

The Constitution of Czechoslovak Socialist Republic : A Study

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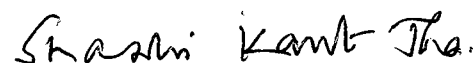
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PREFACE

Among East European countries Czechoslovakia occupies a prominent place, not only because it is one of the important members of the Socialist Block, but also due to the existence of unique kind of political system. However, Eastern Europe in general and Czechoslovakia in particular, has not very much attracted scholars and students of this country. Our study is a modest attempt at exploring the socialist constitutionalism both in theory and practice by taking Czechoslovakia as a particular case.

The study has been divided into four chapters. The first chapter covers socialist constitutional theory and practice; here an attempt has been made to focus attention on their framework. The second chapter analyses the historical background, explaining the factors because of which the present constitution was drafted in 1960. The third chapter deals with the actual provisions of the 1960 constitution of Czechoslovakia. The final chapter sums up the findings of our study.

Our study is primarily based on the actual text

of the 1960 constitution of Czechoslovakia. It has been published in English by the Orbis Press Agency, Prague in 1978.

I would like to record my deep sense of gratitude to my learned supervisor, Shashi Kant Jha, Centre for Soviet and East European Studies for his constant guidance, advice and help in the preparation of this M.Phil dissertation. I am also thankful to Professor Devendra Kaushik for his assistance and encouragement. However, the short-comings are all of my own.

Besides I owe a debt of gratitude to a number of friends and individuals who extended help and co-operation in various ways to facilitate my study.

Finally, I shall be failing in my duty if I do not thank my family members who endured my long absence while writing this dissertation.

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BINAY KUMAR MISHRA

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CHAPTER - ONE

SCIALIST CONSTITUTIONAL THEORY
& PRACTICE: A FRAMEWORK

INTRODUCTION

In the present chapter we are going to discuss what generally is understood by the term 'Constitution' and 'Constitutionalism'. While discussing the theoretical aspects of constitutionalism, we shall take into account the views expressed by both liberal and Marxist schools of thought. Since we are going to analyse the constitutional development in the context of Czechoslovakia - a socialist state - naturally, we shall give more space to the views expressed by scholars belonging to the socialist school, to have a clear picture of what they actually understand by it.

In the most generous sense of the term every country is and has been historically, except in time of revolution or other serious upheaval, governed under something that may be called a constitution. But governments vary greatly in pattern and principle, and their constitution vary even more greatly in such matters as form and content, source and tangibility, stability and permanence. It is in consequence difficult to define a constitution save in terms of rather precisionless and therefore rather useless generality.

This difficulty has not, however, daunted publicists and other commentators. Scores of definitions might easily be assembled. Some of these define with reasonable accuracy a particular constitution or group of constitutions. But few if any of them suffice to include all that may properly be regarded as constitution and to exclude all else. Yet constitutions are not generally unreal because they elude the grasp of words. Perhaps as reasonable a definition as any is that they are the fundamental laws and practices in accordance with which governments commonly operate.¹ But manifestly the use of the word fundamental introduces a wide margin of in-definiteness in respect of which opinions will differ.

According to another definition constitution is a state's fundamental law, which has the highest legal force and establishes the basic principles of the political, legal and economic systems of a given country.² It goes on to add further that a constitution reflects the correlation of class forces at the time of its adoption.

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1. Great Soviet Encyclopedia (197), Vol13, p.95, Macmillan Comp., New York.
 2. Encyclopedia of the Social Sciences (1931), Vol.3-4, p.259, Macmillan Comp., New York.

It consolidates the dictatorship of the ruling class, the form of government, the structure of the state, the organisational procedure and jurisdiction of both central and local government bodies and administration, the legal status of the individual, the organization and fundamental principles of justice and the electoral system.

Another definition explains a constitution in the formal sense as consisting of a single or, as the case may be, of several written documents that verbally articulate, in logical sequence of topics, the most important rules by which the political process of the community is operated.³ It is characteristic of the constitution in the formal sense that it is elaborated in a specific constitution-making procedure viz. usually by a special representative organ which is not identical with the ordinary legislative assembly. Moreover the ultimate validity of the document is derived from a special mode of acceptance (e.g. by qualified majorities of the drafting assembly and/or by popular referendum). Equally characteristic is that the amending procedure is subject to specific requirements that

3. Marxism, Communism and Western Society, A comparative Encyclopedia (1972), Vol.2, p.170, Herder and Herder, New York.

are more stringent than those applying to ordinary legislation. Further more, either by explicit statement or tacit assumption, the norms of the constitution are endowed with a validity superior to that of all legislative norms proper. Quite frequently, and particularly since world War-II, the legal supremacy of the constitutional norms is guaranteed by an independent judicial organ (judicial review of the constitutionality of legislative and other norms).

The foregoing discussion shows that a constitution embodies a system of power relationships which has been effectively institutionalized. No countervailing power or the other amorphous influence, no matter how effective, satisfies the requirements which the concept of a constitution is meant to denote. The ideological justifications for such a system, as well as the thoughts associated with its practice, embody the meaning of constitutionalism. Although some of these ideological and behavioural projections have treated a constitution as a static given as something which never or very rarely changes a constitution is, on the contrary a living system. To be sure, the basic structure or pattern may remain even though the different component parts may undergo significant alterations.

LIBERAL CONCEPT OF CONSTITUTIONALISM:

Constitutionalism, in a formal sense, denotes the principle and practice under which a community is governed by a constitution. Constitution according to the liberal view, stands for a set of rules and processes codified or established by long practice - which prescribe the structure and functions of government, defining organs of government, their powers and mutual relationships as also the limitations under which they are bound to function, so as to ensure that the government or any organ thereof is not allowed to function arbitrarily.⁴ Constitutionalism, therefore, postulates effective checks on the absolute powers of government so that the liberties of the citizens are not curtailed without adequate reason. What is reasonable and what is not so is largely determined by the type and level of the prevailing social consciousness.

As regards the substance and content, constitutions in the Western society, are the product of a compromise of

4. O.P. Gauba (1984), Constitutionalism in a Changing Society, New Delhi.

the socio-economic forces of society that participate in the constitution-making process, be it political parties, pressure groups or the vested interests representing conservative or progressive ideologies. These arrangements are necessarily conditioned by the experience of the past and the requirements of the present. Consequently, the actual content of a constitution varies according to the circumstances of its creation and origin, the purposes for which it has been created and also the style and climate of the period to which it belongs. From these conditions derive the considerable varieties or types of constitution that are reflected by their classification.

This view of constitutionalism better known as the liberal pluralist view, admits - (a) plurality of interests in society; (b) capability of each section of society to identify and articulate its interests through its organization; and (c) availability of a mechanism through which conflicting interests can be resolved into authoritative policies and decisions. This view of constitutionalism postulates existence of 'conflict' and 'consensus' in society at different levels. Accordingly, different sections of society advance conflicting demands for 'authoritative allocation of values' in their favour. At the same time

there is a consensus regarding the mechanism and process through which their confliction of claims can be resolved and reconciled and translated into authoritative policies and decisions. This reconciliation, however, represents a provisional solution. No decision will universally satisfy all sections for ever. But because of their natural deference for the political system, they would choose to respect those decisions and feed their fresh demands into the available channels for further reconciliation, and the process will go on.

In brief, the liberal view of constitutionalism treats the liberties of the citizens as a matter of continuous adjustment of their different interests and this adjustment takes place through the exercise of pressure by different groups of society on the political process. Development of judicial consciousness about the rights of the under privileged and disadvantaged sections vis-a-vis privileged sections also play an important role in this process of adjustment. A liberal constitution, whether its structure conforms to Parliamentary model, Presidential model or any combination of the two, only provides for a mechanism or management of this political process. It does provide for a mechanism of social change, but the pattern and degree

of social change allowed by it are determined by the interplay of political forces, entrenched in the economic and cultural foundations of society. Liberal constitutions prevailing in the Western world have of course allowed for extensive regulation of men's activities in the social interest and also for welfare of the vulnerable sections of society, but all these measures have served as supports to the capitalist system, without accomplishing a radical transformation of society in the interests of the common people. This character of the liberal model of constitutionalism has been subjected to a critical review by Marxist theory, with an attempt to evolve an alternative model of constitutional system.

MARXIST VIEW OF CONSTITUTIONALISM:-

The liberal-pluralist view of constitutionalism is not acceptable to those who do not subscribe to its basic tenets. In sharp contrast to the liberal-pluralist theory, Marxist theory holds that (a) Plurality of interests in society is not real because at bottom there are two main contenders - haves and have-nots, and that the clash of their interests is the root cause and essence of all social conflicts; (b) as a result, the society has remained

divided since the dawn of human civilization, into 'dominant' and 'dependent' classes - those in possession of private property, particularly the means of production, have used their economic power to acquire not only political power but also ideological power in order to legitimize their superior position and to win popular moral support for their sinister designs; and (c) the mechanism of state has always been used by the dominant class to carry on exploitation of the dependent class, and to project a wrong image of reconciliation of interests, with the help of religion, morals and other implements of culture. Thus Marxist model of constitutionalism calls for a different mechanism.

In the decades that followed the advent of Marxist theory, there was a widespread democratic movement in the Western world, so much so that the liberal system was transformed into a liberal democracy. Yet the followers of Marxist theory point out that these developments have not changed the basic class character of the state in a capitalist society. The sophisticated mechanism of liberal constitutionalism uses representative institutions only to create an ideological misconception, that is, to give an impression that the government is run by the chosen representatives of the people - the proletariat as well as

the bourgeoisie. The workers who have the right to vote on par with the businessmen and the industrialists are led to believe that they have an equal share in government. The mechanism of liberal democracy claiming to reconcile the interests of the workers with those of the capitalists, pretends to take care of the interests of the workers. But in actual practice this type of political system simply lends legitimacy to the property relations of the capitalist order which involve exploitation of the workers and other deprived sections of the society.

As John M. Maguire has elucidated:

"The modern state, when it represents every body in this society, is in fact representing the workers only in an illusory manner - representing, as it were, their ideological misconception of themselves".⁵

In other words, so long as the capitalist mode of production is maintained, society remains divided into two antagonistic classes - capitalists and workers, whose interests can never be reconciled. Under such conditions, the capitalists and workers are placed in the dominant and

5. John M. Maguire (1978), Marxist theory of Politics, University Press, Cambridge.

dependent positions respectively so that the state is bound to represent, and serve the interests of the capitalists at the expense of the workers. Liberal constitutionalism, as the cornerstone of a capitalist system, is by its very nature incapable of serving the interests of workers who constitute bulk of the society.

Marx particularly pointed out that the French Revolution which was launched against absolute monarchy in the interests of the people had ended with the establishment of the rule of the bourgeoisie while the mass of the people, that is, the proletariat had been left out in the cold. A new revolution was necessary to establish the rule of the people. The projected revolution was to be led by the proletariat in order to destroy the capitalist system. Since mode of production, particularly the pattern of ownership of the major means of production, determined class character of each society, immediate goal of the proletariat revolution was to socialize the major means of production, that is, such means by which production was done by a large number of workers for the use and consumption by the community. It was hoped that when these means would be held in social ownership, in the custody of the proletariat, these would no longer be open to selfish use. Proletariat would be required to hold power during the socialist phase

in order to fight out any capitalist counter revolution, to liquidate last vestiges of capitalism by making work compulsory for all able-bodied persons, and to secure fullest, technological development so as to ensure maximum production which would meet the requirements of all members of society. In this process class distinction in society would eventually vanish, and in a classless society the state as an instrument of class power would also become redundant. This process was described by Engels as "withering away of the state". Accordingly the projected socialist phase was thought to be a short-lived affair, to be followed by the projected communist phase - a classless and stateless society, where according to Engels, 'authority' would be exercised without political power and 'administration' would be carried on without state. Engels pointed out that when class distinctions disappeared, and 'authority' carried on administration in the interests of the community, it enjoyed instinctive respect from all the members of society who would voluntarily cooperate in social effort. Then the community would no longer need the oppressive machinery of the state- police, magistrates and prison - to make people obey the rules of common life. This hypothetical stage hardly needed any constitutional machinery, because the authority would

be self-regulated; it would need no external constraints, nor internal constraints in the form of resistance from the people.

But during the socialist phase the state shall have to be retained with its class character. This state shall have to fulfil its mission of creating a classless society. As the proletariat would now hold political power, the goals of the state shall have to be redefined. This calls for an alternative theory of constitutionalism. While the liberal theory of constitutionalism serves the interests of the capitalist class, it is designed to maintain status quo; it, therefore, provides for management of the existing class relations. But the socialist model of constitutionalism is designed to serve the people themselves; it has no vested interests in maintaining the existing class relations as it is committed to creating a classless society. The socialist constitutionalism, therefore, provides for transformation of society along socialist goals. A programme of action is therefore, a prominent feature of socialist constitutionalism. This was realized as early as 1936 when the first socialist constitution came into force in the USSR after the period of proletarian dictatorship was over.

As Manoranjan Mohanty has significantly observed:-

"While liberal constitutions elaborately describe procedures, powers and functions relating to various agencies, socialist constitutions describe in addition the political and ideological goals and programmes".⁶

In fact, constitutional development in the USSR has served as a guiding factor in the framing of socialist constitutions in a number of countries which include Albania (1946); Yugoslavia (1946), Bulgaria (1947), Czechoslovakia (1948), People's Republic of China (1949), German Democratic Republic (1950), Poland (1952), Rumania (1952) etc., although different countries have sought to combine the socialist ideology with their respective national talents, cultures, historical background, physical and economic conditions.

However, the development of socialist constitutionalism has not been a smooth affair, so much so that many liberal writers refused to recognize it as a valid form of constitutionalism. Incidentally, the state machinery of

6. Manoranjan Mohanty (1975), "Constitutions and Revolutionary Politics in China" in China Report, Vol.2, p.15.

the socialist phase was described in the Marxist literature particularly in the work of Engels and Lenin as the "dictatorship of the proletariat". The use of the term dictatorship was construed by some writers to mean absence of constitutional mechanism. The opponents of Marxism have widely dubbed all socialist systems as 'totalitarian dictatorships'. But the Marxist theory never intended to give unbridled powers to any state whether it was a capitalist or a socialist state. It rather believed that real democracy was possible only in a classless society, not in a class - divided society whether it was a capitalist or a socialist society, although socialist society being committed to evolution of classless society was more democratic than the capitalist society. Thus dictatorship of the proletariat was intended to replace dictatorship of the bourgeoisie; not any form of democracy, which did not exist. Moreover, the dictatorship of the proletariat was committed to the noble aim of evolving real democracy. While the capitalist state had a vested interest in maintaining the existing systems, the socialist state had no such vested interest. It wanted dictatorial powers in order to suppress any bourgeois counter-revolution, to liquidate the last vestiges of capitalism, and to develop forces of production to their fullest capacity. After fulfilling its historical mission the socialist state would dissolve itself, giving way

to classless and stateless society. While the capitalist state wanted to maintain itself with its system of exploitation of the dependent class, the socialist state was intended to dissolve itself after liquidating all forms of human exploitation. Now, if a system envisages no 'vested interests' of the ruling class, and its goal is to eliminate all human exploitation, it would be wrong to consider it non-constitutional. But this of course calls for a new interpretation of constitutionalism.

The central theme of the Marxist view of constitutionalism is the class character of the state. While the liberal view of constitutionalism regards the state as an instrument of reconciliation of the conflicting interests of various groups and sections of society, the Marxist view treats the state primarily as an instrument of the dominant class. Accordingly so long as power is held by the bourgeoisie, the proletariat cannot have any tangible rights under such system even if its constitution pretends to establish perfect freedom and equality of the citizens. In order to secure real rights of the people, the proletariat must capture state power because they alone represent the people. With this capture of power, the old state machine must be replaced by a new one.

The constitutions in the socialist countries strive to be the frame of a new political system based on and conditioned by, the postulates of Marxism - Leninism. These states abolish private ownership of the means of production. In its place, the practice of integral socialism transfers the natural resources as well as the means of production and distribution to the community represented by the workers and peasants.

Western constitutionalism is described as the product of the class struggle in that it protects the exploitation of the labouring masses by the propertied classes. Its attributes - civil liberties and legality - are regarded merely as devices for appeasing the proletariat. From the Marxist - Leninist view point it is the society which creates and moulds the constitution; the formal constitution has to correspond to the prevailing constellation of the social forces. Under integral socialism it is the collectivity of the working population, with the communist party as its vanguard and legitimate representative, that replaces the liberal - bourgeois society of Western capitalism.

Which role, in this vast transformation, a constitution is to play has no where been spelled out. Orthodox Marxism

is ambivalent towards the constitution; its constitutional theory is meager and obscure. Yet Marxism does not hold that the mechanics of the constitution can be wholly dispensed with. Victorious socialism is bound to use the machinery of the bourgeois-liberal state it dislodges. Elections, parliaments, courts, the administrative machinery and with them, the constitution have to continue for a transition period.

Functionally, socialist constitutions are not merely the frame for the operation of the political process by government, Parliament and Political Parties. Conditioned and motivated by the social functions they have to perform, they are basically action programmes to be translated into political practice. In other words, they are instruments enjoining the actual power-holders to pursue the socialist course and to implement the socialist premises. In this sense, present day constitutions in the transitional period until the classless society has been established are a 'compensatory image' of the future in which the programmatic intentions of the constitution will finally become reality. The socialist constitution is never static; it is in perpetual progressive motion moving towards the ideal communist society of the future, in which the welfare of the working population is identical

with the well being of the entire society.

The "programmatic positivism" of the socialist constitutional theory is responsible for the fact that it recognizes neither the difference between substantive and merely formal constitutional law, nor the existence and validity of constitutional usages that deviate from the positive constitutional norms, nor the existence of different ranks or levels of constitutional norms. All of them are equally valid and equally important; none can be disregarded without affecting the entire constitutional fabric.

Having discussed the theoretical aspects of Marxist notion of constitutionalism, it is worthwhile now to discuss how it has fared in practice. Soon after the Bolshevik Revolution in Russia, a new state machinery was devised ensuring command of the working class on the power of the state. The entire means of production, agriculture and industry, etc., was brought under state's ownership and control. Rights of the people were secured through the declaration of Rights of the Toiling and Exploited People. This Declaration of Rights of the Toiling and Exploited People marked a departure from the traditional declaration of rights in the history of constitutionalism. All earlier declarations

since the British Petition of Right of 1689 embodied the rights of the individual against the state, according to the philosophy of *Laissez Faire*. But the present declaration sought to set up a new state structure in conformity with the socialist goal, since according to the Marxist theory the rights of the citizens are relative to the specific socio-political structure. Accordingly, rights of workers can only be secured when the state itself is placed under the control of the working class. The rights established by any system are always rights of the class in power. That is why the power was now vested in the Soviets of the deputies of workers, peasants and soldiers; these soldiers also belonged to the working class as the propertied classes were completely disarmed. But with the promulgation of the 1936 constitution, this structure was qualitatively revised by introducing universal, equal and direct franchise without diluting the worker's control on the Soviet state. This change over was dubbed by some Marxist theorists as 'revisionism' and return to the bourgeois way of government. However, speaking on the draft of the 1936 constitution Stalin tried to refute these arguments. He pointed out that after the establishment of the leadership of the proletariat,

the old exploiting class had been liquidated and that class contradictions had also been eliminated. Only three social classes were now left in the field, namely, the working class, the peasant class and the intelligentsia. Regarding intelligentsia, he said, that its character had been transformed as it had developed its roots in the working class.

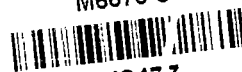
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This line of thinking was developed further when the new constitution of the USSR, promulgated in 1977 declared it as the 'state of the whole people'. This terminology again gave an impression of a liberal state, which is based on conciliation and consensus among the confliction of groups within the state. But in a socialist democracy, the state of the whole people is possible only when class antagonism has been eliminated, exploiting classes have been abolished, and interests of all sections of society have become identical. Then the question of 'reconcilig' any conflicting interest does not arise, because all the people broadly belong to a single class, without any inner contradictions. It is significant that the concept of the 'state of the whole people' is based on the 'unbreakable alliance of the workers, peasants and intelligentsia'.

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Thus the socialist model of constitutionalism is devoted to the great humanitarian ideal of democracy, the ideal of securing real freedom of the oppressed sections of humanity. It is not fair to judge the merit of this model on the basis of its conformity to the liberal model. A socialist constitution is essentially a committed constitution; it is committed to socialist policy and programme. It does not leave public goals, policies and programmes to free play of social, economic and political forces, because according to its philosophical basis, public policy is always an articulation of the designs of the dominant class, whatever political process might be followed. Accordingly, the bill of rights conceded by the liberal state is just a facade which creates an ideological misconception in the dependent class - the toiling masses - of their rights to freedom and equality. But the socialist state does not conceal its class character. When working class (including peasantry and other toiling classes, manual and mental workers) comes into power, public goals, policies and programmes must be decided by that class, in the interests of that class alone. The interest of the antagonistic class - the capitalists and landlords - are not sought to be accommodated in the public policy. On the contrary, the antagonistic class is contemplated to be eliminated so

that with the universalization of labour and fullest development of the forces of production, abundance of material goods could be achieved. At that stage the socialist principle of 'from each according to his ability to each according to his work' would give way to the communist principle of 'from each according to his ability, to each according to his need'. This would coincide with the evolution of a classless society, when the state as an instrument of class power would also 'wither away'. Now a socialist constitution, being solely committed to the interest of the working class, must spell out its goals, public policy, and programmes and should not allow any deviation from these provisions. This would explain why socialist systems do not encourage freedom of expression in the liberal sense of the term. It may also be conceded that a programme provided in a socialist constitution does not reflect what has already been achieved but what is sought to be achieved through the instrumentability of the constitution. It is not meant to mislead the world outside or the people inside about the character of their political order.

To be sure, a socialist bill of rights largely embodies socio-economic rights of the citizens which are

immediately secured or sought to be secured to the citizens in due course. These provisions are meant to govern all policy-making and social planning, not for window-dressing. As these rights are to be secured progressively, the 1977 constitution of the USSR for example, marks an impressive advance over its 1936 constitution. The new constitution includes an elaborate bill of socio-economic rights of the citizens which mark fulfilment of a humanist aspiration. The socio-economic rights of the citizens of the socialist countries ensure from the socialist basis of their economy which is absent in the liberal - capitalist state that only provides 'relief' to the citizens, as admissible under the auspices of a 'welfare state'. The chief purpose of the liberal welfare state is to protect and maintain a free market society. The small increments given to the working classes in a liberal - capitalist state are designed largely to prevent energetic protests which could culminate into revolutionary upheavals. But a socialist state provides for full social security to the citizens as the whole economy is geared to meeting social needs.

The various rights given to the people flow from the provisions of the socialist constitution itself. The people have not to depend upon alternative programmes

of any competing political parties for securing these benefits. This is a distinctive feature of the socialist model of constitutionalism which is not to be found in its liberal counter-part. A.KH. MAKHNENKO⁷ has enumerated eight fundamental features of the constitutions of the socialist countries which broadly distinguish them as typical socialist constitutions:

(a) In the first place, the socialist constitutions serve the socialist basis; they establish socialist ownership of natural wealth, state forests, factories, mines and other basic instruments of production; they secure full employment maintaining citizens' right to work, leisure, education etc.

(b) Secondly, state power in the socialist countries is vested in the working class and working peasantry; the laws express the will and interests of the working people for whose benefit social order^{is} set up.

(c) In the third place, they prohibit any discrimination whatsoever on grounds of racial or national origin; they express the principle of the solidarity of the working class and working people of the whole world.

7. A. KH. MAKHNENKO (1976), The State Law of the Socialist Countries, Progress publishers, Moscow.

(d) Fourthly, they establish equality of all citizens regardless of sex, property status, education, residence etc.

(e) The fifth claim is that the constitutions of the socialist countries do not merely proclaim the rights and freedoms of the citizens; they place their main emphasis on guaranteeing these rights and on the means for their implementation.

(f) In the sixth place, they aim at world peace.

(g) Their seventh characteristic consists in inclusion of programmatic provisions referring to the building of socialism and communism. Unlike bourgeois constitutions, whose role is confined only to the affirmation of the status quo, socialist constitutions, while setting down the achievements of the working people, are at the same time instruments for the further transformation of society.

(h) Finally, unlike bourgeois constitutions which legalize the state power of the exploiting minority under cover of hypocritical references to the rules of the people, equality etc.; socialist constitutions, by vesting state power in the hands of the working people, expressly formulate the nature of that power and the guarantees which ensure its implementation.

With these unique features, the socialist constitution have immense capacity of securing social justice. Socio-economic rights of the people have always been the central theme of the socialist constitutions. In a nutshell, the socialist constitutions provide for a wonderful economic structure; only if they concede fuller freedom in the political sphere, restore civil liberties, encourage freedom of discussion and allow for free competition for political power within the purview of the socialist programme and without altering the socialist basis of their economic structure, they can prove to be much more effective instrument of social justice than the liberal constitutions, which are characterised by their capitalist basis and adoration of manipulative power rather than service rendered to society.

CHAPTER - TWO

HISTORICAL BACKGROUND
(1945-1960)

After analysing the views of different schools on what 'constitution' is really meant in theory, in the present chapter we propose to have a glance over its functioning in practice. Like many other socialist countries of Eastern Europe, two sets of constitutions were introduced in Czechoslovakia. Here, we will look into the factors responsible for the promulgation of first constitution in 1948 and its actual operation. Besides, we will also throw some light on the reasons, because of which it was replaced by a new set of constitution in 1960.

POST-WORLD WAR-II DEVELOPMENTS:

The Second World War ended on May 9, 1945. The anti-fascist coalition triumphed. The Second World War changed the relation of forces on the international scene in favour of socialism and to capitalism's disadvantage. This change was mainly the result of the decisive role played by the Soviet Union in the defeat of the fascist states. The Soviet Union emerged from the war stronger politically than it had entered it. Its international position was strengthened and its authority considerably increased.

The capitalist system suffered tremendous losses because of the war. Fascist Germany, Italy and Japan were defeated. In Europe and in many countries of Asia and South America the working people mounted an active struggle against Reaction, for genuine freedom. In South-Eastern and Central Europe most states disengaged themselves from the capitalist system and embarked on a path of people's democratic development. The defeat of Hitlerite fascism and Japanese Militarism also became impetus for the national liberation movement in colonial and dependent countries, which began to take an active part in the nascent disintegration of the colonial system. The development of the national liberation movement weakened imperialism, strengthened the front of the revolutionary forces and fortified the position of the defenders of peace, democracy and socialism.

The revolutionary process of transition from capitalism to socialism, started by the Great October Socialist Revolution, entered a new stage of development. The anti-fascist national and democratic revolutions led to a new stage of the world socialist revolution. The capitalist encirclement of the Soviet Union, as the only socialist state in the world, was broken. socialism

went beyond the frame of a single country gradually forming a world socialism system.

The communist movement became the most influential international force. The authority which the communist parties had gained in the fight against fascism continued to grow. On the basis of this, the communist strengthened their links with the working class, with the broad popular strata, with democratic and progressive social forces and won new political positions which enabled them to resolutely fight for the basic interests of the working people.

The national and democratic revolution in Czechoslovakia was part of this powerful revolutionary process. It was anti-imperialist and anti-fascist in character. It was directed against German imperialism, the Nazi occupiers and their domestic helpers, against the big bourgeoisie which had betrayed the Czech and Slovak nations and collaborated with the occupiers. The national and democratic revolution was led by the working class. As a result of consistently enforcing the objectives of the national and democratic revolution, it shook the foundations of bourgeois rule and undermined not only the political but also the economic power of the bourgeoisie.

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In view of favourable domestic and foreign political conditions, the communist party of Czechoslovakia was able to orient itself to a peaceful path to socialism. This path was not understood, however, as class reconciliation but as implementation of a revolutionary transformation without the working class using armed forms of struggle. The peaceful transition to socialism, however, did not depend only on the will of the working class but also on the strength of resistance by the bourgeoisie.

The political basis of the People's democratic republic was the national front of Czechs and Slovaks as the political expression of the class and social alliance of the working class, the peasants, tradesmen and the intelligentsia, a union of working people of town and country, of Czechs and Slovaks. From the political point of view, it was a grouping of democratic and anti-fascist forces of both nations and at the same time a bloc of political parties which had taken part in the anti-fascist struggle and pledged themselves to jointly build a new People's Democratic Republic. The big bourgeoisie and its helpers were deprived of participation in political power.

Concurrent with the overall democratization of public life and the extensive socio-economic reforms, the

preconditions were formed for the nationalization of the main economic branches. The Communist Party came forward with the demand to nationalize the key industries. Thanks to nationalization, the economic positions of the big bourgeoisie and foreign capital were liquidated. The economic independence of the People's Democratic Republic was reinforced. The nationalized sector became the basis for new production relations.

Thus only six weeks after liberation Klement Gottwald the first President was able to state:-

"Today we probably cannot find in the Republic a single big enterprise, a single big bank in which its former owners are sitting and running it.... these former omnipotent men of banking concerns, of industrial trusts and cartels have been removed from their thrones..."¹.

Although the national administration did not definitely solve the question of ownership, it significantly strengthened People's Democratic Power.

1. Kl. Gottwald (1955), Works in Czech, Vol.12, p.62, Prague.

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ENACTMENT OF THE 1948 CONSTITUTION:

At the turn of 1945-46 serious differences began to appear in the National Front. The reactionary forces gradually gained the leadership of some parties. Anti-Communist tendencies became stronger especially in the National Socialist, the People's and Democratic Parties and the influence of banned political parties was increasingly evident in the policies of their leaderships. However, the reactionary forces were conducting a battle in which they were weakened. The working class headed by the Communist Party was advancing. This was proved by nationalization and the hard working efforts of all the People. Many economic difficulties were successfully overcome and production in most factories increased. The advantages of nationalized production were also proven.

At the session of the Central Committee of the CPCZ, in December 1945, Klement Gottwald assessed in these words the successes achieved to date in building a People's Democratic Republic:

"Thanks to basic measures which we have carried out in what is almost record time, we have laid the firm foundation to build a new republic on a new People's and democratic principle. This past initial period was characterised also by the

fact that the initiative on political events in our country was firmly in the hands of our party, that we set the tempo".²

The Eighth Congress of the Communist Party of Czechoslovakia took place in 1946 in a situation characterized on the one hand by the rapid advance of the working class and all working people and, on the other hand, by the pressure of the bourgeoisie against the People's Democratic Republic.

Gottwald warned that bourgeois reaction was concentrating its forces in several political parties and that this represented a growing danger to the National Front. The Congress therefore enjoined the party ^{to} strengthen the National Front from below, mainly through united social organizations. It set two main tasks, fulfilment of which would mean further steps on the path to Socialism: Firstly to quickly complete the restoration of the economy ruined by the war to raise production to its pre-war level and to win more economic demands of the working people. Secondly, to elaborate a new constitution and write into it all the results of People's democratic development of the republic, including nationalization. The Congress approved the Party's political line and decided to continue the policy of a broad national front.

2. Ibid., p.210.

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The Congress line became the basic directive for the activities of communist throughout the country. The congress prepared them for a difficult pre-election battle. The results of the first post-war elections were of considerable significance for the further development of the People's democratic republic. The elections to the constitutional National Assembly were held on May 26, 1946. They were a big political victory for the communists. Although the reactionary forces had succeeded through demagogic slogans in fooling part of the working people, the victory of the Communist Party very convincingly and significantly reinforced the position of the working class. For the first time in the history of the Czechoslovak Republic, a Communist - Klement Gottwald - became the Prime Minister. The number of Communist Party representatives in the government and in the constitutional National Assembly increased considerably.

The results of the elections confirmed that the communist party enjoyed the confidence of the broad mass of working people. The decisive victory of the communists in the elections was the guarantee that the working class would strengthen its position in the bodies of state power and the state apparatus and contribute to the further strengthening of the revolution.

The bourgeoisie in Czechoslovakia found itself increasingly isolated. In 1947, its economic position was considerably weakened and its political influence severely curtailed. It realized that only one path was left to bring about a change in political relations; to provoke a government crisis, establish a caretaker government and to remove the communists from the government even before the elections.

However, the February 1948 victory climaxed the stage of transformation of the national and democratic revolution into a socialist revolution. Establishing the dictatorship of the proletariat marked a milestone in the history of Czechoslovakia. It enabled the working class under the leadership of the Communist Party of Czechoslovakia, to proceed to the far reaching socialist transformation of Czechoslovak society.

The immediate task of the Communist party after February 1948 was to ensure and consolidate this victory. On May 9, 1948, on the third anniversary of the climax of the national liberation struggle of the Czech and Slovak people and the liberation of Czechoslovakia by the Soviet Army, the constitutional National Assembly adopted a new,

basic law of the republic - the May 9 constitution. The constitution fully confirmed all the gains made under People's democratic Czechoslovakia, legalised the takeover of all power by the working class in alliance with the peasantry and other strata of working people. It embodied the sovereignty of the working people in the state, the equality of the Czech and Slovak nations and of all citizens.

The Czechoslovak constitution of 1948 showed the influence of the Soviet constitution, but it also retained certain traditional forms. The institution of the President of the Republic, as well as the national assembly, and the Presidium safe-guarding constitutionality remained unchanged. The constitution completed the establishment of the Slovak national organs (the Slovak National Council and the body of delegates) and conferred considerable powers on them. The local authority organization was established in the form of national committees. In accordance with the Soviet model, this constitution included the institution of the People's assessors, but failed to regulate the new functions of the procurator's offices; the administrative courts were maintained in this constitution. This constitution was completed later by

so-called acts of constitution which made the original constitution much more like the Soviet model. The administrative organization, the courts and the new-type Procurator's organisation, the national committees and later the Slovak national organs were reshaped between 1948 and 1956; some of them were rendered suitable for performing new functions. The total revision of the constitution was delayed upto 1960 by a highly detailed, modifying system of acts of constitution. "This way of framing a constitution, however, is rather unusual in the practice of the socialist states".³

PHASE OF SOCIALIST CONSTRUCTION IN CZECHOSLOVAKIA (1948-60):

As a result of the February victory and the changes that came about after February in the state and social system of Czechoslovakia, People's democratic power was strengthened as a form of the dictatorship of the proletariat. The stage of socialist construction now opened up for Czechoslovakia. This was a qualitatively new,

3. Otto Bihari, (1979), The Constitutional models of Socialist' State' Organizations, Budapest.

complicated and tremendously challenging task. This new stage in the history of the Czechoslovak revolutionary working class movement and state placed greater demands chiefly on the communist party of Czechoslovakia, on its cognitive, pro-grammatic, political - organizational and ideological - educational activities, on the correct application of its leading role in society.

The role of the CPCZ after the working class had seized power became even greater. Its position in society changed. As the representative of the working class and the broad strata of other working people it became the leading political force, fully responsible for the further political, economic and cultural development of society, for the state's foreign policy. In these new conditions the organizational forms and methods had to change so that the communist party, which in the state of a dictatorship of the proletariat is the decisive force and main guarantee of building a socialist society, could play its leading role because the "dictatorship of the proletariat" would not work except through the Communist Party".⁴

4. V.I. Lenin (1965), Works in English, Vol.32, p.199, Moscow.

The construction of socialism necessitated strengthening and developing working class power - the dictatorship of the proletariat, building the material - production basis of socialism, strengthening socialist production relations so that their victory was achieved in all branches of the national economy. It was necessary to carry out a socialist cultural revolution, to change social consciousness in the spirit of a Marxist - Leninist world conception. The pre-requisite for the successful construction of socialism was further all-round cooperation, and friendship with the Soviet Union and with the People's democratic states.

In the middle of 1947, the CPCZ, in connection with preparations for the first Five Year Plan, drew up its conception of socialist construction and reconstruction of the Czechoslovak economy based on the nationalization of industry, transport and banking. The CPCZ's proposal for the First Five Year Plan proceeded from an analysis of the state and needs of the Czechoslovak economy and from a study of the experience of Soviet Five Year Plans. In October 1948 it was approved by the National Assembly and became a law. It was a plan for construction and reconstruction of the national economy with priority given to the development of heavy industry, notably engineering. The preferential

development of heavy industry created the essential conditions for building up the material - technical basis of socialism, for the socialist reconstruction of the countryside, for creation of the material prerequisites to raise the living standard of the people and the military preparedness of the country. It enabled the country to extricate itself from economic dependence on the imperialist states and to become integrated in the system of socialist international cooperation.

Together with socialist industrialization the CPCZ set the task of the gradual collectivization of agricultural production through cooperatives. Dividing up the land under the land reforms was the decisive factor for strengthening the alliance of the working class and the small and medium - class peasants and contributed in no small degree to the February victory in 1948. The construction of socialism necessitated the gradual removal of the contradictions between the social character of ownership in industry and the private ownership of the means of production in agriculture. Small-scale production with its tendency to breed and sustain capitalist private - ownership relations might, potentially, threaten not only the economy but also the political stability of the dictatorship of the proletariat.

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The construction of socialism, the modification in the economic, social and political spheres, also made it essential to carry out revolutionary changes in the ideological field. This meant overcoming the ideological heritage of the bourgeoisie and carrying out a socialist cultural revolution. Even before February 1948, the Party had conducted a struggle for new, socialist thinking among the broadest strata of the nation. Part of this struggle was the fight for the democratization of education and culture. Only following the February victory over the bourgeoisie could the socialist cultural revolution proceed vigorously.

The Ninth Congress of the Communist Party of Czechoslovakia was held from May 25 to 29, 1949, in Prague. The Congress laid down the general line of building socialism. It resolved the basic questions of strategy and tactics for the transitional period from capitalism to socialism. This line represented an internally - linked programme determining the basic tasks and direction in which the Party, with the broadest participation of the people, was to take and develop in building socialism.

In implementing the general line the CPCZ devoted increased attention to building up the state apparatus,

the army, the security bodies and the judiciary. In 1949-50 virtually the entire legal system was rebuilt, incorporating the revolutionary changes achieved by the working people after the February victory over the bourgeoisie.

Despite errors and mistakes at this complicated time, a considerable step forward was taken under the leadership of the Communist Party of Czechoslovakia in building the base of socialism. The initiative of the working people, the upsurge of socialist emulation and the shockworker's movement, and the construction plan of the young people overcame the barriers that stood in the way of fulfilling the First Five Year Plan, and the collectivization of the countryside laid the firm foundations for socialism in Czechoslovakia. From the view point of long term development it is these facts that were decisive in assessing the initial period of the fifties. Under exceptionally difficult conditions of the cold war, Czechoslovakia mounted socialist construction and became a solid, integral part of the world socialist system.

The Tenth Congress of the Communist Party of Czechoslovakia met between June 11 and 15, 1954. The Congress

confirmed the correctness of the Ninth Congress's general line and evaluated the successes achieved in fulfilling it. It adopted a programme of economic measures intended to remove the disproportions in the national economy and to ensure further proportional development. Main attention was directed to the development of the Czechoslovak economy and a rise in the living standard in view of the fact that increment in the production of consumer goods would be the same in 1955 as manufacturing means of production in industry.

At the beginning of May 1956, the Central Committee of the CPCZ submitted for discussion to the Party and the entire public a proposal of guidelines for the second Five Year Plan. The results of both the inner - party and public discussion were summarized at a nationwide conference of the CPCZ held from June 11 to 15, 1956. The conference approved the directives for the second Five Year plan for 1956-60 and set the following as the main goals of this period: to complete the construction of the material - production foundations of socialism, to ensure priority development for certain branches of the national economy (raw materials, materials and full power foundations and the chemical industry) and to complete the socialist collectivization of agriculture.

In connection with debate on methods of management, the conference centred attention on questions that were the most frequent subject of criticism - the problem of bureaucracy and too much centralization. It charged the respective party and state bodies to draw up measures that would lead to a more consistent application of democratic centralism and remove hinderances to developing activity in enterprises, National Committees and in other lower bodies in organizations and collectives of working people.

The 11th Congress of the Communist Party of Czechoslovakia was held from June 18 to 21, 1958. It noted that the historical victories of the working people and their perspectives for the future are inseparably linked to the struggle of working people of the whole world for peace and progress, for a better life, for socialism and communism to the historical process of the transition from capitalism to socialism started by the Great October Socialist Revolution and strengthened by the emergence and reinforcement of the world socialist system.

The reform of management of the national economy, improvement in the political system, the results of the wage, social and cultural policy had a favourable reaction on the work and political activity of citizens. The Party's

position in society was reinforced. The main tasks of the Second Five Year Plan in industry and in some other fields were fulfilled by the end of April 1960. The results of a decade of construction work revealed that the general line of building the foundations of socialism laid down at the "Historic" Ninth Congress of the CPCZ were correct.

During the Fifties a powerful material - production base of socialism was built. As a result of industrialization processes, the productive forces in Czechoslovakia increased in a historically record time and deep structural changes in the individual branches and in the national economy as a whole were carried out. The Czechoslovak economy found its firm position in the world economy in the frame of the economic system of member states of the CMEA. The level of per capita industrial production put Czechoslovakia in a leading position in the world.

In all fields of the economy socialist production relations based on the socialist ownership of the means of production prevailed and triumphed. The foundations were laid for a new class and social structure of society. Exploitative classes were removed in towns and villages. The working class grew in number and fully proved its ability to creatively implement the great works of the socialist revolution to build

a new social system and to fulfil its leading role in society. The reconstruction of the village on socialist foundations led to the formation of a new class of cooperative farmers. Thus the workers - peasants alliance moved to a higher level. In the process of socialist construction tenⁿ of thousand of new specialists and managerial cadres acquired education and practical experience - a new intelligentsia emerged; changes in the working class, the rise of a class of cooperative farmers and a socialist intelligentsia led to the emergence of a new social and class structure, marked by basic traits common to all countries of the socialist system.

After building the foundations of socialism the class struggle did not cease. The further maturing of socialist relations in the still very young socialist society required a thorough assessment of the present state, selecting the tasks for the class struggle and establishing the line of all embracing incorporation of the former petty bourgeois strata into the system of socialist large-scale socialist re-education.

The process of levelling out the economic and cultural differences between the Czech land and Slovakia

also continued. The Slovak people, with the fraternal help of the Czech people, had achieved in the historically short-time of socialist construction outstanding successes in economic and social development raising the material and cultural level of the people. The results of socio-economic changes of the whole of society, carried out during ^{these} years, meant overcoming most basic social problems of the past. The roots, which in the past, had given rise to unemployment, to poverty and existential uncertainty were wiped out once and for all. Thanks to the rise in the living standard, by the end of the fifties Czechoslovakia ranked among the leading countries of the world. Thus the foundations of socialism were built in Czechoslovakia under the leadership of the CPCZ in a historically short-time. Czechoslovakia entered a period of the gradual reinforcement of the bases of socialism and the all-round utilization of its further developmental possibilities.

The results of these outstanding revolutionary changes were considered by a nationwide party conference called from June 5 to 7, 1960. The conference noted that socialism in Czechoslovakia had triumphed. This evaluation produced the impression that all the basic tasks linked to the transition from capitalism to socialism had been

solved. It reflected a ^{proper} estimation of the stage of development achieved and indicated great satisfaction with these successes. In conformity with this conclusion, the conference discussed the proposal for a new socialist constitution and approved the guidelines for the Third Five Year Plan of development of the National Economy for 1961-65. It took up a position on several topical questions regarding the international situation and the international communist movement.

At its first meeting on July 11, 1960, the newly elected National Assembly approved the new constitution according to which the name of the state was changed to the Czechoslovak Socialist Republic.

CHAPTER - THREE

A PROFILE OF THE 1960 CONSTITUTION

As in various other People's Democracies, a new constitution was adopted in Czechoslovakia on 11 July, 1960. As discussed in the previous chapter promulgation of the new constitution signalled the inauguration of a new phase of development. The nature of the state was said to have changed and accordingly it was named as the Czechoslovak Socialist Republic.

In this chapter, an attempt has been made to critically examine the actual provisions of the 1960 constitution, as amended drastically in 1968, with a view to present a profile of the constitution of the Czechoslovak Socialist Republic.

The present constitution of Czechoslovakia was adopted by the newly elected National Assembly. The new constitution is substantially longer and more explicit than the previous constitution. It has a more complex internal structure. The 1960 constitution is divided into nine chapters which is spread over 112 articles.

PREAMBLE:

The constitution of 1960 contains a declaration or preamble, which is not a part of the constitution. The

preamble is not so designed as to set the legal tone for the rest of the document but rather to sketch the profile of the political, economic and social systems of Czechoslovakia. The preamble and chapter one are inseparable in as much as they both deal with the characteristic features of the Czechoslovak Political system.

The preamble declared that the stage of socialism has been achieved in Czechoslovakia. It heralds the entry of the Czechoslovak society into a higher stage to achieve the higher goals of constructing advanced socialist society and finally communism. It also declared its fraternal unity with the Soviet Union and other socialist countries. It has applauded the achievements and progress made during the course of construction of socialism in fifteen years (1945-60). It says that the socialist principle of "from each according to his ability to, each according to his work" is being practised in Czechoslovakia. All efforts are now directed at creating the material and moral conditions for the transition of their society to communism, where the principle "from each according to his ability to each according to his needs" will be practised. Thus the preamble reflects amply the will of the working people of Czechoslovakia to consolidate the results already achieved

by their struggle and at the same time to aim at the higher objectives.

THE POLITICAL SYSTEM:-

The articles one to six of the Czechoslovak constitution deal with the political system. The most important feature of this first chapter is that a detailed description of the guiding and leading role of the Communist Party is given and the actual place of the Party in Czechoslovak society and state is clearly defined. Article 4 says that "the guiding force in society and in the state is the vanguard of the working class, the Communist Party of Czechoslovakia, a voluntary militant alliance of the most active and most politically conscious citizens from the ranks of the workers, farmers and intelligentsia".¹

The first two articles explain the nature of state in Czechoslovakia. The first article describes Czechoslovakia as a socialist state which is founded on the firm alliance of workers, farmers and intelligentsia

1. Article 4, The Constitution of the Czechoslovak Socialist Republic, adopted by the National Assembly on July 11, 1960 (Orbis Press Agency, Prague, 1978) (Hereafter all references to articles of 1960 constitution of Czechoslovakia are from this source).

with the working class at its head. The article two says that all powers in the Czechoslovak Socialist Republic belongs to the working people. The working people exercise state power through their representative bodies which are elected and controlled by them viz, the Federal Assembly the Czech National Council, the Slovak National Council, and National Committees. In these representative bodies the working class participates through its representatives and organizations. They alone-determine its policies and procedures and all kinds of initiatives are taken by them. Article three explains the electoral system prevailing in Czechoslovakia, the principle of universal adult suffrage has been accepted and the minimum age required for voting is 18. The minimum age fixed for contesting the election is 21. A novel scheme introduced in the Czechoslovak constitution is that of the provision of recall. A member of any representative body may be recalled by his constituents at any time. This is a unique arrangement unheard of in the liberal democracy of the west. Article five deals with various types of voluntary associations viz. the Revolutionary Trade Union Movement, Cooperative Youth, Cultural, Physical training and other organizations. It postulates that gradually some of the functions of the state organs will be

transferred to these organizations of the people. Article six is related to the National Front of Czech and Slovaks. This institution was formed immediately after second World War and it is still maintained in its original form. It is the political expression of the alliance of the working people of town and country led by the communist party of Czechoslovakia.

Apart from these provisions, there are other articles in the first chapter dealing with the political dimension of Czechoslovak society. Article 17 deals with the observance of principle of 'socialist legality' with regard to the state and social organizations. It says that "all the citizens and all state and people's organizations shall direct all their activities according to the legal order of the socialist state and shall see to the full enforcement of socialist legality in the life of society.² It further says that "People's organizations, in fulfilling their purpose shall guide citizens to uphold the law to maintain working discipline and the rules of

2. n.1, Article 17.

socialist conduct, and shall endeavour to forestall and prevent their violation.³

Another cardinal socialist principle - 'Democratic Centralism' has been given the constitutional status. Article 18 defines that "the Central direction of society and the state in accordance with the principle of democratic centralism shall be effectively combined with the broad authority and responsibility of lower organs, drawing on the initiative and active participation of the working people".⁴

FEDERAL PRINCIPLES:-

Though Article 1 of 1960 Constitution declares Czechoslovakia as a unitary state, it is not so after the enactment of the constitution Act of 1968. Now, the Czechoslovak Socialist Republic is federal in structure and consists of two national republics - the Czech Socialist Republic and the Slovak Socialist Republic.

3. Ibid., Article 17.

4. Ibid., Article 18.

An important principle of the Federation is a universal, democratic principle of Parity. It stems from the principle of equality and equal rights of both states (the Slovak state being weaker numerically and economically). Gustav Husak, the former General Secretary of the Communist Party and also the President of Czechoslovakia has stated:-

"Czechoslovakia is the homeland of two equal nations - Czech and Slovak and it is also the homeland of citizens of Hungarian, Ukrainian, Polish and German nationalities. By the establishment of the federation, we realized the principles of Leninist - nationality Policy in our conditions. We expressed the equality of our nation by the new constitutional set - up.⁵

This specific feature of the federation made it necessary to work out special guarantees of national equality - for example, the prohibition of outvoting of representatives of one nation by the representatives of the other nation on issues concerning fundamental national interests. One

5. Gustav Husak - Speech delivered at the Conference of the National Front, January 27, 1971.

of the most important objects of the federation is to ensure more intensive equalization of economic-social differences between the Slovak and Czech national-political areas.

Coming to the specific provisions Article-1 to 28 of the constitutional Act of October 1968 deal with federal scheme. Article 1 defines "The Czechoslovak socialist Republic as a federal state of two equal fraternal nations, the Czechs and Slovaks."⁶ It further says that "the Czechoslovak Socialist Republic is founded on the voluntary bond of the equal, national states of the Czech and the Slovak nations, based on the right of each of these nations to self - determination."⁷ It continues by saying that "the Czechoslovak Socialist Republic is made up of the Czech Socialist Republic and the Slovak Socialist Republic. Both Republics shall have equal position within the Czechoslovak Socialist Republic."⁸

6. Article 1, Constitutional Act of October 27th, 1968, 'Concerning the Czechoslovak Federation'.

7. Ibid., Article 1.

8. Ibid., Article 1.

The principles of socialist democracy was accepted by the Czechoslovak socialist Republic as well as the Czech Socialist Republic and the Slovak Socialist Republic. Their political system shall be the same in matters of principle. All of them have their own representative bodies through which the working people will exercise the state power. In the economic field, unitary system has been accepted. Article four says that "the economy of the Czechoslovak Socialist Republic is unitary and shall develop on the basis of the socialist economic system".⁹ It further explains that "in the unitary planned economy of the Czechoslovak Socialist Republic a uniform system of Socialist Public ownership, a single currency, a uniform economic policy, a uniform system of management and a uniform policy and placement of the labour force shall be asserted".¹⁰

In the first chapter there are other articles also dealing with the question of territorial integrity, citizenship, language, etc. Article three says that

9. Ibid., Article 4.

10. Ibid.

"the frontiers of the Czechoslovak Socialist Republic and the frontiers of the Czech Socialist Republic and the Slovak Socialist Republic may be changed only by a constitutional Act of the Federal Assembly."¹¹ It further states that "the frontiers of either of the two national Republics may be changed only with the consent of the respective National Councils and the National Council shall grant such consent by its constitutional Act".¹²

There is a provision of single citizenship which may not be in tune with the liberal concept of federalism. Article five explains that "every Czechoslovak citizen is at the same time a citizen of the Czech Socialist Republic or the Slovak Socialist Republic".¹³ It says further that "every Czechoslovak citizen shall enjoy the same rights and have the same duties on the entire territory of the Czechoslovak Socialist Republic".¹⁴ Article six deals with the language issue. It says that "the Czech and the Slovak languages shall be used equally in the promulgation of laws and other generally binding legal regulations".¹⁵

11. Ibid., Article 3.

12. Ibid.

13. no.1, Art. 5

14. Ibid.

15. Ibid., Art.6

It is worthwhile now to throw a glance on the division of jurisdiction between the Federation and the Republics. Articles seven to twenty eight deal with this aspect. Like various federations, there are three categories of subjects. First, there are subjects of crucial importance which are exclusively under the jurisdiction of the Federation - foreign policy, conclusion of international treaties, defence, currency, federal material stockpiles, federal legislation and administration within the scope of the federal jurisdiction and control over the federal organs, protection of federal constitutional rule, etc. This aspect has been dealt with in the article seven.

There is another category of subjects, where there is provision of joint jurisdiction (Concurrent list) by the Czechoslovak Socialist Republic and the two Republics - planning, finance, banking price-control, economic relations with other countries, industry, agriculture and food, transport, post and telecommunications, development of science and technology, and investment activity, labour wages and social policy, socio-economic information, legal regulations governing socialist enterprises and economic arbitration, standardization, matters relating to measures

and weights, industrial rights and the state testing service, internal order and state security, matters concerning the press and other media of information, and control. Article eight says that in the spheres listed above, organs of the Czechoslovak Socialist Republic shall have jurisdiction in precisely specified matters, and in other matters the jurisdiction shall appertain to the organs of the Czech Socialist Republic and the Slovak Socialist Republic.¹⁶

Residuary powers have been given to the Republics. Article nine defines that "the matters which have not been specifically placed under the jurisdiction of the Czechoslovak Socialist Republic shall be under the exclusive jurisdiction of the Czech Socialist Republic and the Slovak Socialist Republic."¹⁷

Having discussed the provisions dealing with relations in the legislative field, we shall now discuss the same in the field of financial relations.

16. Ibid., Art. 8.

17. Ibid., Art. 9.

Article ten declares the Czechoslovak economy as a planned economy in accordance with the socialist economic system. Article 11 deals with the provisions of budgets made separately for the Federation as well as the Republics. Article 12 defines the nature and kind of taxes to be collected and distributed between federation and the two Republics. It says that Acts of the Federal Assembly shall govern enterprise taxes and returns, the turnover tax, the pension tax, the agricultural tax, the income-tax, the tax on artistic and literary activities, the motor vehicle tax (the road tax), the tax on the income of the population and the taxation (returns) of banking and insurance institutions.¹⁸ It further states that "the Acts of Federal Assembly shall also govern changes which by their character have an exclusive or almost exclusive relationship to other countries or are related to the exercise of the jurisdiction of Federal organs."¹⁹ All other taxes (residuary) and duties shall be determined by Acts of the National Councils.

As regards the collection, administration and

18. Ibid., Art. 12

19. Ibid.

control of all taxes and duties, the central organs of the Republics and national committees perform this task in general. But there are cases when the collection of duties (fines) are done exclusively by Federal organs. Federal organs may control payments made into the Federal budget.

Article 13 to 28 deal with the jurisdiction and competence of the Federation and the two Republics. The jurisdiction of Czechoslovak Socialist Republic has been explained in the following fields - Customs, banking, price policy, foreign economic relations, industrial sphere, agriculture and food, transport, post and telecommunication, scientific, technological and investment policy, labour, wages and social policy, socio-economic information, etc. These subjects fall in the previously discussed 'concurrent list' on which both the Federation and the Republics have joint jurisdiction.

This, in brief, is the federal pattern introduced in the original constitution of 1960 by the constitutional Act of 1968.

THE ECONOMIC SYSTEM:-

The constitution puts the provisions dealing with

the socialist ownership of the means of production in the very first chapter. It serves to focus the primacy attached to economic activity in the life of the socialist state. Article 7 to 15 of the first chapter deal primarily with the economic system to be built in Czechoslovakia. Article seven defines "the economic foundation of the Czechoslovak Socialist Republic as the socialist economic system where every form of exploitation of man by man is excluded. It further defines the socialist economic system as one in which the means of production are socially owned and the entire national economy directed by Plan and which ensures, with the active cooperation of all citizens a tremendous development of production and a continuous rise in the living standard of the working people.²¹ Article 8 explains the two basic forms of socialist ownership; state ownership which is ownership by the people as a whole (national property), and cooperative ownership (property of people's cooperatives). The same article defines, what actually constitutes the National Property - the mineral wealth and basic sources of power, the main areas of forests, rivers, natural resources, means of

21. Ibid., Art.7

industrial production, public transport and communications, banks and insurance institutions, broadcasting, television and motion picture enterprises, and the most important social institutions, such as health facilities, schools and scientific institutes. As far as the cultivable lands are concerned, they shall be kept in the joint use of unified agricultural cooperatives.

One important innovation is the guarantee of the personal property and its inheritance. Article 9 and 10 deal with the private enterprises and the personal ownership of consumer goods. According to article 9 "Within the limits of the socialist economic system small private enterprises, based on the labour of the owner himself and excluding exploitation of others' labour power, shall be permitted."²² On the other hand, Article 10 ensures the personal ownership of consumer goods, particularly articles of personal and domestic use, family houses, as well as savings derived from labour. It also guarantees the inheritance of such personal

22. Ibid., Art. 9

property. Thus, we find that though there is no concept of private property in a socialist state like Czechoslovakia, the use of personal property without which there can be no decent life, is very much allowed.

Article 11 to 15 define the various kinds of economic goals to be achieved by the Czechoslovak state. The state has to set up the national enterprises which will look after the national property's administration and management. Besides, in the agricultural field, the socialist state will establish unified agricultural cooperatives. These cooperatives are, in fact, the voluntary associations of working farmers for joint socialist agricultural production. The state will not only establish these and various other types of People's cooperatives but will help them in serving the interests of society, by making available modern science and technology. However, it is the principle of 'democratic centralism' which is the basis of all such economic organisations. Moreover, in these organizations working people are given full participation at all levels of management.

The principle of centralised planning has been also given a constitutional status in this constitution.

Article 13 maintains that all economic organizations shall systematically create the material, technological and organizational conditions for their activity in accordance with the long term plans of development of the national economy, in such a way that their planned tasks may be fulfilled.²³

The concept of planning was originally devised by the Union of Soviet Socialist Republics and has been accepted by most of the east European countries. Even before the drafting of this constitution two five year plans have already been drafted in Czechoslovakia and they helped tremendously in bringing the country on the map of the highly industrialised and developed states of the world . Article 14 describes the prerequisites to be fulfilled to attain the full development of socialist society and thus creating the conditions for the gradual transition to communism. It also points out that the efforts will be made to remove the differences between physical and mental labour and between town and country. For achieving these goals the Czechoslovak Society will attach great importance to its relations with the Union

23. Ibid., Article 13.

of Soviet Socialist Republic and other states of the world Socialist system.

RIGHTS AND DUTIES OF CITIZENS:-

Articles 19 to 38 of the second chapter are devoted to ensure equal rights and duties to all citizens of Czechoslovakia regardless of nationality or race. Characteristic of the harmony between a citizen's rights and duties on the one hand and the interests of society on the other, is the right to work. According to Article 19 "Work in the interests of the Community shall be a primary duty and the right to work a primary right of every citizen".²⁴ Remuneration of work should depend on its amount quality and social significance. At the same time all working people have a right to rest after work (Article 22). All the legal regulations concerning working hours and paid leave as well as recreation, are based on the provision. Thus we find a great concern on the part of state for its working population. The provision of 'right to work' to everyone is really commendable and is something beyond the imagination of the liberal democracies. As a result of this, we do not

24. Ibid., Art. 19.

find any case of unemployment in Czechoslovakia. This one particular right has completely changed the meaning of socialist theory of constitutionalism. It has enhanced tremendously the image of socialist constitutional theory and practice even in the eyes of its western critics.

Citizens are entitled to health protection and medical care, as well as to financial security in old age and invalidity. Medical care is free. An extensive network of health establishments is directed and administered through the elected national committees, and the state allots substantial financial means to ensure the health protection of its citizens. Checking the observance of safety regulations and administering employed person's health insurable are the province of the trade unions. This has been dealt in article 23.

Article 24 of the constitution also guarantees all citizens the right to education which is free at all levels. Similarly, the development of science and research is provided from state funds. Citizens of Hungarian, Ukrainian and Polish descent who are living as ethnic units are given all possible facilities by the state for education in their mother tongue. Article 26 and 27 deal with marriage,

family and the status of women in the society. The state shall take special care of the children, youth and women and shall provide all possible opportunities for their full physical and mental development.

In the political field, freedom of expression has been given a constitutional status. Article 28 states that 'freedom of expression in all fields of public life, in particular freedom of speech and of the press, consistent with the interest of the working people shall be guaranteed to all citizens.²⁵ It further maintains that these freedoms shall enable citizens to further the development of their personalities and their creative efforts, and to take an active part in the administration of the state and in the economic and cultural development of the country.²⁶ The citizens have been also given the right to make complaints, suggestions and proposals, to their representative bodies on which the state bodies are supposed to take immediate action (Art. 29).

No one may be prosecuted for other than legal

25. Ibid., Art. 28

26. Ibid.

reasons. This provision is stipulated in the criminal code which states that a citizen may be prosecuted only after a formal accusation has been duly made. From that moment, the accused has the right to consult a lawyer. A person may be detained in custody only as directed by law and for reasons stated by law. In the course of investigation, a person may be remanded in custody by the prosecutor and after an indictment has been filed, by the court. Penalties may be administered only as the law directs and only the courts may pronounce prison sentences. Inviolability of domicile, privacy of mail and messages and freedom of residence are guaranteed by the article 31.

The Czechoslovak Socialist Republic offers the rights of asylum to foreign subjects persecuted for defending the interests of the working people, for artistic or scientific activity for their defence of peace or participation in national liberation movements (Art. 33).

The last five articles (Article 34 to 38) of the second chapter explain the kind of duties to be performed by the Czechoslovak citizens. Citizens are obliged to abide by the constitution and other laws, and to respect

the interests of the socialist state, to protect and strengthen socialist ownership and carry out public offices conscientiously and responsibly. Defence of the country and its socialist order is the supreme duty and a matter of honour for every citizen. Another civic duty is respect for the rights of one's fellow citizens, as well as careful observance of the rules of socialist conduct.

SUPREME STATE ORGANS:-

The original constitution of 1960 of Czechoslovak Socialist Republic dealt with them in three chapters - three, four and five - covering articles 39 to 72. However, these chapters were repealed by the constitutional Act of 1968. They have been explained again in three chapters - three, four and five - and cover articles from 29 to 85a.

First of all, the name of the National Assembly has been changed into the Federal Assembly. Articles 29 to 59 of the new third chapter explain composition and powers of Federal Assembly. It is the highest state and legislative organ of Czechoslovak Socialist Republic. Though originally unicameral, it has now become bicameral

after 1968 constitutional Act was passed. It consists of two chambers - the Chamber of the People and the Chamber of Nations. Both chambers shall be equal in power. A valid decision of the Federal Assembly shall require the concurrent decision of both chambers.

As far as the composition of the popular chamber is concerned their number is two hundred and they are elected directly in the whole of Czechoslovak Socialist Republic. Their term extends for five years. On the other hand, the higher chamber - Chamber of Nations - represents the equal constitutional position of the two republics within the state. It shall consist of 150 members, 75 of whom shall be elected by direct vote in the Czech Socialist Republic and 75 shall be elected by direct vote in the Slovak Socialist Republic. The term of both chambers is the same.

Articles 32 to 35 deal with the conditions in which the sessions of the Federal Assembly are to be convened. Article 32 stipulates that the Federal Assembly shall be in session at least twice within a year. The sessions of Federal Assembly are convened and prorogued by the President of the Czechoslovak Socialist Republic. In his absence this

is performed by the Presidium of the Federal Assembly. The meetings of the both chambers are generally held in public. Closed meetings take place only in rare and extraordinary situations. Articles 36 to 39 deal with the power and functions of Federal Assembly, especially in the legislative and executive fields. According to article 36, the jurisdiction of the Federal Assembly shall in particular be the following - to enact the constitution of the Czechoslovak Socialist Republic and constitutional and other Acts of the Federal Assembly, foreign policy matters, domestic policy, medium - term plans of development of the national economy, federal budget, election of the president of the Czechoslovak Socialist Republic, discussion of statements of policy of the government and control the activities of the government and its members, to elect and recall members of the constitutional court of the Czechoslovak Socialist Republic, to establish by constitutional Act Federal ministries and establish by Act other Federal organs of state administration, declaration of war, implementation of international political and economic treaties, etc. Article 37 deals with the legislative functions of the Federal Assembly. The executive powers has been defined in article 39. Article 40 to 53 define the minimum criteria of quorum, the cases in which special majority is required, minimum

majority essential for introducing the vote of no-confidence, the rules of procedure of Federal Assembly, oath to be taken by every member of the Federal Assembly, privileges enjoyed by the members etc.

The institution of the Presidium is a special innovation of the socialist states. The constitution of the Czechoslovak Socialist Republic also stipulates the creation of Presidium by each chamber consisting of three to six members. Article 54 has explained this in chapter three. Article 56 to 59 of the constitution further narrates the composition and functions of Presidium of Federal Assembly.

The Presidium of the Federal Assembly consists of 40 members, 20 of whom shall be elected by the chamber of the people and 20 by the chamber of nations. Even after the expiration of the electoral term of Federal Assembly, Presidium continues until the newly elected Federal Assembly elects its own Presidium. Article 58 defines the powers of the Presidium. It says that "at a time when the Federal Assembly is not in session either because it has been adjourned or because its electoral term has expired, the competence of the Federal Assembly shall be exercised by

the Presidium of the Assembly.²⁷ It further says that it shall however, be not competent to elect the Presidium of the Czechoslovak Socialist Republic, adopt or amend constitutional Acts, decide on the Federal Budget, declare war or pass a vote of no-confidence in the government of the Czechoslovak Socialist Republic or its member.²⁸ Article 50 empowers the Presidium of the Federal Assembly to call elections to the Federal Assembly.

The election and powers of the President of the Czechoslovak Socialist Republic are dealt in the articles 60 to 65 of the fourth chapter. The President is the head of Czechoslovak State and is elected by the Federal Assembly. He is also accountable to the Federal Assembly for the discharge of his functions. Article 61 defines the various kinds of functions to be performed by him - representing the Czechoslovak Socialist Republic in foreign relations, negotiations and ratification of international treaties, receiving and accrediting envoys, to convene and prorogue sessions of the Federal Assembly, to sign Acts of

27. Art. 58.

28. Ibid.

the Federal Assembly and legal measures of its Presidium , to appoint and recall Prime Minister and other members of the government of Czechoslovak Socialist Republic, appointment of high officials of the Czechoslovak Socialist Republic, to award decorations, be the commander-in-chief of the armed forces, proclamation of war on the recommendation of the government, etc.

Article 62 deals with the eligibility and mode of election of the President. A person eligible for election to the Federal Assembly may be elected President of the Czechoslovak Socialist Republic. The term of the office of the President is five years. In his absence the exercise of his office shall appertain to the government of the Czechoslovak Socialist Republic. In such an event the government may delegate some of the powers of the President to the Prime Minister.

Chapter five of the new (1968) constitutional Act explains the composition and functions of the government of the Czechoslovak Socialist Republic. It is dealt in articles 66 to 85a. According to article 66 "the government of the Czechoslovak Socialist Republic is the supreme executive organ of state power in the Czechoslovak Socialist

Republic.²⁹ The government of the Czechoslovak Socialist Republic shall consist of the Prime Minister, Deputy Prime Minister and ministers. For the exercise of their duties, the government is accountable to the Federal Assembly - either of the two chambers of the Assembly may express its lack of confidence in the government. The decision is taken by the government on the basis of the majority principle.

Article 77 deals with the functions to be performed by the government. The government of the Czechoslovak Socialist Republic as a body shall decide in particular with respect to - Bills of the Federal Assembly, government decrees, the implementation of its statement of policy, basic questions of domestic and foreign policy, the drafts of state plans of development of the national economy, the Federal Budget and the final budgetary account of the Federation, basic economic measures for securing the implementation of economic policy, the appointment of government officials in cases specified by an act of the Federal Assembly for a vote of confidence and other questions,

29. n.6, Art. 66

if an Act of the Federal Assembly so provides, for the exercise of its functions, the government of Czechoslovak Socialist Republic may establish as its organ the Presidium and set forth its competence and the principles governing its activity. Article 81 limits the jurisdiction of the government. It says that "Federal ministries shall be active in the sphere of exclusive Federal jurisdiction and in the sphere of joint jurisdiction."³⁰

The State Organs of the Czech Socialist Republic and the Slovak Socialist Republic:- One important dimension of the federal arrangement in a political system is the existence of dual government. The Czechoslovak Socialist Republic is not exception to it. Here also we find two sets of government - one of the federation and another of the constituent Republics. Both nationalities - Czech and Slovak - have their separate National Councils and government. The chapter seven, covering articles 102 to 139 are devoted to explain this. The National Council is the supreme representative body of the Republic and its sole legislative organ. Both republics have their own National Council - the Czech National Council and the Slovak National Council.

30. n.6, Art.81

Article 103 defines their composition and the duration. The Czech National Council has 200 deputies, while Slovak National Council has 150 deputies. They are elected for a period of five years. They are convened for session at least twice within a year by their respective Presidia. Like the Federal Assembly their meetings in general are held in public. Article 107 defines the jurisdiction of National Council - to adopt constitutional and other Acts of the Republic and see its implementation, to approve international treaties whose implementation requires an Act of the National Council to discuss the basic questions of domestic policy, to approve state plans of development and budget, to elect and recall the chairman of the National Council, to establish by an Act ministries and other organs of state administration, to elect and recall members of the constitutional court of the Republic, etc. Moreover, as the supreme representative organ of the Republic, the National Council also considers suggestions submitted by National Committees, discuss their activities and decide on measures concerning their development (Art. 108). Like the Federal State organs, in the Republics also we see a similar pattern. Here also there is the institution of Presidium which performs similar functions as its counterpart at the federal level.

Articles 124 to 139 deal with the government of the Republics. According to article 124 "the government of the Republic is the Supreme executive organ of state power in the Republic."³¹ Like its counterpart at the federal level, the government of the Republic also consists of the Prime Minister, Deputy Prime Ministers and ministers. The government of the Republic has to be accountable for the exercise of its functions to the National Council, which may express its lack of confidence in the government. The government of the Republic shall organise and provide for the fulfilment of tasks in the sphere of the economic, cultural and social development of the Republic as well as in other spheres which are placed by the present constitutional Act under the jurisdiction of the Republic. For this purpose, the government of the Republic shall ensure the implementation of laws, coordinate, direct and control the work of the ministries and other organs of state administration of the Republic. Apart from this, the government of the Republic shall direct and control the work of the National Committees* (Article-136).

31. n.6, Article 124.

THE NATIONAL COMMITTEES:-

Articles 86 to 96 of the chapter seven are related to the National Committees. These Committees constitute the main link in the system of Czechoslovak representative bodies. These are the broadest People's organizations and operate as organs of state power and administration in regions, districts and communities. Deputies are elected for a five year term.

Every deputy is obliged to work in his electoral district to maintain permanent contacts with his electors, to consult them to consider their suggestions and to give them accounts of his activity and of the activity of the entire national committee.

The jurisdiction of the national committees is relatively broad. Article 89 and 90 are concerned especially with the kind of functions to be performed by them. These national committees direct, organise and secure the development of economic, cultural, health and social affairs, see to it that laws are implemented that they are respected, that they protect socialist property and the rights and legitimate interests of the

people and their socialist organisations. The national committees are not only state administrative organs; they also play an important role in economic life. They manage enterprises of local significance such as small production plants, community building enterprises, local transport and a number of enterprises providing services. They play an important role in the system of drafting and supervising the fulfilment of the state economic plan and, in conformity with it, the development plans of their respective areas. The National Committee's budget is derived on the one hand from revenues accruing from its own activities and on the other, from state budgetary allotments.

According to article 95 the plenary session of a national committee elects a council and commissions and guides their work. The Council is an executive body with power to decide on matters not specifically reserved to the plenary session, to which it submits regular reports. The council or individual members may be recalled by decision of the plenary session. In external matter the national committee is represented by its chairman.

The Commissions provide scope for direct participation by citizens in public administration, deal with various fields of activity, have authority to make decisions in administrative matters and give directions to the heads of departments at the national committee offices. Apart from deputies, experts are coopted to serve on the commissions. The national committees also cooperate with voluntary organizations such as the trade unions, the Czechoslovak Union of Youth, etc.

National Committees exist at the regional and district levels. In Committees there are either city or local national committees. This structure corresponds to the territorial division of the state. In Prague there is a city national committee and ten district national committees. The city district national committees have their auxiliary organs in the various electoral districts. These are the so-called neighbourhood committees elected at citizen's meetings. They help the national committees in their electoral districts and submit the citizen's suggestions to them. They deal with minor matters such as settling disputes among neighbours, organising voluntary work for the improvement

of playgrounds and parks, cultural and social facilities. They try to draw as many people as possible into public activity, for example, in consumer's councils which supervise the work of shops and services.

THE ELECTORAL SYSTEM:-

Apart from article 3, there are other provisions also in the constitution dealing with the electoral system in the Czechoslovak Socialist Republic. Voting for all representative bodies (the Federal Assembly, the Czech National Council, the Slovak National Council, the National Committees at all levels) is general, equal, direct and secret. All citizens having reached the age of 18 have the right to vote; those having reached the age of 21 have the right to stand for election regardless of national origin, race, sex, religion, occupation or social background. The right to vote is denied only to those who have been legally certified as mentally deficient or those who are serving prison terms. Members of the armed forces have the same right to vote and to be elected as all other citizens.

Elections are organised by Commissions composed of

representatives of political parties and public organisations united in the National Front. The right to propose candidates is reserved to political parties, organisations, assemblies of workers, farmers and others at their places of work or in the villages, as well as to meetings of members of the armed forces. Such proposals are submitted to the law on elections to the Federal Assembly and the national committee also provides for recalling a deputy in the event that he has lost the confidence of his electors. The electors vote on such proposals at public meetings. The system of elections to the Czech National Council and the Slovak National Council is similar to that for the Federal Assembly.

THE JUDICIAL SYSTEM:-

The execution of justice is vested in elected and independent courts - the Supreme Court, regional and district courts, military courts and local people's courts. The chapter 8 of the original constitution of 1960 deals with the judicial arrangements in articles 97 to 106.

As a rule the courts sit as benches of several

judges. The Supreme Court and the regional, district and military courts are composed of professional judges and of judges who exercise their office in addition to their normal employment. All have equal status, are independent and subject only to the laws of the Republic. Judges are elected to district courts by direct universal equal and secret vote, to regional courts by the regional national committees, while the Supreme Court and military courts are elected by the Federal Assembly. They submit regular reports to their constituents, while the chairman of the Supreme Court keeps the Federal Assembly informed on the work of all branches of the judiciary. The term of office for the Judges is four years but they may be recalled at any time if they fail to discharge the responsibilities entrusted to them or for some other reason lose the confidence of the people. In such cases, the judge is recalled by the body which elected him, district judges may be recalled by the voters of their electoral district. The National administration of the judicial system is in the hands of the Ministry of Justice.

The jurisdiction of the courts operates on two levels; as courts of the first instance, district courts hear all cases, both criminal and civil, with the exception

of serious offences against the state. Appeals go to the regional court which sits as a court of the first instance only to hear serious cases of offences against the state. The Supreme Court acts as a check on the findings of the inferior courts in that objections on points of law may be submitted to it by the chairman of the Supreme Court or the Procurator General after sentence has been passed. As an appellate court it hears appeals in cases of exceptional public importance and in all cases of serious offences against the state.

Citizens are equal before the law. The principle of oral and public court proceedings is embodied in the constitution and every citizen is entitled to speak in court in his mother tongue. Sentences are publicly announced in the name of the Republic. Judges must weigh the evidence in a case in part and in whole with impartiality and determination to arrive at the truth and see that justice is done.

These principles are also observed by the local people's courts which try minor offences and simple property disputes. Such courts have been established in communities and at places of employment. Their judges are elected for

a term of two years at citizen's meetings on the proposal of the local national committee or a branch of the trade union movement. The local people's courts are one of the links in the unified system of the Czechoslovak judiciary; at the same time they directly express the will of the people in communities and places of employment. No professional judges sit in these courts. District courts act as courts of appeal hearing decisions taken by the local people's courts.

The constitution ensures the defendant the right to defence (Article 103). The defendant may be taken into custody only for reasons stated by law. The time in which the interrogation must be completed is laid down in the criminal code. The accused has the right to choose his legal adviser who may be present at all interrogations and at times and places at which further evidence is submitted. In certain cases, involving minors or in serious criminal actions, there must be legal defence. The legal profession advises individuals and organisations on legal problems and undertakes defence before the courts. Lawyers are associated in legal advice councils, which are independent professional organisations to which any individual may turn.

Respect for, and implementation of the laws are supervised by prosecutors whose offices work in-dependently of the local authorities. According to article 104, the office of the Prosecutor shall consist of the office of the Prosecutor General of the Czech Socialist Republic, the office of the Prosecutor General of the Slovak Socialist Republic and of the subordinated elements to be specified by an Act of the Federal Assembly.³²

The Prosecutor General is appointed by the President of the Republic and is responsible to the Federal Assembly. He takes part in meetings of the government and has a voice in its debates. He submits reports to the Federal Assembly on the implementation of Socialist legality and may propose subjects which require legal codification or suggest the amendment or supplementation of existing legislation.

The Prosecutor General and the Prosecutor subordinated to him, in accordance with their duties as defined by the constitution, supervise the implementation of and respect for laws on the part of all organs of the state administration and economic and other organisations as well as by citizens. This is known as general supervision. At the same time they supervise the implementation of laws

32. n.1, Art. 104.

in places of detention and institutions providing prophylactic treatment (for example, those treating alcoholism) and protective education. They have the right to attend court proceedings and appear before notaries in civil matters. In criminal cases, only the Prosecutor has the right to submit an indictment to the court. The Prosecutor at a higher level has the right to exercise the functions of the Prosecutors subordinated to him. The interrogating magistrates come under the Prosecutor's office and carry out examinations in criminal cases within the limits established by the criminal code.

Every citizen has the right to ask a prosecutor for a re-examination of the proceedings or decisions taken by the appropriate bodies. The prosecutor is bound to examine all circumstances which help to determine whether the law has been violated and to take appropriate measures in that connection. Such investigations must be concluded with a period of two months.

The constitutional Act of 1968 introduced a new institution in the field of judicial system, arising due to the creation of federal arrangement - the constitutional court of the Czechoslovak Socialist Republic. Article 86 to 101 of the new sixth chapter explain its jurisdiction

and powers. According to article 88, "the constitutional court of the Czechoslovak Socialist Republic shall decide in cases of conflicts of competence between;

(a) organs of the Czechoslovak Socialist Republic and organs of one or both Republics;

(b) organs of the two Republics".³³

By creating a constitutional court, the Czechoslovak Socialist Republic has fulfilled a basic precondition of federalism, according to its western concept. Also it will guarantee the various rights and freedoms of the citizens given to them by the constitution (Article 92). Article 94 deals with its composition. It shall consist of twelve members of whom eight shall be judges and four substitutes. Its chairman and vice-chairman are elected by the Federal Assembly from among its members. The members of the constitutional courts enjoy the same privileges as members of the Federal Assembly.

According to article 101 "there shall be constitutional

33. n.6, Article 88.

Courts in the Czech Socialist Republic and the Slovak Socialist Republic. Their jurisdiction and principles or organisation shall be determined by constitutional Acts of the respective National Councils.³⁴

STATUS OF ETHNIC GROUPS:-

Through the constitutional Act of 1968, the status and privileges of the ethnic groups were also defined in articles 1 to 7. Article 1 says that "the Czechoslovak Socialist Republic, as the common state of the Czech and Slovak nations and the ethnic groups living on its territory shall secure to citizens of Hungarian, German, Polish and Ukrainian national origin the possibility of and the facilities for their all-round development in the spirit of socialist democracy and internationalism."³⁵ The ethnic groups are represented in the representative bodies according to their numerical strength. They have been given facilities to get education and information through press in their own languages. Also it has been ensured by the constitution that their cultures and ethos are not threatened.

34. Ibid., Article 101.

35. Ibid., Article 1.

GENERAL PROVISIONS:-

The chapter 9 of the original 1960 constitution and chapter 8 of the 1968 constitutional Act explain some general provisions. They basically deal with the state emblem, flag, territory, capitals, etc. They also mention about the dates on which the constitutional Acts would deem to be implemented.

In sum, the above discussion in this chapter show that all possible aspects have been covered by this constitution. The provisions of the 1960 constitution clearly deal with the political system, economic system federal arrangement, judicial system, relationship between state and individual, its political institutions, their powers and functions, etc. In fact, this constitution also deals with such minor matters as question of flag, emblem, titles, etc. Besides, by passing various constitutional Acts it has kept pace with the changing needs of the Czechoslovak society. But we have concentrated in this chapter mainly on the original constitution of 1960 and the two constitutional Acts of 1968 making tremendous changes in the existing constitutional arrangement.

CHAPTER - FOUR

CONCLUSION

The Study begins by explaining the theoretical aspects of constitutionalism. According to one theory the constitution is a State's fundamental law, which has the highest legal force and establishes the basic principles of the political, legal and economic system of a given country. It goes on to add further that a constitution reflects the correlation of class forces at the time of its adoption.

While discussing the theoretical aspects of constitutionalism, we took into account both the liberal as well as socialist points of view. The constitution, according to the liberal view, stands for a set of rules and processes - codified or established by a long practice - which prescribes the structure and functions of the government, defining its organs, their powers and mutual relationships as also the limitations under which they are to function, so as to ensure that the government or any organ thereof is not allowed to function arbitrarily. Constitutionalism, therefore, postulates effective checks on the absolute powers of the government so that the liberties of the citizens are not curtailed without adequate reason. What is reasonable and what is not so is largely determined

by the type and level of the prevailing social consciousness.

The liberal pluralist view of constitutionalism is not acceptable to those who do not subscribe to its basic tenets. In sharp contrast to the liberal pluralist theory, Marxist theory holds that class character of the state is the Central theme of its theory of constitutionalism. While the liberal view of constitutionalism regards the state as an instrument of reconciliation of the conflicting interests of various groups and sections of society, the Marxist view treats the state primarily as an instrument of the dominant class. Accordingly, so long as power is held by the bourgeoisie, the proletariat cannot have any tangible rights under such system even if its constitution pretends to establish perfect freedom and equality of the citizens. In order to secure real rights of the people, the proletariat must capture state power because they alone represent the people. With this capture of power, the old state machine must be replaced by a new one.

The constitutions in the socialist countries strive to be the frame of a new political system based on, and

conditioned by the postulates of Marxism - Leninism. These states abolish private ownership of the means of production. In its place, the practice of socialism transfers the natural resources as well as the means of production and distribution to the state controlled and managed by the workers and peasants along with other toiling sections of the society aligned with them.

The Western constitutionalism is described as the product of the class struggle, in that it protects the exploitation of the labouring masses by the propertied classes. Its attributes - civil liberties and legality - are regarded merely as devices for appeasing the proletariat. On the other hand, from the Marxist - Leninist view point it is the society which creates and moulds the constitution. The formal constitution has to correspond to the prevailing constellation of the social forces. Under integral socialism it is the collectivity of the working population, with the Communist Party as its vanguard and legitimate representative, that replaces the liberal bourgeois society of Western capitalism. With this theoretical background an indeft analysis of the Czechoslovak Constitution has undertaken in the present study.

The first constitution of Czechoslovakia was adopted in May 1948 when the national and democratic revolution was transformed into a socialist revolution and dictatorship of the proletariat was established. It was a milestone in the history of Czechoslovakia. It enabled the working class, under the leadership of the Communist Party of Czechoslovakia to proceed to the far-reaching socialist transformation of Czechoslovak society. The constitution fully confirmed all the gains made under People's democratic Czechoslovakia, legalised the takeover of all power by the working class in alliance with the peasantry and other strata of working people. It embodied the sovereignty of the working people in the state, the equality of the Czech and Slovak nations and of all citizens.

The foundations of socialism were built in Czechoslovakia under the leadership of the Communist Party in a historically short time. Thanks to the rise in the living standard, by the end of the fifties Czechoslovakia ranked among the leading countries of the world. It entered a period of the gradual reinforcement of the bases of socialism and the all-round utilisation of its further developmental possibilities.

The results of these outstanding revolutionary changes were considered by a nationwide party conference called from July 5 to 7, 1960. The conference noted that socialism in Czechoslovakia had triumphed. This evaluation produced the impression that all the basic tasks linked to the transition from capitalism to socialism had been solved. It reflected a proper estimation of the state of development achieved and indicated great satisfaction with these successes. In conformity with this conclusion, the National Assembly approved the new constitution in July 1960, according to which the name of the state was changed to the Czechoslovak Socialist Republic.

The new constitution is substantially longer and more explicit than previous constitution. It has a more complex internal structure and is divided into 9 chapters concerning 112 articles. It has provisions dealing with all aspects - political, economic, social, cultural, etc. As far as the political system is concerned, the detailed description of the guiding and leading role of the Communist Party is given and the actual place of the Party in Czechoslovak society and state is clearly defined. Also it contains provisions explaining the actual nature of state in Czechoslovakia. It describes Czechoslovakia

as a socialist state which is founded on the firm alliance of the workers, farmers and intelligentsia with the working class at its head. The other aspects which has been dealt are - electoral system, various types of voluntary associations, National Front, Socialist Legality, Democratic Centralism, Federalism, rights and duties of citizens etc. The new constitution was substantially modified in 1968.

Thus, we find that the new constitution of 1960 is all embracing and comprehensive. There is hardly any aspect which has not been touched upon. It reflects in true sense, the switch over to a new era in the history of the Czechoslovak Socialist Republic. At the same time, we find that it has been made dynamic through introducing far-reaching changes in 1968 as a result of new circumstances.

It may be further added that a new constitution of Czechoslovak Socialist Republic is in the process of being framed. Obviously this will include far-reaching changes and modifications to keep it abreast with the latest developments at the social plane. By the same logic the possible impact on this constitution of the great ongoing changes in the Soviet Union cannot be

discounted. Already the echoes of Perestroika and Glasnost are being heard in the east European socialist countries. In course of time we may expect some definite changes in the theory and practice of Constitutionalism in Czechoslovakia.

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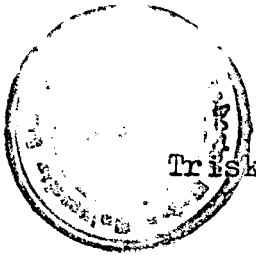
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