on the date for moving the capital

(4) When the transfer has been effected, the present Federal District shall become the state of Guanabara

Article 5: Federal intervention, in the case contemplated by No. VI of Article 7 of the Constitution, with reference to states in arrears in the payment of their funded debt, cannot be effected until two years have elapsed, counted from the date of promulgation of this Act

Article 6: Within three years from the promulgation of this Act, the states must undertake, through agreements, the demarcation of their boundaries, being permitted for this purpose to make alterations and compensations of areas, in accordance with the natural features of the terrain, administrative advantages, and the convenience of the frontier populations

(1) If the interested states so request, the government of the union may entrust the work of demarcation to the Geographic Service of the Army

(2) If such states do not comply with the requirements of this article, the federal Senate shall deliberate with respect thereto, without prejudice to the competence established by Article 101, No. I, letter (e) of the Constitution.

Article 7: The cattle ranches belonging to the domain of the union, situated in of territory of the state of Piauí, remaining from confiscation of the Jesuits during the colonial period, shall become the property of that state.

Article 8: The present territories of Iguacú and Ponta Pora are hereby declared abolished, their areas being returned to the states from which they were dismembered.

Sole paragraph. The judges, and members of the public ministry enjoying stability in office, in the territories abolished, shall continue on the availability list, with pay, until they can be utilized in federal or state posts of a nature and with remuneration compatible with those which they were occupying on the date of promulgation of this Act.

Article 9: The territory of Acre shall be raised to the category of a state, to be known as the state of Acre, as soon as its revenues become equal to those of the state which at present brings in the lowest return.

Article 10: The provisions of Article 56 of the Constitution do not apply to the territory of Fernando de Noronha.

Article 11: On the first Sunday after one hundred and twenty days, counted from the promulgation of this Act, each state shall hold an election for governor and deputies to the legislative assemblies, which at the beginning shall have a constituent function.

(1) The number of deputies in the state assemblies shall be as follows, for the first election: Amazonas, thirty; Pará, thirty-seven; Maranhão, thirty-six; Piauí, thirty-two; Ceará, forty-five; Rio Grande do Norte, thirty-two; Paraíba, thirty-seven; Pernambuco, fifty-five; Alagoas, thirty-five; Sergipe, thirty-two; Bahia, sixty; Espírito Santo, thirty-two; Rio de Janeiro, fifty-four; Sao Paulo, seventy-five; Paraná, thirty-seven; Santa Catarina, thirty-seven; Rio Grande do Sul, fifty-five; Minas Gerais, seventy-two; Goiás, thirty-two; and Mato Grosso, thirty.

(2) Elections shall be held on the same date:

I In the states and in the Federal District:

(a) For the third senatorial seat and the alternates (Constitution, Art. 60; 1, 3, and 4);

(b) For the party alternates of the senators elected on December 2, 1945, if, in respect to these, no vacancy has occurred;

II For federal deputies to complete the required number in those states where the number of representatives in the Chamber of Deputies does not correspond to that established by the Constitution, on the basis of the last official estimate of the Institute of Geography and Statistics;

III For one federal deputy in the territories, excepting Acre and Fernando de Noronha;

IV For fifty municipal councillors, in the Federal District;

V For the filling of existing vacancies or any that may occur up to thirty days before the poll in the respective electoral circumscriptions, and for alternates themselves in the case of senators.

(3) In each state the political parties may enter, for the federal Chamber, in the elections referred to in this article, two candidates more than the number of deputies to be elected. The successful alternates in the election shall replace those who were elected under the terms of Par. 2, in the cases mentioned in the Constitution and in the law, as well as those of the same political party whose list of alternates has become exhausted.

(4) The entry of the same candidate in more than one state will not be permitted.

(5) The Superior Electoral Court shall take steps to ensure compliance with this article and preceding paragraphs. In exercising its jurisdiction, this same court shall fix, in accordance with official statistical information, the number of new seats in the federal representation, in accordance with the criterion established in Article 58; 1 and 2 of the Constitution.

(6) The term of the third senator shall be that of the shortest duration. If more than one senator is elected by the same state or by the Federal District, the term of the one receiving the highest number of votes shall be the one of longest duration.

(7) In the elections referred to in this article, the only ineligibilities shall be:

I For governor:

- (a) Ministers of state who have been in office during three months prior to the election;
- (b) Those who, up to eighteen months prior to the election, have exercised the office of president of the republic, or in the respective state, even *ad interim*, that of governor or interventor; and also the state secretaries, commanders of military zones, chiefs or commanders of police, magistrates and the head of the public ministry, who may have held such positions during two months prior to the election;

II For federal senators and deputies and their respective alternates, those who, up to six months prior to the election have held the office of governor or interventor in the respective state, and the other officers referred to in No. I who have occupied these posts at any time during the two months immediately preceding the election;

III For deputies to the state assemblies, the authorities referred to in No. I, letters (a) and (b), second part, who have been occupying these posts at any time during the two months immediately preceding the election;

IV For councillors to the chamber of the Federal District, the prefect, and the authorities referred to in No. I, letters (a) and (b), second part, who have been occupying these posts at any time during the two months immediately preceding the election.

(8) After receiving their certificates, the deputies to the state assemblies shall meet within ten days, presided over by the president of the regional electoral court, by convocation of the latter, to effect the election of the executive committee (Mesa).

(9) Any state which, up to four months after the installation of its assembly, has not decreed its Constitution shall, by deliberation of the national Congress, be made subject to the constitution of whichever other state appears to be most suitable, until it has been amended by the procedure prescribed therein.

Article 12: Pending the promulgation of the state constitutions, and for the Federal District the enactment of its organic law, the states and municipalities shall be administered in accordance with legislation in force on the date of promulgation of this Act.

Sole paragraph. Within ten days counted from their official publication, any citizen may appeal to the president of the republic against the acts of interventors; and, on the same terms to an interventor, against the acts of municipal prefects.

Article 13: The distribution of revenues established in Articles 19 to 21 and Article 29 of the federal Constitution shall take effect on January 1, 1948, insofar as it modifies the previous regime.

(1) The states that levy exportation taxes higher than the limit prescribed by Article 19, No. V, shall reduce the excess gradually, within a period of four years, except as provided in Par. 6 of that article.

(2) Beginning in 1948, the following shall be made gradually effective:

I In the course of two years, the requirements of Article 15; 4, whereby the union shall turn over to the municipalities half the quota in the first year and the entire quota in the second year;

II In the course of four years, the abolition of those taxes which, under the Constitution, are not included within the powers of the governments that collect them at present;

III In the course of ten years, the provisions of Article 20 of the Constitution.

(3) Federal or state law, as the case may be, may establish a shorter period for the fulfilment of the provisions indicated in the preceding paragraphs.

Article 14: For the composition of the federal Court of Appeals, in the part constituted by magistrates, the federal Supreme Court shall indicate, in order that they may be appointed by the president of the republic, up to three of the sectional judges and substitutes of the extinct federal justice, if they meet the requirements of Article 99 of the Constitution. The indication shall be made, wherever possible, in a duplicate list in each case.

(1) Immediately after termination of the period indicated in Article 3, the national Congress shall fix by law the remuneration of the judges of the federal Court of Appeals; and, within thirty days after the sanction or promulgation of that law, the president of the republic shall make the appointments to the respective posts.

(2) When the Court has been installed, it shall prepare its internal regulations and provide for the organization of its secretariat, registry offices, and other services, and shall propose to the national Congress the creation of these administrative offices and the fixing of the respective salaries (Constitution, Act. 97, No. II).

(3) Pending the functioning of the federal Court of Appeals, the federal Supreme Court shall continue to judge all cases that come within its competence, under the terms of previous legislation.

(4) When the law provided for in Par. 1 has been enacted, the federal Supreme Court shall forward to the federal Court of Appeals all cases within the jurisdiction of the latter which do not bear the visa of the respective reporter.

(5) Embargoes against judgments rendered by the federal Supreme Court shall continue to be prosecuted and judged by that court

Article 15: Within ten days, counted from the date of promulgation of this Act, the electoral justice shall be organized, in accordance with the terms of Title I, Chapter IV, Section V, of the Constitution.

(1) For the composition of the Superior Electoral Court, the Court of Justice of the Federal District shall elect, by secret ballot, from among its judges, one effective member and two provisional members who shall function until such time as the federal Court of Appeals has fulfilled the requirements of Article 110, No. I letter (b), of the Constitution.

(2) When the electoral courts have been installed, they shall proceed in accordance with Article 14; 2 of this Act.

(3) In filling the offices of the secretariats of the Superior Electoral Court and of the regional electoral courts, effective office holders of the courts abolished on November 10, 1937 are to be utilized, if they are still in active service of the union and so request, and to complete the respective rosters, the personnel at present comprising the secretariats of the same courts will be utilized.

(4) Until the secretariats of these courts have been definitively organized the personnel to which the final sentence of Par. 3 of this article alludes shall continue in office.

Article 16: Beginning on January 1, 1947, the magistrates of the Federal District and of the states shall thereafter receive the emoluments fixed in accordance with the provisions of the Constitution.

Article 17: The present Maritime Court shall continue with the organization and jurisdiction attributed to it by legislation in effect, until a federal law may deal with this matter in accordance with the terms of the Constitution.

Article 18: Brazilians who, in the last war, rendered military service to the allied nations, even without permission of the Brazilian government, shall not lose their nationality, nor shall minors who, under the same conditions, may have served other nations.

Sole paragraph. Present employees of the union, the states, or of municipalities who served in the Brazilian expeditionary forces are considered to have stability of employment.

Article 19: Those who have acquired Brazilian nationality during the validity of previous Constitutions and who held any elective office whatsoever are eligible to hold any position as representative of the people, except that of president or vice-president of the republic or as governor.

Article 20: The provision contained in the sole paragraph of Article 155 of the Constitution does not apply to naturalized Brazilians who, as of the date of this Act, were practicing the professions to which that provision refers.

Article 21: The utilization of waterfalls already being used for industrial purposes as of July 16, 1934, and, by the same token, the exploitation of mines, even if temporarily suspended, do not depend upon concession or authorization; but such utilization and exploitation remain subject to the rules for the regulation and revision of contracts, as prescribed by law.

Article 22: The provisions of Article 182; 1, of the Constitution do not prejudice concessions granted prior to this Act and which are now maintained or re-established.

Article 23: The present temporary employees of the union, the states, and municipalities who have at least five years of service shall automatically be made effective as of the date of promulgation of this Act; and the present supernumeraries who have been performing functions of a permanent character for more than five years or by virtue of competitive examination or test of ability, shall be placed on an equal footing with employees for purposes of stability, retirement, leave, availability, and vacations.

Sole paragraph: The provisions of this article do not apply to:

I Those who temporarily hold life-tenure offices considered as such in the Constitution;

II Those who hold positions which are filled by open competition, but for which the registration was closed on the date of promulgation of this Act;

III Those who have been disqualified in a competition for the position held.

Article 24: Employees who, in accordance with legislation then in force, held more than one technical or scientific teaching position and who lost their effective employment because of the prohibition against holding more than one post established in the Charter of November 10, 1937, and Decree-law No. 24 of November 29 of the same year, are hereby considered to be on the available list with pay until they may be utilized again, but without any right to salary prior to the date of promulgation of this Act.

Sole paragraph: The retirement benefits are hereby restored to those who lost them by virtue of the decree mentioned, but also, without any right to salary prior to the date of promulgation of this Act.

Article 25: Employees of the secretariats of the chambers of the legislative branch are ensured of the right to receive additional bonuses for the time they are in public service.

Article 26: The executive committee (Mesa) of the Constituent Assembly shall issue certificates of effective appointment to the temporary employees of the secretariats of the federal Senate and the Chamber of Deputies occupying vacant position who, up to September 3, 1946, rendered services during the work of drawing up the Constitution.

Sole paragraph. Those serving in an acting capacity up to the date mentioned and not benefited by the provisions of this article, shall be utilized to fill the first vacancies that occur.

Article 27: For a period of fifteen years, counted from the installation of the Constituent Assembly, real estate acquired for his residence by a journalist who possesses no other property, shall be exempt from the transfer tax and, as long as it serves the purpose envisioned in this article, from the respective real estate tax.

Sole paragraph. For the effects of this article, a journalist is defined as anyone who proves that he is practicing his profession in accordance with existing legislation or who has been retired therefrom.

Article 28: Amnesty is hereby granted to all citizens considered deserters or who failed to present themselves for military service up to the date of promulgation of this Act, and likewise to workers who have undergone disciplinary punishment as a result of strikes or labor disputes.

Article 29: The federal government is obligated, within a period of twenty years counted from the date of promulgation of this constitution, to prepare and execute a plan for the full utilization of the economic possibilities of the São Francisco River and its tributaries, for which it shall apply annually an amount not less than one percent of its tax revenues.

Article 30: Those who availed themselves of the right to present claims, provided by the sole paragraph of Article 18 of the Transitory Provisions of the Constitution of July 16, 1934, are ensured of the right to plead before the judicial branch for recognition of their right, except with respect to remuneration in arrears, and all prescriptions will be forgiven in this manner, provided that the following requirements are met:

I That a favorable and final opinion of the Revisory Commission, referred to in Decree No. 254 of August 1, 1935, has been obtained;

II That the executive branch has not acted in accordance with the opinion of the Revisory Commission, to restore the rights of the claimants.

Article 31: The incorporation into the patrimony of the union of goods given as collateral by those benefited by the financing of the cotton crops from the 1942 to the 1945 and 1946 crops is not subject to judicial consideration.

Article 32: Within two years, counted from the promulgation of this Act, the union shall complete the Rio-Northeast Highway.

Article 33: The government shall order erected in the capital of the republic a monument to Rui Barbosa, in commemoration of his services to his country, to liberty, and to justice.

Article 34: The honors of Marshal of the Brazilian Army are hereby conferred on General of Division João Batista Mascarenhas de Moraes, Commander of the Brazilian Expeditionary Forces in the last war.

Article 35: The government shall appoint a committee of teachers, writers, and journalists to render an opinion on the denomination of the national language.

Article 36: This Act shall be promulgated by the executive committee of the Constituent Assembly in the form prescribed by Article 218 of the Constituent Assembly.

Hall of Sessions of the Constituent Assembly, in the city of Rio de Janeiro, September 18, 1946, 125th year of Independence and 58th of the Republic.

The executive committees of the Chamber of Deputies and of the federal Senate, pursuant to Article 217, paragraph 4, of the federal Constitution, promulgate the following:

CONSTITUTIONAL AMENDMENT NO. 1

Sole article. Article 26, paragraph 3, of the federal Constitution shall read as follows:

The salaries of the judges (*desembargadores*) of the court of justice shall be fixed at an amount not less than seventy percent of the salaries of the justices of the federal Supreme Court; and those of other life-tenure judges at a difference not exceeding thirty percent between one classification and another, those in the highest classification to receive not less than two-thirds of the salaries of the judges (*desembargadores*).

December 26, 1950

The executive committees of the Chamber of Deputies and of the federal Senate, pursuant to Article 217, paragraph 4, of the federal Constitution, promulgate the following.

CONSTITUTIONAL AMENDMENT NO. 2

Article 1: The present Federal District shall be administered by a prefect, with the legislative functions vested in a Chamber of Councilors (*vereadores*), both to be elected simultaneously by direct suffrage for a term of four years.

Sole paragraph. The first election of a prefect shall take place at the time of the election of the president of the republic for the next term.

Article 2: The ineligibilities provided for in No. IV of Article 139 of the Constitution shall be extended to the prefect of the Federal District.

Article 3: The federal government shall not intervene in the local administration of the Federal District except in the cases cited in Article 7 of the Constitution, insofar as applicable, or when;

I There is a lack of punctuality in service on a loan guaranteed by the government;

II It fails to pay its funded debt for two consecutive years.

Sole paragraph. Intervention shall be decreed in the manner prescribed in Articles 8 et seq of the Constitution.

Rio de Janeiro, July 3, 1956:

CONSTITUTIONAL AMENDMENT NO. 3

I

Article 1: In the Federal District and territories, federal law shall regulate the administrative and judicial branches and, in compliance with the general rules established for the union by the Constitution, it shall provide for:

I The creation and abolition of public posts and offices, and the establishment of corresponding salaries;

II The levying of taxes and the approval of the budget.

III The opening of credits, and financial operations.

II

Article 2: The Federal District shall be administered by a prefect, appointed by the president of the republic, with the approval of the federal Senate, and shall have a chamber elected by the people, with the functions attributed to it by federal law.

III

Article 3: The national Congress has the power to set the date for the first elections for representatives from the Federal District to the federal Senate, to the Chamber of Deputies and the chamber of the Federal District, and to exercise legislative functions in all matters within the competence of the Federal District, until this chamber is installed

IV

Article 4: It is also permissible for a deputy or senator, with previous permission of his chamber, to exercise the office of prefect of the Federal District.

V

Article 5: States that are constituted after September 18, 1964, without a municipality, owing to local circumstances, are also empowered to levy the taxes referred to in Article 29.

VI

Article 6: Salaries, family allowances, per diems and other allowances granted by reason of the transfer of the capital of the union to the central plateau of the country, shall be approved by the legislative branch at the legislative session that adopts this amendment.

Sole paragraph. The cash allowances referred to in this article shall not apply to retirement incomes.

VII

Article 7: The national flag may be modified whenever any change is made in the number of states that compose the federation.

Brasilia, June 8, 1961.

CONSTITUTIONAL AMENDMENT NO. 4

Additional Act

Institutes the Parliamentary System of Government ¹ /

Chapter I

Preliminary Provisions

Article 1: The executive power is exercised by the president of the republic, and by the council of ministers which shall direct and be responsible for the policy of the government, and for the federal administration.

Chapter II

The President of the Republic

Article 2: The president of the republic shall be elected by the national Congress by an absolute majority vote, and he shall hold office for five years.

Article 3: The president of the republic shall have power:

I To appoint the president of the Council of Ministers and, at the council's suggestion, the other ministers of state, and shall remove them when the Chamber of Deputies withdraws its confidence in them;

II To preside at meetings of the Council of Ministers when he deems it advisable;

III To approve and promulgate the laws, and order them published;

IV To veto bills, in accordance with the Constitution, and consider those bills approved that obtain a vote of three-fifths of the deputies and senators present at a joint session of the two chambers;

V To represent the nation before foreign states;

VI To make international treaties and conventions, ad referendum to the national Congress;

VII To declare war, upon authorization by the national Congress, or without such authorization in the event of foreign aggression, occurring in the interval between legislative sessions;

VIII To make peace, with the authorization of and ad referendum to the national Congress;

IX To permit, upon authorization by the national Congress, or without this authorization in the interval between legislative sessions, foreign forces to pass through the territory of the country, or because of war, to remain there temporarily;

X To exercise, through the president of the Council of Ministers, command of the Armed Forces;

¹ This amendment was repealed by Constitutional Amendment No. 6.

XI To authorize Brazilians to accept pensions, employment, or commissions from foreign governments;

XII To present a message to the national Congress at the opening of a legislative session, giving an account of the state of the nation;

XIII To grant pardons and commute sentences, with the the recommendation of the agencies instituted by law;

XIV To fill federal public offices, according to law and with the exceptions established by this Constitution;

XV To confer decorations or other honorary distinctions on foreigners according to the law and with the reservations established by the Constitution;

XVI To appoint, with the approval of the federal Senate, and remove, as indicated by the president of the council, the prefect of the Federal District, and to appoint and remove the members of the National Economic Council (Article 205; 1).

Article 4: The president of the republic, after the Chamber of Deputies, by a vote of an absolute majority of its members has declared impeachment in order, shall be tried before the federal Supreme Court of common crimes, or before the federal Senate for functional crimes.

Article 5: Functional crimes are acts committed by the president of the republic against the federal Constitution and, particularly, against:

I The existence of the union;

II The free exercise of any constitutional powers of the Union or of the states;

III The exercise of political, individual and social powers;

IV The internal security of the country.

Chapter III

The Council of Ministers

Article 6: The Council of Ministers is responsible collectively to the Chamber of Deputies for the policies of the government and for the federal administration, and each minister of state is responsible, individually, for his actions during the exercise of his functions.

Article 7: Each act of the president of the republic shall be countersigned by the president of the council and by the competent minister as a prerequisite for its validity

Article 8: In case of vacancy, the president of the republic shall submit to the Chamber of Deputies, within a period of three days, the name of the president of the Council of Ministers. The approval of the Chamber of Deputies shall require an absolute majority vote of its members.

Sole paragraph. When approval is denied, the president of the republic shall, within a similar period, present another name. If this name is also rejected, he shall present another name within the same period. If none is accepted, the federal Senate shall elect, by an absolute majority of its members, the president of the council, who cannot be one of those who were rejected.

Article 9: The Council of Ministers, after being appointed, shall appear before the Chamber of Deputies in order to present its program of government.

Sole paragraph. The Chamber of Deputies, at the following session and by a majority vote of all those present, shall express its confidence in the Council of Ministers. A denial of confidence shall require the formation of a new Council of Ministers.

Article 10: After the motion of confidence is voted, the federal Senate, by a two-thirds vote of its members, may, within forty-eight hours, oppose the composition of the Council of Ministers

Sole paragraph. The action of the federal Senate may be rejected by an absolute majority of the Chamber of Deputies, at its first session.

Article 11: The ministers are dependent upon the confidence of the Chamber of Deputies and they shall be removed when it is denied.

Article 12: A motion of lack of confidence against the Council of Ministers, or of censure of any of its members, may be presented only by a minimum fifty deputies, and it shall be discussed and voted upon, except in special circumstances regulated by law, five days after the proposal, and its approval shall require an absolute majority vote of the Chamber of Deputies.

Article 13: A motion of confidence requested by the Council of Ministers from the Chamber of Deputies shall be voted upon immediately and it shall be considered approved by a majority vote of those present.

Article 14: After verifying the impossibility of maintaining the Council of Ministers owing to a lack of parliamentary support, substantiated by lack of confidence motions opposed consecutively to three councils, the president of the republic may dissolve the Chamber of Deputies, convoking new elections to be held within a maximum period of ninety days, to which members of parliament can concur, who integrated the councils that were dissolved.

(1) When the Chamber of Deputies is dissolved, the president of the republic shall appoint a provisional Council of Ministers.

(2) The Chamber of Deputies shall meet again, with full rights, if elections are not held within the term established.

(3) If the new Chamber of Deputies has not been installed, the Senate shall have the powers set forth in Article 66, Nos. III, IV and VII of the Constitution.

Article 15: The Council of Ministers decides by a majority vote. In the case of a deadlock, the vote of the president of the council shall prevail.

Article 16: The president of the council and the ministers may participate in the discussions of either house of national Congress.

Article 17: Each ministry shall have an undersecretary appointed by the minister with the approval of the Council of Ministers.

(1) The undersecretaries may appear before either house of the national Congress and any of its committees, as representatives of the respective ministries.

(2) When a Council of Ministers has resigned, the undersecretaries shall be responsible for the affairs of the respective portfolios until a new council has been constituted.

Article 18: The president of the Council of Ministers also has power to:

- I Introduce bills on behalf of the government;
- II Maintain relations with foreign states and orient foreign policy;
- III Exercise the regulatory power;
- IV Decree a state of siege, under the terms of the Constitution;
- V Decree and carry out federal intervention, under the terms of the Constitution;
- VI Send the proposed budget to the Chamber of Deputies;
- VII Render annually to the national Congress, within sixty days after the opening of a legislative session, the accounts relating to the previous fiscal year.

Article 19: The president of the council may take over the direction of any ministry.

Chapter IV

Transitory Provisions

Article 20: The present amendment, entitled Additional Act, shall enter into force on the date of its promulgation by the executive committees of the Chamber of Deputies and of the federal Senate.

Article 21: The vice-president of the republic, elected on October 3, 1960, shall hold the office of president of the republic, under the terms of this Additional Act, until January 31, 1966; he shall take a pledge before the national Congress and, at the same session, he shall indicate, subject to approval by Congress, the name of the president of the council and the composition of the first Council of Ministers.

Sole paragraph. During the same session, the president of the national Congress shall set the date and hour on which the president of the republic, the president of the council of ministers and the Council of Ministers shall take office.

Article 22: The organization of the parliamentary system of government instituted at this time may be supplemented by means of laws voted in the two houses of the national Congress by an absolute majority of the members.

Sole paragraph. Delegated legislation may be admitted by legislation voted in accordance with this article.

Article 23: The office of vice-president of the republic is abolished.

Article 24: The constitutions of the states shall be adapted to the parliamentary system of government within the period established by law, which cannot be prior to the end of the term of office of the present governors. The terms of other federal, state and municipal officials shall also be respected.

Article 25: The law voted under the terms of Article 22 shall also provide for the holding of a plebiscite to decide whether to maintain the parliamentary system or to return to the presidential system, and in the latter case a consultation shall be made by means of a plebiscite, nine months before the termination of the present presidential term.

Brasilia, September 2, 1961.

CONSTITUTIONAL AMENDMENT NO. 5.

Institutes a new system of distribution of revenue to Brazilian municipalities

The paragraphs in Article 15 are revised to read as follows:

(4) The Union shall turn over to municipalities ten percent of the total that it collects from the tax dealt with in No II, the distribution being made in equal parts, and payment shall be made in a lump sum to each municipality, at the same time, during the last quarter of each year.

(5) The Union shall turn over to municipalities fifteen percent of the total that it collects from the tax dealt with in No IV, the distribution being made in equal parts, and payment shall be made in a lump sum to each municipality, at the same time, during the third quarter of each year.

(6) At least one-half of the sum of money turned over to municipalities, in accordance with paragraph 5, shall be applied to benefits of a rural nature. For the purposes of this paragraph, "benefits of a rural nature" means services that are installed, or works carried out to improve the economic, social, sanitary, and cultural conditions of the rural population.

(7) Legal acts, or the instruments relating thereto, do not come under the provisions of No VI, when they are included in the taxing powers established in Articles 19 and 29

(8) In the imminence of or in case of foreign war, the Union is empowered to decree extraordinary taxes, which shall not be distributed in the manner provided by Article 21 and which shall be eliminated gradually, within five years counted from the date of signing the peace

Article 19 is revised to read as follows:

Article 19: The states shall have power to decree taxes upon:

- I Transfer of property *causa mortis*—
- II Sales and consignments made by merchants and producers, including industrialists; however, the first transaction of a small producer, as defined by state law, is exempt from this tax;
- III Exportation abroad of goods of their production, up to a maximum of five percent ad valorem, any additional taxes being prohibited;
- IV Acts regulated by state law, those of their judicial service, and the business of their economy
 - (1) The taxes on the transfer *causa mortis* of tangible property belong to the state in whose territory such property is located
 - (2) The tax on a transfer *causa mortis* of intangible property, including securities and credits, belongs to the state in whose territory the assets of the estate are to be liquidated or transferred to the heirs, even though the succession may have been opened in a foreign country
 - (3) The states may not tax securities of the public debt issued by other juridical entities of national public law to an extent greater than that established for their own obligations.
 - (4) The tax on sales and consignments shall be uniform, without distinction as to origin or destination.
 - (5) In exceptional cases, the federal Senate may authorize an increase, for a specified time, in the tax on exports up to a maximum of ten percent ad valorem.

Article 29 is revised to read as follows:

Article 29: In addition to the revenue that is attributed to them by virtue of paragraphs 4 and 5 of Article 15, and of the taxes that in whole or in part are to be transferred to them by the state, the following tax sources belong exclusively to the municipalities;

- I Urban and rural land property;
- II Buildings;
- III Transfer of real property *inter vivos* and its incorporation into company capital;
- IV Licenses;
- V Industries and professions;
- VI Public amusements;
- VII Acts relating to their economy or matters within their jurisdiction.

Sole paragraph. The rural land tax shall not be levied on farms not exceeding twenty hectares, when they are cultivated by the owner, alone or with his family.

Brasilia, November 21, 1961.

CONSTITUTIONAL AMENDMENT NO. 6.

Article 1: Constitutional Amendment No. 4 is hereby revoked, and the presidential system of government established by the federal Constitution of 1946 restored, with the exception of the provisions of Article 61.

Article 2: Paragraph 1 of Article 79 of the Constitution shall be in force with the following text:

In case of impediment or vacancy in the office of the president and of the vice-president of the republic, the president of the Chamber of Deputies, the president of the federal Senate, and the president of the federal Supreme Court shall be called, in that order, to exercise the presidency.

Brasilia, January 23, 1963.

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF CONGO

Congo is a country in search of unity, stability and peace. Foreign exploitation, and latterly, internecine civil strife, left serious marks on her political institutions. The ultimate bend of its constitutional development will depend, in a large measure, on whether the Constitution of 1964 has given definition to the wishes of the Congolese themselves, because it was a product of, not just the Congolese, but also a number of invitees, experts, and minions of vested interests.

2. The Congo Free State was a colony of Belgium. It is rich in mineral wealth, and mighty foreign interests entrenched themselves in the country in order to exploit this, their activities being concentrated in and around the Katanga province.

3. After world War II, Congo became involved in the wave of struggle for independence which characterised the African Colonies of this era. There were political disturbances. Subsequently, (in early 1960) a Round Table Conference was held in Brussels between Congolese delegates and the Government of Belgium during which independence was promised by June 30, 1960. On May 19, 1960, the Belgian Government promulgated the Fundamental Law which established a provisional form of parliamentary government. This Law was to be in force until a constitution was drafted, by a Constituent Assembly comprising the Head of State and the two Chambers of Parliament, and approved by the Provincial Assemblies.

4. The Fundamental Law forced on the Congo a Belgian-type parliamentary government, without any thought whatever of the geo-political nature of the Congolese territory, and superimposed on this a cumbersome machinery for framing a constitution intended to delay, probably to stultify, the legitimate claim to self-determination. This was not what the Congo delegates desired. The period which followed was marked by the activities of Patrice Lumumba, the murdered Congolese leader; Moïse Tshombe of secessionist Katanga fame, the emergence of stolid President Joseph Kasavubu, and ultimately the intervention of the United Nations Organization.

5. It therefore became urgent to produce a proper Constitution for the Congo. Government officials were put to work on it in 1962. In 1963, a Constitutional Commission was constituted, and given one hundred days to produce a draft Constitution. The draft put up was later adopted by Parliament, approved in a referendum and promulgated by President Kasavubu on August 1, 1964.

6. The Constitution of the Democratic Republic of the Congo, like all constitutions of multi-tribal communities, is an attempt to reconcile a number of views and fears - particularly the latter. A unitary form of government, whether or not clothed in the garb of a federation, was deemed to be undesirable. It had to provide against the possibility of one group dominating the government; of one person or group of persons assuming dictatorial powers; of the liberties of individuals or tribes being invaded by public authorities; and of any one of the twenty-one autonomous regions becoming so powerful as to take to secession.

7. The English version given here is a translation from the French text by Judge Brinton of the American Society of International Law.

CONSTITUTION OF THE DEMOCRATIC
REPUBLIC OF THE CONGO

1 August 1964

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CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO OF AUGUST 1, 1964

The Constitutional Commission after sitting at Luluabourg from January 10 until April 11, 1964, has proposed;

The Congolese People by constitutional referendum held between June 25 and July 10, 1964, has adopted;

The President of the Republic promulgates the following Constitution:

PREAMBLE

Proclaiming our adherence to the Universal Declaration of the Rights of Man; Determined to preserve those values in life which are our property and to give to the family, the natural basis of human society, the special protection of the State Authorities in such a manner as to ensure its cohesion and stability;

Affirming our determination to consolidate our national unity with due respect to our regional characteristics and with a view to furthering, on the road of justice, our material well-being and our moral and spiritual fulfilment;

We, the Congolese People;

Conscious of our responsibility before God, the Nation, Africa, and the World; Solemnly declare that we adopt the present Constitution.

TITLE ONE

GENERAL PROVISIONS

SECTION I

The Territory and Sovereignty of the Republic

Article 1: The Democratic Republic of the Congo comprises within its frontiers as of June 30, 1960, a sovereign, indivisible, democratic and social state.

The emblem of the Republic is a sky-blue flag with a yellow star in the upper left-hand corner traversed by a red band with a narrow yellow border.

The arms of the Republic are a leopard's head having to the left a palm branch and an arrow and to the right an ivory spearhead and a lance, the whole resting on a stone.

The motto of the Republic is JUSTICE, PEACE, LABOR.

Article 2: The territorial integrity of the Republic is inviolable.

It shall be the duty of all public authorities within the Republic and the Provinces to protect this integrity.

Article 3: All power proceeds from the people, who exercise it through their representatives or through referendum.

No section of the People nor any individual may assume the exercise of this power.

Article 4: The Democratic Republic of the Congo is composed of the city of Leopoldville and its autonomous Provinces as hereafter named; The Provinces of the Cuvette Central; Upper Congo; East Katanga; Kibali-Ituri; Central Kivu; Central Congo; Kwango; Kwilu; Lake Leopold II; Lomami; Luabala; Luluabourg; Maniema; Middle Congo; North Katanga; North-Kivu; Sankuru; South-Kasai; Ubangi; Uele and the Kasaïenne Unity.

The limits of the Provinces and those of the city of Leopoldville shall be fixed by a national organic law.

No new Province may be created by the dismemberment of one or more Provinces except through a revision of the first paragraph of the present article, effected in conformity with the provisions of Articles 175 to 177; such revision shall not become effective except with the agreement of the interested parties consulted through a referendum.

No new Province shall be created by the fusion of two or more Provinces or parts of Provinces unless the interested provincial assemblies shall demand it. The President of the Republic, on receipt of the request of such assemblies through their President, shall submit for the approval of the interested populations, consulted through a referendum, a proposal for amendment in conformity with the request received. If the referendum is in favour of the adoption of the project, the President of the Republic shall promulgate the same within the period provided for in Article 94 (paragraph 1).

In each of the cases provided for in the preceding paragraphs the limits of the new Province shall be fixed by an organic law modifying the law referred to in paragraph 2 of the present article.

A national organic law shall prescribe the rules for the application of the present article and shall establish the procedure for the implementation of the institutions of the newly created Province.

Article 5: The Provinces are autonomous within the limits fixed by the present constitution.

Each Province shall constitute a distinct legal entity. The Republic, however, shall alone enjoy the status of a subject of international law.

Leopoldville, the capital of the Republic, shall be the headquarters of the national institutions provided for in paragraphs 1-4 of Article 53.

The city of Leopoldville shall be under the exclusive jurisdiction of the central authority, which shall establish its legal status by an organic national law.

Section II

Nationality

Article 6: There shall exist only one Congolese nationality. It shall belong as of the date of June 30, 1960, to every person one of whose ascendants is or was at that time a member of a tribe or of a party of a tribe established on the territory of the Congo before October 18, 1908.

However, those persons who are comprised within the terms of paragraph 2 of the present article, who are in possession of a foreign nationality at the date of the entry into effect of the present Constitution, shall acquire Congolese nationality only if they apply for the same by a declaration made in the form prescribed by the national law and only if by the making of such declaration they lose their foreign nationality.

Such declaration must be made within a period of twelve months from the date of entry into effect of the present Constitution if the declarant is of the age of 21 years at that date; if the declarant has not then reached the age of 21 the declaration shall be made within twelve months of the date of attaining such age.

Article 7: Congolese nationality shall be acquired by birth, by naturalisation, by option, or by legal presumption, within the conditions fixed by a national organic law. Such law shall also determine the conditions for the loss of Congolese nationality.

Every Congolese who voluntarily acquires the nationality of another State shall forfeit Congolese nationality.

Every Congolese who, at the age of 21, is in possession, at the same time, of both Congolese nationality and that of another State, shall lose his Congolese nationality unless he shall have declared, within the form provided by the national law, that he desires to retain Congolese nationality.

Section III

Treaties and International Agreements

Article 8: The President of the Republic negotiates and ratifies treaties and agreements in the name of the Republic.

Treaties of peace, commercial treaties, and agreements relating to international organizations or to the settlement of international conflicts; those which involve state finance; or those which alter legislative acts or relate to personal status may not be ratified except pursuant to federal law.

Treaties or international agreements which involve cession, exchange, or addition of territory may not be ratified or approved except in pursuance of the provisions of Articles 1 (paragraph 1) and 4 (paragraph 1), of the present Constitution, and with the approval of the interested parties as expressed through a referendum.

Whenever a treaty or an international agreement affects the interest of a Province, the Governor of the Province shall be consulted before it is concluded.

Article 9: Treaties or international agreements regularly ratified or approved constitute from the date of their publication an authority superior to the laws, subject, as to every such treaty or agreement, to reciprocity of application by the other party thereto.

Article 10: If the Constitutional Court, acting pursuant to the request of one of the Chambers of Parliament, of the President of one or other of the Chambers, of the Governor of a Province, or of the President of a Provincial Assembly, declares that an international agreement contains a clause contrary to the present Constitution, authorisation for its ratification or approval may not be given except after revision of the Constitution.

TITLE TWO FUNDAMENTAL RIGHTS

Article 11: In the present title the word "law," when not followed by the word "national," shall include both national and provincial laws.

Article 12: It shall be the duty of the legislative, of the executive, and of the judicial power of the Republic and of the Provinces to respect the rights proclaimed by the present Constitution.

When a state of emergency (*l'état d'urgence*) is proclaimed in conformity with the provisions of Article 97, no derogation shall be made, in any case, from the provisions of the present article and of articles 13, 14, 15 (paragraphs 2 and 3), 16, 20 (paragraphs 1-3), 22 (paragraph 2), 23, 24, 29, 30 (paragraph 2), 31-37, 39-43.

Article 13: All Congolese are equal before the law and have the right to the equal protection of the laws.

Article 14: No Congolese shall, in any matter affecting education or access to public office in the Republic, be made the object of a discriminatory measure, whether resulting from a law or from an act of executive power, by reason of his religion, his tribal association, his sex, parentage (*ascendance*), his place of birth, or his residence.

Article 15: Every person shall have the right of respect for the protection of his life and the inviolability of his person.

No one may be subjected to torture nor to any inhuman or degrading penalties or treatment.

No one may be put to death except in the cases provided by law and in the form prescribed.

Article 16: No one shall be held in slavery or servitude nor under any conditions analogous thereto.

No one may be condemned to forced or compulsory labour except in the cases provided by law.

Article 17: Individual liberty is guaranteed. No one may be arrested or held in detention except in accordance with law and in the manner thereby prescribed.

Article 18: Every person who is arrested shall be informed immediately, and in any event within 24 hours, in language which he understands, of the reasons for his arrest and of any accusation made against him.

He may not be held in preventive detention except in accordance with an ordinance of an authorised judge and for the duration expressly provided for by law. Everyone shall have the right to an appeal against an ordinance rendered in a matter of preventive detention.

Article 19: Any person who is the victim of an arrest or detention under conditions contrary to the provisions of Articles 17 and 18 above, shall have the right to a just reparation for the damage which he has suffered, or to an equitable indemnity.

Article 20: Every person shall have the right to have his case heard equitably and within a reasonable time by an authorised judge.

He shall have the right to defend himself or to be represented by a defender of his choice.

No one may be deprived, against his will, of the right to be judged by the Court to whom his case has been properly assigned.

A national law shall determine the conditions of indigence and the nature of the punishment which justify the granting of legal assistance.

Article 21: Hearings of the Courts of Appeals and of the Tribunals shall be public unless such publicity shall involve danger to public order and good morals: in such case the court shall by written decision with reasons stated order a closed hearing.

Article 22: No one may be prosecuted except in cases defined by the law and in the manner thereby prescribed.

No one may be prosecuted for an action or an omission which does not constitute an offence both at the time of commission and that of the prosecution.

No punishment may be inflicted greater than that which is applicable at the moment when the violation was committed.

If the existing law punishes a violation of law with a penalty less than that which was provided for by the law in force at the time of the violation, the judge shall apply the lighter of the penalties.

Article 23: Every person accused of an offence is presumed innocent until his guilt shall have been established by final judgment (*jugement définitif*).

Every judgment shall be pronounced at a public hearing. It shall be in writing accompanied by a statement of reasons.

No penalty shall be pronounced or inflicted except in pursuance of a law.

A national law shall determine grounds of justification, excuse, and non-imputability.

The right to appeal against a judgment is guaranteed to all in conformity with the law,

Article 24: Every person has the right to freedom of thought, of conscience, and of religion.

There is no state religion within the Republic. Any person upon reaching his majority has the right to change his religion or belief.

Every one shall have the right to give expression to his religion or to his belief either alone or in community with others, in public or in private, by means of worship, teaching, practices, observances, and the conditions of the religious life (*l'état de la vie religieuse*), subject to respect for public order and good morals.

Article 25: Every person has the right to liberty of expression. This right implies the liberty of the expression of opinions and feelings, notably by word, in writing, and by visual art, subject to public order and good morals.

Article 26: Liberty of the press is guaranteed to all Congolese. No authorization of publication is required and no censorship may be established.

The formalities for the declarations of an intention to publish shall be prescribed by law.

The law may not subject the exercise of the liberty of the press to restrictions except to insure the protection of public order, public security, and good morals, as well as respect for the rights of others.

When the author is known and has his residence in the Republic, the editor, printer, or distributor may not be prosecuted.

Article 27: The right of emission by radio and television shall be exercised in conformity with national law. Radio diffusion and television organized by public authority are public services under the control of national legislation, guaranteeing to all their emissions, impartiality, and the respect of all beliefs.

Article 28: All Congolese have the right to assemble peacefully and without arms, to create syndicates or other associations, and to associate themselves to promote their welfare and assure the defense of their political, social, economic, religious, and other interests.

The right to strike is guaranteed. The law shall regulate the procedure relating thereto and shall establish the conditions which shall insure the functioning of the public services or services of public interest, which may not be subjected to interruption even in case of strike or lock-out.

Article 29: The members of the armed forces, of the constabulary, and of the police may not establish syndicates or associations of a political character nor become members thereof. They may not take part in any strike.

Article 30: Every Congolese has the right to create a political party or to belong to one.

No one may impose a single political party on all or part of the territory of the Republic.

Political parties shall collaborate in giving expression to the public will (*l'expression du suffrage*). They may freely plan and carry out their activities. They shall respect the principles of national sovereignty, democracy, and the laws of the Republic.

Article 31: Everyone shall have the right to marry the person of his choice and to establish a family.

The family shall be organized in such a manner as to ensure its unity and stability. It is placed under the special protection of the public authorities. The care and education to be given to children shall constitute, for the parents, a natural right and duty which they shall exercise under the supervision and with the aid of the public authorities.

Article 32: The public authorities shall protect youth against exploitation and moral neglect (*l'abandon moral*). Youth organizations and their coordinating agencies shall have an educational purpose. The public authorities shall lend their moral support.

Article 33: Every Congolese has the right to education. The parents shall have a right to priority in the choice of the kind (*genre*) of education to be given to their children. Education is obligatory and at public expense (*gratuit*) up to the level of study and age provided for by law.

Article 34: Education shall be free.

It shall nevertheless be subject to the supervision of the public authorities under the conditions established by a national law.

Article 35: The public authorities shall make national education available to all Congolese.

National education shall comprise the establishments of learning organized by the public authorities as well as establishments organized and conducted by private individuals.

The creation of schools by the public authorities and the approval by them of schools organized by private individuals shall be made in due conformity with a general educational plan (*planification scolaire d'ensemble*).

Schools which are part of the national educational system shall be administered in accordance with the rules established by law. The national schools shall be conducted at public expense.

Public funds destined for the conduct of national education shall be allocated among such schools in proportion to the actual number (*nombre effectif*) of their students.

Article 36: All Congolese shall have access to national educational establishments without distinction of place (*sans distinction de lieu*), origin, religion, race, or political and philosophical opinions.

In collaboration with the religious authorities concerned, public establishments shall assure to all minors whose parents request it and to those students who are of full age and request it, an education in conformity with their religious beliefs. A national law shall prescribe the means of application of the present paragraph.

Article 37: Schools established by individuals shall, at the request of the parties in interest, be accepted (*agrées*) by the appropriate public authorities as part of the national educational establishment, wherever they are not inferior to the schools

established by the public authorities in respect to the level of studies and qualifications of the teaching personnel and comply with the standards fixed by law, in conformity with the present Constitution, in the matter of education.

The public authorities shall bear the cost of construction of schools established by individuals, upon their request, whenever such persons present evidence of having complied with the conditions required by law.

Article 33: The pursuit of art and science is free with due respect to public order and good conduct.

Article 39: Every person has the right to the inviolability of his domicile.

The public authorities may not interfere with the exercise of this right except in cases prescribed by law and in the forms therein laid down.

Article 40: No Congolese may be expelled from the territory of the Congo. All Congolese have the right to leave the territory of the Republic and to return.

The exercise of this right may be restricted only by national law and to the extent to which the present Constitution authorizes a restriction upon individual liberties.

Article 41: Every Congolese shall have the right to change his domicile and to establish himself freely in any part of the territory of the Republic and to enjoy therein all the rights which are guaranteed to him under the present Constitution.

The exercise of this right may only be restricted by a national law and then only in the interests of public order or in the case of preventive measures taken against the risks of an epidemic or to prevent any widespread breach of law (*prévention d'infractions générales*).

Article 42: Every person has the right to secrecy of correspondence and of every other form of communication. The public authorities may restrict this right only in the cases authorized by law.

Article 43: The rights of property acquired by virtue of customary law or written law are guaranteed in conformity with the national laws.

No one may be deprived of his property, movable or immovable, lawfully acquired in any region of the territory of the Republic, except for reasons of general interest and by virtue of a national law providing for the previous payment of an equitable indemnity together with the right of the party interested to have recourse, in case of disagreement, to the courts of law, which shall pronounce upon these rights and fix the amount of the indemnity.

The national law may transfer to the Republic, to a Province, or to a public body, the ownership of specific private enterprises of an essentially national interest.

By exception to the provisions of the three preceding paragraphs, a national law shall determine finally the legal status of all land grants and concessions made before June 30, 1960 (*cessions et des concessions foncières*).

Article 44: The right to engage in commerce is guaranteed to all Congolese throughout the territory of the Republic under conditions fixed by a national law.

The movement of property is free throughout the Republic.

Article 45: Without prejudice to any right of legal recourse which they may have, in a particular case, against their several public organs, the public authorities are civilly liable for acts accomplished by such organs in the exercise of their powers and functions.

An appeal to justice shall be available to every person injured in his rights by the public authorities. Except when otherwise provided in the present Constitution, such appeal shall be within the jurisdiction of the ordinary courts.

Article 46: Every stranger within the territory of the Republic enjoys the protection accorded to persons and property under the present Constitution, subject to the exceptions established by law.

He shall enjoy the rights reserved to Congolese under the present Constitution only in the measure established by a national law.

TITLE THREE

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE REPUBLIC AND THE PROVINCES

Article 47: The division of powers (*compétence*) as between the Republic and the Provinces is established by the present Constitution.

Matters shall be within the exclusive jurisdiction of the Republic; within the concurrent jurisdiction of the Republic and the Provinces; or within the exclusive jurisdiction of the Provinces.

Article 48: Subject to other provisions of the present Constitution, the following matters are within the exclusive jurisdiction of the Republic:

1. Foreign affairs, including diplomatic relations, as well as treaties and international agreements;
2. The regulation of foreign commerce;
3. Nationality, the status of and police regulations affecting foreigners;
4. Extradition, immigration, emigration, and delivery of passports and visas;
5. External protection (*la sûreté extérieure*);
6. National defense;
7. Police protection of the Capital;
8. The public administration of the State;
9. The finances of the Republic;
10. The establishment of taxes on income, taxes on companies, and personal taxes in conformity with Article 144;
11. The public debt of the Republic;
12. External loans for the needs of the Republic or the Provinces;
13. Internal loans for the needs of the Republic;
14. Money and its value as legal tender (*pouvoir libérateur*);
15. Weights and measures;
16. Customs and import and export duties;
17. The code of commerce, including insurance;

18. The regulation of banks and banking operations;
19. Exchange control;
20. Literary, artistic, and industrial property and patents;
21. Post and telecommunications, including telephones, telegraphs, radio diffusion, and television;
22. Maritime and internal navigation, airlines, roads, routes, and other means of communication, natural or artificial, which join two or more Provinces, or the territory of the Republic to a foreign territory, or which national law shall declare to be of national interest, even though they may be entirely situated within the territory of a Province;
23. Universities and other institutions of higher education, scientific, technical, and professional, established or supported by the public authorities or by the central or provincial governments, and which by national law have been declared to be of national interest;
24. The establishment of standards of education applicable throughout the territory of the Republic;
25. The penal code and the penitentiary regime;
26. The procedure to be followed before the courts of appeal and tribunals;
27. The acquisition of property for the use of the Republic subject to the provisions of Article 43;
28. The legal and medical professions;
29. Labour legislation, including the laws regulating the relations between employers and employees, the security of workers, the rules relating to social security, and in particular the rules relating to insurance, social insurance, and involuntary unemployment (*chomage obligatoire*);
30. Economic legislation, including the laws relating to mines, minerals, and mineral oils, industry, the sources of energy, and the protection of national resources;
31. Legislation relating to arts and professions;
32. Medical legislation and the art of healing; preventive medicine: notably, hygiene, public health, and maternal and child care; legislation relating to the profession of pharmacy, trade in pharmaceutical products, immigration and transit; legislation relating to the hygiene of labour and the technical coordination of medical laboratories and the distribution (*répartition*) of physicians;
33. The establishment of agricultural and forestry programmes of national interest and the coordination of programmes of provincial interest; The public services relating to agricultural produce and similar services, as well as the employment and distribution of their senior staff (*du personnel de cadre*) in conformity with the provisions of the general rules governing the status of public servants; General legislation on the agricultural and forestry regime, on the regime of hunting and fishing; the conservation of nature; the capture of animals (*la capture*); stock breeding; food stuffs of animal origin, and the veterinary art;
34. The historic patrimony; public monuments and parks which are declared to be of national interest;
35. Meteorological services and the technical coordination of the services of geodesy, cartography, and hydrography.

Article 49: Subject to the other provisions of this constitution the following matters are within the concurrent jurisdiction of the Republic and the Provinces:

1. The application and the protection of the fundamental rights guaranteed by the present Constitution;
2. Civil and customary law;
3. Statistics and census;
4. Internal security;
5. The administration of the courts of appeal and tribunals, as well as of detention houses and prisons (*prisons pour peines*);
6. The cultural life;
7. Establishment of taxes, including excise and consumption taxes; but excluding taxes provided for under Article 48;
8. The execution of police measures relating to foreigners;
9. Scientific research, including scientific institutions;
10. Medical and philanthropic institutions and the employment of classified medical personnel (*l'engagement du personnel médical de cadre*);

Article 50: Subject to other provisions of this Constitution, all matters other than those specified in Articles 48-49 are within the exclusive jurisdiction of the Provinces and notably the following:

1. The political and administrative institutions of the Provinces;
2. The public organizations (*fonction publique*) of the Provinces;
3. Provincial electoral law;
4. Public finance;
5. The provincial public debt;
6. International loans for provincial needs;
7. The granting of concessions and leases for land, mines, minerals, mineral oil, water resources, forests, and other property in public ownership (*biens domaniaux*);
8. Public works of local interest;
9. The provincial police;
10. Education other than provided for under Article 48.
11. Local institutions;
12. The acquisition of property for the needs of the Provinces, subject to the provisions of Article 43;
13. The imposition of fines or imprisonment for violations of provincial law;
14. The interior communications of the Provinces;
15. Taxes and provincial duties;
16. The securing of employment for workers and the fixing of minimum salaries with due respect to national legislation; the discipline of the personnel of the labour inspection services in conformity with the rules covering agents of public administration; the supervision of the services and the agents of the national organization for social security in conformity with the status of such agents;
17. The distribution of the personnel of the medical service in conformity with the status of public servants; the development of a health program and of a campaign against endemo-epidemic diseases in conformity with national planning; the organization of hygiene services and provincial prophylaxis; the application and control of national medical and pharmaceutical legislation as

- well as the organization of pharmaceutical services, curative medicines and philanthropic and missionary medical enterprises, and medical laboratories;
18. The elaboration of agricultural and forestry programs and their execution in conformity with national planning; the placing of the classified agricultural personnel (*du cadre*) in conformity with the provisions of the statute of public agents;
The application of national legislation in matters relating to agriculture, forestry, stock raising, hunting, and fishing, and the preservation of natural resources and the capture of animals (*à la capture*) subject to the provisions of Article 48 (33);
 19. The historic patrimony, public museums, and parks other than those provided for in Article 48 (34);
 20. The administrative control of the services of geodesy, cartography, and hydrography.

Article 51: A Provincial Assembly may not legislate on matters within the exclusive jurisdiction of Parliament. Reciprocally, Parliament may not legislate upon matters within the exclusive jurisdiction of a Provincial Assembly. However, Parliament may by law authorize a Provincial Assembly to legislate upon matters within the exclusive jurisdiction of the former. When Parliament terminates by law the delegation of power thus given to the Assembly the provisions of provincial laws promulgated in matters within the exclusive jurisdiction of Parliament, by virtue of this delegation, shall remain in force within the Provinces interested, until a national law shall have regulated such matters.

Similarly, a Provincial Assembly may by a law authorize Parliament to legislate upon matters within the exclusive jurisdiction of the former. When the assembly shall by law terminate the delegation of power thus given to Parliament, the provisions of any national laws promulgated in matters within the exclusive jurisdiction of the assemblies, by virtue of this delegation of powers, shall nonetheless remain in force within the province interested until such matters shall have been regulated by a provincial law.

In matters within the concurrent jurisdiction of the Republic and the Provinces any provincial law incompatible with national laws and executory regulations shall be null or ipso facto abrogated to the extent of such incompatibility.

The national law shall take precedence over the provincial.

Article 52: Subject to any provisions of national legislation to the contrary Provincial Governments shall through their several services, execute the national laws and regulations (*règlements*).

TITLE FOUR

NATIONAL INSTITUTIONS

Article 53: The principal national institutions are:

1. The President of the Republic;
2. The Government, under the direction of a Prime Minister;
3. Parliament, composed of two chambers;
4. The Constitutional Court;
5. The Courts of Appeal and the Tribunals.

Section I

The Central Executive Power

I. The President of the Republic

Article 54: The President of the Republic represents the Nation.

He is the Chief of the Central Executive. He determines and conducts the policy of the State. He establishes the framework of the activities of the government, sees to its application, and keeps the Parliament advised of its development.

Article 55: The President of the Republic is elected for five years. His term of office expires six months after the ending of the legislature.

Every native-born Congolese citizen of the age of forty years who fulfils the conditions of eligibility required for election to the Senate, is eligible for election to the office of President of the Republic.

The President of the Republic may be re-elected in immediate succession once only.

Article 56: The President of the Republic is elected by an electoral corps composed of the members of Parliament and of the delegates of the City of Leopoldville, who shall vote in the capital, together with members of the Provincial Assemblies, who shall vote at the headquarters of the Province which they represent.

The City of Leopoldville shall select a number of presidential electors equal in number to the provincial counsellors to which this city would be entitled if it had been created a province.

Voting shall be held upon the call of the President of the Chamber of Deputies, not more than thirty days before and not more than sixty days after the expiration of the term of office of the President of the Republic then in office.

Declarations of candidacy for the presidency of the Republic shall be filed at the office of the Chamber of Deputies at least ninety days and not more than a hundred and twenty days before the expiration of the term of office of the President then in office.

Election shall require an absolute majority of the votes cast at either of the two first ballots or a relative majority upon the third turn. At the second ballot only those two candidates shall remain in competition who have received the greatest number of votes at the first ballot.

Before entering upon his duties the President of the Republic shall take the following oath before the President of the Constitutional Court, in the presence of Parliament, meeting in national congress, of the Governors of the Provinces, and of the members of the Constitutional Court:

"I 'X' elected President of the Democratic Republic of the Congo, swear to observe the Constitution and laws of the Republic of the Congo, and to maintain its national independence and the integrity of its territory."

A national organic law shall provide for the application of this present article.

Article 57: In the case of a vacancy in the presidency, by death, resignation, or for any other reason whatsoever, or of the existence of an impediment to service declared by the Constitutional Court upon consultation by the President, or, as the

case may be, by the person who shall have been designated to replace the President, conformably to paragraph 2 of Article 57, the functions of President of the Republic shall be provisionally exercised by the President of the Senate. The President of the Republic may have the ending of the impediment formally declared by the Constitutional Court.

In the case of a vacancy or when an impediment to service has been declared by the Constitutional Court to be definitive, the election of the new President shall take place upon convocation of the President of the Chamber of Deputies sixty days at least and ninety days at most after the occurring of the vacancy or of the declaration of the definitive nature of the impediment.

The declarations of candidacy shall be filed with the executive board of the Chamber of Deputies within sixty days of the beginning (*ouverture*) of the vacancy or of the declaration of the definitive character of the impediment.

If the remaining period of a presidential term is equal to or more than three years, the new President of the Republic shall be elected in conformity with the provisions of paragraphs 1, 2, and 5 of Article 56.

If the remaining period of the presidential term is less than three years, the new President shall be elected by an electoral corps composed of the members of the National Parliament, of five counsellors from each Provincial Assembly, and of five delegates chosen from among their number by the Assembly of the presidential electors of the City of Leopoldville, as provided for in paragraph 2 of Article 56. The electoral corps shall meet in assembly in the capital, and the election shall take place in conformity with the provisions of paragraph 5 of Article 56.

The President of the Republic elected in accordance with the provisions of this article shall exercise his functions until the expiration of the normal duration of the mandate of his predecessor. The provisions of paragraph 4 of Article 55 shall not be applicable to him until after the expiration of such mandate.

Article 58: The President of the Republic conducts and controls the foreign policy of the Republic.

He accredits ambassadors and envoys extraordinary to foreign powers; foreign ambassadors and envoys are accredited to him.

Article 59: The President of the Republic shall communicate with the two national chambers either directly or by messages to be read and which will not be subject to debate.

He shall pronounce at least once a year before the Chambers, meeting in national congress, an address in which he shall present the policy of the Central Government.

Article 60: The President of the Republic promulgates the national laws under the conditions prescribed by the present Constitution.

Except in the cases provided for in paragraph 6 of Article 95 and paragraph 7 of Article 97, he may, by a message accompanied by a statement of reasons (*motive*), address to the National Parliament, before the expiration of the period fixed for the promulgation of laws, a request to the Chambers for a new deliberation on a law or on certain of its articles. Such deliberation may not be refused. Unless it shall have been modified in accordance with the proposals contained in the message of the President, the law shall not be considered definitely adopted unless it shall receive, in

each of the two chambers, the approval of two-thirds of the members who compose it. If the law is adopted the President of the Republic shall promulgate it within the period prescribed in Article 94 (paragraph 1).

Failing the promulgation of a national law by the President of the Republic within the period fixed by the present Constitution, it shall be promulgated by the President of the Chamber of Deputies.

Article 61: The President of the Republic assures them execution of national laws and prescribes the national rules of police and of internal organization for the central administration. He exercises this power by way of ordinance of decree.

He may, in the conditions fixed by Articles 95 to 97, issue decrees having the force of national law.

In every case the decrees shall be the subject of deliberation in the Council of Ministers.

Article 62: The President of the Republic appoints the Prime Minister and other members of the Central Government.

He may terminate the office of the Prime Minister or of one or more members of the Central Government, upon the presentation by them of their resignations or upon the proposal of the Prime Minister.

He may also, upon his own initiative, put an end to the office of the Prime Minister or of one or more of the members of the Central Government, notably in the case of a serious conflict between them.

He shall settle finally any conflicts which shall arise between the Prime Minister and other members of the Government.

Article 63: The President of the Republic invests the Governors of the Provinces with the power of representing him in the Provinces.

He is the Supreme Head (*Chef Suprême*) of the armed forces. He appoints and revokes, in conformity with the national law, the Commander-in-Chief and other officers of the armed forces.

He appoints pursuant to national law the justices of the Constitutional Court, the justices of the Supreme Court of Justice, and of the Courts of Appeal and other courts as well as the judges of all the other tribunals.

He names and revokes the high officials of the national administration in conformity with national law.

The President of the Republic and his government shall have at their disposition the Central Administration and the armed forces, under the conditions established by law.

He receives the oath of members of the Central Government, of the Governors of the Provinces, of the Justices of the Constitutional Court and of the Supreme Court of Justice, and of the Commander-in-Chief of the armed forces and other higher officers.

He may remit, commute, and reduce sentences (*les peines*). However, he may not grant a pardon to a member of the Central Government or of the Provincial Government who has been convicted by the Constitutional Court or by the Supreme Court of Justice, except with the approval of the Superior Council of the Magistracy.

He confers the honours (*grades*) established in the national orders in accordance with the national law and also the decorations of the Republic.

He shall pursuant to a national law have the right of coinage and the right to issue paper money.

2 THE CENTRAL GOVERNMENT

Article 64: The Central Government is composed of the Prime Minister and a maximum of fifteen other ministers.

It may include, in addition, a maximum of three Secretaries of State who are associated with either the Prime Minister or a Minister.

Article 65: The Prime Minister is appointed by the President of the Republic.

The other members of the Central Government are named by the President of the Republic on the proposal of the Prime Minister.

Ministerial appointments shall, on the proposal of the Prime Minister, be allocated among the members of the Central Government by the President of the Republic.

After their nomination the member of the Central Government shall take the following oath before the President of the Republic:

"I swear to observe the Constitution and laws of the Republic of the Congo and to loyally and faithfully fulfil the functions which are conferred upon me."

Article 66: The President of the Republic shall within thirty days from the formation of the government (*l'équipe gouvernementale*) if the Chambers are in session at the time of the formation of the Government, or within thirty days from the meeting of the Chambers if they should be in recess at the time of the formation of the government, submit to the approval of Parliament, meeting in national congress, the act of nomination of the members of the Government.

If the Congress declines to give its approval the government shall be taken to have resigned and the President of the Republic shall again select a Prime Minister, who shall form another Government whose nomination must be approved in conformity with the preceding article.

No new member appointed by the President of the Republic as a member of a Ministry (*équipe ministérielle*), to which Congress shall have given its approval as provided in the first paragraph of this article, shall enter upon the exercise of his duties until after the approval of his nomination by the Chamber of Deputies.

Except as otherwise provided in the present Constitution, the members of the Central Government continue in the exercise of their office until the termination of the term of office of the President of the Republic.

Article 67: The Prime Minister directs the actions of the Central Government within the framework of the programme outlined and of the decisions taken by the President of the Republic. He shall keep the President fully informed of the conduct of the affairs of the Government.

The Prime Minister, or in his absence the Minister designated by him or, failing such designation, by the Cabinet, shall preside over the Cabinet Council.

He shall adjust the disputes which may occur between members of the Government.

Article 68: The Ministers are heads of their departments. They shall each one within his department, under the direction of the Prime Minister, carry out the programme fixed and decisions taken by the President of the Republic. They shall make, within these limits, all decisions relating to the management of the public services relevant to their department.

Secretaries of State shall, under the authority of the Minister to whom they are assigned, exercise the duties which are expressly assigned to them by the President of the Republic. They shall replace the Ministers during their absence and in such case shall countersign the acts of the President of the Republic.

Article 69: Subject to the other provisions of the present Constitution, members of the Central Government are responsible only to the President of the Republic. By their countersignature given to the acts of the President they assume the duty of giving execution to such acts.

Subject to the other provisions of the present Constitution, the measure of control of Parliament over the Central Government are: the Question, oral or written; Interpellation; Hearing before Commissions; a Commission of Inquiry; Warning or Remonstrance.

Article 70: In case of the permanent disability (*empêchement*) of the Prime Minister, duly certified by the President of the Republic, or if he shall have been removed from office by application of Article 62 (paragraphs 2 and 3), the Central Government shall be considered to have resigned.

The Central Government shall be considered to have resigned at the expiration of the term of office of the President of the Republic.

In all these cases where the Central Government has resigned or is considered to have resigned, it shall continue to dispose of current affairs until the formation of a new government in conformity with the provisions of Articles 64 and 65.

3. Provisions Common to the President of the Republic and to Members of the Central Government

Article 71: The President of the Republic and members of the Central Government shall be penally responsible for their acts done in the exercise of their functions, in case of high treason, of intentional violation of the present Constitution, of embezzlement, peculation, corruption (*de détournement, de concussion ou de corruption*) and in the other cases provided for by an organic national law.

Every act contrary to the National Constitution by which the President of the Republic or member of the Central Government strikes a blow at national independence (*porte atteinte*) or the integrity of the territory or by which he assumes or attempts to assume the powers of the Chambers, of the Constitutional Court, of the Courts and Tribunals, or of a Provincial Government or a Provincial Assembly, or by which he prevents them or seeks to prevent them from exercising the powers which are given to them by the present Constitution, shall be considered a crime of high treason in the sense of the preceding paragraph. Every act contrary to the National Constitution by which the Prime Minister or any member of the Central Government shall assume or attempt to assume the powers of the President of the Republic or by which he prevents or seeks to prevent him from exercising the power

which are granted to him by the present constitution shall also be a crime of high treason.

The national organic law referred to in the first paragraph of the present article will define (*définir*) the other violations provided for in the said paragraph.

Article 72: The President of the Republic and the other members of the Central Government may not be prosecuted for the offences referred to in the preceding paragraph of Article 71 nor for any other violation of the penal laws unless a charge against them shall have been presented by one of the Chambers by an absolute majority of its members, upon a secret ballot.

They shall be arraigned before the Constitutional Court in case of high treason or of the intentional violation of the present Constitution; in all other cases before the Supreme Court of Justice.

Whenever they shall be condemned for high treason or intentional violation of the present Constitution or when they shall be subject to a conviction involving, under the terms of the national electoral law, the forfeiture of their right to election to the office of senator, the Constitutional court shall pronounce their dismissal from office.

A national law shall fix the penalties applicable to crimes of high treason and also the measures for the application of the present article.

4. The Conference of Governors of the Provinces

Article 73: The Conference of Governors of the Provinces shall consist of the President of the Republic, who shall preside, of the Prime Minister, and of the Governors of the Provinces.

Subject to the other provisions of this Constitution the role of the Conference shall be consultative.

It will meet at least once a year on the call of the President.

The Conference of the Governors of the Provinces shall have for its purpose the reinforcement of the unity of the Republic and the promotion of political coordination among the Provinces.

A national organic law shall fix the methods for application of this article.

Section II

The National Legislative Power

I. The Composition and Functioning of Parliament

Article 74: The National Parliament shall be composed of the Chamber of Deputies and the Senate.

The Deputies represent the Nation.

The Senators elected by the Provincial Assemblies shall each represent the Province by whose Assembly he has been elected. The Senators elected by the City of Leopoldville shall each represent that city.

Article 75: Deputies are elected by direct secret universal ballot in the proportion of one Deputy for 100,000 inhabitants; each fraction of the population equal to or larger than 50,000 shall give right to the election of an additional Deputy.

The City of Leopoldville and each of the Provinces shall be represented by six Senators. The Senators representing the Province are elected by the Provincial Assemblies. One of the six Senators representing each Province shall be a customary chief or a notable elected in that capacity.

The Senators of the City of Leopoldville are elected by universal direct and secret vote.

In addition to the Senators provided for in the second paragraph of the present article, the former presidents of the Republic are life members of the Senate.

Article 76: The term of office of the legislature is for five years. The powers of the Chambers expire on the 15th of June of the fifth year following their election.

The election of new Chambers shall be held at least 30 days and not more than 60 days before the end of the legislature.

Electors must be Congolese, have completed the age of eighteen years, and must not fall within one of the classes of excluded persons defined in the national electoral law.

To be eligible for the Chamber of Deputies, one must be Congolese of at least 25 years of age and must not fall within one of the classes of excluded persons defined in the national electoral law.

To be eligible for the Senate, one must be Congolese of at least 30 years of age and must not fall within one of the cases of excluded persons defined in the national electoral law.

The national electoral law shall define the electoral procedure and the conditions for the selection of those who shall be called on, in case of a seat becoming vacant, to replace the members of one or the other Chambers, until the renewal of the Parliament.

Article 77: Each Chamber shall pass on the credentials (*vérifie les pouvoirs*) of its members.

In case of contest the Constitutional Court shall render a decision in conformity with national legislation.

Article 78: The term of office of a member of Parliament shall expire by death, resignation, permanent incapacity, unjustified and unauthorized absence for more than one-quarter of the total number of the meetings of an ordinary session, or whenever such member shall fall within one of the classes of excluded persons provided for by the national electoral law.

Article 79: Each Chamber shall adopt its own rules of procedure (*règlement d'ordre intérieur*).

The rules of procedure of one or other Chamber shall, before being put into effect, be communicated by the President of the Chamber in question to the Constitutional Court, who shall pronounce upon the conformity of such rules to the present Constitution. Provisions declared to be not in conformity may not be given effect.

All further modification of the rules is subject to the same procedure.

Each Chamber shall provide within the framework of its rules the administrative organization of its various services.

The administrative services of each Chamber are placed under the high authority of a Secretary General named in conformity with the rules relating to parliamentary officials. The Secretary General shall handle the funds of the Assembly. He shall be the guardian of the archives of the Chamber.

A national law shall establish the status of the officials (*fonctionnaires*) of Parliament in conformity with the provisions of Article 156.

Article 80: The Chambers shall meet in ordinary session twice a year.

The first session shall open on the first Monday of March and shall end on the first Monday of June unless the order of business shall have been earlier completed; the second session shall begin on the first Monday of September and shall end on the first Monday of December if the order of business has not been earlier completed.

The Chambers shall be convened in extraordinary session by the President of the Republic acting upon his own initiative or upon the request of one-quarter of the members of one or other Chamber.

Each Chamber shall be convened in extraordinary session by its President at the request of one-third of its members. In such case the other Chamber shall automatically meet.

In the cases provided for in the preceding paragraphs the acts of convocation shall fix the order of business of the session.

In order to establish their executive boards (*bureaux*) the Chambers shall *de jure* (*de plein droit*) meet in extraordinary session on the day following that of the expiration of the powers of the Presiding Chambers.

The President of the Republic shall on the proposal of the executive board of the Chambers declare the closing (*colture*) of the ordinary sessions and that of the extraordinary sessions whenever the Chambers shall have completed their order of business.

The sessions of the Chambers shall be simultaneous. Any meeting of either of them outside the time of sessions shall be legally void.

Article 81: The sessions of the Chambers shall be public. Each Chamber may decide to meet in closed session (*huis clos*); in such case it may decide whether the meeting may be resumed in public on the same subject.

The President shall be responsible for the policing of the Assembly. He may, after having given warning, expel forthwith any member of the public who shall disturb its order or who is giving expression to signs of approbation or disapprobation.

Anyone who refuses to obey an order of expulsion is subject to the penalty provided for by the national law.

A minute and a proces-verbal of the session shall be kept which shall be made public under the conditions fixed by national law.

The President of each Chamber shall attest by his signature the authenticity of the decisions taken by (*actes*) the Chamber.

Article 82: Each year at the ordinary session held in March, each Chamber shall elect its executive board, to be composed of a President, a Vice-President, and two Secretaries.

Article 83: The Chambers shall meet in National Congress only in those cases expressly provided for by the present Constitution.

When the Chambers meet jointly in National Congress the executive board of the Congress shall be that of the Chamber of Deputies, and the President of the Congress shall be in turn the President of the Senate and the President of the Chamber of Deputies.

Article 79 (paragraphs 2 and 3) shall be applicable *mutatis mutandis* to the National Congress.

Article 84: In addition to the permanent commissions of each Chamber, the two Chambers shall establish one or more permanent parliamentary mixed commissions, composed of elected members, with an equal number from each of the two Chambers.

The permanent parliamentary mixed commissions shall meet to reconcile points of view when the Chambers are in disagreement on the subject of any question as to which agreement between them shall be essential to its validity.

Article 85: The members of Parliament shall exercise their mandate in complete independence. Any committed mandate (*mandat impératif*) shall be null and void, and the right of voting is personal.

The members of Parliament may not take part in debates relating to questions in which they have a personal interest.

Article 86: The members of the Central Government have the right, and if they are so requested, the duty of being present at the meetings of the Chambers. They shall be heard whenever they shall so request. They may call upon the assistance of government commissioners (*commissaires*). They shall not take part in the voting.

Article 87: At the meetings of each Chamber or of Parliament in united session, one-third of the members shall constitute a quorum. However, subject to the other provisions of this Constitution, neither of the two Chambers, nor Parliament in united session, shall take any decision unless an absolute majority of their members is present.

Subject to the other provisions of this Constitution every resolution or decision shall be taken by a majority vote.

Article 88: Votes shall be taken either by word of mouth or by sitting and rising. In the case of a vote on the text of a law as a whole the votes shall be taken by roll call and by word of mouth.

Voting may also be had through the use of a technical system offering equivalent guarantees.

Subject to the other provisions of this Constitution each Chamber may decide upon the holding of a secret vote upon a particular resolution.

The presentation and election of candidates shall be had by secret vote.

Article 89: French is the official language of Parliament. However, each of the Chambers may admit the use of other working languages.

2. Elaboration of the Laws

Article 90: The legislative power shall be exercised collectively by the Chamber of Deputies and the Senate.

The initiative of national laws belongs concurrently to the President of the Republic and to every member of Parliament.

Draft laws or proposals (*les avant-projets ou propositions*) for national legislation shall be first submitted for advice to the Legislative Council.

The Council shall submit the draft laws to the Central Government and the legislative proposals to the Executive Board of the Chamber from which they have been sent. In each case it shall make a report.

The draft or proposal upon which the Council of Legislation has given its advice shall be examined successively by the two Chambers with a view to the adoption of a common text.

Members of the Central Government shall have the right of amendment.

In each Chamber every bill shall be first examined by the appropriate commission who shall present it to the Assembly with a reasoned opinion (*avec un rapport motive*). It shall then be discussed in the Assembly which shall act upon it, article by article, and shall pronounce upon its adoption by a final vote covering the whole body of its articles.

Article 91: Parliament shall vote the proposed budget which shall be submitted to the Executive Board of the Chambers at the latest at the meeting of September. It shall proceed in conformity with the provisions of Article 90.

Every amendment to the budget involving an increase of expense shall provide for the necessary ways and means, and every amendment involving a diminution of receipts which shall have the effect of disturbing the equilibrium of the budget shall provide for a corresponding diminution of expenses or for new receipts.

If Parliament has not taken a decision on the budget, as presented by the Government, before the opening of the new year (*nouvel exercice*), the provisions of the budget as presented shall be put into effect by a decree-law.

If the budget for a fixed period has not been presented in time for its promulgation before the beginning of that period, the President of the Republic shall request Parliament to open the necessary provisional credits. In the case where Parliament shall not act within fifteen days of the opening of such provisional credits, the provisions of the project calling for such credits shall come into effect by a decree-law.

If, up to the time of the opening of the session in March, the Government has not presented its proposed budget it shall be considered to have resigned.

If, up to the time of the closing session in March, Parliament has not approved the budget presented by the Government at least 60 days previously, the President of the Republic shall by decree-law give effect to its proposals.

Article 92: The national electoral law, the law on nationality, and the national laws on which the present Constitution confers the character of organic laws, may not be adopted by either Chamber except by at least a majority of its members. They shall be amended in the same manner.

They may not be promulgated until having first been submitted to the Constitutional Court, which shall verify within one month their conformity with the Constitution.

Article 93: If a legislative project or proposal is declared urgent by the President of the Republic, it shall be given priority of examination in each Chamber, by the appropriate commission, following a procedure provided for by an organic national law. The same law shall determine the forms of publicity to be given to the work of the commission and the time limit (*le délai*) within which the Chamber shall decide upon such project or proposal. If the Commission or the Chamber fails to take a decision within the period fixed, the project or proposal shall be considered to have been adopted, as the case may be, by the Commission or the Chamber.

Normal procedure shall be applied to projects or proposals of law calling for an amendment of the present Constitution or modifying organic laws, electoral laws, or projects and proposals of law relating to the delegation of powers provided for in Article 95.

Article 94: Subject to the provisions of Article 60 (paragraph 2), national laws shall be promulgated by the President of the Republic within ten days of their transmission to the Central Government by the President of the Chamber whose vote has resulted in their final adoption.

The seal of the Republic shall be affixed to national laws and they shall be published in the Official Journal immediately after their promulgation.

Unless it is otherwise provided a national law shall take effect thirty days after publication in the Official Journal.

Article 95: The Chambers may either on their own initiative or upon the request of the President of the Republic, delegate to him by a national law the exercise of a national legislative power in certain specified matters and for a fixed period.

The President of the Republic shall exercise the power thus delegated to him, through decree-laws deliberated in the Council of Ministers.

The Chambers may request the Central Government to communicate to their executive board within a period which they shall determine, the decree-laws thus deliberated in the Council of Ministers.

If a decree-law is rejected by one or other of the Chambers within the period fixed by law, as provided in the first paragraph, the President of the Republic may not promulgate the same.

Decree-laws are published under the same conditions as national laws and shall have the force of national law.

The Chambers may at any time by law modify or withdraw the powers delegated to the President of the Republic.

Article 96: In cases of extraordinary necessity and urgency, other than those provided for in Article 97, the President of the Republic may issue decrees having the force of law.

He shall present them within 24 hours of their signature to the Executive Board of the Chambers, with a view to their legislative approval, and to the Constitutional Court, which shall verify their conformity to the present Constitution.

If the Chambers are not in session the President of the Republic shall convoke them in extraordinary session. Decree-laws which are not approved within a period of sixty days from the date of their publication shall cease to be effective.

Article 97: In time of war the President of the Republic may proclaim the State of Siege (*l'état de siège*). When an external danger threatens the Republic or the regular functioning of the institutions of the Republic or one of the Provinces is interrupted, the President of the Republic shall proclaim a State of Emergency (*l'état d'urgence*). He shall thereupon take the necessary measures to meet the situation.

The President of the Republic shall, immediately after their signature, deliver to the executive board of the Chambers for the approval of Parliament, the declaration of siege or of emergency, as well as each of the measures which fall normally within the domain of law or which are in derogation of the present Constitution. If the Chambers are not in session he shall convoke them for such purpose.

Measures of urgency shall, upon signature, be submitted to the Constitutional Court, which shall declare whether or not they are in derogation of the present Constitution.

Before the Meeting of the Chambers, the Constitutional Court shall, furthermore, examine, on the request of the executive board of one or other of the Chambers, the question as to whether the measures taken are vitiated by excess of power (*d'excès de pouvoir*). The Court shall declare null and of no effect any measures involving such excess.

The proclamation of a state of siege or of emergency and the urgent measures which fall within legislative scope, shall de jure (*de plein droit*) cease to be effective if the Chambers shall reject them, or in any case do not approve them within a period of sixty days from the date of their deposit with the executive boards of the Chambers if the latter are in session, or from the date of the meeting of the Chambers if the latter are in vacation at the time of the proclamation of the state of siege or emergency. Measures declared to be in derogation of the present Constitution may only be approved by a majority of two-thirds of each Chamber, in which case the delay of sixty days mentioned above, shall be reduced to fifteen days.

The state of siege or emergency may be proclaimed throughout the whole or part of the territory of the Republic for a maximum period of six months. It may be prorogued for successive periods of three months in the same conditions in which it was proclaimed.

The Chambers may at any moment terminate by law the state of siege or emergency.

3. Special Provisions

Article 98: No petition may be presented to the Chambers except in writing. Each Chamber has a right to send to the members of the Central Government the petitions which are addressed to the Chamber.

The members of the Central Government shall be required to give explanations in reply to the content of such petitions whenever one of the Chambers shall so require.

Article 99: No member of Parliament may be prosecuted, arrested, detained, or judged by reasons of actions or votes given by him in the exercise of his functions.

No member of Parliament may during the period of session be prosecuted or arrested except with the authorization of the Chamber of which he is a member and only in the case of a flagrant offence (*flagrant délit*).

The holding in arrest of a member of Parliament or any proceedings against such members shall be suspended if the Chamber to which he belongs so requires, but such suspension may not exceed the period of the current session.

Outside of the period of the sessions no member of Parliament may be arrested without authorization of the executive board of the Chamber of which he is a member except in the case of flagrant offence or of assault on life or person or of corruption or of an authorized measure of arrest (*poursuites autorisées*) or in the execution of a sentence.

TITLE FIVE

PROVINCIAL INSTITUTIONS

Section I

General Provisions

Article 100: The Provinces are subdivided into administrative districts (*arrondissements*) or towns, communes and tribal centers (*chefferies*).

The principal organs of the Provinces shall be the following:

1. The Provincial Government;
2. The Provincial Assembly.

Article 101: The Provinces and the authorities which are dependent thereon shall respect the provisions of the present Constitution as well as the measures taken by the central authorities in conformity with the said Constitution.

Subject to the other provisions of the present Constitution each Province shall organize its own institutions and shall adopt (*édicte*) its own legislation.

Whenever a state of siege or of urgency has been proclaimed or whenever the Provincial Assembly requests it, the President of the Republic shall, by decree, name a Committee presided over by a High Commissioner of the Republic, who shall have the direction of the affairs of the Province.

Section II

The Provincial Government

Article 102: The Provincial Government is composed of a Governor of a Province, and of members whose number, fixed by a provincial law, may not exceed six.

To be eligible for the office of Governor or member of the Provincial Government, a person must fulfil the conditions of eligibility for membership in a Provincial Assembly.

Article 103: The Governor of the Province is the executive head of the Province; he represents the President of the Republic within the Province.

Article 104: The Governor of a Province is elected by the Provincial Assembly, from among or from outside its members, by a majority of three-quarters of the members comprising the Assembly at the two first ballots. After two ballots the two candidates who have received the greatest number of votes at the last voting shall alone remain in competition, and the election shall be had by a majority of two-thirds of the members of the Assembly.

The date of the balloting shall be fixed by the President of the Provincial Assembly. It shall be held not less than eight days and not more than thirty days from the date of the formation of the executive board of the Assembly.

If the Governor is not elected within one month from the time of the opening of the ballot, the President of the Republic shall proclaim a State of Urgency, which shall cease upon the election of the Governor.

Upon his election the Governor is, as a matter of right, invested by the President of the Republic with the powers of representing the Chief of State within the Province.

Before entering upon his office he shall take the following oath before the President of the Republic.

"I swear to observe the Constitution of the Democratic Republic of the Congo as well as the national and provincial laws made in conformity with this Constitution and to fulfil loyally and faithfully the functions which are confided to me."

Article 105: The Governor of a Province shall direct the policy of the Province in collaboration with the members of the Government over which he presides.

He shall coordinate and supervise the activities of other members of the Government and shall determine the functions of each of them.

He shall render final decision in any conflict (*tranche souverainement*) as to the division of duties which shall arise between the members of Government.

He shall prepare each year the draft project of a budget which he shall submit to the Assembly.

He shall promulgate and publish the provincial laws.

He shall ensure the execution of provincial laws and shall issue police regulations and regulations for the internal organization of the provincial administration. He shall exercise this power by way of official orders (*arrêtés*).

He shall organize the provincial services (*dispose des services provinciaux*) under the conditions prescribed by provincial law.

He shall take in the form of *arrêt-laws*, where a case of emergency has been duly established, those legislative measures which a Province is called on to take by virtue of a decree-law or an ordinance, if two successive appeals to its assembly have proved ineffective.

He shall insure the enforcement of the national legislations and regulations committed to him by the Central Government.

He shall direct the national administrative services which exist in the Province, and shall coordinate the relations between the central and provincial institutions.

He may assume the defence of any legal action brought against the Province.

He may, without previous discussion before the Assembly, initiate legal proceedings relating to actions which involve personal property as well as possessory actions and may take all necessary conservatory measures.

He shall select the attorneys and agents called on to represent the Province before the courts.

Actions on behalf of the Province as plaintiff or defendant shall be taken by the Governor of the Province.

Article 106: The normal duration of the term of office of the Governor shall correspond to that of a legislature.

His mandate shall expire upon death, resignation, or destitution or, at the beginning of each new legislative session, at the time of the taking of oath of the new governor. His resignation shall be valid only if it is accepted by the Provincial Assembly.

In case of absence or impediment (*empêchement*) the governor shall be replaced by a member of the Government designated by him or, failing such designation, by the Council of the Cabinet.

In case of a vacancy in the office of the Governor for any cause whatever or of the existence of a definite impediment declared by the Constitutional Court upon consultation by the President of the Republic, by the President of the Provincial Assembly, or by the Council of the Cabinet, the functions of the provincial governor shall be provisionally exercised by a member of the government designated by the Council of the Cabinet.

The election of the new Governor shall take place upon the call of the President of the Provincial Assembly, at the latest within thirty days after the existence of the vacancy or the formal determination of the existence of a definitive impediment.

Article 107: The members of the Provincial Government shall be named by the Governor of the Province from within or from outside the membership of the Provincial Assembly. They shall not enter upon their duties until their nomination has been approved by the Provincial Assembly and oath has been taken before the Governor (*entre les mains du Gouverneur*).

If the Provincial Assembly declines to approve the nomination of the members named by the Governor, he shall prepare another list to be presented to the Assembly.

The functions of the members of the Provincial Government shall cease upon death, or resignation accepted by the Governor, or by destitution pronounced in conformity with Article 110, or whenever the mandate of the Governor shall for any cause whatsoever have come to an end.

The retiring government shall continue to expedite current affairs until the entry upon their functions of a new governor.

Article 108: The Governor of a Province and other member of the Provincial Government shall be penally liable for the commission of any act contrary to the present Constitution or the Provincial Constitution, by which they shall usurp or seek to usurp the powers of the President of the Republic, the Central Government, the Legislative Chambers, the Constitutional Court, the courts and tribunals, or the Provincial Assembly, or by which they impede or seek to impede the exercise by the aforementioned authorities or organized bodies (*corps constitués*), in the

exercise of the duties confided to them by the present Constitution or by the provincial constitution.

They may be prosecuted (*mis en accusation*) in the cases mentioned, only by the President of the Republic, or by the Provincial Assembly, by secret ballot and by an absolute majority of its members. However, the members of a provincial government other than the governor of a Province may also be prosecuted by the latter.

Members of a Provincial Government, prosecuted in conformity with the provisions of the present article, shall be tried before the Constitutional Court.

A national law shall establish the procedure to be followed as against the accused, as also the applicable punishments.

Article 109: Neither the Governor of a Province nor the other members of the Provincial Government may be made the object of penal prosecution for offenses under the common law (*infraction de droit commun*), unless they shall have been the subject of formal accusation by the President of the Republic, or by the Provincial Assembly, rendering its decision in the manner provided in paragraph two of the preceding article.

A national law shall determine the procedure against the accused.

Article 110: In case of conviction by the Constitutional Court or whenever he shall have been convicted (*frappe*) by the Supreme Court of Justice of an offense involving, under the terms of the national electoral law, the deprivation of the right of election as a provincial councillor, the governor of the province shall be removed from office by the President of the Republic; The other members of the provincial government shall, in similar cases, be removed from office by the governor of the province.

Section III

The Provincial Assembly

Article 111: The Provincial Assembly is composed of:

1. Provincial councillors elected by universal direct and secret ballot;
2. Provincial councillors co-opted by the elected councillors from among the notables and customary chiefs (*chefs coutumiers*).

The Assembly shall comprise one elected representative for each 25,000 inhabitants. Each fraction of the population equal to or in excess of 12,500 shall have right to an additional representative. The number of elected members of an assembly may not be less than fifteen.

The number of co-opted chiefs and notables shall be equal to one-fifth of the number of councillors, but without in any case being less than three.

The provincial councillors shall represent the province and not the electoral precinct, nor any other administrative entity from which they may come (*dont ils sont issus*).

Article 112: The term of an Assembly is five years. The powers of the Assembly expire on May 15 of the fifth year.

The election of provincial councillors shall take place at least thirty days and not more than sixty days before the end of the legislature following its election.

Electors shall fulfil the conditions provided in Article 76 (paragraph 3), and shall have had their habitual residence in the Province for at least one year.

To be eligible for the Provincial Assembly candidates shall fulfil the conditions prescribed by Article 76 (paragraph 4), for eligibility to the Chamber of Deputies.

The method of the election and the co-opting of provincial counsellors shall be determined by provincial law. The same law shall fix the conditions for the election or co-opting of those who shall be called upon to provide, in case of vacancy, the replacing of the provincial counsellors until the time of the renewal of the Assembly.

Article 113: Each year the Provincial Assembly shall *de jure* (*de plein droit*) meet in two ordinary sessions on the first Mondays of April and of October. The duration of each ordinary session shall be at least fifteen and not more than sixty days.

The closing of the ordinary session shall be pronounced, on the proposal of the President of the Assembly, by the Governor of the Province.

Each year, at the ordinary session in April, the Assembly shall elect its executive board, which shall include a President, a Vice President, and two secretaries.

The first session of the legislature shall be convened by the Governor then in office within fifteen days following the closing of the polls for the election of provincial counsellors. The Assembly shall verify the powers of its members before final election of the permanent board.

The Assembly shall meet in extraordinary session upon the call of the Governor of the Province or the President of the Assembly for a fixed order of business. The President of the Republic shall convene the Assembly if one-fifth of the provincial counsellors so demand. An extraordinary session shall be terminated by decision (*arrêté*) of the Governor when the order of business has been exhausted.

Any meeting of the Assembly outside of an ordinary or extraordinary session shall *de jure* be considered null.

Article 114: The Provincial Assembly shall meet at the headquarters of the Province unless, by reason of some extraordinary event, it shall have been authorized by the Governor to meet in some other place within the Province.

Article 115: At the first meeting of the legislature, the Assembly, after having disposed of the matters indicated in paragraph 4 of Article 113, shall elect the Senators to be called on to represent the Province in the Senate.

The election shall be held in conformity with the national electoral law.

Article 116: Whenever the Assembly shall be called on, by virtue of the present Constitution, to approve a measure (*acte d'autorité*) taken by the central authority, or whenever it shall request the President of the Republic to take the measures provided for in Articles 4 (paragraph 4), and 101 (paragraph 3), the decision of the Assembly shall be by an absolute majority of the members of which it is composed.

Article 117: Within the limits of the autonomy of the Provinces as recognized by the present Constitution, the provincial Constitution and laws shall be adopted by the Provincial Assembly.

The initiative for revision of the Constitution and the provincial laws shall belong concurrently to the Governor of the province and to the members of the Assembly.

The provincial Constitution as well as any provincial constitutional law modifying the same shall before its promulgation be submitted by the Governor to the

Constitutional Court, who shall within sixty days pronounce on its conformity with the present Constitution.

Article 118: The Assembly shall render its opinion on all questions submitted to it by the President of the Republic, and upon his delegation, by the Prime Minister as well as by each Chamber.

Article 119: The President of the Assembly guarantees (*assure*) by his signature the authenticity of the acts of the Assembly.

Article 120: The provisions of Articles 77, 78, 79, 81 (paragraphs 1—5), 85, 88, 90 (paragraphs 3, 4, 6, and 7), 91, 93, 94, and 99 are applicable, *mutatis mutandis*, to the Provincial Assemblies and to their members.

Section IV

Relations between the Government and the Provincial Assembly

Article 121: The provisions of Articles 59, 69 (paragraph 2), 86, and 95 are applicable, *mutatis mutandis*, to the Governor and to the members of the provincial government in their relations with the provincial assembly.

TITLE SIX

THE JUDICIAL POWER

Section I

General Provisions

Article 122: The judicial power is independent of the legislative and executive powers. It belongs to the courts and tribunals.

In no case may it be exercised by the organs of legislative or executive power.

Courts or tribunals may not be established except by national law. No commissions or extraordinary courts may be created under any denomination whatsoever.

Justice is rendered throughout the territory of the Republic in the name of the People.

Arrêts and judgements, and the ordinances of the courts and tribunals, shall be executed in the name of the President of the Republic.

Article 123: The courts and the tribunals shall apply the law and custom in so far as the same is in conformity with the laws and with public order and good morals.

The courts and tribunals shall give effect to administrative acts (*actes réglementaires*) only so far as they are in conformity with the laws.

Article 124: In time of peace the military courts shall exercise jurisdiction only over offences committed by the members of the armed forces.

The President of the Republic may, whenever a state of siege or emergency has been proclaimed, and with the approval of the Procurator General of the Supreme Court of Justice, suspend throughout a specified part of the Republic and for the

period which he shall determine, the criminal jurisdiction (*l'action répressive*) of the courts and tribunals and substitute that of the military power for such penal offenses as he shall determine.

In cases where the military jurisdiction has been substituted for that of the courts and the common law tribunals, the right of defence and of appeal (*recours*) may not be suspended.

Section II

The Courts and Tribunals

Article 125: The courts and tribunals (*l'ensemble*) shall comprise a Supreme Court of Justice, the Courts of Appeal, the military courts, and the courts established by national law.

The organization and jurisdiction of the courts and tribunals, as also their procedure, shall be regulated by national law.

Article 126: The Supreme Court of Justice shall have two sections:

The judicial section;

The administrative section.

The judicial section shall have jurisdiction, notably:

1. to hear appeals (*pourvois*) in cassation based on violation of law against decision rendered in final resort by the judicial sections of the courts of appeal and by the tribunals; in such cases it shall not enter into the merits of the litigation (*elle ne connaît pas du fond des affaires*);
2. to judge in cases against the President of the Republic, the members of the Central Government, the Governors of Provinces and the members of Provincial Governments, under the conditions established by the present constitution.

The administrative section shall have jurisdiction, notably:

1. to hear, in first and in last resort, proceedings (*recours*) in annulment (*annulation*) for violation of the law directed against the acts, regulations, and decisions of the central administration authorities;
2. to hear appeals (*connaître de l'appel*) against decisions rendered by the administrative sections of the Courts of Appeal in proceedings (*recours*) in annulment for violation of law, directed against the acts, regulations, and decisions of the provincial and local administrative authorities;
3. to hear, in case there may be no other competent jurisdiction, claims for indemnity touching exceptional damage resulting from a measure taken or ordered by the Republic, the Province, or a local authority; the administrative section of the Court shall give its advisory opinion with reasons stated on the basis of equity, taking into consideration all the circumstances of public and private interest.

Article 127: The jurisdiction of the Supreme Court of Justice shall extend throughout the territory of the Republic.

The decisions (*arrêts*) of the Supreme Court of Justice shall be binding on the courts and inferior tribunals and shall not be subject to any further appeal (*d'aucun recours*).

Article 128: The Courts of Appeals will comprise a judicial and administrative section.

The administrative section shall have jurisdiction in first resort over appeals for violation of law directed against acts, regulations, and decisions of the provincial and local administrative authorities.

Section III

Magistrates and the Superior Council of the Magistracy

Article 129: The statutory position (*statut*) of judges shall be defined by national law.

Their nomination may be made only in pursuance of national law.

A judge (*magistrat de siège*) is irremovable. He may not be transferred except by a new appointment and with his consent. His appointment is for life.

The President of the Republic appoints, supervises, and revokes the magistrates of the *parquet*.

Article 130: The Superior Council of the Magistracy shall comprise:

1. a member nominated by the Constitutional Court from among or outside of its members, or from among the members of the bench;
2. the First President of the Supreme Court of Justice and one other member of the said Court;
3. three judges elected by delegates representing the Courts of Appeal;
4. seven judges elected by delegates from other tribunals.

The Superior Council shall sit under the presidency of the President of the Republic. The Minister of Justice shall be *ex officio* the Vice-President. He may replace the President of the Republic.

The Superior Council of the Magistracy shall give its opinion (*avis*) upon the nomination of judges of the courts and tribunals. It shall be consulted in the matter of pardons (*grâces*).

The Superior Council of the Magistracy shall act as a council of discipline in the case of judges. In such cases it shall be presided over by the first president of the Supreme Court of Justice.

A national law shall fix the number of delegates of the Courts of Appeal and of the tribunals who shall be called upon to elect members of the Council referred to

under Nos. 3 and 4 of the first paragraph above, as well as the procedure for the designation of such delegates.

A law shall also fix the conditions under which the Council shall give its opinion in matters of the appointment of magistrates as well as in the matter of pardons.

TITLE SEVEN

AUXILIARY ORGANS

Section I

The National Economic and Social Council

Article 131: The central authorities shall include a consultative assembly known as the "National Economic and Social Council."

The Council shall be composed of representatives of the principal economic and social activities of the country and of representatives of the Provincial Council mentioned in the following article.

It shall include an educational section and sections devoted to the study of the principal problems of interest to the different economic and social activities.

The educational section shall include sub-sections, specialized in the problems relating to the different branches of education. It shall in particular include delegates of the Ministry of National Education together with representatives of each system (*réseau*) of national and private education, and representatives of the teaching corps and of the parents of the students within each educational system.

The section on education shall give its opinion and offer its proposals concerning scholastic programs, teaching methods, educational planning (*planification*), and coordination as well as the measures suitable for insuring respect for the provisions of Articles 33 to 37.

Article 132: There shall be established among the provincial organizations an economic and social council composed of sections whose number shall be fixed by a provincial law.

Article 133: The National Economic and Social Council shall be consulted (*est consulté*) by the Central Government or by one of the Chambers, on all economic and social problems of interest to the Republic.

The provincial, economic, and social councils shall be consulted by the provincial governments or by the provincial assemblies on all economic and social problems of interest to the Province.

The National and the Provincial Councils shall examine and advise on every plan, program project, or legislative proposal of an economic or social character of interest either to the Republic or to the Province, as the case may be, which is submitted to them by the Central Government or the Provincial Government or by the president of one of the Chambers or by the President of the Provincial Assembly.

Any law not submitted for such advice to the National or Provincial Council shall be null except in urgent cases as provided for by a national organic law. The same national law shall fix the period during which the National Council and the Provincial

Councils shall render their advice. If the Councils shall not present their advice within such period, the Chambers and the provincial Assemblies may adopt the law without the advice of the Council.

The National Economic and Social Council and the Provincial Councils may, of their own initiative, call the attention of the governments to reforms which appear to them to be of a character calculated to encourage the economic and social development of the country.

They may commit to one of their members the duty of developing before the Chambers or the Provincial Assemblies the opinion of Council on the project or proposal of law which has been submitted to them.

Article 134: The National Economic and Social Council as also the Provincial Councils shall, de jure, meet in ordinary session twice a year, respectively on the first Monday of January and the first Monday of February, as well as on the first Monday of July and the first Monday of August.

At the opening of each session, the National Economic and Social Council and the Provincial Councils shall elect from their members (*en leur sein*) a President, a Vice-President, and two Secretaries.

Article 135: The term of office of the members of the National Economic and Social Council and of the Provincial Councils is six years. During the period of their session the members shall enjoy the same compensation as (*indemnités*) paid to members of Parliament.

A national law shall determine the composition and shall regulate the procedure of the National Economic and Social Council and the Provincial Councils.

Section II

The Parity Commission for Fixing Salaries and Wages

(*De la Commission paritaire spéciale fixant les indemnités et traitements*)

Article 136: A special Parity Commission shall fix, at public expense, the maximum of the indemnities and salaries to be paid to members of Parliament, of the Provincial Assemblies, the Central Government, and the Provincial Governments.

The Commission shall render decisions by a majority of two-thirds of its members.

It shall be composed as to one-half thereof of representatives of the national and provincial public authorities (*pouvoirs publics nationaux et provinciaux*), and as to the other half, of delegates designated by the Economic and Social Council from amongst its members.

A national organic law shall establish the organization and functioning of the Commission.

Section III

The Legislative Council

Article 137: The Legislative Council is a consultative organization acting within the jurisdiction (*au relèvement de la compétence*) of the Conference of Governors.

Its members are named by the President of the Republic on the proposal of the Conference of Governors.

The Council shall include sections established in the capital and in the chief towns (*chefs-lieux*) of the provinces.

A national organic law shall regulate the organization and functioning of the Council as well as the status of its members.

Article 138: The President of the Republic and the Governors of the Provinces, each one so far as relates to his projected plans (*les projets de ses actes*), the President of each Chamber or of each Provincial Assembly, each as relates to legislative proposals presented by members of the Assembly over which he presides, shall submit to the Council for a reasoned opinion any project, draft of law or other legislative act and every proposal for a decree, ordinance, or order (*arrêté*).

Except in the case covered by the following paragraph, any act having the force of law, except the decree-laws issued in the cases covered by Articles 96 and 97, every decree, ordinance, and *arrêté* of a governor as to which a proposal or project has not been submitted for advice to the Council for its opinion, shall be null.

A national law shall fix the period within which the Council shall give its opinion. If the Council shall fail to give its opinion within the period legally fixed (*le délai légal*), the authorities named in paragraph 1 may take action without awaiting the advice of the Council.

The members of the Central Government and the Provincial Governments may submit to the Council for its advice any plans concerning their projected activities. They may also commit to the Legislative Council the preparation of the preliminary draft of any legislative or administrative act (*acte réglementaire*).

TITLE EIGHT

PUBLIC FINANCE

Article 139: The franc is the monetary unit of the Republic.

It shall be legal tender throughout the Republic. Its weight in gold shall be fixed by a national law.

Every project or proposal of law modifying the value of the franc shall be first submitted to the advice of the National Economic and Social Council and the National Financial Commission.

Article 140: The finances of the Republic and of the Provinces are distinct.

Article 141: The National Bank shall have the custody of the public funds. It shall be the organ for the issuing of money throughout the Republic (*L'Institut d'Emission pour toute la République*).

The organization and financing of the National Bank shall be regulated by a national law whose text or project shall be first submitted to the advice of the National Financial Commission and the Economic and Social Council.

The national service of postal cheques shall have its headquarters in the Capital. Each Province may open a special account therein.

Provinces where there is no branch or agency of the National Bank may commit the custodianship of their funds to another bank.

Article 142: No tax shall be established except by law.

It shall be the duty of every citizen to contribute to public expenses.

No fiscal exemption or privileges shall be given except by law.

Article 143: The property, and the profits or revenue resulting from industrial or commercial activities of the Provinces, may not be subject to any tax by the Republic nor shall those of the Republic be subject to taxation by the Provinces.

Taxation by the Provinces on merchandise imported, exported, or forming the subject of inter-provincial commerce is forbidden.

Article 144: Parliament alone may establish customs duties, income tax, taxes on companies, and personal taxes.

All other taxes, including excise and consumption taxes (*accise et de consommation*), may be established both by the Parliament and by the Provincial Assemblies.

Article 145: Customs duties as well as excise and consumption taxes, as also taxes on companies, shall be collected by the central fiscal authorities.

In the absence of any provisions to the contrary in the national legislation, all other national taxes shall be collected by the provincial fiscal authorities. However, Parliament may by a law delegate to a Province the right to collect excise and consumption taxes or taxes on companies. A Province may, by a law, delegate to local collectivities the right to collect taxes within its territory.

Article 146: (1) The proceeds of import taxes shall belong to the Republic;

(2) The proceeds of personal and income taxes shall belong to the provinces in question (*provinces intéressées*);

(3) The proceeds of export, excise, and national consumption taxes and of taxes on companies shall be distributed between the State and the Provinces in the following manner:

(A) The share of any particular Province shall vary between a minimum of 45% and a maximum of 75% according to a progressive rate varying inversely in relation to the total of such taxes having their source within the Province interested.

Wherever such total is equal to or greater than the maximum fixed by a national law, the portion reverting to the interested Province shall be 45% of the said total.

If the total is inferior or equal to the maximum fixed in the same manner, the portion reverting to the interested Province shall be 75% of such total.

The national law referred to in the two preceding paragraphs shall determine the total of intermediate taxes (*d'impôts intermédiaires*) and the appropriate progressive rates applicable thereto for the purpose of calculation of such share.

By "province interested," in the sense of the first paragraph of the above-lettered section, shall be understood: as concerns export duties, the Province from which the exported produce has come; as concerns the rights of excise and consumption, the Province where the products taxed have been produced; as concerns taxes on companies, the Provinces wherein are situated the principal headquarters (*sièges d'exploitation*) where such profits have been made.

(B) The share which is not attributed to a Province shall revert to the Republic.

(4) The proceeds of all the other impositions, rights, and taxes (*impôts, droits et taxes*) shall belong to the Republic, to the Provinces, or to local collectivities, according as to whether they are levied by the Republic, the Province or local collectivities.

Article 147: Each Province may grant land leases as well as concessions for mines and minerals, including mineral oil.

All rents and benefits (*redevances*) accruing from such leases and concessions shall be payable to the Central Government.

The Central Government shall pay over to each province 50% of the net product of the leases and benefits which it shall collect on minerals and mineral oils extracted within the territory of the Province, including the continental shelf.

Article 148: The fiscal year (*l'exercice budgétaire*) of the Republic and of the Provinces begins on the first of January and ends on the thirty-first of December.

The general budget (*compte général*) of the Republic shall be settled (*arrêté*) by a national law; the general account for each Province, by a provincial law.

Article 149: Each Province shall be responsible for the balancing of its ordinary budget. However, in exceptional cases and for reasons duly established, Parliament may, by law, authorize financial aid to a Province for the balancing of its budget.

Article 150: Upon the proposal of the President of the Republic, Parliament may by law authorize the intervention of the Republic in the investment programs (*les dépenses d'investissement*) of a Province.

Article 151: The Republic may not borrow nor guarantee the principal or the interest of a loan nor engage in work involving extraordinary receipts except by authority of a national law.

However, if the needs of the Treasury require it, the President of the Republic may, without previous authorization, create or renew interest-bearing treasury bonds, with a date of maturity not exceeding five years.

The Provinces may not contract any loan not authorized by a provincial law.

Article 152: There shall be established in the Republic a Court of Audit (*Cour des Comptes*) composed of counsellors named by the Parliament, one-half by each Chamber, and whose period of service shall be for six years, subject to renewal.

A Counsellor of the Court of Audit shall have received technical training on a university or equivalent level in an institution of higher education or in a higher school of accounting, and shall have been employed for five years at least in financial service.

The organization and operation of the Court of Accounts shall be regulated by a national law.

Article 153: The duty of the Court of Audit shall be:

1. to examine and liquidate the accounts of the central provincial administration, as well as the accounts of all accountants in their relations with the treasuries of the Republic and the Provinces;

2. to verify the accounts of the public establishments of the Republic and the Provinces as well as the accounts of other organizations and associations governed by public law.

The Court shall satisfy itself that the credits opened for the various items of expenditure have not been exceeded and that, where appropriate, the supplementary budgets and additional expenditure have been approved according to law.

The Court shall settle the accounts of the different services of the Republic or of the Provinces and to that purpose shall make demand on the appropriate authorities for all necessary information and documents (*pièces nécessaires*).

The general account of the Republic shall be submitted each year to Parliament with the observations of the Court.

The general accounts of the Provinces shall be submitted each year to the respective Provincial Assemblies accompanied by the observations of the Court.

Article 154: There shall be established a National Financial Commission composed of a President and eight members named by the President of the Republic.

The method of selection of the members of the Commission and their qualifications shall be prescribed by a national law.

The Commission shall establish its own rules of procedure and shall perform the duties which are committed to it in conformity with Article 155 of the present Constitution.

Article 155: It shall be the duty of the National Financial Commission to make recommendations to the President of the Republic on the following matters:—

1. the division between the Republic and the Provinces of the proceeds of the taxes shared between them, and the distribution to the different provinces of their several shares;
2. the principles on which the Central Government should base the granting of subventions to a Province in application of Article 149;
3. any other question of a financial or economic nature submitted to it by the President of the Republic.

The President of the Republic shall submit every year to Parliament the various recommendations presented by the National Commission on Finance, in application of the present article, together with an Explanatory Memoir as to the action taken.

TITLE NINE

THE ADMINISTRATION

Article 156: The administrative personnel of the national and provincial public service of Parliament and of the Provincial Assemblies, of the courts and tribunals, of auxiliary administrations (*organismes*), and of the Court of Audit and the Constitutional Court shall be governed by a code established (*statut déterminé*) by national law.

Such legislation shall, in particular, determine the conditions of recruitment, of interruption and termination of services, the rights and duties of employees, their careers (*leur carrière*), and the rules as to incompatibilities, leave of absence, and pension.

It shall establish the principles governing salaries and promotion.

The administrative personnel of the national public services and of Parliament and the courts shall be under national control; that of the provincial public services, the Provincial Assemblies, and the tribunals shall be under the control of the provincial authorities.

The personnel of private organizations with a public interest (*organismes de droit public*) shall enjoy the same social benefits as are available to representatives of the public administrations.

TITLE TEN

THE FORCES OF PUBLIC ORDER

(*Des forces de l'Ordre*)

Section I

The Police

Article 157: There shall be organized a police force of the Central Government for the City of Leopoldville.

Each Province shall have control over (*dispose de*) its own police force.

The composition (*effectifs*), equipment, arming, as well as the basic principles for the organization of the police shall be determined by a national law.

The discipline of the police force, their control, their recruitment, and the conditions of service of their members, shall be determined by national law in the case of the police force of the City of Leopoldville, and by a provincial law in the case of the provincial police.

Section II

The Constabulary (*Gendarmerie*) and the Armed Forces

1. The Constabulary (*Gendarmerie*).

Article 158: The Constabulary is part of the National Army and is under the control of the central power.

It may not intervene in the internal affairs of a Province except in the cases provided for under Article 163 of the present Constitution.

The Governor of a Province and his agents have the right to call on the services of the constabulary in conformity with national law and in the cases and under the conditions provided for by the provincial law.

2. The Armed Forces.

Article 159: There shall be but a single National Army in the Republic, comprising the forces of Land, Sea, and Air.

The Army is at the service of the Congolese Nation in its entirety.

No authority may divert it from its proper ends.

No one shall organize any military or paramilitary formations or private military bodies, nor engage in the training of an armed or subversive youth movement.

Article 160: A national law shall fix the method of recruitment, the organization, the rules of discipline, conditions of service, as well as the rights and duties of the military. Military service is obligatory; its organization and enforcement (*application*) shall be governed by national law.

Article 161: There shall be established in the Republic a Council of Defence whose organization, composition, and functioning shall be regulated by a nation law.

Article 162: The establishment of foreign bases on the territory of the Republic is forbidden.

No foreign forces may occupy nor cross the territory of the Republic except pursuant to a national law.

The Army may not be called upon to engage in operations external to the country except under conditions fixed by a national law.

Article 163: The armed forces may not intervene in the internal affairs of a Province, thereby replacing its police forces, except in the cases authorized by national law.

Article 164: The President of the Republic confers rank in the Army and the Constabulary.

No one may be promoted to a higher rank nor be deprived of his rank or pension except under the conditions established by a national law.

Congolese alone shall be admitted to military services of the National Army.

TITLE ELEVEN

THE CONSTITUTIONAL COURT

Article 165: The Constitutional Court shall be composed of twelve justices whose term of office shall be for nine years, not immediately renewable.

Membership in the court shall be renewed as to one-third of its members every three years.

Justices of the Constitutional Court shall be appointed as to one-third thereof on the proposal of a Conference of Governors, as to another one-third by that of a joint meeting of the two executive boards of the National Legislative Chambers, and as to a final third on the proposal of the Superior Council of the Magistracy.

No one may be named a Justice of the Court unless he shall be a Congolese and fulfils the conditions required for eligibility to the Senate, and for at least ten years has been a member of the Bar or has exercised judicial or juridical functions or has been a teacher of law in a university or higher establishment of learning.

Subject to the other provisions of the present Constitution the office of Justice of the Constitutional Court shall be incompatible with that of membership in the Central

Government or a Provincial Government or with membership in Parliament or a Provincial Assembly. The other cases of incompatibility shall be as provided for by a national organic law.

The Court shall elect its president from among its members.

An organic law shall prescribe the rules of organization and operation of the Constitutional Court as well as its procedure.

Article 166: Before entering upon their duties the justices of the Constitutional Court shall take the following oath before the President of the Republic, in the presence of the Parliament, the Central Government, the Governors of the Provinces, and the Supreme Court of Justice:

"I swear to well and faithfully fulfil my duties, to exercise them with complete impartiality and with respect for the national Constitution, to preserve the secret of deliberation and of votings, to take no public position, and to give no consultations on questions relating to the jurisdiction of the Constitutional Court."

Article 167: The Constitutional Court shall have jurisdiction in the following matters:

1. Appeals involving the constitutionality of (*recours en appréciation de*) laws and of acts having the force of law;
2. Appeals in interpretation (*recours en interprétation*) of the present Constitution made in connection with conflicts of jurisdiction touching the extent of the powers conferred and obligations imposed by the present Constitution on the national and provincial organs referred to in paragraph 2 of Article 168;
3. All matters as to which it has been given jurisdiction by the present Constitution;
4. All matters as to which it has been given jurisdiction by national legislation; The Constitutional Court shall supervise the regularity of the election of the President of the Republic and of the Provincial Governors. It shall examine complaints and in the case of the election of the President of the Republic, shall publicly announce the results of the vote.

The Court shall have jurisdiction, in case of dispute concerning the regularity of the election of members of Parliament and of the Provincial Assemblies, as well as over the decisions of Parliament and the Assemblies pronouncing the deprivation of civil rights or the dismissal from office of their members, pursuant to Articles 78 and 120.

The Court shall supervise the regularity and the operations of referendum and shall proclaim the results.

Article 168: The jurisdiction of the Court may be invoked on a question of the constitutionality of,

1. the national laws: by the President of the Republic, the Presidents of the Provincial Assemblies, and the Provincial Governors;

- b. the acts of the President of the Republic having force of national law: by the Presidents of the Legislative Chambers, the Presidents of the Provincial Assemblies, and the Provincial Governors;
- c. the provincial laws: by the President of the Republic, the Presidents of the Legislative Chambers, and the Provincial Governors;
- d. the acts of the Provincial Governors having the force of provincial law: by the President of the Republic, the Presidents of the Legislative Chambers, and the Presidents of the Provincial Assemblies;
- e. national laws, acts of the President of the Republic having force of national law, provincial laws, and acts of Provincial Governors having force of provincial law: by the Supreme Court of Justice whenever an exception of unconstitutionality is raised before it.

The following shall have the right to appeal to the Constitutional Court upon a question of interpretation: the President of the Republic, the Presidents of the Legislative Chambers, the Presidents of the Provincial Assemblies, and the Provincial Governors.

Article 169: The decisions of the Constitutional Court are not subject to any form of appeal.

Any act declared to be in nonconformity (*non conforme*) with the present Constitution is de jure abrogated.

The unconstitutionality of one or more provisions of an act shall not necessarily involve the abrogation of the entire act. The decision of the Court on such questions shall be sovereign.

TITLE TWELVE

INCOMPATIBILITIES

Article 170: The office of the President of the Republic is incompatible with any other public or private office, whether compensated or gratuitous.

The provisions of the preceding paragraph shall not include the functions which the President of the Republic may be called upon to exercise within the framework of international organizations and institutions.

Article 171: No one may at the same time be a member of the Central and Provincial Governments.

Membership in the Central or Provincial Governments is incompatible with the exercise of any elective public position or of any other public office. However, a member of the Central Government, elected to Parliament or to a Provincial Assembly, at legislative elections held before the end of the term of office (*mandat*) of such Government, may continue in the exercise of his ministerial office (*les fonctions ministérielles*) until the formation of a new government called to replace that of which he was a member. He shall not, however, in such case enjoy parliamentary indemnity.

No member of the Central Government or of a Provincial Government may engage directly in commerce. A national organic law shall determine the professional activities which are incompatible with the functions of a member of the Central Government or of a Provincial Government.

Article 172: No one may at the same time be a member of the Chamber of Deputies and of the Senate.

The office (*mandat*) of member of Parliament or of a Provincial Assembly is incompatible with any public elective office. It is also incompatible with the exercise of any public function (*fonction publique*); however, a customary traditional chief who is elected or co-opted as a member of a Provincial Assembly or of Parliament may continue, within the chieftdom which he administers, in the exercise of the functions which have been conferred upon him, and may enjoy the benefits (*avantages*) attached thereto.

Any member of Parliament or of a Provincial Assembly who is named as a member of the Central Government or of a Provincial Government, or who is elected Governor of a Province, and who accepts such post, shall forfeit his elective position upon the approval by Parliament or by the Provincial Assembly of the act of nomination as a member of the government of which he is a member.

Article 173: No judge (*magistrat*) may accept from the Central Government or from a Provincial Government any salaried post, unless such services are gratuitous.

The duties of a judge (*magistrat*) are incompatible with those of any other public elected office.

The duties of a Counsellor of the Court of Accounts are incompatible with every other public or private function (*fonction publique*) and with any elected office (*mandat électif*).

Article 174: A national organic law may establish other cases of incompatibility.

TITLE THIRTEEN

CONSTITUTIONAL REVISION

Article 175: The initiative for the revision of the Constitution shall belong concurrently to the President of the Republic, the Conference of Governors, to each Chamber of the Parliament, and to a quarter (*au quart*) of the Provincial Assemblies.

Article 176: The proposal for revision must be adopted by each of the Chambers by a majority of two-thirds at least of the members of whom it is composed.

The proposal for revision must be approved by two-thirds at least of all the Provincial Assemblies if it modifies the provisions of:

1. Section I of Title I;
2. Titles II and III;
3. Articles 54 to 57, 60, 62, 65 to 70, 71 to 74 (paragraph 2), 76, 78, 90, 92, 95, 97, and 99.
4. Title V:

5. Section I of Title VI;
6. Title VII;
7. Articles 142, 143, 145 to 148, 151 to 153, 162;
8. Titles XI and XIII.

When these conditions are fulfilled, the President of the Republic shall, pursuant to Article 94, promulgate the text, which shall enter into force in the conditions specified in such article.

Article 177: The vote of the Provincial Assemblies shall be directed to the proposal in its entirety to be approved or rejected by YES or NO.

In case of the rejection of a proposal of revision, involving a number of articles, the Assembly shall be required to again give its decision on each article.

Whenever the Assembly shall reject one article it shall propose, by a resolution, amendments to the article which it has rejected.

In case the amendments proposed by the Provincial Assemblies relate solely to one or to several articles of the same project, the Chambers may limit their examination to such amendments.

They shall add to their members, to the number of two counsellors for each Assembly, a delegation from the Provincial Assemblies, whom they shall consult on the preparation of a new text. Such text shall require for its adoption by the Chambers the majority provided for by paragraph 1 of Article 176, and shall be submitted for approval to the Provincial Assemblies.

After a second voting the revision shall be adopted when it shall receive an absolute majority of all the Assemblies.

Article 178: The terminology appropriate (*terminologie correspondant*) to the political structures organized by the present Constitution shall be made use of in official acts, beginning with the third legislative assembly after the entering into force of the present Constitution. The Constitutional text containing such terminology and annexed to the present Constitution, shall enter into force at the beginning of the third legislature.

TITLE FOURTEEN

TRANSITORY PROVISIONS

Article 179: All legislative and administrative provisions in existence at the date of the entry into effect of the present Constitution shall remain in force until their abrogation.

Notwithstanding the provisions of the preceding paragraph no legislative or administrative (*règlementaire*) text shall take effect if incompatible with any provision of the present Constitution.

The expression "legislative and administrative text" shall include all legislative or administrative texts promulgated in the Congo by an authorized legislative or other authority before the entry into force of the present Constitution.

No provision of the present article may be interpreted to prolong a provisional law beyond the date fixed for its expiration or beyond the date at which it would have ceased to be effective if the present Constitution had not entered into effect.

Article 180: The Legislative Chambers elected in 1960 shall be ipso facto dissolved at the date of the adoption of the present Constitution.

Article 181: The elections for the constitution of the new Chambers shall take place within six months from the date of the entry into force of the present Constitution. This period may be prolonged for a maximum of three months by the President of the Republic.

Within the sixty days which follow the closing of the ballot the new Chambers shall be convened in extraordinary session by the President of the Republic for the purpose of establishing their executive board.

Article 182: The powers of the President of the Republic actually in office shall not expire until the taking of the oath of office by the President of the Republic who shall be elected for the first time in conformity with the provisions of Article 56 of the present Constitution. This first election shall take place six months after the first meeting of the Chambers elected pursuant to paragraph 2 of Article 181.

Article 183: Until the first meeting of the Legislative Chambers elected pursuant to paragraph 2 of Article 181, the President of the Republic shall exercise central legislative power by means of decree-laws.

Article 184: Within the four months following the entry into effect of the present Constitution, the President of the Republic shall establish by decree-laws the regime for the elections provided for in Article 181 (paragraph 1), and that of the elections provided for in Article 186 (paragraph 2).

Article 185: The Central Government now in office shall be considered to have resigned at the date of the adoption of the present Constitution.

The President of the Republic shall name a new government to be composed of a maximum of nineteen members and whose principal duty shall be to prepare the elections provided for by Article 181 (paragraph 1) and those provided for by Article 186 (paragraph 2).

Article 186: The Provincial Assemblies now in office shall continue to exercise their functions until the first meeting of the assemblies called to replace them.

Elections for the constitution of the new Assemblies shall take place at the same time as the elections provided for in Article 181 (paragraph 1).

Within thirty days following the closing of the ballot the new Assemblies shall be convened in extraordinary session by the governors of the provinces for the purpose of establishing their executive boards.

Article 187: As of the date of the entry into effect of the present constitution, the presidents of the provincial governments shall de jure become governors of the provinces. Their powers in such capacity shall cease on the day of the taking of the oath by the governors who are selected to replace them, and who shall be elected by the new assemblies within the period provided for in Article 104 (paragraph 2).

The other members of the provincial governments now in office shall continue to exercise their duties until the expiration of the powers of the provincial governors, in accordance with the preceding paragraph.

Article 188: For the preparation and conduct of elections provided for in Article 181 (paragraph 1), and of those provided for in Article 186 (paragraph 2), there shall be created in each province and in the City of Leopoldville a special commission which for the purpose of accomplishing its mission shall have at its disposal the forces of public order (*des forces d'ordre*).

This commission shall be composed of six members, namely,

- a. two shall be chosen among statistic-demographic officials other than those who may be candidates at the elections;
- b. two members shall be chosen from the representatives of national economic and social organizations who have participated in the elaboration of the present Constitution. They may not be from (*originaires*) the provinces or headquarters of the commission of which they are members.
The members noted under paragraphs (a) and (b) above shall be named by the President of the Republic;
- c. two members named by the provincial assembly—one member representing a group favourable to the government and another representing the opposition.

However, the Commission which shall be sitting in Leopoldville shall include, in lieu of the two members noted under paragraph (c), two supplementary members selected in conformity with the provisions of paragraph (b).

Article 189: The President of the Republic is authorized to take the necessary measures covering his replacement in case of absence or disability. These measures shall de jure cease to have effect as from the date of the taking of oath by the President in conformity with the provisions of Article 182.

Article 190: The term "Congolese" in Articles 76 and 112 shall apply equally to men and women. However, only electors of masculine sex may participate in the elections which shall take place for the first time after the entry into effect of the present Constitution.

Article 191: The procedure followed by the Provincial Assemblies for the election of their provisional executive boards and of their permanent executive boards, and for the validation of the powers of their members as well as for the designation of co-opted provincial counsellors shall be established by decree-law until such time as the provincial assemblies shall have themselves regulated these matters.

The provisions of Article 187 shall be applicable *mutatis mutandis* to provincial assemblies as long as these shall not have themselves regulated the matter.

Article 192: From the beginning of the fiscal year following the adoption of the present Constitution, for a period of ten years, the distribution of the proceeds of export duties and consumption and excise taxes and company taxes provided for the paragraph 3 of Article 146 shall be made in the following manner:

- 30 to 40% to the Republic;
- 30 to 40% to the interested provinces;
- 30 to 40% to be distributed between all the provinces.

Article 193: The portion reserved for all the Provinces shall be paid into a special account. Its purpose shall be to cover, principally, operating expenses and, eventually, investments (*éventuellement celles d'investissement*).

It shall be distributed among the Provinces with regard notably to their capacities, their requirements, and their necessities (*la capacité fiscale, les besoins et les nécessités*).

Article 194: During the present fiscal year (*l'année budgétaire*) the existing system of subvention shall remain in application.

Article 195: Until it shall have been constituted in conformity with the provisions of Article 165, the Constitutional Court shall comprise seven Counsellors of whom four at least shall be Congolese.

The President of the Republic names the President and Counsellors of the Constitutional Court upon the presentation of candidates by the Conference of Governors.

The Court elects its President from among its members. No one shall be elected President of the Constitutional Court unless he be a Congolese, at least forty years of age.

The duties (*fonctions*) of President and of Counsellor of the Constitutional Court shall not be incompatible with those exercised in other courts and tribunals.

Article 196: Pending the establishment of the Constitutional Court, the Court of Appeals at Leopoldville shall exercise the powers granted by the present Constitution to the Constitutional Court.

Article 197: The Constitutional Court shall be established in conformity with the provisions of Article 165 within the twelve years which follow the entry into force of the present Constitution.

The first Constitutional Court composed in conformity with the provisions of Article 165 shall include four members chosen for three years; four members chosen for six years; and four members chosen for nine years.

Article 198: Until the Supreme Court of Justice shall be legally established, (1) the Courts of Appeal shall have jurisdiction in the case of the persons mentioned in Articles 72 and 109; (2) the Procurators General before the Courts of Appeal shall have authority to render the opinions provided for under Article 124, paragraph 2.

Article 199: From the date of the entry into force of the present Constitution and for a period of twelve years the following persons may be appointed counsellors of the Court of Accounts:

1. Persons indicated in Article 152 (paragraph 2) of the Constitution, and having had professional experience for at least two years in a financial service;
2. Holders of a diploma of six years post-primary education and of a diploma recognised by the State and who have had the direction for at least two years of a financial service in a public or private organization. Candidates shall in addition be required to undergo an examination (*présenter un examen d'admission*).

3. Foreigners complying with the conditions of Article 152 (paragraph 2), not exceeding in number one-third that of the members of the Court. The appointment (*mandat*) of a foreign counsellor may only be renewed if there is no national candidate who complies with the conditions of Article 152 (paragraph 2) available. The posts of President and Vice President may not be held by a foreigner.

Article 200: Until the Legislative Council shall be established in conformity with the provisions of Article 137, it shall include a central section established in the Capital and interprovincial sections.

The Council shall be constituted in conformity with the provisions of Article 137 within the ten years following the entry into force of the present Constitution.

In those provinces in whose principal town (*chef lieu*) no interprovincial section has been established, drafts of legislation or of the *arrêtés* of the governors may be adopted without previous advice (*avis*) of the Council, in the case of urgency as provided for by a national organic law.

Article 201: From the time of the entry into effect of the present Constitution all territory placed under the administration of a Province but geographically situated in another Province, shall cease as a matter of law to be subject to the administration of the Province to which it is actually attached according to the laws which created the Province; its administration shall belong to the Province of which it is geographically a part.

No such special enclaves shall be created in the future.

Article 202: Pending the judicial organization which shall provide for career judges (*magistrat de carrière en place*) in all the courts and tribunals, press offences, political offences, and breaches of law committed in connection with labour conflicts, shall be within the jurisdiction of the Court of First Instance.

TITLE FIFTEEN

FINAL PROVISIONS

Article 203: The Fundamental Law of May 1960 relating to the structure of the Congo and the Fundamental Law of 17 June 1960 relating to public liberties are abrogated.

Article 204: The present Constitution enters into force on the date of its promulgation.

Done at Leopoldville, 1st August 1964.

For the President of the Republic:

J. KASA-VUBU

The Prime Minister
MOISE TSHOMBE.

The Minister of Interior
GODEFROID MUNONGO.

The Minister of Justice
LEON MAMBOLEO.

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

Nigeria of the pre-British era consisted of several distinct ethnic and cultural groups. In the north, there were the Hausas, the Kanuris and their sub-tribes. Below these, there were the Tivs, Jukuns, Borgus, Nupes, Igbirras, Igalas, Idomas, and their sub-tribes. To the west were the Yorubas, and east of them, the Edos, Itshekris and Urhobos. On either side of the River Niger, there were the Ibos and small enclaves of riverine tribes, the Ijaws; and beyond them, the Ibibios, Efiks and other semi-Bantu tribes of the Ogoja area. There have since been some interminglings of the tribes, but their geographical dispositions still remain the same.

2. The Fulanis were, relatively speaking, later arrivals. Their true origin is still a matter of conjecture. However they conquered the Hausas, were fought off by the Kanuris, and later moved downwards through the central areas of the North, westwards into the Yoruba country. "Ilorin owes its inclusion in these Provinces (Northern) to the fact that during the break-up of the Yoruba kingdom of Oyo at the beginning of the nineteenth century, the Yoruba governor of Ilorin associated himself with a Fulani priest, Alim, with whose aid he made himself independent of Oyo. He was ultimately supplanted by Alimi, and Ilorin thus became one of the Fulani Emirates owing spiritual allegiance to Sokoto". (Lord Hailey, "Native Administration in the British African Territories", Part III, page 45).

3. The true north consisted of a number of emirates which were (except Bornu) ultimately under legitheocratic sway of the Moslem Sultan of Sokoto, while the Kanuris owed allegiance of a similar nature to the Shehu of Bornu. The Nupes, Igalas, Igbirras and Borgus were under the Sultan. The Tivs and the Jukuns, the hardiest tribes of the area, never really accepted the Sultan's power and refused to be assimilated into the Islamic fold,

4. The Yorubas were organised into fairly compact groups, each under a constitutional chief who recognised the spiritual power of the Oni, the paramount chief at Ife, a town traditionally regarded as the cradle of the Yoruba race.

5. The Edo people were ruled by a fairly powerful chief, the Oba of Benin, whose influence extended right to Asaba and Abo on the west bank of the River Niger. The Itshekris and Urhobos are regarded as offshoots of the Edos.

6. The Ibos occupied much of the territory east, as well as a bit on the west side, of the River Niger. They lived in patrilineal groups which were large or small according to their respective populations and ramifications. Union was dictated by the necessity for defence, each group always striving to retain its identity. They were essentially republican and democratic, matters of common interest being discussed and decided at meetings held in the premises of the headmen who usually were the custodians of the ancestral idols.

7. Such was roughly the position when Britain came into the scene, about a century ago, first as explorers, then as traders, and later as rulers. Under the British, Nigeria at one time consisted of the Colony and Settlement of Lagos, the Oil Rivers and the Niger Coast Protectorates and the territories up north. These, in 1900, became the Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria. In 1914, they became the Colony and Protectorate of Nigeria under a Governor-General in Lagos and Lieutenant-Governors in Kaduna and Enugu. About 1939, the South was split into two, the River Niger being used as a good boundary for this purpose. In place of Lieutenant-Governors, Chief Commissioners were placed over what were then called the Northern, Eastern and Western Provinces. With one exception, this division was used as the basis for regionalisation when the Federation of Nigeria was established.

8. The exception referred to above relates to those parts of the Cameroons which were placed under British mandate in 1922. Northern Cameroons were administered as part of the Northern Provinces, and Southern Cameroons, as part of the Eastern Provinces. The constitutional instrument of 1954 made Southern Cameroons, but not Northern Cameroons, a region within the Federation of Nigeria. Before the Constitution of 1960, a plebiscite for the two areas had been agreed upon for the purpose of enabling their inhabitants to make a choice in the terms of a questionnaire which read—

“(a) Do you wish to achieve independence by joining the Independent Federation of Nigeria?

(b) Do you wish to achieve independence by joining the Independent Republic of the Cameroons?”

The plebiscite did not itself contemplate the assimilation of either territory into any particular region in Nigeria. The provisions made by the British Government for this eventuality were, therefore, remarkable. The Nigeria (Constitution) Order in Council enacted that the Government of Northern Nigeria was to “incorporate” Northern Cameroons into its territory; but there was no equivalent provision in respect of Eastern Nigeria and Southern Cameroons (See Section 16). Thus was it pre-ordained that some two million Northern Cameroonians were to come under Northern Nigeria without being given any choice in the matter.

9. Constitutional reform in Nigeria was at first dictated by administrative convenience. Later it had to take into consideration the claims by the people to be associated with the law-making. This was met by the nomination of selected Nigerians as members of the Legislative Council. Movement towards independence followed the usual colonial pattern - first, a demand for elective representation; secondly, a demand to have majority in the Legislature; and thirdly, an outright demand for complete freedom, this mounting in intensity in the 1940's. The 1954 Constitution drew the pattern for Nigerian Independence.

10. By Statutory Instrument No. 1146 of 1954, the Nigerian (Constitution) Order in Council, 1954, was promulgated at the Court of Balmoral, the 30th day of August of that year, by the Queen's Most Excellent Majesty in Council, by virtue of the powers recited therein. This order converted the former groups of provinces into "Regions" and styled them together "The Federation of Nigeria." It created the forms of government which we have today.

11. By means of various amendments and adapting laws, this Instrument gradually led up to the Nigeria (Constitution) Order in Council, 1960, which was another Statutory Instrument, No. 1652 of 1960, promulgated at the Court at Balmoral the 12th day of September, 1960, also by the Queen's Most Excellent Majesty in Council, and by virtue of the same powers as in the 1954 Instrument. The 1960 Instrument embodied the one of 1954 and subsequent amendments, touched up a number of points, and introduced a chapter on fundamental rights.

12. Lastly, on October 1, 1963, the present Constitution of the Federal Republic of Nigeria was promulgated, "by our representatives here in Parliament assembled." It did not go beyond what was necessary to remove the last vestiges of colonial rule and thereby establish a republic. It excised the name of the Queen from our laws, hoisted in its place the name of an emasculated President, and left things pretty much as they were. That the term "federation" is used to describe Nigeria is of no consequence. What is important is whether the proper federal idea can be spelt out of a system which is predicated on the rule of a government derived perpetually from a particular set of people from a particular region.

13. "There is no natural affinity either of ethnic origin or of culture between the major groups which comprise the present population of Nigeria, and if ever she becomes a nation, in the sense in which this term is now commonly used, she will owe it to the political unity imposed on her by British Rule" (Lord Hailey in "Native Administration in the British African Territories", Part III, page I). Those who, like Lord Hailey, had hoped that the influence of British rule would be enough to keep Nigeria together must now be thoroughly disillusioned. With the withdrawal of Britain the cult of the "tribe", which had hitherto lain dormant, has been resuscitated, fed by men such as are described by W. Arthur Lewis (in "Politics in West Africa" page 31) as "merely self-seeking rogues." Unity is fast eluding Nigeria.

14. The controversy generated by the censuses of 1962 and 1963 is still remembered. The constitutional crisis over the 1964 federal elections very nearly split the country, and the situation has been further bedevilled by the events connected with the recent elections in Western Nigeria. Some people naively attribute these troubles to the absence of goodwill on the part of those who control affairs in the country. This may be true to some extent. The main problem is that the our so-called "federal" Constitution makes it possible for these events to happen. There must be a framework on which any goodwill can be built, and the review of the present Constitution, now being arranged, may provide it, because for the first time, the ordinary Nigerian may, it is hoped, be associated with the making of the basic law of his country.

15. What is reproduced in the following pages is the official text of the Constitution of the Federal Republic of Nigeria as promulgated on October 1, 1963.

THE CONSTITUTION OF NIGERIA

1963, No. 20

An Act to make provision for the Constitution of the Federal Republic of Nigeria

Commencement [1st October, 1963]

Having firmly resolved to establish the Federal Republic of Nigeria, With a view to ensuring the unity of our people and faith in our fatherland, For the purpose of promoting inter-African co-operation and solidarity, In order to assure world peace and international understanding, and So as to further the ends of liberty, equality and justice both in our country and in the world at large, We the people of Nigeria, by our representatives here in Parliament assembled, do hereby declare, enact and give to ourselves the following Constitution:—

CHAPTER I

The Federation and its Territories

Effect of this Constitution

1: This Constitution shall have the force of law throughout Nigeria and, subject to the provisions of section 4 of this Constitution, if any other law (including the constitution of a Region) is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Establishment of the Federal Republic.

2: Nigeria shall be a Federation comprising Regions and a Federal territory, and shall be a Republic by the name of the Federal Republic of Nigeria.

Territories of the Federation

3: (1) There shall be four Regions, that is to say, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-Western Nigeria.

(2) The Regions and the Federal territory shall consist of the areas comprised in those territories respectively on the thirtieth day of September, 1963.

Alteration of this Constitution

4: (1) Parliament may alter any of the provisions of this Constitution:

Provided that, in so far as it alters any of the provisions of this section, sections 1, 2, 5, 6, 18 to 36, 38, 41, 42, 43, 50, 51, 52, 62, 67 to 94, 104 to 113, 115, 117, 119, 120, 122 to 125, 127, 129, 130, 133 to 147, 150, 152, 154 to 161, 166 and the Schedule to this Constitution or (in so far as they apply to any of those provisions) sections 66

and 165 of this Constitution, an Act of Parliament shall not come into operation unless each legislative house of at least three Regions has passed a resolution signifying consent to its having effect.

(2) A bill for an Act of Parliament under this section, not being an Act to which subsection (3) of this section applies, shall not be passed in either House of Parliament unless it has been supported on second and third readings by the votes of not less than two-thirds of all the members of that House.

(3) Alterations to section 3 of this Constitution for the purpose of establishing new Regions out of other territories shall be effected only in accordance with the following procedure—

(a) a proposal for the alteration shall be submitted to each House of Parliament and, if that proposal is approved by a resolution of each of those Houses supported by the votes of at least two-thirds of all the members of that House, the proposal shall then be submitted to the legislative houses of all the Regions; and

(b) if the proposal is approved—

(i) by a resolution of each legislative house of a majority of all the Regions; or

(ii) by a resolution of each legislative house of at least two Regions, including any Region comprising any part of Nigeria that would be transferred to the new Region under the proposal,

Parliament may provide for the alteration.

(4) Alterations to section 3 of this Constitution for the purpose of altering the boundaries of territories by the transfer of any part of one territory to another territory shall be effected only in accordance with the following procedure—

(a) a proposal for the alteration shall be submitted to each House of Parliament and, if that proposal is approved by a resolution of each of those Houses supported by the votes of at least two-thirds of all the members of that House, the proposal shall then be submitted to the legislative houses of all the Regions; and

(b) if the proposal is approved—

(i) by a resolution of each legislative house of a majority of all the Regions, including any Region to which any part of Nigeria comprised in another territory would be transferred under the proposal; or

(ii) by a resolution of each legislative house of each Region comprising any part of Nigeria that would be transferred either to or from that Region under the proposal,

Parliament may provide for the alteration:

Provided that the procedure described in paragraphs (a) and (b) of this subsection need not be followed if the alteration is for the purpose of transferring an area of not more than one thousand square miles inhabited by not more than one hundred thousand persons from one Region to another Region or Regions.

(5) An Act of Parliament passed for the purposes of subsection (3) of this section or an Act of Parliament passed for the purposes of subsection (4) of the section, being an Act to effect an alteration in respect of which the procedure des-

cribed in paragraphs (a) and (b) thereof is required to be followed, shall not come into operation unless—

(a) a resolution has been passed by each legislative house of at least two Regions signifying consent to its having effect; and

(b) a referendum upon the question whether the Act should have effect has been held in pursuance of provision made in that behalf by Parliament in every part of Nigeria that would be comprised in a new Region or transferred from one territory to another, as the case may be, at which the persons entitled to vote were the persons who at the date of the referendum were entitled to vote in any constituency in that part of Nigeria established under section 51 of this Constitution and at which at least three-fifths of all the persons who were entitled to vote at the referendum voted in favour of the Act.

(6) An Act of Parliament passed for the purposes of subsection (4) of this section, being an Act to effect an alteration in respect of which the procedure described in paragraphs (a) and (b) thereof is not required to be followed, shall not come into operation unless a resolution has been passed by each legislative house of each Region whose boundaries are affected by the Act signifying consent to its having effect.

(7) An Act of Parliament altering section 42 of this Constitution in relation to any Region in such a manner that that Region would be represented in the Senate by less than the appropriate proportion of Senators shall not come into operation unless a resolution has been passed by each legislative house of that Region signifying consent to its having effect.

(8) An Act of Parliament altering section 43, 51 or 52 of this Constitution in relation to any Region in such a manner that the number of members of the House of Representatives to be elected in that Region would be less than the appropriate proportion for that Region shall not come into operation unless a resolution has been passed by each legislative house of that Region signifying consent to its having effect.

(9) An Act of Parliament altering section 43, 51 or 52 of this Constitution in relation to the Federal territory in such a manner that the number of members of the House of Representatives to be elected in that territory would be less than the appropriate proportion for that territory shall not come into operation unless a resolution supported by a majority of the members of that House who represent that territory has been passed by each House of Parliament signifying consent to its having effect.

(10) The provisions of this Constitution shall not be altered except in accordance with the provisions of this section.

(11) For the purposes of subsection (7) of this section, the expression "the appropriate proportion" means the number obtained by dividing the total number of Senators representing the Regions by the total number of Regions; and for the purposes of subsections (8) and (9) of this section that expression means, in relation to a territory, such proportion of the total number of members of the House of Representatives as corresponds most nearly to the proportion borne by the number of inhabitants of that territory to the total number of inhabitants of Nigeria.

(12) For the purposes of this section the number of inhabitants of Nigeria or a territory shall be ascertained by reference to the latest census of the population of Nigeria held in pursuance of an Act of Parliament.

Provisions relating to Regional constitutions.

5: (1) Subject to the provisions of this Constitution, the constitution of each Region shall have the force of law throughout that Region, and if any other law is inconsistent with that constitution, the provisions of that constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

(2) Subject to the provisions of this Constitution, the constitution of a Region may be altered only by a law enacted by the legislature of that Region.

(3) A bill for a law to be enacted by the legislature of a Region altering any of the constitution of that Region shall not be passed in any legislative house of that Region unless it has been supported on second and third readings by the votes of not less than two-thirds of all the members of that legislative house and shall not be presented to the Governor of the Region for assent unless it has been passed by each legislative house of the Region.

(4) No law enacted by the legislature of a Region, to the extent that it alters any provision of the constitution of that Region to which this subsection applies, shall have effect unless a resolution supported by the votes of at least two-thirds of all the members of that House is passed by each House of Parliament signifying consent to its having effect.

(5) Where a new Region is established out of other territories or parts of other territories, Parliament may make laws for the peace, order and good government of that Region with respect to matters not included in the Legislative Lists (including provision for the constitution of that Region) for a period of six months after the establishment of that Region, but thereafter Parliament shall have only such powers to make laws for that Region as it has in relation to the other Regions:

Provided that nothing in this section shall preclude the legislature of that Region from making laws in accordance with the provisions of this Constitution and the constitution of the Region.

(6) Subsection (4) of this section applies to any provision of the constitution of a Region relating to—

(a) the establishment of any of the following, that is to say, the office of Governor, a legislative house, a legislature, an executive council, the office of any Minister of the Government, a High Court, a court having jurisdiction on appeal from a High Court, an electoral commission, a public service commission and the office of a Director of Audit;

(b) the manner in which the Governor's functions are to be exercised;

(c) the appointment, tenure of office and the terms of service of any of the following, that is to say, the Governor, the judges of the High Court or of a court having jurisdiction as aforesaid, the members of the commissions referred to in paragraph (a) of this subsection and the Director of Audit;

(d) the functions of any of the following, that is to say, the executive council, the commissions referred to in paragraph (a) of this subsection and the Director of Audit;

(e) the appointment and tenure of office of Ministers of the Government and the allocation of portfolios;

(f) the summoning, sessions, prorogation and dissolution of the legislative houses;

(g) the establishment of a Consolidated Revenue Fund and other public funds, the authorisation of expenditure therefrom and the imposition of charges upon any public fund or upon the revenues and assets of the Region;

(h) appeals to the High Court from subordinate courts and appeals from the High Court; and

(i) the procedure of the commissions referred to in paragraph (a) of this subsection.

Interpretation of Chapter I.

6: Without prejudice to the generality of section 165 of this Constitution, in this Chapter—

(a) references to any of the provisions of this Constitution or the constitution of a Region include references to any law, or instrument made under a law, that amends, modifies, re-enacts with or without amendment or modification or makes different provision in lieu of, that provision; and

(b) references to the alteration of any of the provisions of this Constitution or the constitution of a Region include references to the amendment, modification or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of different provision in lieu of that provision.

CHAPTER II

Citizenship

Persons who become citizens on 1st October, 1960.

7: (1) Every person who, having been born in the former Colony or Protectorate of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Nigeria on the first day of October, 1960:

Provided that a person shall not become a citizen of Nigeria by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Nigeria.

(2) Every person who, having been born outside the former Colony and Protectorate of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or a British protected person shall, if his father was born in the former Colony or Protectorate and was a citizen of the United Kingdom and Colonies or a British protected person on the thirtieth day of September, 1960, (or, if he died before that date, was such a citizen or person at the date of his death or would have become such a citizen or person but for his death) become a citizen of Nigeria on the first day of October, 1960.

Persons entitled to be registered as citizens.

8: (1) Any person who, but for the proviso to subsection (1) of section 7 of this Constitution, would be a citizen of Nigeria by virtue of that subsection shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria;

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

(2) Any woman, who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies or a British protected person and who is or has been married to a person—

(a) who becomes a citizen of Nigeria by virtue of section 7 of this Constitution; or

(b) who, having died before the first day of October, 1960, would, but for his death, have become a citizen of Nigeria by virtue of that section, shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(3) Any woman who is or has been married to a person who becomes a citizen of Nigeria by registration under subsection (1) of this section and is at the date of such registration a citizen of the United Kingdom and Colonies or a British protected person shall be entitled, upon making application within such time and in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(4) Any woman who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies or a British protected person and who has been married to a person who, having died before the first day of October, 1960, would, but for his death, be entitled to be registered as a citizen of Nigeria under subsection (1) of this section, shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions of section 7 of this Constitution.

Persons naturalized or registered before 1st October, 1960.

9: Any person who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies—

(a) having become such a citizen under the British Nationality Act by virtue of his having been naturalized in the former Colony or Protectorate of Nigeria as a British subject before that Act came into force; or

(b) having become such a citizen by virtue of his having been naturalized or registered in the former Colony or Protectorate of Nigeria under that Act., shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

Special provisions as to Northern Cameroons.

10: (1) For the purpose of determining the status of persons connected with the part of Northern Nigeria which was not included in the Federation on the thirty-first day of May, 1961, the foregoing provisions of this Chapter and subsection (3) of section 17 of this Constitution shall have effect as if—

(a) for any reference to a particular date there were substituted a reference to the last day of the period of eight months beginning with the day next following that date; and

(b) for any reference to the former Colony or Protectorate of Nigeria (other than the second reference in section 7) there were substituted a reference to the part aforesaid; and

(c) that other reference included a reference to the part aforesaid.

(2) Nothing in subsection (1) of this section shall prejudice the status of any person who is or may become a citizen of Nigeria apart from that subsection.

Persons born in Nigeria after 30th September, 1960.

11: Every person born in Nigeria after the thirtieth day of September, 1960, shall become a citizen of Nigeria at the date of his birth:

Provided that a person shall not become a citizen of Nigeria by virtue of this section if at the time of his birth—

(a) neither of his parents was a citizen of Nigeria and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to the Federation; or

(b) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

Persons born outside Nigeria after 30th September, 1960.

12: A person born outside Nigeria after the thirtieth day of September, 1960, shall become a citizen of Nigeria at the date of his birth if at that date his father is a citizen of Nigeria otherwise than by virtue of this section or subsection (2) of section 7 of this Constitution.

Dual citizenship

13: Any person who, upon his attainment of the age of twenty-one years, was a citizen of Nigeria and also a citizen of some country other than Nigeria shall cease to be a citizen of Nigeria upon his attainment of the age of twenty-two years (or, in the case of a person of unsound mind, at such later date as may be prescribed by Parliament) unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Nigeria by virtue of subsection (2) of section 7 of this Constitution, has made such declaration of

his intentions concerning residence or employment as may be prescribed by Parliament:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed by Parliament.

Commonwealth citizens

14: (1) Every person who under this Constitution or any Act of Parliament is a citizen of Nigeria or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act or who continues to be a British subject under section two of that Act shall by virtue of that status have the status of a Commonwealth citizen.

(3) The countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, the Federation of Rhodesia and Nyasaland, Ceylon, Ghana, the Federation of Malaya, the State of Singapore, the Republic of Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda and such other countries as may be prescribed by Parliament.

Criminal liability of Commonwealth citizens.

15: (1) A Commonwealth citizen who is not a citizen of Nigeria or a citizen of the Republic of Ireland who is not a citizen of Nigeria shall not be guilty of an offence against any law in force in Nigeria by reason of anything done or omitted in any part of the Commonwealth other than Nigeria or in the Republic of Ireland or in any foreign country unless—

(a) the act or omission would be an offence if he were an alien; and

(b) in the case of an act or omission in any part of the Commonwealth or in the Republic of Ireland, it would be an offence if the country in which the act was done or the omission made were a foreign country.

(2) In this section "foreign country" means a country (other than the Republic of Ireland) that is not part of the Commonwealth.

Powers of Parliament.

16: Parliament may make provision—

(a) for the acquisition of citizenship of Nigeria by persons who do not become citizens of Nigeria by virtue of the provisions of this Chapter;

(b) for depriving of his citizenship of Nigeria any person who is a citizen of Nigeria otherwise than by virtue of subsection (1) of section 7 or section 11 of this Constitution; or

(c) for the renunciation by any person of his citizenship of Nigeria.

Interpretation of Chapter II.

17: (1) Without prejudice to the generality of section 165 of this Constitution, in this Chapter—

“alien” means a person who is not a citizen of Nigeria, a Commonwealth citizen other than a citizen of Nigeria, a British protected person or a citizen of the Republic of Ireland;

“the British Nationality Act” means the Act of the Parliament of the United Kingdom entitled the British Nationality Act, 1948; and

“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act.

(2) For the purposes of this Chapter a person born in a ship or aircraft registered in Nigeria or belonging to the Government of the Federation shall be deemed to have been born in Nigeria.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of his father's death; and where that death occurred before the first day of October, 1960, and the birth occurred after the thirtieth day of September, 1960, the national status that the father would have had if he had died on the first day of October, 1960, shall be deemed to be his national status at the time of his death.

CHAPTER III

Fundamental Rights*Deprivation of life.*

18: (1) No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect an arrest or to prevent the escape of a person detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence.

(3) The use of force in any part of Nigeria in circumstances in which and to the extent to which it would have been authorized in that part on the first day of November 1959, by the Code of Criminal Law established by the Criminal Code Ordinance(a), as amended, shall be regarded as reasonably justifiable for the purposes of this section.

Inhuman treatment

19: (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing in this section shall invalidate any law by reason only that it authorizes the infliction in any part of Nigeria of any punishment that was lawful and customary in that part on the first day of November, 1959.

Slavery and forced labour.

20: (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section "forced labour" does not include—

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the armed forces, any labour required instead of such service;

(c) any labour required in the event of any emergency or calamity threatening the life or well-being of the community; or

(d) any labour that forms part of normal communal or other civil obligations.

Deprivation of personal liberty.

21: (1) No person shall be deprived of his personal liberty save in the following cases and in accordance with a procedure permitted by law—

(a) in consequence of his unfitness to plead to a criminal charge, in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty or in the execution of the order of a court of record punishing him for contempt of itself;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be promptly informed, in language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in accordance with paragraph (c) of subsection (1) of this section shall be brought before a court without undue delay and if he is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation.

(5) Nothing in this section shall invalidate any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of a police force in execution of a sentence imposed by an officer of the armed forces of the Federation or a police force, as the case may be, in respect of an offence punishable by such detention of which he has been found guilty.

Determination of rights

22: (1) In the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality:

Provided that nothing in this subsection shall invalidate any law by reason only that it confers on any person or authority power to determine—

- (a) questions arising in the administration of a law that affect or may affect the civil rights and obligations of any person; or
- (b) chieftaincy questions.

(2) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public;

Provided that—

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto in the interests of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of twenty-one years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice; and

(b) if in any proceedings before a court or such a tribunal a Minister of the Government of the Federation or a Minister of the Government of a Region certifies that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(5) Every person who is charged with a criminal offence shall be entitled—

(a) to be informed promptly, in language that he understands and in detail, of the nature of the offence;

(b) to be given adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or by persons of his own choice who are legal practitioners;

(d) to examine in person or by his legal representatives the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution; and

(e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

Provided that nothing in this subsection shall invalidate any law by reason only that the law prohibits legal representation in a court established by or under the Native Courts Law, 1956, the Sharia Court of Appeal Law, 1960 or the Court of Resolution Law, 1960, of Northern Nigeria (a), the Customary Courts Law, 1956, of Eastern Nigeria (b), or the Customary Courts Law of Western Nigeria (c), as amended, or any law replacing any of those laws.

(6) When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the record within a reasonable time upon payment of such fee as may be prescribed by law.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court; and no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(9) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(10) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law;

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(a) Laws No. 6 of 1956 and Nos. 16 and 17 of 1960.

(b) Law No. 21 of 1956.

(c) Laws of Western Nigeria, 1959, chapter 31.

Private and family life.

23: (1) Every person shall be entitled to respect for his private and family life, his home and his correspondence.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) in the interest of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

(b) for the purpose of protecting the rights and freedom of other persons.

Freedom of conscience.

24: (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practise their religions without the unsolicited intervention of members of other religions.

Freedom of expression.

25: (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) in the interest of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights, reputations and freedom of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, wireless broadcasting, television, or the exhibition of cinematograph films; or

(c) imposing restrictions upon persons holding office under the state, members of the armed forces of the Federation or members of a police force.

Peaceful assembly and association.

26: (1) Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) in the interest of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of other persons; or

(c) imposing restrictions upon persons holding office under the state, members of the armed forces of the Federation or members of a police force.

Freedom of movement.

27: (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof; and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—

(a) restricting the movement or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health;

(b) for the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentences of courts in respect of criminal offences of which they have been found guilty;

(c) imposing restrictions upon the movement or residence within Nigeria of members of the public service of the Federation or the public service of a Region, members of the armed forces of the Federation or members of a police force.

(3) Nothing in this section shall invalidate any law by reason only that the law imposes restrictions with respect to the acquisition or use by any person of land or other property in Nigeria or any part thereof.

(4) Nothing in this section shall invalidate any law by reason only that the law provides for the removal or exclusion of a person who is or was a chief by reference to a territory or a part of a territory from a particular area within that territory.

Freedom from discrimination.

28: (1) A citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person—

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or res-

trictions to which citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not conferred on citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions.

(2) Nothing in this section shall invalidate any law by reason only that the law—

(a) prescribes qualifications for service in an office under the state or as a member of the armed forces of the Federation or a member of a police force or for the service of a body corporate established directly by any law in force in Nigeria;

(b) imposes restrictions with respect to the appointment of any person to an office under the state or as a member of the armed forces of the Federation or a member of a police force or to an office in the service of a body corporate established directly by any law in force in Nigeria;

(c) imposes restrictions with respect to the acquisition or use by any person of land or other property; or

(d) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

Derogations from fundamental rights.

29: (1) An Act of Parliament shall not be invalid by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 18, 21, 22 or 28 of this Constitution, but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 18 of this Constitution except in respect of deaths resulting from acts of war or any derogation from the provisions of subsection (7) of section 22 of this Constitution.

(2) In this section "period of emergency" means a period of emergency for the purposes of section 70 of this Constitution.

Reference to tribunal in certain cases.

30: (1) Where—

(a) any person is detained in pursuance of an Act of Parliament derogating from the provisions of section 21 of this Constitution; or

(b) the movement or residence of any person within Nigeria who is a citizen of Nigeria is lawfully restricted (otherwise than by order of a court) in the interest of defence, public safety, public order, public morality or public health, that person shall be entitled to require that his case should be referred within one month of the beginning of the period of detention or restriction and thereafter during

that period at intervals of not more than six months to a tribunal established by law and that tribunal may make recommendations concerning the necessity or expediency of continuing the detention or restriction to the authority that has ordered it:

Provided that such authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendation.

(2) A tribunal established for the purposes of this section shall be constituted in such manner as to ensure its independence and impartiality and its chairman shall be a legal practitioner appointed by the Chief Justice of Nigeria.

Compulsory acquisition of property.

31: (1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that—

- (a) requires the payment of adequate compensation therefor; and
- (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

(2) Nothing in this section shall affect the operation of any law in force on the thirty-first day of March, 1958, or any law made after that date that amends or replaces any such law and does not—

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) add to the purposes for which or circumstances in which such property may be taken possession of or acquired;
- (c) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning or interested in the property; or
- (d) deprive any person of any such right as is mentioned in paragraph (b) of subsection (1) of this section.

(3) Nothing in this section shall be construed as affecting any general law—

- (a) for the imposition or enforcement of any tax, rate or due;
- (b) for the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence;
- (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
- (d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind, of deceased persons and of companies, other bodies corporate and unincorporated societies in the course of being wound up;
- (e) relating to the execution of judgments or orders of courts;
- (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- (g) relating to enemy property;
- (h) relating to trusts and trustees;
- (i) relating to the limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purposes of any examination, investigation or enquiry; or

(l) providing for the carrying out of work on land for the purpose of soil-conservation.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property, movable or immovable, and the compulsory acquisition of rights over and interests in such property by or on behalf of the state.

Special jurisdiction of High Courts in relation to this Chapter.

32: (1) Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress.

(2) Subject to the provisions of section 115 of this Constitution, the High Court of a territory shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, within that territory of any rights to which the person who makes the application may be entitled under this Chapter.

(3) Parliament may make provision with respect to the practice and procedure of the High Courts of the territories for the purposes of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling those courts more effectively to exercise the jurisdiction conferred upon them by this section.

Interpretation of Chapter III.

33: Without prejudice to the generality of section 165 of this Constitution, in this Chapter, unless it is otherwise expressly provided or required by the context—

“court” means any court of law in Nigeria but, except in relation to a member of the armed forces of the Federation, does not include a courtmartial;

“law” includes an unwritten rule of law;

“member of the armed forces of the Federation” includes any person who is subject to naval, military or air-force law; and

“member of a police force” includes a person who is subject to any law relating to the discipline of a police force.

CHAPTER IV

The President of the Republic

Establishment of office of President.

34: There shall be a President of the Republic, who shall be elected to office in accordance with section 35 of this Constitution and shall be the Head of State of the Federation and the Commander-in-Chief of the armed forces of the Federation.

Election of President.

- 35: (1) A person shall be eligible for election as the President if—
- (a) he is a citizen of Nigeria who has attained the age of forty years; and
 - (b) he is not disqualified by virtue of paragraphs (a) to (d) or (f) of subsection (1), subsection (2) or subsection (3) of subsection 45 of this Constitution for election as a member of the House of Representatives.

(2) The President shall be elected by secret ballot at a joint meeting of both Houses of Parliament held for the purpose of electing the President (hereafter in this section referred to as an "election meeting"); and each member of Parliament shall be entitled to a single vote in each ballot for the election of the President taken at such a meeting (hereafter in this section referred to as a "presidential ballot").

- (3) An election meeting shall be held so as to begin—

- (a) if the President continues in office after the beginning of the period of four months ending with the date when his term of office would expire by the effluxion of time, during the first three months of that period;
- (b) in any other case, during the period of three months beginning with the date when the office of President becomes vacant;

and shall be held at such place and shall begin on such date as the President or the person performing the functions of the President shall specify by order published in the Gazette of the Federation.

(4) A person shall not be a candidate in a presidential ballot unless he is nominated for election or re-election as the President by a document which—

- (a) is signed by him and by three or more members of Parliament; and
- (b) is served before the ballot is ordered on the person presiding at the election meeting at which the ballot is taken.

(5) If in a presidential ballot there is only one candidate, he shall be declared elected if the number of votes which he receives is greater than half of the number of all the members of Parliament.

(6) If in a presidential ballot there are two or more candidates and the number of votes which one candidate receives is not less than two-thirds of the number of all the members of Parliament, that candidate shall be declared elected.

- (7) If in a presidential ballot—

- (a) there are three or more candidates; and
- (b) none of the candidates is declared elected; and
- (c) one of the candidates receives a smaller number of votes than each of the others,

that one of the candidates shall not be a candidate in any subsequent presidential ballot ordered at the same election meeting.

- (8) If in a presidential ballot—

- (a) the conditions specified by paragraphs (a) and (b) of subsection (7) of this section are satisfied, but the condition specified by paragraph (c) of that subsection is not; and

(b) two of the candidates each receives the same number of votes and that number is smaller than the number of votes received by the other candidate or each of the other candidates, as the case may be, a ballot shall forthwith be taken for the purpose of determining which of the two shall be treated for the purposes of the said subsection (7) as the candidate mentioned in paragraph (c) of that subsection; and the candidate who receives the smaller number of the votes cast in that ballot shall be so treated, and that subsection shall apply accordingly.

(9) Where in a ballot taken in pursuance of subsection (8) of this section each candidate would, apart from this subsection, be treated as receiving the same number of votes, the person presiding at the election meeting when the ballot is ordered shall have a second or casting vote.

(10) If in a presidential ballot no candidate is declared elected, a further presidential ballot shall be taken at the same election meeting; and an election meeting shall continue until a candidate is declared elected in a presidential ballot taken at that meeting but may be adjourned from time to time for not more than two days exclusive of the days on which and to which it is adjourned.

(11) An instrument which—

(a) is executed under the hand and seal of the person who was or purported to act as the person presiding at an election meeting at the time of a presidential ballot; and

(b) states that a person named in the instrument was declared elected at that meeting as the President of the Republic in consequence of that ballot, shall be conclusive evidence that the person so named was so elected; and no question as to the validity of the election as the President of the person so named shall be entertained by any court.

Tenure of office of President.

36: (1) A person shall hold office as the President for the period of five years beginning with the day on which he is elected as the President or, where he or another person holds office as the President on that day, beginning with the day next following the date on which that office next becomes vacant.

(2) The office of President shall become vacant—

(a) on the expiration of the period mentioned in subsection (1) of this section; or

(b) if the incumbent dies or resigns the office or ceases to hold office in pursuance of section 38 of this Constitution.

(3) When a person takes office as the President any other public office held by him shall become vacant; and while a person continues in office as the President he shall be disqualified for any other public office.

In this subsection, "public office" means office as a president, speaker or member of a legislative house of the Federation or a Region, any office of emolument under the state and any paid appointment as a member or employee of a body corporate established directly by any law in force in Nigeria.

Oaths to be taken by President.

37: (1) A person elected as the President shall not begin to perform the functions of that office until he has taken and subscribed the oath of allegiance and such oath for the due performance of those functions as may be prescribed by Parliament.

(2) The oaths aforesaid shall be administered by the Chief Justice of Nigeria or the person for the time being appointed to exercise the functions of the Chief Justice.

Removal of President from office.

38: (1) The President shall cease to hold office if a motion for his removal from office is declared to be passed in accordance with the provisions of this section.

(2) If—

(a) notice in writing is given to the President of the Senate of a motion that the conduct of the President of the Republic be investigated so as to ascertain whether he is guilty of misconduct in the performance of the functions of his office or is unable to perform those functions; and

(b) the notice is signed by not less than one quarter of all the members of the Senate or one quarter of all the members of the House of Representatives, the President of the Senate shall, by order published in the Gazette of the Federation, forthwith convene a joint meeting of both Houses of Parliament to consider the motion.

(3) A meeting convened in pursuance of subsection (2) of this section shall be held at such place as may be specified by the order convening the meeting and shall begin on such date as may be so specified, not being before the expiration of the period of seven days or after the expiration of the period of fourteen days beginning with the date of publication of the order.

(4) A meeting convened as aforesaid shall not without the leave of the person presiding at the meeting consider any matter other than the motion for which the meeting is convened and shall not debate the motion; and the person presiding at meeting shall, after declaring the meeting to be open, forthwith direct a vote to be taken on the motion and shall—

(a) if two-thirds or more of the votes cast on the motion are cast in favour of the motion, declare the motion to be passed; and

(b) in any other case, declare the motion to be defeated.

(5) Where a motion is declared to be passed in pursuance of subsection (4) of this section, a committee consisting of members of each House of Parliament shall be set up to investigate the conduct of the President and to report on it to Parliament within the period of three months beginning with the date on which the motion was passed, and the President shall be entitled to appear in person and to be represented before the committee; and the constitution, powers and procedure of the committee (including the mode of reporting to Parliament) shall be in accordance with provision in that behalf made by an Act of Parliament and, notwithstanding any other provisions of this Constitution, no appeal shall lie from any determination

of the committee and provision may be made by Act of Parliament for prohibiting or restricting the issue out of any court of any process touching the committee or its proceedings.

(6) The report made to Parliament by the committee aforesaid shall state whether the committee finds the President guilty of misconduct in performing the functions of his office or finds him unable to perform those functions; and where the report includes a statement that the committee finds the President guilty as aforesaid or unable to perform those functions, the President of the Senate shall, by order published in the Gazette of the Federation, forthwith convene a joint meeting of both Houses of Parliament to consider a motion for the removal of the President from office, and the provisions of subsection (3) of this section shall apply in relation to the meeting as they apply in relation to such a meeting as is mentioned in that subsection.

(7.) A meeting convened in pursuance of subsection (6) of this section shall not without the leave of the person presiding at the meeting consider any business other than the motion mentioned in that subsection; and the person presiding at the meeting shall, after permitting the motion to be debated during such period as he thinks fit, direct a vote to be taken on the motion and shall—

(a) if the number of the votes cast in favour of the motion is not less than two-thirds of the number of all the members of Parliament, declare the motion to be passed;

(b) in any other case, declare the motion to be defeated.

(8) Where a motion is declared to be passed in pursuance of subsection (4) of this section, the President shall not exercise any of the functions of his office during the period beginning with the time of the declaration and ending—

(a) where the report mentioned in subsection (6) of this section does not include such a statement as is mentioned in that subsection, with the time of the presentation of the report to Parliament;

(b) where the report includes such a statement, with the time of the subsequent declaration made in pursuance of subsection (7) of this section, but nothing in this subsection shall affect the entitlement of the President to the emoluments of his office during that period.

Discharge of President's functions during vacancy, etc.

39: (1) During any period while—

(a) the office of President is vacant; or

(b) the President is absent from Nigeria or is, in the opinion of the Prime Minister, unable to perform the functions of his office by reason of his illness; or

(c) the President is prohibited by subsection (8) of section 38 of this Constitution from exercising those functions,

the functions of that office shall, subject to the following provisions of this section, be performed by the President of the Senate.

(2) During any period while the President of the Senate is, in the opinion of the Prime Minister, unable to perform the functions conferred on him by subsection

(1) of this section, those functions shall, subject to subsection (3) of this section, be performed by the Speaker of the House of Representatives.

(3) During any period while the Speaker of the House of Representatives is, in the opinion of the Prime Minister, unable to perform the functions conferred on him by subsection (2) of this section, those functions shall be performed by such person as the Council of Ministers may appoint by order published in the Gazette of the Federation; and an order under this subsection may be revoked by a subsequent order thereunder.

(4) The President shall not be absent from Nigeria except with the agreement of the Council of Ministers.

Proceedings at certain joint meetings of Houses of Parliament.

40: Subject to the foregoing provisions of this Chapter, the procedure of any joint meeting of both Houses of Parliament held in pursuance of those provisions (including the procedure for counting votes and for declaring that individual votes are void) shall be in accordance with provision in that behalf made by Act of Parliament.

CHAPTER V

Parliament

Part I.—Composition of Parliament

Establishment of Parliament.

41: There shall be a Parliament of the Federation, which shall consist of the President, a Senate and a House of Representatives.

Composition of Senate.

42: (1) Without prejudice to the provisions of section 46 of this Constitution, the Senate shall consist of—

- (a) twelve Senators representing each Region, who shall be selected at a joint sitting of the legislative houses of that Region from among persons nominated by the Governor;
- (b) four Senators representing the Federal territory;
- (c) four Senators selected by the President, acting in accordance with the advice of the Prime Minister.

(2) The Senators representing the Federal territory shall be—

- (a) the Oba of Lagos, who shall be an ex-officio member of the Senate;
- (b) a Chief selected in such manner as may be prescribed by Parliament by the White-Cap Chiefs and War Chiefs of Lagos from among their own number; and
- (c) two other persons selected for that purpose in such manner as may be prescribed by Parliament.

(3) A joint sitting of the legislative houses of a Region may regulate its own procedure for the purposes of this section.

Composition of House of Representatives.

43: Without prejudice to the provisions of sections 47 and 88 of this Constitution, the House of Representatives shall consist of three hundred and twelve members.

Qualifications for membership of Parliament.

44: Subject to the provisions of section 45 of this Constitution—

(a) a person shall be qualified for selection as a Senator if he is a citizen of Nigeria and has attained the age of forty years;

(b) a person shall be qualified for election as a member of the House of Representatives if he is a citizen of Nigeria and has attained the age of twenty-one years and, in the case of a person who stands for election in Northern Nigeria, is a male person.

Disqualifications for membership of Parliament, etc.

45: (1) No person shall be qualified for selection as a Senator or election to the House of Representatives—

(a) if he has voluntarily acquired citizenship of a country other than Nigeria or, except in such cases as may be prescribed by Parliament, has made a declaration of allegiance to such a country;

(b) if under any law in force in any part of Nigeria he is adjudged to be a lunatic or otherwise declared to be of unsound mind;

(c) if he is under a sentence of death imposed on him by any court of law in Nigeria or a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(d) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;

(e) save as otherwise provided by Parliament, if he is a member of the public service of the Federation or the public service of a Region, a member of the armed forces of the Federation or the holder of any other office of emolument under the state; or

(f) if he is an ex-officio member of the Senate or a legislative house of a Region.

(2) Parliament may provide that a person shall not be qualified for selection as a Senator or election to the House of Representatives for such period (not exceeding five years) as may be prescribed if he is convicted by any court of law in Nigeria of such offences connected with the selection or election of members of a House of Parliament or a legislative house of a Region as may be prescribed.

(3) Parliament may provide that a person disqualified under paragraph (c) of subsection (1) of this section by reason of his being under a sentence of imprisonment exceeding six months for any such offence (being an offence that appears to Parliament to involve dishonesty) as may be prescribed, or by reason of his being under sentences of imprisonment that include such a sentence for any such offence, shall not be qualified for selection as a Senator or election to the House of Representatives for such period from the date on which he ceases to be disqualified under that paragraph (not exceeding five years) as may be prescribed.

(4) Parliament may provide that a person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to the House of Representatives or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to that House.

(5) Parliament may, in order to permit any person who has been adjudged to be a lunatic, declared to be of unsound mind, sentenced to death or imprisonment or adjudged or declared bankrupt to appeal against the decision in accordance with any law in force in Nigeria, provide that, subject to such conditions as may be prescribed, the decision shall not have effect for the purposes of subsection (1) of this section until such time as may be prescribed.

(6) For the purposes of paragraph (c) of subsection (1) of this section two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds six months, but if any one of those sentences exceeds that term they shall be regarded as one sentence.

(7) For the purposes of paragraph (e) of subsection (1) of this section the office of the President of the Senate or Deputy President of the Senate, a Senator, the Speaker or Deputy Speaker of the House of Representatives, a member of the House of Representatives, a Minister of the Government of the Federation, a Parliamentary Secretary to such a Minister, a member of the Council of Ministers, the President, Speaker, Deputy President or Deputy Speaker of a legislative house of a Region, a member of such a legislative house, a Minister of the Government of a Region, Parliamentary Secretary to such a Minister, a member of the Executive Council of a Region, a member of the Council of Chiefs of Northern Nigeria, or a member of any such body corporate as is referred to in the proviso to subsection (10) of this section shall not be regarded as an office of emolument under the state.

(8) Save as otherwise provided by Parliament, a person shall not be regarded as disqualified for selection as a Senator or election as a member of the House of Representatives under paragraph (e) of subsection (1) of this section by reason only that he holds office as a member of a statutory corporation.

(9) If a person who holds office as a member of a statutory corporation is selected as a Senator or elected as a member of the House of Representatives he shall, unless it is otherwise provided by Parliament, thereupon cease to hold office as a member of that corporation.

(10) In this section the expression "statutory corporation" means any body corporate established directly by any law in force in Nigeria:

Provided that the expression does not include any body corporate established by or under the Native Authority Law, 1954, of Northern Nigeria(a), the Eastern Nigeria Local Government Law, 1960, of Eastern Nigeria(b), or the Western Region Local Government Law, 1952, or the Local Government Law of Western Nigeria (c), as amended, or any law replacing any of those laws.

(a) Law No. 4 of 1954.

(b) Law No. 17 of 1960.

(c) Law No. 1 of 1953 and Laws of Western Nigeria, 1959, chapter 68.

President of Senate.

46: (1) There shall be a President of the Senate, who shall be elected by the members of the Senate.

(2) No person shall be elected as President of the Senate unless he is a Senator or a person who is qualified for selection as a Senator.

(3) The President of the Senate shall vacate his office—

(a) if he ceases to be a Senator otherwise than by reason of a dissolution of Parliament;

(b) when the Senate first sits after any dissolution of Parliament;

(c) if he becomes a Minister of the Government of the Federation or a Parliamentary Secretary to such a Minister; or

(d) if he is removed from office by a resolution of the Senate supported by the votes of two-thirds of all the members of that House.

(4) No business shall be transacted in the Senate (other than an election to the office of President of the Senate) at any time when that office is vacant.

(5) Subject to the provisions of section 49 of this Constitution, the President of the Senate shall be a member of the Senate by virtue of this subsection if he is not such a member apart from this subsection.

Speaker of House of Representatives.

47: (1) There shall be a Speaker of the House of Representatives, who shall be elected by the members of that House.

(2) No person shall be elected as Speaker of the House of Representatives unless he is a member of the House or a person who is qualified for election in some part of Nigeria as a member of the House.

(3) The Speaker of the House of Representatives shall vacate his office—

(a) if he ceases to be a member otherwise than by reason of a dissolution of Parliament;

(b) when the House first sits after any dissolution of Parliament;

(c) if he becomes a Minister of the Government of the Federation or a Parliamentary Secretary to such a Minister; or

(d) if he is removed from office by a resolution of the House supported by the votes of two-thirds of all the members of the House.

(4) No business shall be transacted in the House of Representatives (other than an election to the office of Speaker) at any time when that office is vacant.

(5) Subject to the provisions of section 49 of this Constitution, the Speaker shall be a member of the House of Representatives by virtue of this subsection if he is not such a member apart from this subsection.

Right of attendance of Ministers.

48: (1) A Minister of the Government of the Federation may attend and take part in the proceedings of either House of Parliament notwithstanding that he is not a member of that House.

(2) Nothing in this section shall entitle any person who is not a member of a House of Parliament to vote in that House or any of its committees.

Tenure of seats of members of Parliament.

49: (1) A Senator (other than the Oba of Lagos) or a member of the House of Representatives shall vacate his seat in the House of which he is a member—

(a) if he becomes a member of the other House of Parliament or a legislative house of a Region;

(b) if any other circumstances arise that, if he were not a member of that House, would cause him to be disqualified for selection or election as such a member under subsection (1), (2) or (3) of section 45 of this Constitution;

(c) if he ceases to be a citizen of Nigeria;

(d) if he becomes a Minister of the Government of a Region;

(e) save as otherwise provided by Parliament, if he becomes a member of a statutory corporation; or

(f) if he is absent from two consecutive meetings of the House and the President of the Senate or Speaker of the House, as the case may be, does not, by writing under his hand, excuse his absence within one month after the end of the second meeting.

(2) Parliament may, in order to permit any Senator or member of the House of Representatives who has been adjudged to be a lunatic, declared to be of unsound mind, sentenced to death or imprisonment or adjudged or declared bankrupt to appeal against the decision in accordance with any law in force in Nigeria, provide that, subject to such conditions as may be prescribed, the decision shall not have effect for the purposes of this section until such time as may be prescribed.

(3) In this section the expression "statutory corporation" has the meaning assigned to it for the purposes of section 45 of this Constitution.

Establishment of Electoral Commission.

50: (1) There shall be an Electoral Commission for the Federation.

(2) The members of the Electoral Commission of the Federation shall be—

(a) a Chief Electoral Commissioner, who shall be chairman; and

(b) a member representing each territory.

(3) The members of the Electoral Commission of the Federation shall be appointed by the President, acting in accordance with the advice of the Prime Minister.

(4) Before tendering any advice for the purposes of this section in relation to the appointment of the member of the Electoral Commission of the Federation representing a Region, the Prime Minister shall consult the Premier of that Region.

(5) A person shall not be qualified to hold office as a member of the Electoral Commission of the Federation if he is a member of either House of Parliament, a member of a legislative house of a Region, a Minister of the Government of the Federation, a Minister of the Government of a Region or a member of the public service of the Federation or the public service of a Region.

(6) Subject to the provisions of this section, a member of the Electoral Commission of the Federation shall vacate his office—

(a) at the expiration of five years from the date of his appointment;
or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such a member.

(7) A member of the Electoral Commission of the Federation may be removed from office by the President, acting in accordance with the advice of the Prime Minister, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(8) A member of the Electoral Commission of the Federation shall not be removed from office except in accordance with the provisions of this section.

(9) In the exercise of its functions under this Constitution the Electoral Commission of the Federation shall not be subject to the direction or control of any other person or authority.

Constituencies.

51: (1) Nigeria shall be divided into as many constituencies as there are members of the House of Representatives by virtue of section 43 of this Constitution, and shall be so divided in such manner as the competent authority, acting with the approval of each House of Parliament signified by resolution, may prescribe.

(2) No constituency shall form part of more than one territory and the boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, the distribution of different communities and the boundaries of the territories.

(3) The competent authority shall review the division of Nigeria into constituencies at intervals of not less than eight and not more than ten years and may alter the constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review:

Provided that that authority may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any amendment to section 3 or 43 of this Constitution or any provision replacing either of those sections or by reason of the holding of a census of the population of Nigeria in pursuance of an Act of Parliament.

(4) Where the boundaries of any constituency established under this section are altered in accordance with the provisions of this section, that alteration shall come into effect upon the next dissolution of Parliament after the alteration has been approved by both Houses of Parliament.

(5) In this section "population quota" means the number obtained by dividing the number of the inhabitants of Nigeria by the number of constituencies into which Nigeria is divided under this section.

(6) For the purposes of this section the number of inhabitants of Nigeria or any part thereof shall be ascertained by reference to the latest census of the population of Nigeria held in pursuance of an Act of Parliament.

(7) In this section "the competent authority" means the Electoral Commission of the Federation or such other authority consisting of a chairman appointed by the President, acting in accordance with the advice of the Prime Minister, and of members appointed in like manner to represent the territories (each territory being equally represented) as may be established in that behalf by Parliament.

Elections

52: (1) Every constituency established under section 51 of this Constitution shall return to the House of Representatives one member who shall be directly elected in such manner as may be prescribed by Parliament.

(2) The registration of voters and the conduct of elections shall be subject to the direction and supervision of the Electoral Commission of the Federation.

Determination of questions respecting membership of Parliament.

53: (1) Subject to the provisions of section 115 of this Constitution, the competent High Court shall have original jurisdiction to hear and determine any question whether—

(a) any person has been validly selected as a Senator or elected as a member of the House of Representatives; or

(b) the seat in the Senate of a Senator or the seat in the House of Representatives of a member of that House has become vacant.

(2) Parliament may make provision with respect to—

(a) the persons who may apply to the competent High Court for the determination of any question under this section;

(b) the circumstances and manner in which, and the conditions upon which, any such application may be made; and

(c) the powers, practice and procedure of the competent High Court in relation to any such application.

(3) In this section "the competent High Court" means, in relation to a person who has been selected as a Senator to represent a Region or elected a member of the House of Representatives in a Region, the High Court of that Region and, in relation to any other person, the High Court of the Federal territory.

Clerks to Houses of Parliament and their staff.

54: (1) There shall be a Clerk to the Senate and a Clerk to the House of Representatives, and both offices may be held by the same person.

(2) Subject to the provisions of any Act of Parliament, the office of the Clerk of each House of Parliament and the office of each member of his staff shall be offices in the public service of the Federation.

*Part 2.—Procedure in Parliament**Oaths to be taken by members of Parliament.*

55: Every member of either House of Parliament shall, before taking his seat in that House, take and subscribe before the House the oath of allegiance, but a member may before taking that oath take part in the election of a President of the Senate or a Speaker of the House of Representatives, as the case may be:

Provided that if a House of Parliament is not sitting a member of that House may take and subscribe the oath of allegiance before a judge of the High Court of a territory.

Presiding in Senate.

56: (1) There shall preside at any sitting of the Senate—

- (a) the President of the Senate; or
- (b) in the absence of the President, the Deputy President; or
- (c) in the absence of the President and the Deputy President, such Senator as the Senate may elect for that purpose.

(2) The Senate may from time to time elect a Senator to be Deputy President and any person so elected shall hold office as such until he ceases to be a Senator or is removed from office by the Senate.

Presiding in House of Representatives.

57: (1) There shall preside at any sitting of the House of Representatives—

- (a) the Speaker; or
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such member of the House as the House may elect for that purpose.

(2) The House of Representatives may from time to time elect a member of the House to be Deputy Speaker and any person so elected shall hold office as such until he ceases to be a member of the House or is removed from office by the House.

Quorum in Houses of Parliament.

58: If objection is taken by any member of a House of Parliament present that there are present in that House (besides the person presiding) fewer than one-sixth of all the members of that House and, after such interval as may be prescribed in the rules of procedure of the House, the person presiding ascertains that the number of members present is still less than one-sixth of all the members of the House, he shall thereupon adjourn the House.

Use of English in Parliament.

59: The business of Parliament shall be conducted in English.

Voting in Parliament.

60: (1) Any question proposed for decision in a House of Parliament shall be determined by the required majority of the members present and voting; and the person presiding shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case.

(2) Save as otherwise provided in this Constitution, the required majority for the purposes of determining any question shall be a simple majority.

(3) The rules of procedure of a House of Parliament may provide that the vote of a member upon a question in which he has a direct pecuniary interest shall be disallowed.

Unqualified persons sitting or voting.

61: Any person who sits or votes in either House of Parliament knowing or having reasonable ground for knowing that he is not entitled to do so shall be liable to a penalty not exceeding twenty pounds or such other sum as may be prescribed by Parliament for each day on which he sits or votes in that House, which shall be recoverable by action in the High Court of Lagos at the suit of the Attorney-General of the Federation.

Mode of exercising legislative power.

62: (1) The power of Parliament to make laws shall be exercised by bills passed by both Houses (or in the case mentioned in section 64 of this Constitution the House of Representatives) and assented to by the President.

(2) A bill other than a money bill may originate in either House of Parliament but a money bill may originate only in the House of Representatives.

(3) When a bill has been passed by the House of Parliament in which it originated, it shall be sent to the other House; and it shall be presented to the President for assent

(a) when it has been passed by the other House and agreement has been reached between the two Houses on any amendments made in it; or

(b) when it is required to be so presented under section 64 of this Constitution.

(4) When a bill is presented to the President for assent, he shall signify that he assents or that he withholds assent.

(5) A bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution.

Restrictions with regard to certain financial measures.

63: (1) The Senate shall not—

(a) proceed upon any bill, other than a bill sent from the House of Repre-

sentatives, that, in the opinion of the person presiding makes provision for any of the following purposes—

- (i) the imposition, repeal or alteration of taxation;
 - (ii) the imposition of any charge upon the Consolidated Revenue Fund or any other public fund of the Federation;
 - (iii) the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money not charged thereon or any alteration in the amount of such a payment, issue or withdrawal; or
 - (iv) the composition or remission of any debt due to the Federation
- (b) proceed upon any amendment to any bill that in the opinion of the person presiding makes provision for any of those purposes;
- (c) proceed upon any motion (including any amendment to a motion), the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or
- (d) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

(2) Except upon the recommendation of the President signified by a Minister of the Government of the Federation, the House of Representatives shall not—

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—
- (i) the imposition of taxation or the alteration of taxation otherwise than by reduction;
 - (ii) the imposition of any charge upon the Consolidated Revenue Fund or any other public fund of the Federation or the alteration of any such charge otherwise than by reduction;
 - (iii) the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any moneys not charged thereon or any increase in the amount of such a payment, issue or withdrawal; or
 - (iv) the composition or remission of any debt due to the Federation;
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or
- (c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

Limitation of powers of Senate.

64: (1) Where a money bill is passed by the House of Representatives and, having been sent to the Senate at least one month before the end of the session, is not passed by the Senate without amendment within one month after it is so sent, the bill shall, unless the House of Representatives otherwise resolves, be presented to the President for his assent.

(2) Where—

- (a) a bill that is not a money bill is passed by the House of Representatives and, having been sent to the Senate at least one month before the end of the

session, is not passed by the Senate before the end of the session or is passed by the Senate with amendments to which the House of Representatives does not before the end of the session agree; and

(b) in the following session (whether of the same Parliament or not) but not earlier than six months after it was first passed by the House of Representatives, the same bill, with no other alterations than those mentioned in subsection (4) of this section, is passed again by the House of Representatives and sent to the Senate at least one month before the end of the session and is not passed by the Senate before the end of the session or is passed by the Senate with amendments to which the House of Representatives does not before the end of the session agree,

the bill shall, unless the House of Representatives otherwise resolves, be presented to the President for his assent with such amendments, if any, as may have been agreed to by both Houses.

(3) The House of Representatives may, on the passage of a bill for the purposes of paragraph (b) of subsection (2) of this section, suggest any amendments without inserting the amendments in the bill and any such suggested amendments shall be considered by the Senate and, if agreed to by the Senate, shall be treated as amendments agreed to by both Houses; but the exercise of this power by the House of Representatives shall not affect the operation of this section if the bill is not passed by the Senate or is passed by the Senate with amendments to which the House of Representatives does not agree.

(4) The alterations referred to in subsection (2) of this section are alterations certified by the Speaker of the House of Representatives to be necessary owing to the time that has elapsed since the bill was passed in the earlier session or to represent amendments made in that session by the Senate.

(5) When a money bill is sent to the Senate from the House of Representatives it shall bear a certificate of the Speaker of the House of Representatives that it is a money bill.

(6) When a bill is presented to the President in pursuance of this section it shall bear a certificate of the Speaker of the House of Representatives that this section has been complied with and that certificate shall be conclusive for all purposes and shall not be questioned in any court of law.

(7) This section does not apply to any bill for the purposes of section 4 of this Constitution.

Regulation of procedure in Houses of Parliament.

65: (1) Subject to the provisions of this Constitution, each House of Parliament may regulate its own procedure.

(2) Each House of Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when the House first meets after any dissolution of Parliament) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings.

Interpretation of Part 2.

66: Without prejudice to the generality of section 165 of this Constitution, in this Part of this Chapter "money bill" means a bill that in the opinion of the Speaker of the House of Representatives contains only provisions dealing with—

- (a) the imposition, repeal, remission, alteration or regulation of taxation;
- (b) the imposition for the payment of debt or other financial purposes of charges on the Consolidated Revenue Fund or any other public fund of the Federation or the variation or repeal of any such charges;
- (c) the grant of money to the state or to any other person or authority or the variation or revocation of any such grant;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
- (e) the raising or guarantee of any loan or the repayment thereof; or
- (f) subordinate matters incidental to any of those matters:

Provided that the expressions "taxation", "public money" and "loan" do not include any taxation, money or loan raised by local authorities or bodies for public purposes.

*Part 3.—Summoning, prorogation and dissolution**Sessions of Parliament.*

67: Each session of Parliament shall be held at such place within Nigeria and shall begin at such time (not being later than twelve months from the end of the preceding session if Parliament has been prorogued or three months from the end of that session if Parliament has been dissolved) as the President shall appoint.

Prorogation and dissolution of Parliament.

68: (1) The President may at any time prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(3) At any time when the Federation is at war, Parliament may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve Parliament the President shall act in accordance with the advice of the Prime Minister, so however that if the Prime Minister recommends a dissolution in a case not falling within subsection (5) of this section and the President considers that the government of the Federation can be carried on without a dissolution and that a dissolution would not be in the interests of the Federation he may refuse to dissolve Parliament.

(5) The President shall dissolve Parliament—

- (a) if the House of Representatives passes a resolution that it has no confidence in the Government of the Federation and within the period of three

days beginning with the day on which the resolution is passed the Prime Minister does not resign or recommend a dissolution or does recommend a dissolution;

(b) if the office of Prime Minister is vacant and the President considers that there is no prospect of his being able, within a reasonable time, to appoint to that office a person who can command the support of the majority of the members of the House of Representatives.

Part 4.—Legislative powers

Powers of Parliament to make laws.

69: (1) Parliament shall have power to make laws—

(a) for the peace, order and good government of Nigeria (other than the Federal territory) or any part thereof with respect to any matter included in the Legislative Lists; and

(b) for the peace, order and good government of the Federal territory with respect to any matter, whether or not it is included in the Legislative Lists.

(2) The power of Parliament to make laws for the peace, order and good government of the Regions with respect to any matter included in the Exclusive Legislative List shall (save as provided in section 78 of this Constitution) be to the exclusion of the legislatures of the Regions:

Provided that nothing in this subsection shall preclude the legislature of a Region from making provision for grants or loans from or the imposition of charges upon any of the public funds of that Region or the imposition of charges upon the revenues and assets of that Region for any purpose notwithstanding that it relates to a matter included in the Exclusive Legislative List.

(3) In addition and without prejudice to the powers conferred by subsection (1) of this section, Parliament shall have the powers to make laws conferred by sections 5, 70 to 74, 80 to 83 and 126 of this Constitution (which relate to matters not included in the Legislative Lists).

(4) If any law enacted by the legislature of a Region is inconsistent with any law validly made by Parliament, the law made by Parliament shall prevail and the Regional law shall, to the extent of the inconsistency, be void.

(5) Subject to the provisions of subsection (4) of this section, nothing in this section shall preclude the legislature of a Region from making laws with respect to any matter that is not included in the Exclusive Legislative List.

Special powers of Parliament in relation to emergencies.

70: (1) Parliament may at any time make such laws for Nigeria or any part thereof with respect to matters not included in the Legislative Lists as may appear to Parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government during any period of emergency.

(2) Any provision of law enacted in pursuance of this section shall have effect only during a period of emergency:

Provided that the termination of a period of emergency shall not affect the operation of such a provision of law during that period, the validity of any action taken thereunder during that period, any penalty or punishment incurred in respect of any contravention thereof or failure to comply therewith during that period or any proceeding or remedy in respect of any such penalty or punishment.

(3) In this section "period of emergency" means any period during which—

(a) the Federation is at war;

(b) there is in force a resolution passed by each House of Parliament declaring that a state of public emergency exists; or

(c) there is in force a resolution of each House of Parliament supported by the votes of not less than two-thirds of all the members of the House declaring that democratic institutions in Nigeria are threatened by subversion.

(4) A resolution passed by a House of Parliament for the purposes of this section shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be revoked at any time or may be extended from time to time for a further period not exceeding twelve months by resolution passed in like manner.

Special powers of Parliament when s. 86 of this Constitution has been contravened.

71: (1) During any period in which there is in force a resolution of each House of Parliament supported by the votes of not less than two-thirds of all the members of that House declaring that the executive authority of a Region is being exercised in contravention of section 86 of this Constitution, Parliament may make laws for that Region with respect to matters not included in the Legislative Lists to such extent as may appear to Parliament to be necessary for securing compliance with the provisions of that section.

(2) A resolution passed by a House of Parliament for the purposes of this section shall remain in force for twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be revoked at any time or may be extended from time to time for a further period not exceeding twelve months by resolution passed in like manner.

(3) Upon the expiration of any period during which there were in force resolutions of both Houses of Parliament passed for the purposes of this section, any provision of law enacted in pursuance of this section shall cease to have effect:

Provided that the termination of any such period shall not affect the operation of such a provision of law during that period, the validity of any action taken thereunder during that period, any penalty or punishment incurred in respect of any contravention thereof or failure to comply therewith during that period or any proceeding or remedy in respect of any such penalty or punishment.

Powers of Parliament conferred by Regional law.

72: (1) Parliament may at any time when there is in force a law enacted by the legislature of a Region conferring authority upon Parliament to do so make laws for that Region with respect to a matter not included in the Legislative Lists.

(2) If any law enacted by the legislature of a Region conferring authority upon Parliament for the purposes of this section ceases to have effect, then any provision of law enacted by Parliament, to the extent to which it was enacted in pursuance of that authority, shall thereafter have effect as if it had been enacted by the legislature of that Region and may be amended or repealed accordingly.

Powers to make grants of money, etc., for any purpose.

73: Parliament may make provision for grants and loans from and the imposition of charges upon the Consolidated Revenue Fund or any other public fund of the Federation or for the imposition of charges upon the revenues and assets of the Federation for any purpose, notwithstanding that it relates to a matter not included in the Legislative Lists.

Implementation of treaties, etc.

74: Parliament may make laws for Nigeria or any part thereof with respect to matters not included in the Legislative Lists for the purpose of implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member:

Provided that any provision of law enacted in pursuance of this section shall not come into operation in a Region unless the Governor of that Region has consented to its having effect.

Titles of honour, etc.

75: (1) Subject to provisions of this section, Parliament may make laws for Nigeria or any part thereof with respect to titles of honour, decorations and other dignities.

(2) Any such law providing for the award of a title, decoration or other dignity shall confer the power to make the award upon the President; and in the exercise of any such power the President shall act in accordance with the advice—

- (a) in the case of an award in respect of services to a Region, of the Premier of the Region;
- (b) in any other case, of the Prime Minister.

(3) The powers conferred on Parliament by subsection (1) of this section shall not extend to the dignity of a chief.

(4) Except with the prior consent of the President—

- (a) a person who is a citizen of Nigeria; and
- (b) any other person who is a member of the public service of the Federation or a Region or the armed forces of the Federation,

shall not accept a title of honour, decoration or other dignity (other than a distinction conferred by, or attaching to an award or appointment made by, an educational, professional or scientific body) from an authority of a country other than Nigeria.

Income tax and estate duty.

76: (1) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the income and profits of companies.

(2) Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of—

(a) implementing any treaty convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member with respect to taxes on income and profits;

(b) securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;

(c) securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for purposes or assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes;

(d) regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the laws of more than one territory;

(e) providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a Region, for the exemption from liability to tax in respect of all or part of the income or profits of any person or class of persons;

(f) obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities; and

(g) providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a Region, for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge such other functions relating to the taxation of income and profits as may be conferred upon them in pursuance of any such agreement.

(3) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the estates of deceased persons and the succession to their property for the purpose of ensuring that any estate or part thereof does not bear tax under the laws of more than one territory.

(4) The powers conferred upon Parliament by subsections (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs.

(5) Nothing in subsections (2) and (3) of this section shall preclude the legislature of a Region from making laws with respect to the matters referred to in those subsections.

(6) In this section references to the income and profits of companies are references to the income and profits of any company or other corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere but do not include references—

(a) to the income and profits of any body corporate established by or under the Native Authority Law, 1954, of Northern Nigeria, the Eastern Nigeria Local Government Law, 1960, of Eastern Nigeria, or the Western Region Local Government Law, 1952, or the Local Government Law of Western Nigeria, as amended, or any law replacing any of those laws;

(b) to the income and profits of any purchasing authority established by the legislature of a Region and empowered to acquire any commodity in that Region for export from Nigeria derived from the purchase and sale (whether for purposes of export or otherwise) of that commodity; or

(c) to the income or profits of any corporation established by the legislature of a Region for the purpose of fostering the economic development of that Region, not being income or profits derived from a trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority.

Trade and commerce.

77: (1) Parliament may make laws for Nigeria or any part thereof with respect to trade and commerce between Nigeria and other countries and trade and commerce among the territories, including (without prejudice to the generality of the foregoing power) the export of commodities from Nigeria, the import of commodities into Nigeria, the establishment and enforcement of grades and standards of quality for commodities to be exported from Nigeria and the preservation of freedom of trade and commerce among the territories.

(2) For the purposes of this section Parliament may—

(a) confer on any person or authority exclusive power to acquire from a purchasing authority established for a Region by the legislature of that Region any commodity for export from Nigeria, to export any commodity from Nigeria or to sell any commodity outside Nigeria;

(b) make provision for the inspection of commodities to be exported from Nigeria at the port of shipment from Nigeria and for the enforcement of grades and standards of quality in respect of commodities so inspected.

(3) The powers conferred upon Parliament by this section shall not include powers—

(a) to establish a purchasing authority for a Region;

(b) to confer on any person or authority power to acquire in a Region any commodity for export from Nigeria from any person or authority in that Region other than a purchasing authority established for that Region by the legislature of a Region;

(c) to regulate the prices to be paid by a purchasing authority established by the legislature of a Region for commodities for export;

(d) to regulate or prohibit in a Region any processing of a commodity to be exported or any dealing with such a commodity other than its export from Nigeria; or

(e) to make provision for the enforcement in a Region of any grades or standards of quality for commodities to be exported from Nigeria that may be established by Parliament.

(4) Nothing in this section shall be construed as precluding the legislature of a Region—

(a) from making provision for any of the matters referred to in subsection (3) of this section; or

(b) from conferring upon any purchasing authority of the Region power to acquire any commodity in the Region for purposes other than export from Nigeria.

(5) In this section "purchasing authority" means, in relation to a Region, any person or authority empowered to purchase commodities for export in that Region.

Banks and banking.

78: (1) Parliament may make laws for Nigeria or any part thereof with respect to banks and banking.

(2) Nothing in this section shall preclude the legislature of a Region from establishing an authority for the purpose of carrying on (subject to and in compliance with any Act of Parliament for the time being in force and in particular any Act relating to banks and banking) the business of banking in Nigeria or elsewhere or from making such provision for the constitution of that authority and regulating the performance by that authority of its functions as is consistent with any Act of Parliament.

Electricity and gas.

79: (1) Parliament may make laws for Nigeria or any part thereof with respect to electricity or gas:

Provided that nothing in this subsection shall preclude the legislature of a Region from making laws for that Region with respect to those matters.

(2) The powers conferred on Parliament by this section shall not include powers—

(a) to prohibit or restrict the establishment by or on behalf of the Government of a Region of an agency for the manufacture, distribution or supply of electricity or gas in that Region; or

(b) to regulate the production, distribution or supply of electricity or gas by Government of a Region or any such agency.

(3) In this section "gas" does not include natural gas.

Authorities empowered to administer trusts and estates.

80: Parliament may make laws for Nigeria or any part thereof establishing and regulating authorities for the Federation with power—

(a) to administer trusts; or

(b) to apply for grants of representation in respect of the estates of deceased persons and to administer such estates:

Provided that nothing in this section shall preclude the legislature of a Region from making provision for similar authorities for that Region.

Exhibition of cinematograph films.

81: Parliament may make laws for Nigeria or any part thereof establishing and regulating authorities for the Federation with power to carry out censorship of cinematograph films and to prohibit or restrict the exhibition of such films:

Provided that nothing in this section shall preclude the legislature of a Region from making provision for similar authorities for that Region.

Exemption from Regional taxes with respect to mining.

82: Parliament may, for the purpose of implementing any agreement between the Government of the Federation and any person relating to mining or matters connected therewith, provide for exempting that person in whole or in part from liability for any tax or rate imposed by or under a law enacted by the legislature of a Region with respect to any matter not included in the Legislative Lists:

Provided that no person shall be granted any exemption in pursuance of this section without prior consultation between the Government of the Federation and the Government of the Region concerned.

Evidence

83: Parliament may make laws for Nigeria or any part thereof with respect to evidence in regard to matters not included in the Legislative Lists:

Provided that an Act of Parliament enacted in pursuance of this section shall have effect in relation to any Region only to the extent that provision in that behalf is not made by the legislature of that Region.

CHAPTER VI

Executive Powers*Exercise of executive authority of Federation.*

84: (1) The executive authority of the Federation shall be vested in the President and, subject to the provisions of this Constitution, may be exercised by him either directly or through officers subordinate to him.

(2) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

Extent of executive authority of Federation.

85: The executive authority of the Federation shall extend to the execution and maintenance of this Constitution and to all matters with respect to which Parliament has for the time being power to make laws.

Executive authority of Region.

86: The executive authority of a Region shall extend to the execution and maintenance of the constitution of the Region and to all matters with respect to which the legislature of the Region has for the time being power to make laws but shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation or to endanger the continuance of federal government in Nigeria.

Ministers of Government of Federation.

87: (1) There shall be a Prime Minister of the Federation, who shall be appointed by the President.

(2) Whenever the President has occasion to appoint a Prime Minister he shall appoint a member of the House of Representatives who appears to him likely to command the support of the majority of the members of the House.

(3) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government of the Federation as may be established by this Constitution or by Parliament or, subject to the provisions of any Act of Parliament, by the President, acting in accordance with the advice of the Prime Minister.

(4) Appointments to the office of Minister of the Government of the Federation other than the office of Prime Minister shall be made by the President, acting in accordance with the advice of the Prime Minister.

(5) A person shall not hold office at the same time both as a Minister of the Government of the Federation and as a Minister of the Government of a Region.

(6) A person who holds office as a Minister of the Government of the Federation for any period of four consecutive months without also being a Senator or a member of the House of Representatives shall cease to be a Minister at the expiration of that period or, if that period expires at a time when Parliament is dissolved and he does not in the meantime become a Senator or a member of the House of Representatives, at the date on which Parliament first meets after that dissolution.

(7) A person who holds office as a Minister of the Government of the Federation and who is at no time while holding that office also a Senator or a member of the House of Representatives shall not be qualified for reappointment as such a Minister before Parliament is next dissolved after he ceases to hold that office, unless in the meantime he has become a Senator or a member of the House of Representatives.

(8) The office of Prime Minister shall become vacant—

(a) when, after any dissolution of the House of Representatives, the Prime Minister is informed by the President that the President is about to re-appoint him as Prime Minister or to appoint another person as Prime Minister; or

(b) if he ceases to be a member of the House of Representatives otherwise than by reason of a dissolution of Parliament.

(9) The office of a Minister of the Government of the Federation other than the Prime Minister shall become vacant if the office of Prime Minister becomes vacant.

(10) Subject to the provisions of subsection (9) of this section, the Ministers of the Government of the Federation, other than the Prime Minister, shall hold office during the President's pleasure; but the President shall not remove such a Minister from office except in accordance with the advice of the Prime Minister.

(11) If on any occasion the office of Prime Minister becomes vacant at a time when Parliament is dissolved, then—

(a) subsections (2) and (9) of this section and paragraph (b) of subsection (2) of section 95 of this Constitution shall not apply as respects that occasion; and

(b) the President shall appoint a member of the Council of Ministers as the Prime Minister;

and if a dissolution of Parliament takes place at a time when the office of Prime Minister is vacant, the President shall, without regard to the provisions of subsection (2) of this section, appoint as Prime Minister a person who was a member of the Council of Ministers immediately before the vacancy occurred.

Attorney-General of Federation.

88: (1) There shall be an Attorney-General of the Federation who shall be a Minister the Government of the Federation.

(2) Subject to the provisions of section 49 of this Constitution, the Attorney-General of the Federation shall be a member of the House of Representatives by virtue of this subsection if he is not a Senator and is not such a member apart from this subsection.

(3) If the person holding that office is for any reason unable to perform the functions conferred upon him by this Constitution or any other law, those functions (other than functions as a member of the House of Representatives) may be performed by such other person, whether or not that person is a Minister, as may from time to time be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

(4) A person shall not be qualified to hold or perform the functions of the office of Attorney-General of the Federation unless he is qualified for admission as an advocate in Nigeria and has been so qualified for not less than ten years.

Establishment of Council of Ministers.

89: (1) There shall be a Council of Ministers for the Federation, whose function shall be to advise the President in the government of the Federation and which shall consist of the Prime Minister and such other persons, being Ministers of the Government of the Federation, as the President, acting in accordance with the advice of the Prime Minister, may from time to time appoint.

(2) A person appointed as a member of the Council of Ministers shall vacate his seat in the Council if he ceases to be a Minister of the Government of the Federation or if the President, acting in accordance with the advice of the Prime Minister, so directs.

Collective responsibility.

90: (1) The Council of Ministers shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Council and for all things done by or under the authority of any Minister of the Government of the Federation in the execution of his office.

(2) The provisions of this section shall not apply in relation to—

- (a) the appointment and removal from office of Ministers of the Government of the Federation, members of the Council of Ministers and Parliamentary Secretaries to Ministers, the assignment of portfolios to Ministers or the authorization of another member of the Council of Ministers to perform the functions of the Prime Minister in pursuance of section 92 of this Constitution;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 101 of this Constitution; or
- (d) the exercise of the powers conferred on the Attorney-General of the Federation by section 104 of this Constitution.

Allocation of portfolios to Ministers.

91: The President, acting in accordance with the advice of the Prime Minister, may assign to the Prime Minister or any other Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government.

Performance of functions of Prime Minister during absence, etc.

92: (1) Whenever the Prime Minister is absent from Nigeria or is for any other reason unable to perform the functions conferred upon him by this Constitution, the President may authorize some other member of the Council of Ministers of the Federation to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his authority is revoked by the President.

(2) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the President considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.

Exercise of President's powers.

93: (1) Subject to subsection (2) of this section, in the exercise of his functions under this Constitution or any other law the President shall act in accordance with the advice of the Council of Ministers or a Minister of the Government of the Federation acting under the general authority of the Council of Ministers except in cases where by this Constitution or the constitution of a Region he is required to act in accordance with the advice of any person or authority other than the Council of Ministers:

Provided that the President shall act in accordance with his own deliberate judgment in the performance of the following function—

- (a) in the exercise of the power to refuse to dissolve Parliament conferred upon him by subsection (4) of section 68 of this Constitution;
- (b) in the exercise of the powers to appoint the Prime Minister conferred upon him by subsections (2) and (11) of section 87 of this Constitution and of the power conferred upon him by subsection (8) of that section to inform the Prime Minister of his re-appointment or replacement;

(c) in the exercise of the powers conferred upon him by section 92 of this Constitution in the circumstances described in the proviso to subsection (2) of that section; and

(d) in signifying his approval for the purposes of section 147 of this Constitution of an appointment to an office on his personal staff.

(2) Nothing in subsection (1) of this section shall apply to functions conferred upon the President by any of the following provisions of this Constitution, that is to say, subsection (5) of section 68, section 94, subsection (2) of section 113, subsection (2) of section 124, and subsection (3) of section 150.

(3) Where by this Constitution the President is required to act in accordance with the advice of any person or authority, the question whether he has in any case received, or acted in accordance with, such advice shall not be enquired into in any court of law.

President to be informed concerning matters of government.

94: The Prime Minister shall keep the President fully informed concerning the general conduct of the government of the Federation and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of the Federation.

Parliamentary secretaries.

95: (1) The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the Senators and the members of the House of Representatives to assist Ministers of the Government of the Federation in the performance of their duties.

(2) The office of a Parliamentary Secretary shall become vacant—

(a) if he ceases to be a member of one or other House of Parliament otherwise than by reason of a dissolution of Parliament;

(b) if the office of Prime Minister becomes vacant; or

(c) if the President, acting in accordance with the advice of the Prime Minister, so directs.

Oaths to be taken by Ministers, etc.

96: A member of the Council of Ministers, Minister of the Government of the Federation or Parliamentary Secretary to such a Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

Permanent secretaries.

97: Where any Minister of the Government of the Federation has been charged with responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a permanent secretary, whose office shall be an office in the public service of the Federation:

Provided that two or more government departments may be placed under the supervision of one permanent secretary.

Constitution of offices for Federation, etc.

98: Subject to the provisions of this Constitution and of any Act of Parliament, the President may constitute offices for the Federation, make appointments to any such office and terminate any such appointment.

Delegation of executive authority of Federation.

99: (1) The President may, with the consent of the Governor of a Region, entrust either conditionally or unconditionally to the Governor or to any officer or authority of that Region functions in relation to any matter to which the executive authority of the Federation extends falling to be performed within that Region:

Provided that the consent of the Governor shall not be required during any such period as is referred to in section 70 or 71 of this Constitution.

(2) An Act of Parliament may include provision conferring powers or imposing duties, or authorizing the conferring of powers or the imposition of duties, upon the Governor of a Region or any officer or authority of a Region:

Provided that, save during any such period as is referred to in section 70 or 71 of this Constitution, no provision made in pursuance of this section shall have effect in relation to any Region unless the Governor has consented to its having effect.

Delegation of executive authority of Region.

100: (1) The Governor of a Region may, with the consent of the President entrust either conditionally or unconditionally to the President or to any officer or authority of the Federation functions in relation to any matter to which the executive authority of the Region extends.

(2) A law enacted by the legislature of a Region may include provision conferring powers or imposing duties, or authorizing the conferring of powers or the imposition of duties, upon the President or any officer or authority of the Federation:

Provided that no provision made in pursuance of this subsection shall have effect unless the President has consented to its having effect.

Prerogative of mercy.

101: (1) The President, may—

(a) grant to any person concerned in or convicted of any offence created by or under an Act of Parliament a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or

(d) remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.

(2) Subject to the provisions of subsection (3) of this section, the powers of the President under subsection (1) of this section shall be exercised by him in

accordance with the advice of such member of the Council of Ministers as may from time to time be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

(3) In relation to persons concerned in offences against naval military or air-force law or convicted or sentenced by courts-martial, the President, acting in accordance with the advice of the Prime Minister, may designate a member of the Council of Ministers other than the member designated for the purposes of subsection (2) of this section and at any time when there is another member so designated the powers of the President under subsection (1) of this section shall, in relation to such persons, be exercised in accordance with the advice of that other member.

(4) The provisions of this section shall apply—

(a) in relation to any offence created by or under any law in force in the Federal territory, not being an offence created by or under an Act of Parliament; and

(b) in relation to any offence created by or under any law in force in a Region relating to any matter include in the Exclusive Legislative List or the Concurrent Legislative List, not being an offence created by or under an Act of Parliament or a law made by the Legislature of that Region, as they apply in relation to an offence created by or under an Act of Parliament.

Establishment of Advisory Council on Prerogative of Mercy.

102: (1) There shall be for the Federation an Advisory Council on the Prerogative of Mercy, which shall consist of—

(a) such member of the Council of Ministers of the Federation as may for the time being be designated under subsection (2) of section 101 of this Constitution, who shall be chairman;

(b) where the chairman is a Minister other than the Attorney-General of the Federation, the Attorney-General; and

(c) not less than five nor more than seven other members, who shall be appointed by the President, acting in accordance with the advice of the Prime Minister, of whom at least one shall be a person who is a qualified medical practitioner.

(2) A person shall not be qualified for appointment by the President as a member of the Advisory Council if he is a member of either House of Parliament, a member of a legislative house of a Region, a Minister of the Government of the Federation or a Minister of the Government of a Region.

(3) A member of the Advisory Council appointed by the President shall hold office for three years:

Provided that his seat on the Council shall become vacant—

(a) if any circumstance arises that, if he were not a member of the Council, would cause him to be disqualified for appointment as such a member; or

(b) if he is removed from office by the President, acting in accordance with the advice of the Prime Minister, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

Functions of Advisory Council.

103: (1) Where any person has been sentenced to death by any court of law in Nigeria other than a court-martial for any offence created by or under an Act of Parliament, the member of the Council of Ministers designated under subsection (2) of section 101 of this Constitution shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the member may require, to be taken into consideration at a meeting of the Advisory Council; and after obtaining the advice of the Council the member shall decide in his own deliberate judgment whether to recommend to the President that he should exercise any of his powers under that section in relation to that person.

(2) The member of the Council of Ministers designated under subsection (2) of section 101 of this Constitution may consult the Advisory Council before making any recommendation to the President under that subsection in any case not falling within subsection (1) of this section, but shall not be obliged to act in accordance with the advice of the Advisory Council.

(3) The Advisory Council may regulate its own procedure.

Public prosecutions.

104: (1) There shall be a Director of Public Prosecutions for the Federation, whose office shall be an office in the public service of the Federation and, without prejudice to the provisions of this Constitution relating to the Public Service Commission of the Federation, an office in the department of government for which responsibility is assigned to the Attorney-General of the Federation.

(2) The Attorney-General of the Federation shall have power in any case in which he considers it desirable so to do—

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial in respect of any offence created by or under any Act of Parliament;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Attorney-General of the Federation under subsection (2) of this section may be exercised by the Attorney-General in person and through the Director of Public Prosecutions of the Federation, acting under and in accordance with the general or special instructions of the Attorney-General, and through other officers of the department mentioned in subsection (1) of this section, acting under and in accordance with such instructions.

(4) The Attorney-General of the Federation may confer a general or special authority upon the Attorney-General of a Region to exercise, subject to such conditions and exceptions as he may think fit, any of the powers conferred upon him by

subsection (2) of this section in relation to prosecutions in that Region and may vary or revoke any such authority.

(5) The powers conferred upon the Attorney-General of the Federation by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(6) In the exercise of the powers conferred upon the Attorney-General of the Federation by this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

(7) For the purposes of this section any appeal from any determination in any criminal proceedings before any court of law or any case stated or question of law reserved for the purposes of any such proceedings to any other court shall be deemed to be part of those proceedings.

(8) The provisions of this section shall apply—

(a) in relation to any offence created by or under any law in force in the Federal territory, not being an offence created by or under an Act of Parliament; and

(b) in relation to any offence created by or under any law in force in a Region relating to any matter included in the Exclusive Legislative List or the Concurrent Legislative List, not being an offence created by or under an Act of Parliament or a law made by the Legislature of that Region, as they apply in relation to an offence created by or under an Act of Parliament.

CHAPTER VII

Police

Establishment of Nigeria Police Force.

105: (1) There shall be a police force for Nigeria, which shall be styled the Nigeria Police Force.

(2) Subject to the provisions of this Constitution, the Nigeria Police Force shall be organized and administered in accordance with such provision as may be made in that behalf by Parliament.

(3) Subject to the provisions of this Constitution, the members of the Nigeria Police Force shall have such powers and duties as may be conferred upon them by any law in force in Nigeria.

(4) Subject to the provisions of this section, no police forces other than the Nigeria Police Force shall be established for Nigeria or any part thereof.

(5) Parliament may make provision for police forces forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and airfields.

(6) Parliament may make provision for the maintenance by any local authority within the Federal territory of a police force for employment within the Federal territory.

(7) Nothing in this section shall prevent the legislature of a Region from making provision for the maintenance by any native authority or local government authority established for a province or any part of a province of a police force for employment within that province.

In this subsection "province" means any area that was a province on the thirtieth day of September, 1954.

Control of Nigeria Police Force.

106: (1) There shall be an Inspector-General of the Nigeria Police and a Commissioner of Police for each Region, whose offices shall be offices in the public service of the Federation.

(2) The Nigeria Police Force shall be under the command of the Inspector-General of the Nigeria Police and any contingents of the Nigeria Police Force stationed in a Region shall, subject to the authority of the Inspector-General of the Nigeria Police, be under the command of the Commissioner of Police of that Region.

(3) The Prime Minister or such other Minister of the Government of the Federation as may be authorized in that behalf by the Prime Minister may give to the Inspector-General of the Nigeria Police such directions with respect to the maintaining and securing of public safety and public order as he may consider necessary and the Inspector-General shall comply with those directions or cause them to be complied with.

(4) Subject to the provisions of subsection (3) of this section, the Commissioner of Police of a Region shall comply with the directions of the Premier of the Region or such other Minister of the Government of the Region as may be authorized in that behalf by the Premier with respect to the maintaining and securing of public safety and public order within the Region or cause them to be complied with:

Provided that before carrying out any such directions the Commissioner may request that the matter should be referred to the Prime Minister or such other Minister of the Government of the Federation as may be authorized in that behalf by the Prime Minister for his directions.

(5) The question whether any, and if so what, directions have been given under subsection (3) of this section shall not be enquired into in any court.

Establishment of Nigeria Police Council.

- 107:** (1) There shall be a Nigeria Police Council, which shall consist of—
- (a) such Minister of the Government of the Federation, who shall be chairman, as may for the time being be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister;
 - (b) such Minister of the Government of each Region as may for the time being be designated in that behalf by the Governor of that Region; and
 - (c) the chairman of the Police Service Commission of the Federation.

(2) The Inspector-General of the Nigeria Police or such other officer of the Nigeria Police Force as he may designate shall attend the meetings of the Nigeria Police Council and, save for the purpose of voting, may take part in the proceedings of the Council.

Functions of Nigeria Police Council.

108: (1) The organization and administration of the Nigeria Police Force and all other matters relating thereto (not being matters relating to the use and operational control of the force or the appointment, disciplinary control and dismissal of members of the force) shall be under the general supervision of the Nigeria Police Council.

(2) The Prime Minister shall cause the Nigeria Police Council to be kept fully informed concerning the matters under its supervision and shall cause the Council to be furnished with such information as the Council may require with respect to any particular matter under its supervision.

(3) The Nigeria Police Council may make recommendations to the Government of the Federation with respect to any matter under its supervision, and if in any case the Government acts otherwise than in accordance with any such recommendation it shall cause a statement containing that recommendation and its reasons for acting otherwise than in accordance with that recommendation to be laid before both Houses of Parliament.

Establishment of Police Service Commission.

109: (1) There shall be a Police Service Commission for the Federation, which shall consist of a chairman and not less than two nor more than four other members.

(2) The members of the Police Service Commission of the Federation shall be appointed by the President, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified to hold office as a member of the Police Service Commission of the Federation if he is a member of either House of Parliament, a member of a legislative house of a Region, a Minister of the Government of the Federation, a Minister of the Government of a Region or a member of the public service of the Federation or the public service of a Region:

Provided that a judge of the High Court of a territory may be appointed as a member of the Commission.

(4) Subject to the provisions of this section, a member of the Police Service Commission of the Federation shall vacate his office—

- (a) at the expiration of five years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such a member.

(5) A member of the Police Service Commission of the Federation may be removed from office by the President acting in accordance with the advice of the Prime Minister, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(6) A member of the Police Service Commission of the Federation shall not be removed from office except in accordance with the provisions of this section.

Appointments to Nigeria Police Force, etc.

110: (1) Power to appoint persons to hold or act in offices in the Nigeria Police Force (including power to make appointments on promotion and transfer and to confirm appointments) and to dismiss and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission of the Federation:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any of its members or to the Inspector-General of the Nigeria Police or any other member of the Nigeria Police Force.

(2) Before making any appointment to the office of Inspector-General of the Nigeria Police or removing the Inspector-General from office the Police Service Commission of the Federation shall consult the Prime Minister, and before making any appointment to the office of Commissioner of Police of a Region or removing the Commissioner from office the Commission shall consult the Premier of that Region.

CHAPTER VIII

Courts

Part 1.—The Supreme Court of Nigeria

Establishment of Supreme Court.

111: (1) There shall be a Supreme Court of Nigeria.

(2) The judges of the Supreme Court shall be—

- (a) the Chief Justice of Nigeria; and
- (b) such number of Justices of the Supreme Court (not being less than five) as may be prescribed by Parliament.

(3) The Supreme Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4) The Supreme Court shall sit in the Federal territory and in such other places in Nigeria as the Chief Justice of Nigeria may appoint.

Appointment of judges of Supreme Court.

112: (1) The Chief Justice of Nigeria and the Justices of the Supreme Court shall be appointed by the President, acting in accordance with the advice of the Prime Minister, so however that four of the Justices of the Supreme Court shall be appointed by the President acting on the advice, as respects each of those Justices severally, of the Premier of a different Region.

(2) A person shall not be qualified to hold the office of Chief Justice of Nigeria or a Justice of the Supreme Court unless—

(a) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(b) he is qualified for admission as an advocate in Nigeria and he has been so qualified for not less than ten years:

Provided that in computing the period during which any person has been qualified for admission as an advocate any period during which he has held office as a judge or magistrate after becoming so qualified shall be included.

(3) If the office of Chief Justice of Nigeria is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding the office has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of the Supreme Court as may from time to time be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

(4) If the office of any Justice of the Supreme Court is vacant or if the person holding the office is acting as Chief Justice of Nigeria or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person qualified to hold the office of a Justice of the Supreme Court to act in the office of a Justice of the Supreme Court, and any person so appointed shall continue to act for the period of the appointment or if no period is specified until his appointment is revoked by the President, acting in accordance with the advice of the Prime Minister:

Provided that a person may act as a Justice of the Supreme Court notwithstanding that he has attained the age prescribed for the purposes of subsection (1) of section 113 of this Constitution.

Tenure of office of judges of Supreme Court.

113: (1) Subject to the provisions of this section, a person holding or appointed to act in the office of Chief Justice of Nigeria or a Justice of the Supreme Court shall vacate that office when he attains such age as may be prescribed by Parliament:

Provided that the President, acting in accordance with the advice of the Prime Minister, may permit a judge to continue in his office or appointment for such period

after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A person holding or appointed to act in the office of Chief Justice of Nigeria or a Justice of the Supreme Court shall be removed from his office or appointment by the President if—

(a) there are presented to the President addresses from both Houses of Parliament praying that that person be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of mind or body or any other cause) or for misbehaviour; and

(b) the address from each House bears a certificate which is signed by the person who presided at the meeting of that House at which the motion for the address was passed and which states that not less than two-thirds of all the members of that House voted in favour of the motion;

and, except on the revocation in pursuance of section 112 of this Constitution of an appointment to act as aforesaid, a person holding or appointed to act in such an office shall not be removed from his office or appointment in any other circumstances.

Original jurisdiction of Supreme Court.

114: (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a Region or between Regions if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of Parliament:

Provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.

(3) Provision may be made by Act of Parliament for securing that, during any period of emergency within the meaning of section 70 of this Constitution, the jurisdiction exercisable by the High Court by virtue of section 32 of this Constitution shall be exercisable, either generally or in relation to particular matters, by the Supreme Court to the exclusion of the court aforesaid; and references in subsection (3) of the said section 32 to the High Courts of the territories shall be construed accordingly.

(4) An Act of Parliament passed in pursuance of subsection (3) of this section shall not be treated for the purposes of the proviso to subsection (1) of section 4 of this Constitution as altering the said section 32.

Questions as to interpretation of this Constitution.

115: (1) Where any question as to the interpretation of this Constitution or the constitution of a Region arises in any proceedings in any court of law in any part of Nigeria (other than the Supreme Court, the High Court of a territory or a

court-martial) and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the High Court having jurisdiction in that part of Nigeria; and the High Court shall—

(a) if it is of opinion that the question involves a substantial question of law, refer the question to the Supreme Court; or

(b) if it is of opinion that the question does not involve a substantial question of law, remit the question to the court that made the reference to be disposed of in accordance with such directions as the High Court may think fit to give.

(2) Where any question as to the interpretation of this Constitution or the constitution of a Region arises in any proceedings in the High Court of a territory and the court is of opinion that the question involves a substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(3) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

Advisory jurisdiction of Supreme Court.

116: Parliament may confer jurisdiction upon the Supreme Court—

(a) to consider and advise upon any question upon which the President desires the assistance of the court for the purpose of deciding whether or not any of the powers vested in him by section 101 of this Constitution should be exercised; or

(b) to consider and advise upon any question upon which the Governor of a Region desires the assistance of the court for the purpose of deciding whether or not any of the powers vested in him by the constitution of that Region with respect to the exercise of the prerogative of mercy should be exercised.

Appeals to Supreme Court from High Courts.

117: (1) The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the High Court of a territory.

(2) An appeal shall lie from decisions of the High Court of a territory to the Supreme Court as of right in the following cases—

(a) final decisions in any civil proceedings before the High Court sitting at first instance;

(b) where the ground of appeal involves questions of law alone, decisions in any criminal proceedings before the High Court sitting at first instance;

(c) decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution or the constitution of a Region;

(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter III of this Constitution has been contravened in relation to any person;

(e) decisions in any criminal proceedings in which any person has been sentenced to death by the High Court or in which the High Court has affirmed a sentence of death imposed by some other court; and

(f) such other cases as may be prescribed by any law in force in the territory: Provided that nothing in paragraph (a) of this subsection shall confer any right of appeal—

(i) from any order made *ex parte*;

(ii) from any order relating only to costs;

(iii) from any order made with the consent of the parties; or

(iv) in the case of a party to proceedings for dissolution or nullity of marriage who, having had time and opportunity to appeal from any decree nisi in such proceedings, has not so appealed, from any decree absolute founded upon such a decree nisi.

(3) An appeal shall lie from decisions of the High Court of a territory to the Supreme Court as of right in the following cases—

(a) decisions on any such question as is referred to in section 53 of this Constitution; or

(b) decisions on any question whether any person has been validly selected or elected as a member of a legislative house of a Region or the seat in a legislative house of a Region of any member of that house has become vacant.

(4) Subject to the provisions of subsection (2) and (3) of this section, an appeal shall lie from decisions of the High Court of a territory to the Supreme Court with the leave of the High Court or the Supreme Court in the following cases—

(a) where the ground of appeal involves questions of fact, mixed law and fact or quantum of sentence, decisions in any criminal proceedings before the High Court sitting at first instance;

(b) any case in which, but for the terms of the proviso to subsection (2) of this section, an appeal would lie as of right to the Supreme Court by virtue of paragraph (a) of that subsection;

(c) decisions in any civil or criminal proceedings in which an appeal has been brought to the High Court from some other court; and

(d) such other cases as may be prescribed by any law in force in the territory.

(5) The Supreme Court may dispose of any application for leave to appeal from any decision of the High Court of a territory in respect of any civil or criminal proceedings in which an appeal has been brought to the High Court from some other court of the territory upon consideration of the record of the proceedings if the Supreme Court is of opinion that the interests of justice do not require an oral hearing of the application.

(6) Any right of appeal to the Supreme Court from the decisions of the High Court of a territory conferred by this section—

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto or, with the leave of the High Court or the Supreme Court at the instance of any other person having an interest in the matter and in the case of criminal proceedings at the instance of an accused person or, subject to the

provisions of section 104 of this Constitution and any powers conferred by the constitution of a Region to take over and continue or to discontinue such proceedings, at the instance of such other persons or authorities as may be prescribed by any law in force in the territory; and

(b) shall be exercised in accordance with any Acts of Parliament and rules of court for the time being in force in the territory regulating the powers, practice and procedure of the Supreme Court.

(7) In this section "decision" means, in relation to the High Court of a territory, any determination of that High Court and includes without prejudice to the generality of the foregoing provisions of this subsection, a judgment, decree, order, conviction, sentence (other than a sentence fixed by law) or recommendation.

Appeals to Supreme Court from certain other tribunals.

118: Parliament may confer jurisdiction upon the Supreme Court to hear and determine appeals from any decision of any court of law or tribunal established by Parliament.

Appeals to Supreme Court from Sharia Court of Appeal and Court of Resolution.

119: (1) An appeal shall lie from decisions of the Sharia Court of Appeal to the Supreme Court as of right in the following cases—

(a) decisions on questions as to the interpretation of this Constitution or the constitution of a Region;

(b) decisions on questions as to whether any of the provisions of Chapter III of this Constitution has been contravened in relation to any person; and

(c) such other cases as may be prescribed by any law in force in Northern Nigeria:

Provided that nothing in paragraph (a) or (b) of this subsection (in so far as it applies to civil proceedings) shall confer any right of appeal with respect to any question relating to the respective jurisdiction of the High Court of Northern Nigeria and the Sharia Court of Appeal that the Court of Resolution is competent to determine.

(2) Subject to the provisions of subsection (1) of this section, an appeal shall lie from decisions of the Sharia Court of Appeal or the Court of Resolution to the Supreme Court with the leave of the Supreme Court in such cases as may be prescribed by any law in force in Northern Nigeria.

(3) Any right of appeal to the Supreme Court from the decisions of the Sharia Court of Appeal conferred by this section—

(a) shall be exercisable at the instance of a party thereto or, with the leave of the Sharia Court of Appeal or the Supreme Court, at the instance of any other person having an interest in the matter; and

(b) shall be exercised in accordance with any Acts of Parliament and rules of court for the time being in force in Northern Nigeria regulating the powers, practice and procedure of the Supreme Court.

(4) The Supreme Court may dispose of any application for leave to appeal from any decision of the Sharia Court of Appeal or the Court of Resolution upon consideration of the record of the proceedings if the Supreme Court is of opinion that the interests of justice do not require an oral hearing of the application.

(5) In this section—

“the Court of Resolution” means the Court of Resolution established by the Court of Resolution Law, 1960, of Northern Nigeria, as amended, or any law replacing that law;

“decision” means, in relation to the Sharia Court of Appeal or the Court of Resolution, any determination of that court in any civil proceedings and without prejudice to the generality of the foregoing provisions of this definition, includes a judgment, decree, order or recommendation;

“the Sharia Court of Appeal” means the Sharia Court of Appeal established by the Sharia Court of Appeal Law, 1960, of Northern Nigeria, as amended, or any law replacing that law.

Determinations of Supreme Court to be final.

120: Without prejudice to the provisions of section 101 of this Constitution, no appeal shall lie to any other body or person from any determination of the Supreme Court.

Powers, practice and procedure of Supreme Court.

121: (1) The decisions of the Supreme Court shall be enforced in any part of Nigeria by the High Court having jurisdiction in that part of Nigeria and by all persons, authorities and other courts of law in that part as if they were decisions of that High Court.

(2) Subject to the provisions of any Act of Parliament, the Supreme Court may make rules for regulating the practice and procedure of the court.

(3) Parliament may make provision with respect to the practice and procedure of the Supreme Court (including the service and execution of all civil and criminal processes of the court) and may confer upon the court such powers additional to those conferred by this section as may appear to be necessary or desirable for enabling the court more effectively to exercise its jurisdiction.

(4) Rules made under this section may fix the minimum number of judges who may sit for any purpose, so however that no matter shall be finally determined by less than three judges:

Provided that nothing in this subsection shall preclude a judge who does not concur in the opinion of the other judges from delivering a dissenting opinion.

Part 2.—The High Court of the Federal territory.

Establishment of High Court of Lagos.

122: (1) There shall be a High Court for the Federal territory, which shall be styled the High Court of Lagos.

(2) The judges of the High Court of Lagos shall be—

(a) the Chief Justice of Lagos; and

(b) such number of other judges (not being less than five) as may be prescribed by Parliament.

(3) The High Court of Lagos shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

Appointment of judges of High Court of Lagos.

123: (1) The Chief Justice of Lagos and the other judges of the High Court of Lagos shall be appointed by the President, acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to hold the office of a judge of the High Court of Lagos unless—

(a) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(b) he is qualified for admission as an advocate in Nigeria and he has been so qualified for not less than ten years:

Provided that in computing the period during which any person has been qualified for admission as an advocate any period during which he has held office as a judge or magistrate after becoming so qualified shall be included.

(3) If the office of Chief Justice of Lagos is vacant or if the person holding the office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding the office has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the High Court of Lagos as may from time to time be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

(4) If the office of any judge of the High Court of Lagos other than the Chief Justice is vacant or if the person holding the office is acting as Chief Justice is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person with such qualifications as may be prescribed by Parliament to act in the office of a judge of the High Court; and any person so appointed shall continue to act for the period of the appointment or if no period is specified until his appointment is revoked by the President, acting in accordance with the advice of the Prime Minister.

Tenure of office of judges of High Court of Lagos.

124: (1) Subject to the provisions of this section, a person holding or appointed to act in the office of Chief Justice of Lagos or any other judge of the High Court of Lagos shall vacate his office or appointment when he attains such age as may be prescribed by Parliament:

Provided that the President, acting in accordance with the advice of the Prime Minister, may permit a judge to continue in his office or appointment for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A person holding or appointed to act in the office of a judge of the High Court of Lagos shall be removed from his office or appointment by the President if—

(a) there are presented to the President addresses from both Houses of Parliament praying that that person be so removed for inability to discharge the functions of the office in question (whether arising from infirmity of mind or body or any other cause) or for misbehaviour; and

(b) the address from each House bears a certificate which is signed by the person (or any other cause) or for misbehaviour; and

(c) the address from each House bears a certificate which is signed by the person who presided at the meeting of that House at which the motion for the address was passed and which states that not less than two-thirds of all the members of that House voted in favour of the motion;

and, except on the revocation in pursuance of section 123 of this Constitution of an appointment to act as aforesaid, a person holding or appointed to act in such an office shall not be removed from his office or appointment in any other circumstances.

Appeals to High Court of Lagos from subordinate courts.

125: (1) An appeal shall lie from decisions of a subordinate court to the High Court of Lagos as of right or, if it is provided by Parliament that an appeal as of right shall lie from that subordinate court to another subordinate court, an appeal shall thereafter lie to the High Court as of right in the following cases—

(a) where the matter in dispute on the appeal to the High Court is of the value of fifty pounds or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of fifty pounds or upwards, final decisions in any civil proceedings;

(b) where the ground of appeal to the High Court involves questions of law alone, decisions in any criminal proceedings in which any person has been sentenced to imprisonment for a term exceeding three months or corporal punishment exceeding six strokes or a fine or forfeiture exceeding twenty-five pounds by the subordinate court from which the appeal lies to the High Court or that subordinate court has affirmed or substituted such a sentence;

(c) decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution or the constitution of a Region;

(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter III of this Constitution has been contravened in relation to any person;

(e) decisions in any criminal proceedings in which any person has been sentenced to death by the subordinate court from which the appeal lies to the High Court or in which that subordinate court has affirmed a sentence of death;

(f) decisions in any criminal proceedings before a subordinate court sitting at first instance from which no appeal lies as of right to another subordinate court; and

(g) such other cases as may be prescribed by Parliament:

Provided that no appeal shall lie from decisions of a subordinate court established under section 126 of this Constitution to the High Court in any case in which

an appeal lies as of right to the Supreme Court by virtue of any Act of Parliament enacted in pursuance of section 118 of this Constitution.

(2) An appeal shall lie from decisions of a subordinate court to the High Court of Lagos with the leave of the High Court or, if it is provided by Parliament that an appeal shall lie from that subordinate court to another subordinate court, an appeal shall thereafter lie to the High Court with the leave of the High Court in the following cases—

(a) decisions in any criminal proceedings from which no appeal lies as of right to the High Court; and

(b) such other cases in which no appeal lies as of right to the High Court as may be prescribed by Parliament:

Provided that no appeal shall lie under paragraph (a) of this subsection from decisions of a subordinate court established under section 126 of this Constitution to the High Court in any case in which an appeal lies to the Supreme Court (whether as of right or with the leave of the Supreme Court) by virtue of an Act of Parliament enacted under section 118 of this Constitution.

(3) Any right of appeal from decisions of a subordinate court to the High Court of Lagos conferred by this section—

(a) shall be exercisable in the case of civil proceedings at the instance of a party thereto or, with the leave of the High Court, at the instance of any other person having an interest in the matter and in the case of criminal proceedings at the instance of the accused person or, subject to the provisions of section 104 of this Constitution, at the instance of such other persons or authorities as may be prescribed by Parliament; and

(b) shall be exercised in accordance with any laws and rules of court for the time being in force regulating the powers, practice and procedure of the High Court.

(4) In this section—

“decision” means, in relation to a subordinate court, any determination of that court and, without prejudice to the generality of the foregoing provisions of this definition, includes a judgment, decree, order, conviction, sentence (other than a sentence fixed by law) or recommendation;

“subordinate court” means any court of law in the Federal territory other than the Supreme Court, the High Court of Lagos or a court-martial.

Part 3.—General

Establishment of further courts.

126: Parliament may establish courts of law for the Federation in addition to the Supreme Court:

Provided that nothing in this section shall—

(a) preclude the legislature of a Region from establishing courts of law for that Region; or

(b) confer upon Parliament powers to make provision with respect to the jurisdiction of any court established under this section additional to those conferred by the other provisions of this Constitution.

Special provisions as to Regional courts of appeal

127: (1) If by the Constitution or the legislature of a Region there is established for the Region a court having jurisdiction to hear and determine appeals in any matter from the High Court of the Region, then—

(a) sections 115 and 117 of this Constitution shall have effect, in relation to that matter, as if any reference in those sections to the High Court of the Region were a reference to the court having jurisdiction as aforesaid and as if the words "sitting at first instance" wherever they occur in section 117 were omitted; and

(b) a judge of the last-mentioned court shall be included among the persons qualified for appointment as members of the Police Service Commission of the Federation.

(2) Subsection (1) of this section shall come into force on such date as the President may by order appoint; but an order shall not be made under this subsection unless a draft of the order has been laid before both Houses of Parliament and approved by resolution of each House.

Oaths to be taken by judges.

128: A judge of the Supreme Court or the High Court of Lagos shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

CHAPTER IX

Finance*Part 1.—Public funds of the Federation.**Establishment of Consolidated Revenue Fund.*

129: (1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of Parliament into some other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the Fund by this Constitution or any Act of Parliament or where the issue of those moneys has been authorised by an appropriation Act or an Act passed in pursuance of section 131 of this Constitution.

(3) No moneys shall be withdrawn from any public fund of the Federation other than the Consolidated Revenue Fund unless the issue of those moneys has been authorised by an Act of Parliament.

(4) No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by Parliament.

Authorization of expenditure from Consolidated Revenue Fund.

130: (1) The Minister of the Government of the Federation responsible for finance shall cause to be prepared and laid before both Houses of Parliament in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.

(2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund by this Constitution or any Act of Parliament) shall be included in a bill, to be known as an appropriation bill, providing for the issue from the Consolidated Revenue Fund of the Federation of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found—

(a) that the amount appropriated by the appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act; or

(b) that any moneys have been expended for any purpose in excess of the amount appropriated for the purpose by the appropriation Act or for a purpose for which no amount has been appropriated by the Act.,

a supplementary estimate showing the sums required or spent shall be laid before both Houses of Parliament and the heads of any such expenditure shall be included in a supplementary appropriation bill.

Authorization of expenditure in advance of appropriation.

131: Parliament may make provision under which, if the appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the Minister of the Government of the Federation responsible for finance may authorise the withdrawal of moneys from the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Act, whichever is the earlier.

Contingencies Fund.

132: (1) Parliament may provide for the establishment of a Contingencies Fund for the Federation and for authorising the Minister of the Government of the Federation responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet that need.

(2) Where any advance is made in accordance with subsection (1) of this section, a supplementary estimate shall be presented and a supplementary appropriation bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of President and certain other officers.

133: (1) There shall be paid to the holders of the offices mentioned in subsection (4) of this section such salary as may be prescribed by Parliament.

(2) The salary and allowances payable to the holders of the offices so mentioned shall be a charge on the Consolidated Revenue Fund of the Federation.

(3) The salary payable to the holder of any office so mentioned and his terms of office other than allowances shall not be altered to his disadvantage after his appointment.

(4) The offices aforesaid are the office of President, Chief Justice of Nigeria, Justice of the Supreme Court, Chief Justice or other judge of the High Court of Lagos, member of the Electoral Commission of the Federation, member of the Public Service Commission of the Federation, member of the Police Service Commission of the Federation and Director of Audit of the Federation.

(5) Provision may be made by Act of Parliament for the grant of a pension or gratuity to or in respect of a person who has held office as President, and any pension granted by virtue of provision made in pursuance of this subsection shall be a charge on the Consolidated Revenue Fund of the Federation.

Audit of public accounts.

134: (1) There shall be a Director of Audit for the Federation, whose office shall be an office in the public service of the Federation.

(2) The accounts of the Federation and of all officers, courts and authorities of the Federation shall be audited and reported on by the Director of Audit of the Federation, and for that purpose the Director or any person authorized by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

(3) The Director of Audit of the Federation shall submit his reports to the Minister of the Government of the Federation responsible for finance, who shall cause them to be laid before both Houses of Parliament.

(4) In the exercise of his functions under this Constitution the Director of Audit of the Federation shall not be subject to the direction or control of any other person or authority.

Public debt.

135: (1) The public debt of the Federation shall be secured on the revenues and assets of the Federation.

(2) In this section references to the public debt of the Federation include references to the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Part 2.—Allocation of revenue

Import duties on certain commodities.

136: (1) Where under any Act of Parliament a duty is levied in respect of the import into Nigeria of any commodity other than motor spirit, diesel oil, tobacco, wine, potable spirits or beer, the Federation shall, in respect of each quarter, credit

to a special account maintained by the Federation (to be called "the Distributable Pool Account") a sum equal to thirty per cent of the proceeds of that duty for that quarter.

(2) For the purposes of this section the proceeds of a duty for a quarter shall be the amount remaining from the receipts from that duty that are collected in that quarter after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for.

Import duties on motor spirit and tobacco.

137: (1) Where under any Act of Parliament a duty is levied in respect of the import into Nigeria of motor spirit or diesel oil, or of any particular class, variety or description of motor spirit or diesel oil, there shall be paid by the Federation to the Regions in respect of each quarter a sum equal to the proceeds of that duty for that quarter.

(2) When under subsection (1) of this section any sum is payable by the Federation to the Regions in respect of any quarter, payment of the said sum shall be made in such manner that the sum is divided among the Regions in shares proportionate to the respective amounts of motor spirit or diesel oil, or of motor spirit or diesel oil of the particular class, variety or description in question, as the case may be, that have been distributed for consumption in the several Regions in the immediately preceding quarter.

(3) Where under any Act of Parliament a duty is levied in respect of the import into Nigeria of tobacco, or of any particular class, variety or description of tobacco, there shall be paid by the Federation to the Regions in respect of each quarter such sum as is equal to the proceeds of that duty for that quarter.

(4) When under subsection (3) of this section any sum is payable by the Federation to the Regions in respect of any quarter, payment of the said sum shall be made in such manner that the sum is divided among the Regions in shares proportionate to the respective amounts of tobacco, or of tobacco of the particular class, variety or description in question, as the case may be, that have been distributed for consumption in the several Regions in the immediately preceding quarter.

(5) For the purposes of this section the proceeds of a duty for a quarter levied on any commodity, or any particular class, variety or description of commodity, shall be the amount remaining from the receipts from that duty that are collected in that quarter after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for less the part of that amount that is attributable to quantities of that commodity or that class, variety or description of commodity distributed, or intended to be distributed, in the Federal territory.

Excise duties

138: (1) Where under any Act of Parliament an excise duty is levied on tobacco, or on any particular class, variety or description of tobacco, there shall be paid by the Federation to the Regions in respect of each quarter a sum equal to the proceeds of that duty for that quarter.

(2) Where under subsection (1) of this section any sum is payable by the Federation to the Regions in respect of any quarter, payment of the said sum shall be made in such manner that the sum is divided among the Regions in shares proportionate to the respective amounts of the commodity in question that have been distributed for consumption in the several Regions in the immediately preceding quarter.

(3) For the purposes of this section the proceeds for a quarter of a duty levied on tobacco or any particular class, variety or description of tobacco, shall be the amount remaining from the receipts from that duty that are collected in that quarter after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for, less the part of that amount that is attributable to quantities of tobacco or that particular class, variety or description of tobacco, distributed, or intended to be distributed, for consumption in the Federal territory.

Export duties

139: (1) Where under any Act of Parliament duty is levied in respect of the export from Nigeria of produce, hides or skins there shall be paid by the Federation to each Region in respect of each quarter a sum equal to the appropriate percentage of the proceeds of that duty for that quarter.

(2) For the purposes of subsection (1) of this section—

(a) the proceeds for a quarter of a duty levied on a commodity shall be the amount remaining from such of the receipts from that duty as relate to exports of that commodity during that quarter after any drawbacks, refunds or other repayments relating to those receipts have been made or allowed for;

(b) the appropriate percentage of the proceeds for a quarter of a duty levied on a commodity shall, in relation to any Region, be whichever of the following percentages is prescribed by Parliament in that behalf, that is to say, either—

(i) the percentage of those proceeds that is attributable to exports of that commodity that were derived from that Region;

(ii) the percentage of those proceeds that is attributable to exports of that commodity that were purchased in that Region;

(iii) the percentage of those proceeds that bears the same proportion to the total amount of those proceeds as the amount of that commodity that was purchased for export in that Region during the quarter immediately preceding that quarter bears to that total amount of that commodity that was so purchased in all the Regions during that immediately preceding quarter; or

(iv) the percentage of those proceeds that bears the same proportion to the total amount of those proceeds as the amount of that commodity that was purchased for export in that Region during the period of twelve months commencing three months before the commencement of the financial year in which that quarter falls bears to the total amount of that commodity that was so purchased in all the Regions during the period of twelve months.

(3) Parliament may designate, or make provision for designating, any class, variety or description of any commodity as a separate commodity for the purposes

of this section, and any such class, variety or description that is so designated shall be regarded as a separate commodity for those purposes.

(4) For the purposes of this section any amount of a commodity that is derived from the Federal territory shall be deemed to be derived from Western Nigeria and any amount of a commodity that is purchased in the Federal territory shall be deemed to be purchased in Western Nigeria.

Mining royalties and rents.

140: (1) There shall be paid by the Federation to each Region a sum equal to fifty per cent of—

- (a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region; and
- (b) any mining rents derived by the Federation from within that Region.

(2) The Federation shall credit to the Distributable Pool Account a sum equal to thirty per cent of—

- (a) the proceeds of any royalty received by the Federation in respect of minerals extracted in any Region; and
- (b) any mining rents derived by the Federation from within any Region.

(3) For the purposes of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to those receipts have been deducted therefrom or allowed for.

(4) Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.

(5) In this section "minerals" includes mineral oil.

(6) For the purposes of this section the continental shelf of a Region shall be deemed to be part of that Region.

Distribution of funds in Distributable Pool Account.

141: There shall be paid by the Federation to the Regions at the end of each quarter sums equal to the following fractions of the amount standing to the credit of the Distributable Pool Account at that date, that is to say—

- (a) to Northern Nigeria, forty ninety-fifths;
- (b) to Eastern Nigeria, thirty-one ninety-fifths;
- (c) to Western Nigeria, eighteen ninety-fifths;
- (d) to Mid-Western Nigeria, six ninety-fifths.

Regions to contribute towards costs of administration.

142: Each Region shall in respect of each financial year pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year in respect of the department of customs and excise of the

Government of the Federation for the purpose of collecting the duties referred to in sections 136 to 139 of this Constitution as is proportionate to the share of the proceeds of those duties received by that Region under those sections in respect of that financial year.

Set-off

143: (1) Any sum that is required by this Chapter to be paid by the Federation to a Region may be set off by the Federation in or towards the payment of any sum that is due from that Region to the Federation in respect of any loan made by the Federation to that Region.

(2) The right of set-off conferred by subsection (1) of this section shall be without prejudice to any other right of the Federation to obtain payment of any sum due to the Federation in respect of any loan.

Sums charged on Consolidated Revenue Funds.

144: Any payments that are required by this Chapter to be made by the Federation to a Region shall be a charge on the Consolidated Revenue Fund of the Federation and any payments that are so required to be made by a Region to the Federation shall be a charge on the Consolidated Revenue Fund of that Region.

Provisions with regard to payments.

145: (1) Where any payment falls to be made under this Part of this Chapter, the amount payable shall be certified by the Director of Audit of the Federation:

Provided that a provisional payment may be made before the Director has given his certificate.

(2) Parliament may make provision as to the time and manner in which any payment falling to be made under this Part of this Chapter shall be effected and for the making of adjustments and provisional payments.

CHAPTER X

The Public Service of the Federation

Establishment of Public Service Commission.

146: (1) There shall be a Public Service Commission for the Federation, which shall consist of a chairman and not less than two nor more than four other members.

(2) The members of the Public Service Commission of the Federation shall be appointed by the President, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified to hold office as a member of the Public Service Commission of the Federation if he is a member of either House of Parliament, a member of a legislative house of a Region a Minister of the Government

of the Federation, a Minister of the Government of a Region or the holder of an office in the public service of the Federation or the public service of a Region.

(4) Subject to the provisions of this section, a member of the Public Service Commission of the Federation shall vacate his office—

(a) at the expiration of five years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) A member of the Public Service Commission of the Federation may be removed from office by the President, acting in accordance with the advice of the Prime Minister, for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(6) A member of the Public Service Commission of the Federation shall not be removed from office except in accordance with the provisions of this section.

(7) A person who has been appointed to be a member of the Public Service Commission of the Federation shall not thereafter be eligible for appointment to any office in the public service of the Federation.

Appointment etc. of officers in public service.

147: (1) Power to appoint persons to hold or act in offices in the public service of the Federation (including power to make appointments on promotion and transfer and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission of the Federation:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section to any of its members or to any officer in the public service of the Federation.

(2) Subsection (1) of this section shall not apply in relation to any of the following offices—

(a) the office of any judge of the Supreme Court or the High Court of Lagos;

(b) except for the purposes of making appointments thereto, the office of the Director of Audit of the Federation;

(c) any office in the Nigeria Police Force; or

(d) any office to which section 148 of this Constitution applies.

(3) The provisions of this section shall be subject to the provisions of section 149 of this Constitution.

(4) No appointment shall be made under this section to any office on the personal staff of the President unless the President signifies his approval of the appointment.

Appointment, etc., of principal representatives of Republic abroad.

148: (1) Power to appoint persons to hold or act in the offices to which this section applies (including power to make appointments on promotion and transfer) and to remove persons so appointed from any such office shall vest in the President, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this section in relation to any person who holds any office in the public service of the Federation other than an office to which this section applies, the Prime Minister shall consult the Public Service Commission of the Federation.

(3) The offices to which this section applies are the offices of any Ambassador, High Commissioner or other principal representative of the Republic in countries other than Nigeria.

Appointment etc. of permanent secretaries.

149: (1) Power to appoint persons: to hold or act in the office of permanent secretary to any department of government of the Federation and to remove persons so appointed from that office shall vest in the President, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this section the Prime Minister shall consult the Public Service Commission of the Federation.

Appointment and tenure of office of Director of Audit.

150: (1) Before appointing any person to hold the office of Director of Audit of the Federation the Public Service Commission of the Federation shall consult the Prime Minister.

(2) Subject to the provisions of this section, a person holding the office of Director of Audit of the Federation shall vacate that office when he attains such age as may be prescribed by Parliament.

(3) A person holding office as Director of Audit of the Federation shall be removed from office by the President if a resolution is passed by each House of Parliament recommending his removal from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(4) A person holding the office of Director of Audit of the Federation shall not be removed from office except in accordance with the provisions of this section.

(5) If the office of Director of Audit of the Federation is vacant or the holder of the office is for any reason unable to perform the functions of the office, the Public Service Commission of the Federation, acting after consultation with the Prime Minister, may appoint a person to act in the office; and any person so appointed shall continue to act until his appointment is revoked by the Commission acting after consultation with the Prime Minister.

Powers relating to Clerks of Houses of Parliament.

151: Before exercising any of its powers in relation to the Clerk to the Senate the Public Service Commission of the Federation shall consult the President of the Senate, and before exercising any of its powers in relation to the Clerk to the House of Representatives the Commission shall consult the Speaker of that House.

Protection of pension rights.

152: (1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted or is eligible for such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) In this section "the relevant date" means—

(a) in relation to any benefits granted before this Constitution came into operation, the date on which those benefits were granted;

(b) in relation to any benefits granted after this Constitution came into operation to or in respect of any person who was a member of the public service of the Federation, the former public service of Nigeria, or the public service of a Region before this Constitution came into operation or any benefits for which any such person may be eligible, the thirtieth day of September, 1963; and

(c) in relation to any benefits granted to or in respect of any person who first becomes a member of the public service of the Federation or the public service of a Region after this Constitution came into operation or any benefits for which any such person may be eligible, the date on which he first became such a member.

(3) Where a person is entitled to exercise an option whichever one of two or more laws shall apply in his case, the law specified by him in exercising the option shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) Any benefit to which this section applies that is payable by the Federation (not being a benefit that is a charge upon some other public fund of the Federation) shall be a charge upon the Consolidated Revenue Fund of the Federation, and any such benefit that is payable by a Region (not being a benefit that is a charge upon some other public fund of that Region) shall be a charge upon the Consolidated Revenue Fund of that Region.

(5) This section applies to any benefits payable under any law in force in Nigeria or any part thereof providing for the grant of pensions, gratuities or compensation to persons who are or have been members of the public service of the Federation, the former public service of Nigeria or the public service of a Region in respect of their service on any of those public services or to the widows, children, dependants or personal representatives of such persons in respect of such service.

Powers of Commissions in relation to grant of pensions, etc.

153: (1) Where any benefits to which this section applies can be withheld, reduced in amount or suspended by any person or authority under any Act of Parliament, those benefits shall not be so withheld, reduced in amount or suspended.

(a) in the case of benefits that have been granted in respect of the service in the public service of the Federation of any person who at the time when he ceased to be a member of that public service was subject to the jurisdiction of the Police Service Commission of the Federation or for which any person may be eligible in respect of such service, without the approval of that Commission; or

(b) in any other case, without the approval of the Public Service Commission of the Federation.

(2) No benefits to which this section applies that have been granted to any person who holds or has held the office of a judge of the Supreme Court, the former Federal Supreme Court, or the High Court of Lagos or for which any such person may be eligible shall be withheld, reduced or suspended on the ground that that person has been guilty of misbehaviour while holding that office unless that person has been removed from that office by reason of such misbehaviour.

(3) This section applies to any benefits payable under any Act of Parliament providing for the grant of pensions, gratuities or compensation to persons who are or have been members of the public service of the Federation or the former public service of Nigeria in respect of their service in that public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

CHAPTER XI

Transitional Provisions

Repeal of certain constitutional instruments.

154: (1) Subject to the provisions of this section and section 155 of this Constitution, the Act of the Parliament of the United Kingdom entitled the Nigeria Independence Act, 1960, and the Nigeria (Constitution) Order in Council, 1960 (other than the Third, Fourth and Fifth Schedules to that Order) are hereby repealed.

(2) Nothing in subsection (1) of this section shall affect the operation of any provision of the Act or Order aforesaid (other than sections 14 and 17 of the Order) in so far as that provision has effect as part of, or in relation to, the law of a Region; and the legislature of a Region shall have, and be deemed always to have had, power to alter or repeal any such provision in so far as it has effect as aforesaid, but no law enacted by the legislature of a Region by virtue of this subsection shall have effect unless, either before or after the commencement of this Constitution, a resolution supported by the votes of not less than two-thirds of all the members of that House is passed by each House of Parliament signifying consent to its having effect.

(3) References in subsection (2) of this section to the law of a Region are references to that law in so far as it is not either part of the law of the Federation as a whole or contained or deemed to be contained in an Act of Parliament enacted otherwise than in the exercise of powers conferred by provisions corresponding to section 72 of this Constitution.

Saving for things done, etc., under repealed constitutional instruments.

155: (1) Subject to the provisions of sections 157 and 158 of this Constitution, any court of law, authority or office which was established, any appointment, election or other selection which was made or held, and any other thing whatsoever which was done in pursuance of any provision repealed by section 154 of this Constitution or which was deemed by virtue of any such provision to be so established, made, held or done, shall be deemed—

(a) to have been duly established, made, held or done in pursuance of the corresponding provision of this Constitution, whether or not the corresponding provision differs from the provision to which it corresponds; and

(b) so far as relevant in the case of an appointment, election, selection or other thing, to have been so made, held or done in pursuance of the corresponding provision on the date or for the period on or for which it was actually made, held or done.

(2) Without prejudice to the generality of subsection (1) of this section and subject to the provisions of subsection (3) of section 68 of this Constitution, Parliament shall, unless sooner dissolved, stand dissolved on the date on which it would, apart from this Constitution, have stood dissolved in pursuance of subsection (2) of section sixty-three of the constitution repealed by subsection (1) of section 154 of this Constitution.

(3) Except so far as the contrary intention appears in this Constitution, any right, privilege, obligation or liability saved by the operation of the Interpretation Act (a) on the repeal by this Constitution of any enactment shall be deemed to arise under the corresponding provision of this Constitution, whether or not the corresponding provision differs from the enactment to which it corresponds.

Adaptation of existing law.

156: (1) All existing law, that is to say, all law which, whether being a rule of law or a provision of an Act of Parliament or of a Law made by the legislature of a Region or of any other enactment or instrument whatsoever, is in force immediately before the date of the commencement of this Constitution or has been passed or made before that date and comes into force on or after that date, shall, until that law is altered by an authority having power to do so, have effect with such modifications (whether by way of addition, alteration or omission) as may be necessary to bring that law into conformity with this Constitution and the constitution of each Region.

(2) The appropriate authority may, at any time during the period of three years beginning with the date aforesaid, by order make such changes in the text of any such provision as is mentioned in subsection (1) of this section as he considers appropriate for the purpose of bringing that text into conformity with the provisions of that subsection; and the validity of an order made by the appropriate authority in the exercise or purported exercise of the powers conferred by this subsection shall not be impugned on the ground that any change made by the order is inconsistent with the provisions of subsection (1) of this section.

(a) Cap. 89.

(3) In subsection (2) of this section "the appropriate authority" means, in relation to any provision—

(a) in so far as the provision forms part of the law of a Region, the Governor of the Region; and

(b) in so far as it does not form part of the law of a Region, the President; and references in this subsection to the law of a Region shall be construed in accordance with subsection (3) of section 154 of this Constitution.

Nnamdi Azikiwe to be President.

157: (1) Nnamdi Azikiwe shall be deemed to be elected President of the Republic on the date of the commencement of this Constitution.

(2) Nothing in subsection (1) of section 155 of this Constitution shall be construed as applying to the election or period of office of the President or to the oaths required to be taken and subscribed by a person elected as President before he begins to perform the functions of that office.

Miscellaneous transitional provisions.

158: (1) Without prejudice to the generality of section 156 of this Constitution, all property which, immediately before the date of the commencement of this Constitution, was held by the Crown or by some other body or person (not being an authority of the Federation) on behalf of or in trust for the Crown shall on that date, by virtue of this subsection and without further assurance, vest in the President and be held by him on behalf of, or as the case may be on the like trusts for the benefit of, the Government of the Federation; and all property which, immediately before the date aforesaid, was held by an authority of the Federation on behalf of or in trust for the Crown shall be held by that authority on behalf of, or as the case may be on the like trusts for the benefit of, the Government of the Federation.

(2) References to the Crown in subsection (1) of this section are references to the Crown in right of the Government of the Federation; and that subsection shall, with the necessary modifications, apply in relation to rights, liabilities and obligations arising out of a contract or other arrangement as it applies in relation to property.

(3) Subject to the provisions of subsection (4) of this section, any proceedings on appeal from a decision of the Federal Supreme Court which are pending immediately before the date of the commencement of this Constitution may be continued on or after that date as if this Constitution had not been passed and any decision given in pursuance of any such proceedings shall have effect accordingly, so however that any such proceedings which are still pending at the expiration of the period of one year beginning with that date shall abate on the expiration of that period.

(4) Where immediately before the date of the commencement of this Constitution any proceedings on appeal from a decision of the Federal Supreme Court are pending or any right to bring such proceedings has accrued, the proceedings or right shall abate on that date in so far as any question for determination in the relevant proceedings is—

(a) a chieftaincy question; or
 (b) a question as to the interpretation of a constitution or former constitution of the Federation or a Region or as to the validity of an enactment which amends or purports to amend such a constitution;
 and where immediately before that date any proceedings are pending in any court in Nigeria or any right has accrued to bring proceedings on appeal to such a court, the proceedings or right shall abate on that date in so far as any question for determination in the relevant proceedings is a chieftaincy question.

(5) Any debt of the Federation which immediately before the date of the commencement of this Constitution was, by virtue of any provision repealed by subsection (1) of section 154 of this Constitution, charged on the revenues and assets of the Regions as well as on the revenues and assets of the Federation shall, on and after that date, continue to be so charged.

(6) For the avoidance of doubt it is hereby declared that, without prejudice to the generality of the provisions of section 155 of this Constitution, the period of six months referred to in subsection (5) of section 5 of this Constitution began, in relation to Mid-Western Nigeria, on the ninth day of August, 1963 (being the date on which that Region was established).

CHAPTER XII

Miscellaneous

The Niger Delta Development Board.

159: (1) There shall be a board for the Niger Delta which shall be styled the Niger Delta Development Board.

2) The members of the Board shall be—

- (a) a person appointed by the President, who shall be chairman;
- (b) a person appointed by the Governor of Eastern Nigeria;
- (c) a person appointed by the Governor of Mid-Western Nigeria; and
- (d) such other persons as may be appointed in such manner as may be prescribed by Parliament to represent the inhabitants of the Niger Delta.

(3) A member of the Board shall vacate his office in such circumstances as may be prescribed by Parliament.

(4) The Board shall be responsible for advising the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria with respect to the physical development of the Niger Delta, and in order to discharge that responsibility the Board shall—

- (a) cause the Niger Delta to be surveyed in order to ascertain what measures are required to promote its physical development;
- (b) prepare schemes designed to promote the physical development of the Niger Delta, together with estimates of the costs of putting the schemes into effect;

(c) submit to the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria annual reports describing the work of the Board and the measures taken in pursuance of its advice.

(5) Parliament may make such provision as it considers expedient for enabling the Board to discharge its functions under this section.

(6) In this section, "the Niger Delta" means the area specified in the Proclamation relating to the Board which was made on the twenty-sixth day of August, 1959.

(7) This section shall cease to have effect on the first day of July, 1969, or such later date as may be prescribed by Parliament.

Powers and procedure of Federal Commissions.

160: (1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister of the Government of the Federation as may be authorised in that behalf by the Prime Minister, by regulation or otherwise regulate its own procedure or confer powers and impose duties on any officer or authority of the Federation for the purpose of discharging its functions.

(2) Subject to its rules of procedure, any Commission established by this Constitution may act notwithstanding any vacancy in its membership or the absence of any member, but any decision of the Commission shall require the concurrence of a majority of all the members thereof.

Prohibition of certain legal proceedings, etc.

161: (1) Without prejudice to the generality of section 156 of this Constitution—

(a) no criminal proceedings shall be instituted or continued during his period of office against a person to whom this subsection applies; and

(b) such a person shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no proceedings in which relief is claimed against such a person in his personal capacity shall be instituted or continued in any court during his period of office;

but in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this subsection applies, his period of office shall be left out of account.

(2) Subsection (1) of this section applies to a person holding or required to perform the functions of the office of the President or of the Governor of a Region, and in that subsection "period of office" means, in relation to such a person, the period during which he holds or is required to perform the functions of the office in question.

(3) Notwithstanding anything in any other provision of this Constitution (including in particular sections 32 and 53 of this Constitution) but without prejudice to the proviso to subsection (1) of section 22 and subsection (4) of section 27 of this

Constitution, no chieftaincy question shall be entertained by any court of law in Nigeria, and a certificate which is executed by an authority authorised in that behalf by a law coming into force in a territory on or after the date of the commencement of this Constitution (including a law passed before that date) and which states—

- (a) that a particular person is or was, by reference to that territory or a part of it, a chief of a specified grade at a specified time or during a specified period; or
 - (b) that the provisions of a law in force in that territory relating to the removal or exclusion of chiefs or former chiefs from areas within the territory have been complied with in the case of a particular person,
- shall be conclusive evidence as to the matters set out in that statement.

Resignations

162: (1) Any person who is appointed, elected or otherwise selected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected:

Provided that—

- (a) in the case of the President of the Republic, his resignation shall be addressed to the President of the Senate; and
 - (b) in the case of a member of a House of Parliament who holds office as President of the Senate or Speaker, his resignation from the House or that office shall be addressed to the House; and
 - (c) in the case of any other member of a House of Parliament, his resignation from the House shall be addressed to the President of the Senate or Speaker, as the case may be.
- (2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.
- (3) On the resignation of the President of the Republic, the President of the Senate shall forthwith give notice of the resignation to the Prime Minister.

Reappointments, etc.

163: (1) Where any person has vacated any office constituted by this Constitution, he may, if qualified, again be appointed, elected or otherwise selected to hold that office in accordance with the provisions of this Constitution.

(2) Where by this Constitution a power is conferred upon any person or authority to make any appointment to any office in the public service of the Federation a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then for the purposes of any function conferred upon the holder of that office the person last appointed shall be deemed to be the sole holder of the office.

Review of ss. 140 and 141 of this Constitution.

164: The Government of the Federation, acting after consultation with the Governments of the Regions, shall from time to time appoint a Commission to review and make recommendations with respect to the provisions of sections 140 and 141 of this Constitution.

Interpretation, etc. —general.

165: (1) In this Constitution, unless it is otherwise expressly provided or required by the context—

“Act of Parliament” means any law made by Parliament;

“the Advisory Council” means the Advisory Council on the Prerogative of Mercy of the Federation;

“chieftaincy question” means any question as to the validity of the selection, appointment, approval of appointment, recognition, installation, grading, deposition or abdication of a chief;

“the Commonwealth” means Nigeria, any country to which section 14 of this Constitution applies and any dependency of any such country;

“the Concurrent Legislative List” means the list in Part II of the Schedule to this Constitution;

“the Exclusive Legislative List” means the list in Part I of the Schedule to this Constitution;

“financial year” means any period of twelve months beginning on the first day of April in any year or such other date as Parliament may prescribe;

“the Legislative Lists” means the Exclusive Legislative List and the Concurrent Legislative List;

“oath” includes affirmation;

“the oath of allegiance” means such oath of allegiance as may be prescribed by Parliament;

“Parliament” means the Parliament of the Federation;

“the President” means the President of the Republic;

“produce” means such animal or vegetable products, whether processed or in a natural state (other than tobacco, hides or skins) as may with the consent of the Governments of the Regions be designated by the President by order;

“the public service of the Federation” means the service of the Republic in a civil capacity in respect of the government of the Federation;

“quarter” means a quarter of a financial year;

“the state” means the Government of the Federation or a Region, and “office of emolument under the state” includes office as the Governor of a Region or as a member of the Government of the Federation or a Region, so however that a person shall not be treated as holding an office of emolument under the state by reason only of his receiving a pension or other like benefit in respect of such an office; and

“territory” means a Region or the Federal territory.

(2) In this Constitution, unless it is otherwise expressly provided or required by the context—

(a) references to persons holding offices in the public service of the Federation or a Region include references to persons acting in those offices; and

(b) references to offices in the public service of the Federation include references to the offices of the judges of the Supreme Court and the High Court of Lagos and references to the offices of members of all other courts of law established by Parliament (other than courts-martial), being offices the emoluments attaching to which are paid out of the Consolidated Revenue Fund or any other public fund of the Federation, and references to the offices of members of the Nigeria Police Force.

(3) For the purposes of this Constitution, the office of the President of the Senate or Deputy President of the Senate, a Senator, the Speaker or the Deputy Speaker of the House of Representatives, a member of the House of Representatives, a Minister of the Government of the Federation, a Parliamentary Secretary to such a Minister or a member of the Council of Ministers, the Nigeria Police Council, any Commission established by this Constitution or the Advisory Council shall not be regarded as an office in the public service of the Federation.

(4) Subject to the provisions of section 4 of this Constitution, no amendment made to the Interpretation Act, as in force at the date of the commencement of this Constitution, shall have effect in relation to this Constitution.

(5) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(6) For the avoidance of doubt it is hereby declared that—

(a) any power to make laws conferred by this Constitution includes power to make laws having extra-territorial operation;

(b) any reference in this Constitution to the functions of the President includes a reference to his functions as the Commander-in-Chief of the armed forces of the Federation; and

(c) the functions of the Commander-in-Chief of the armed forces of the Federation are such as may be prescribed by Parliament.

Short title and commencement.

166: (1) This Act may be cited as the Constitution of the Federation and, subject to the provisions of section 127 of this Constitution, shall come into force on the first day of October, 1963.

(2) On and after the date mentioned in subsection (1) of this section, Chapter II of this Constitution (except section 10) shall be deemed to have come into force on the first day of October, 1960, and section 10 of this Constitution shall be deemed to have come into force on the first day of June, 1961.

THE SCHEDULE

Section 69.

The Legislative Lists

PART I

The Exclusive Legislative List

Item

1. Accounts of the Government of the Federation and officers, courts and authorities thereof, including audit of those accounts.
2. Archives, other than the public records of the Governments of the Regions since the twenty-third day of January, 1952.
3. Aviation, including airports, safety of aircraft and ancillary transport and other services.
4. Bills of exchange and promissory notes.
5. Borrowing of moneys outside Nigeria for the purposes of the Federation or of any Region, other than borrowing by the Government of a Region for a period not exceeding twelve months on the security of any funds or assets of that government held outside Nigeria.
6. Borrowing of moneys within Nigeria for the purposes of the Federation.
7. Control of capital issues.
8. Copyright.
9. Currency, coinage and legal tender.
10. Customs and excise duties, including export duties.
11. Defence.
12. Deportation; compulsory removal of persons from one territory to another.
13. Designation of securities in which trust funds may be invested.
14. Exchange control.
15. External affairs.
16. Extradition.

17. The following higher educational institutions, that is to say—
 - The University of Ibadan.
 - The University College Teaching Hospital at Ibadan.
 - The University of Lagos.
 - The Lagos University Teaching Hospital.
 - The West African Institute of Social and Economic Research.
 - The Pharmacy School at Yaba.
 - The Forestry School at Ibadan.
 - The Veterinary School at Vom.
18. Immigration into and emigration from Nigeria.
19. Incorporation, regulation and winding-up of bodies corporate, other than co-operative societies, native authorities, local-government authorities and bodies corporate established directly by any law enacted by the legislature of a Region.
20. Insurance other than insurance undertaken by the Government of a Region but including any insurance undertaken by the Government of a Region that extends beyond the limits of that Region.
21. Legal proceedings between the Government of the Federation and any other person or authority or between the Governments of Regions.
22. Maritime shipping and navigation, including—
 - (a) shipping and navigation on tidal waters;
 - (b) shipping and navigation on the River Niger and its affluents and on any such other inland waterway as may be declared by Parliament to be an international waterway or to be an inter-Regional waterway;
 - (c) lighthouses, lightships, beacons and other provisions for the safety of shipping and navigation;
 - (d) such ports as may be declared by Parliament to be Federal ports (including the constitution and powers of port authorities for Federal ports).
23. Marriages other than marriages under Moslem law or other customary law; annulment and dissolution of, and other matrimonial causes relating to, marriages other than marriages under Moslem law or other customary law.
24. Meteorology.
25. Mines and minerals, including oilfields, oil mining, geological surveys and natural gas.
26. Museums of the Federation, that is to say—
 - The Jos Museum.
 - The Oron Museum.

The House of Images at Esie.

Any other museums established by the Government of the Federation.

27. Naval, military and air forces.
28. Nuclear energy.
29. Passports and visas.
30. Patents, trade marks, designs and merchandise marks.
31. Pensions, gratuities and other like benefits payable out of the Consolidated Revenue Fund or any other public fund of the Federation.
32. Posts, telegraphs and telephones, including post office savings banks.

Item

33. Powers, privileges and immunities of each House of Parliament and its members.
34. The public debt of the Federation.
35. Public relations of the Federation.
36. The public service of the Federation, including the settlement of disputes between the Federation and officers in the public service of the Federation.
37. Railways, including ancillary transport and other services.
38. Taxes on amounts paid or payable on the sale or purchase of commodities except—
 - (a) produce;
 - (b) hides and skins;
 - (c) motor spirit;
 - (d) diesel oil sold or purchased for use in road vehicles;
 - (e) diesel oil sold or purchased for other than industrial purposes.
39. Tribunals of inquiry with respect to all or any of the matters mentioned elsewhere in this list.
40. Trunk roads, that is to say, the construction, alteration and maintenance of such roads as may be declared by Parliament to be Federal trunk roads.
41. Water from such sources as may be declared by Parliament to be sources affecting more than one territory.

42. Weights and measures.
43. Wireless, broadcasting and television other than broadcasting and television provided by the Government of a Region; allocation of wavelengths for wireless, broadcasting and television transmission.
44. The matters with respect to which Parliament is empowered to make provision by section 4, 8, 9, 13, 16, 32, 37, 38, 40, 42, 45, 49, 52, 68, 75, subsection (1) of section 76, sections 77, 78, 87, 96, subsections (2) and (5) of section 105, sections 111, 113, 114, 116, 118, 121, 128, 131, 132, 133, 139, 140, 145, 150, 159 and 165 of this Constitution.
45. Any matter that is incidental or supplementary—
 - (a) to any matter mentioned elsewhere in this list; or
 - (b) to the discharge by the Government of the Federation or any officer, court or authority of the Federation of any function conferred by this Constitution.

PART II

The Concurrent Legislative List

Item

1. Antiquities.
2. Arms and ammunition.
3. Bankruptcy and insolvency.
4. Census.
5. Chemical services, including analytical services.
6. Commercial and industrial monopolies, combines and trusts.
7. Control of the voluntary movement of persons between territories.
8. Such drugs and poisons as may with the consent of the governments of the Regions be designated by the President by order.
9. Fingerprints, identification and criminal records.
10. Higher education, that is to say, institutions and other bodies offering courses or conducting examinations of a university, technological or of a professional character, other than the institutions referred to in Item 17 of Part I of this Schedule.

11. Industrial development.
12. Labour, that is to say, conditions of labour, industrial relations, trade unions and welfare of labour.
13. The legal and medical professions and such other professional occupations as may with the consent of the governments of the Regions be designated by the President by order.
14. National monuments, that is to say, such monuments in a Region as may with the consent of the Government of that Region be designated by the President by order as national monuments.
15. National parks, that is to say, the control of such areas in a Region as may with the consent of the Government of that Region be designated by the President by order as national parks.
16. Prisons and other institutions for the treatment of offenders.
17. Promotion of tourist traffic.
18. The maintaining and securing of public safety and public order; the providing, maintaining and securing of such supplies and services as may be designated by the President by order as essential supplies and services.
19. Quarantine.
20. Registration of business names.
21. Scientific and industrial research.
22. Service and execution in a Region of the civil and criminal processes, judgments, decrees, orders and other decisions of any court of law outside Nigeria or any court of law in Nigeria other than the Supreme Court, the High Court of that Region or any court of law established by the legislature of that Region.
23. Statistics.
24. Traffic on Federal trunk roads.
25. Tribunals of inquiry with respect to all or any of the matters mentioned elsewhere in this list.
26. Trigonometrical, cadastral and topographical surveys.
27. Water-power.

28. The matters with respect to which Parliament is empowered to make provision by subsections (2) and (3) of section 76 and section 79 of this Constitution.
29. Any matter that is incidental or supplementary to any matter mentioned elsewhere in this list.

PART III

Interpretation

1. In this Schedule, references to incidental and supplementary matters include, without prejudice to their generality—

- (a) offences;
- (b) the jurisdiction, powers, practice and procedure of courts of law; and
- (c) the acquisition and tenure of land.

2. Where by this Schedule Parliament is empowered to make any declaration, that declaration may be made by resolutions passed by both Houses of Parliament instead of by Act of Parliament.

SELECTED BIBLIOGRAPHY AND SUGGESTIONS FOR FURTHER READING

- EDWARDS, J G: Confirmation Cartarum and Baronial Grievances in 1297
(English Historical Review, LVIII, 1943).
- THOMPSON, F: Parliamentary Confirmations of the Great Charter
(American Historical Review, LX, 1945).
- "Sources of Our Liberties", (Ed. Richard L. Perry,
American Bar Association, N.Y. University Press, 1952,
1959).
- C. B. SWISHER: American Constitutional Development (Houghton
Milfin Coy).
- RUSSELL F. MOORE: Modern Constitutions (1957, Littlefield Adams & Co.).
- O. HOOD-PHILLIPS: Constitutional Law (Sweet and Maxwell).
- KEITH: Constitutional Law (Stevens & Sons).
- KEITH: British Cabinet System (Steven & Sons).
- LORD DENNING: Freedom under the Law (Hamlyn Lectures).
- LORD DENNING: Road to Justice (Steven & Sons).
- CURTIS WILGUS: Latin American History (Barnes & Noble Inc. N.T.).
- R. SCOTT: Mexican Government in Transition (University of
Illinois Press).
- MORELAND: Equal Justice under Law (Oceana Publication Inc.).
- A. C. BANERJEE: Indian Constitutional Documents (A Mukherejee and
Co. Private Ltd. 1757—1947 (4 volumes).
- BASU: Commentary on the Constitution of India.
- GROVES: Comperative Constitutional Law (Oceana Publication
Inc.).
- The New French Constitution adopted by a referendum
September 28, 1958.
- GOSH: Constitution of the Fourth Republic (Translation by
Gosh).

- NICHOLAS: Australian Constitution (Law Book Co. of Australia).
- KERR: Law of the Australian Constitution (Law Book Co. of Australia).
- HUGHES: Federal Constitution of Switzerland (OUP).
- SHORTWELL: Government of Continental Europe (Macmillan Co. N.Y.).
- STARKE: An Introduction to International Law.
- HOWARD LAW JOURNAL: Symposium on International Law of Human Rights (Volume II, Number 2, Spring 1965).
- International Seminar on Constitutional Review (Edited by Professor Julius Marke and John G. Laxes New York University).
- MAUNG MAUNG: Burmese Constitution (Marlinus Nighoff, The Hague).
- BENERJEE: Our Fundamental Rights (World Press).
- DOWLING & EDWARDS: American Constitution (Foundation Press Inc.).
- STRONG: American Constitutional Law (Dennis & Co. Inc.).
- MUNRO: Governments of Europe (Macmillan).
- K. C. WHEARE: Federal Government.
- ALEXANDER: A Constitutional Strait Jacket for Canada Reprint: Canadian Bar Review, May 1965.







